

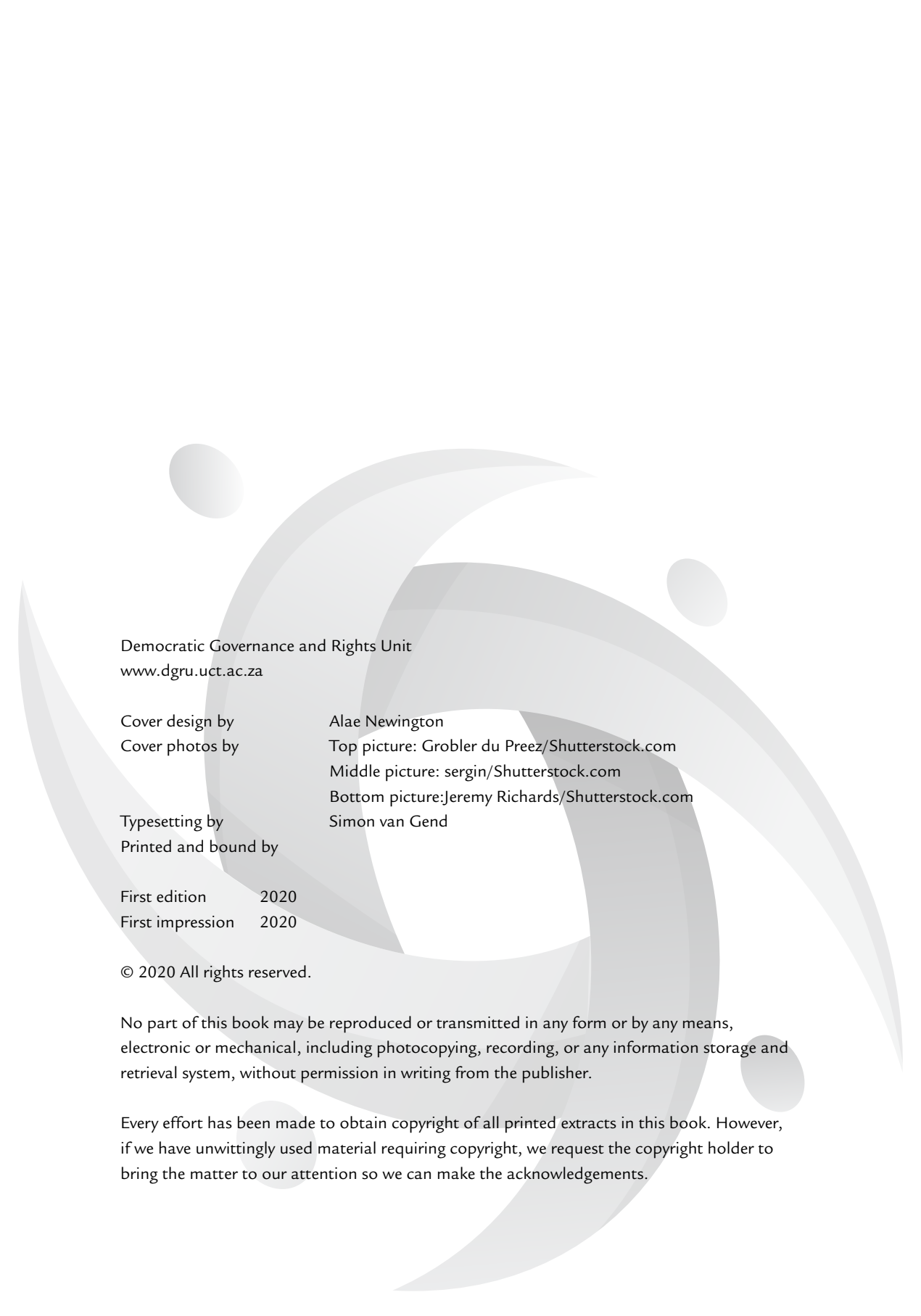
# THE 2019 SURVEY OF SOUTH AFRICAN MAGISTRATES' PERCEPTIONS OF THEIR WORK ENVIRONMENT



**WORKING PAPER SERIES**

# The 2019 Survey of South African Magistrates' Perceptions of their Work Environment





Democratic Governance and Rights Unit  
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# Executive Summary

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The Magistrates we surveyed were demographically broadly reflective of the total number of magistrates in South Africa and broadly reflective in terms of rank, even though some of the more senior positions (e.g. regional magistrate) are over-represented.

We examine in some detail the workload of magistrates in terms of civil and criminal work. We find that the magistrates doing civil work perceive their workload to be particularly high, and we suggest reasons for that finding.

We identify the kind of support that magistrates value, and measure the extent to which they receive such support. We find that they feel largely unsupported, and assess what kinds of support they feel would be most valuable. We also investigated the magistrates' view that the physical infrastructure of the court building, their offices, as well as their safety and security are inadequate. Given the significant amount of perceived work pressure as well as inadequate support and issues around security, it is unsurprising that the majority of respondents experienced a great deal or a lot of stress, which takes a toll. Insufficient remuneration is a key concern for many magistrates.

The issue of corruption also came under scrutiny, and we asked magistrates to evaluate corruption among different stakeholders in the justice system. We found that they perceive there to be high levels of corruption in the police, but also levels of corruption in the magistracy itself.

We identify six key areas where we recommend policy reform and further research, in the areas of workload and qualifications, stress, safety and security, infrastructure, remuneration, and corruption.



# Introduction

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This survey is part of the Democratic Governance and Rights Unit's (DGRU) research project on the South African Magistracy. The results of this survey are combined with other DGRU projects on the South African Judiciary to inform and improve policy recommendations, the training of magistrates, as well as educating the South African public about the state of the judiciary in the country.

The magistracy is separate from the judiciary in the so-called superior courts. Until 1993, legislation structured the magistracy as an arm of the executive, not the judiciary. While legislators have taken steps to increase the magistracy's independence, the magistracy remains tied to the executive's administration. The 1993 Interim Constitution led to discussions about moving towards a "single judiciary," one that integrated the magistrate's courts into the court system to achieve the new Constitution's vision of an independent judiciary. Nearly two decades later, government officials still express unification as their goal for the judiciary, but progress beyond discussions appears disjointed and preliminary at best.<sup>1</sup>

Although the magistracy remains formally separate from the superior court judiciary, it generally does the same work as the judiciary. For many South Africans, the magistracy is the only judiciary they will ever encounter. Magistrate's courts hear an estimated ninety-five percent of cases in South Africa (Morné Olivier,

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1 For instance, the Department of Justice and Constitutional Development's 2012 publication on the transformation of the judiciary describes a single judiciary as necessary to meet the Constitutional judiciary framework, but states that the pursuit of a single judiciary still requires "debate" given the "divergent views between judges and the Magistracy on the meaning of the concept." (Department of Justice and Constitutional Development, 2012)

2014). The Constitutional Court has acknowledged that magistrate's courts are a "vital part of the Judiciary and the administration of justice" (*Association of Regional Magistrates of Southern Africa v. President of the Republic of South Africa*, 2013)<sup>2</sup>

Magistrates have increasingly been called on to act and be appointed as judges. The increasing numbers of former magistrates who have become judges do not appear coincidental. Magistrates now form a pool of candidates from which judges are appointed, which was not the case in the pre-constitutional era.

Given the importance of the magistracy in providing access to justice, as well as their increasing role as providing judges of the high court, we wanted to survey magistrates in order to understand their own perception of their role, and highlight the challenges they are experiencing.

Additionally, the DGRU was concerned about the results of the 2018 Afrobarometer public opinion survey which recorded that 45% of South Africans have little or no trust in the courts. This survey forms part of a broader research agenda in which we are unpacking this finding further. Our research looks at magistrates' own perceptions of their workplace (the courts); the perceptions of ordinary people who use the courts; and analyses the kinds of misconduct issues that are dealt with by the Magistrates Commission and the system of dealing with misconduct. This report deals with the first of these – magistrates' perceptions of their own work environment.

The survey was designed to request sitting South African Magistrates to complete a brief online questionnaire regarding their workload and pressures, the broader court environment, as well as their personal career trajectories. With the generous assistance and cooperation of the Association of Regional Magistrates of Southern Africa (ARMSA) and the Judicial Officers Association of South Africa (JOASA) who helped to disseminate the questionnaire, the online survey was conducted from 20

The 2018 Afrobarometer public opinion survey recorded that 45% of South Africans have little or no trust in the courts.

2 -Association of Regional Magistrates of Southern Africa v. President of the Republic of South Africa 2013 (7) BCLR (CC) para 63.



September to 18 October 2019. The survey responses were then analysed by members of the DGRU. A first draft of the report was then shared with a group of magistrates and discussed in a virtual meeting during July 2020. Participants' responses and feedback have been included in our analysis in this report.

This survey was made possible due to the generous support of the Open Society Foundation and the Social Justice Initiative.



# Methodology

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The goal of the survey was to gauge the views, attitudes and experiences of the more than 2000 magistrates that work across 1886 courts in South Africa. The survey included 48 questions and was administered online using Survey Monkey. The majority of questions were drawn from the UK 2016 Judicial Attitude Survey<sup>3</sup> and adapted to the local context where necessary. We also added several questions that were particular to the South African context. The final version of the questionnaire as well as summary results are available upon request.

Respondents were sampled through available email lists from ARMSA and JOASA who sent it out to a total of 386 magistrates. We also sent out three reminders over the course of two weeks.

Since this was the first online survey of magistrates in South Africa, and thus an exploratory exercise, we were unsure of the number of responses we would receive. While a larger sample size would have been beneficial for reducing the margin of error, we decided to stop data collection once additional reminders sent out to magistrates did not yield additional responses. The response rate was 43%, with a margin of error of 7,29% and a confidence level of 95%.

A focus group of senior magistrates were consulted on the findings of the survey, and their responses have been taken into account in our analysis of the data.

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3 Available at <https://www.judiciary.uk/wp-content/uploads/2017/02/jas-2016-england-wales-court-uk-tribunals-7-february-2017.pdf>.

# The Magistrates we surveyed

In terms of demographic characteristics, 50% of our sample were male and 50% were female, constituting a slight over-representation of females compared to the total number of magistrates in South Africa (Table 1). Moreover, our sample is broadly reflective in terms of rank, even though some of the more senior positions (e.g. regional magistrate) are over-represented.

**Table 1:** Demographic characteristics of magistrates (sample and universe)

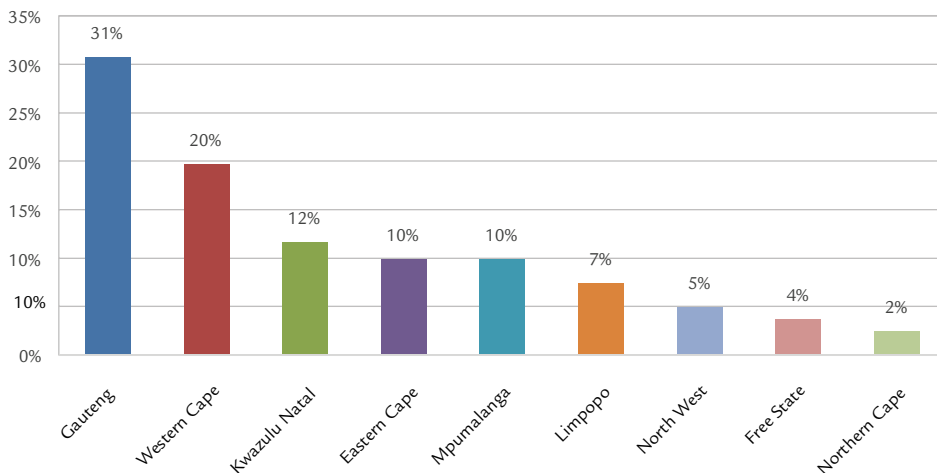
	Survey Sample		Employed 2018		Difference Percentage
	Count	%	Count	%	
Male	82	49,7%	1109	54,5%	-4,7%
Female	83	50,3%	927	45,5%	4,7%
Regional Court President	3	1,8%	8	0,4%	1,4%
Regional Magistrate	39	23,6%	351	17,2%	6,4%
Chief Magistrate	0	0%	16	0,8%	-0,8%
Senior Magistrate	13	7,8%	109	5,4%	2,4%
Magistrate	110	66,7%	1552	76,2%	-9,5%
<i>Grand Total</i>	<i>165</i>	<i>100%</i>	<i>2036</i>	<i>100%</i>	

Note: N=165 because one respondent did not answer the relevant questions.

The majority of surveyed magistrates were between 45 and 54 years old. While we do not have a breakdown by age for the total number of magistrates in South Africa as a reference point, there does not seem to be an obvious over-

representation of a specific age-group. As Figure 1 shows, half of all respondents are based in only two provinces, Gauteng (31%) and the Western Cape (20%).

**Figure 1:** Province in which respondent is based



Note: N=163.

Six out of ten (60%) respondents have an LLB degree, while an additional 10% completed an LLM (Figure 2). However, this profile is likely to be in flux given legislative changes to the formal requirements to be a magistrate. In 2010, legislators replaced the LLB requirement for regional magistrates with a general requirement that candidates be “fit and proper.” They justified the change as aligning qualifications for magistrates with qualifications for judges (Parliamentary Monitoring Group, 2010).<sup>4</sup> The bill was the culmination of debates over changing magistrate’s qualifications from specific requirements to a general appropriateness standard dating back to the 1990s, which was partly meant to accelerate diversification of the magistracy.<sup>5</sup> In committee meetings, the Department of Justice and Constitutional

4 These requirements are now found in regulation 3.1 of the Regulations for Judicial Officers in Lower Courts GN R361 of 1994 (as amended).

5 The 1944 Magistrates Act set an LLB requirement for regional magistrates and a Civil Service Lower Law Examination requirement for district magistrates. At that time, an LLB required five years of coursework. Magistrates’ Courts Act 32 of 1944, §9, 10.

The vast majority of magistrates previously worked as prosecutors for the government.

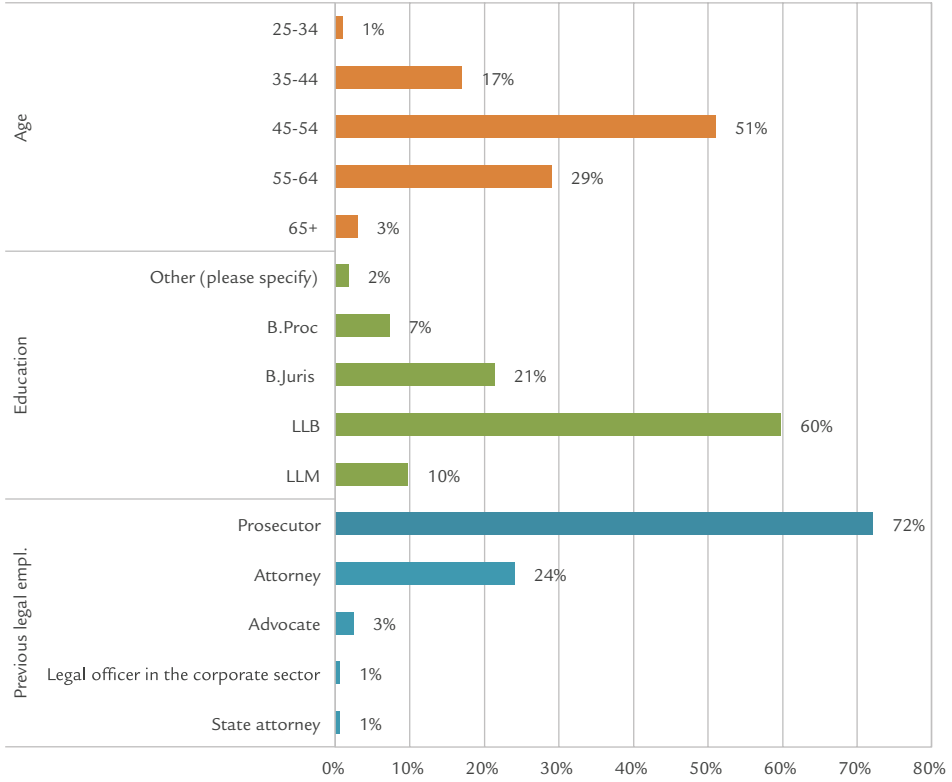
Development (DoJCD) characterized the LLB requirement as “inconsistent with the ‘fit and proper’ requirement in the Constitution”(Parliamentary Monitoring Group, 2010). Further, it described removing the LLB requirement as inconsequential since the LLB had “diminished” in status since its adoption as a requirement, citing the existence of good judges with no LLB as evidence that the degree was a misplaced requirement. The DoJCD justified the change as a step towards “harmonis[ing] the appointment requirements for judicial officers for the entire court system”, arguing that the requirements for appointing magistrates should be consistent with the requirements for the judiciary and that there were “good judges” with a B.Proc and no LLB(Parliamentary Monitoring Group, 2010). The committee cancelled public hearings on the bill due to a lack of public interest.<sup>6</sup>

In terms of respondents’ previous work experience, the vast majority of magistrates previously worked as prosecutors for the government. A further quarter (24%) of respondents had a background as an attorney. Under apartheid, the Minister of Justice appointed magistrates from the Department of Justice’s ranks of bureaucrats, rather than from the legal profession at large. Most were former DoJ prosecutors, although there was no policy prohibiting appointments from outside the public service sector.<sup>7</sup> Today, the pattern of appointments remains, with magistrates still mostly being drawn from the ranks of prosecutors. However, this practice is open to criticism as undermining the independence of the magistracy, as so many magistrates have a history of acting for the state in criminal matters.

6 The committee received two written submissions related to the bill, one in favor and one against, and no requests for oral presentations. Magistrates’ Courts Amendments Bill: public hearings cancelled, deliberations and voting, Justice and Correctional Services Committee, Sept. 13, 2010, available at <https://pmg.org.za/committee-meeting/12026/>. According to a telephone interview with Nazeem Joemath, Magistrate, Former President of JOASA (May 26, 2015). Joemath, former president of JOASA, the change in requirements has not had much of a practical impact on the qualifications of the candidates appointed.

7 “As Hahlo and Kahn explained in 1960, ‘to the lay world the magistracy seems a ‘plum’ and thus attracts recruits to the [public] service, while to the world of successful practising layers the salary makes it a crab apple.”(Morné Olivier, 2014).

**Figure 2: Respondent characteristics<sup>8</sup>**



Note: N=162 (Age); N=164 (Education); N=158 (previous appointment).

Comparing the timing of the initial appointment, the survey data reveals that 20% of respondents have been appointed as a magistrate before the end of Apartheid, while about the same percentage of respondents (23%) have been appointed between 1994 and 1999. Almost 60% of respondents were first appointed as a judicial officer in the past 20 years.

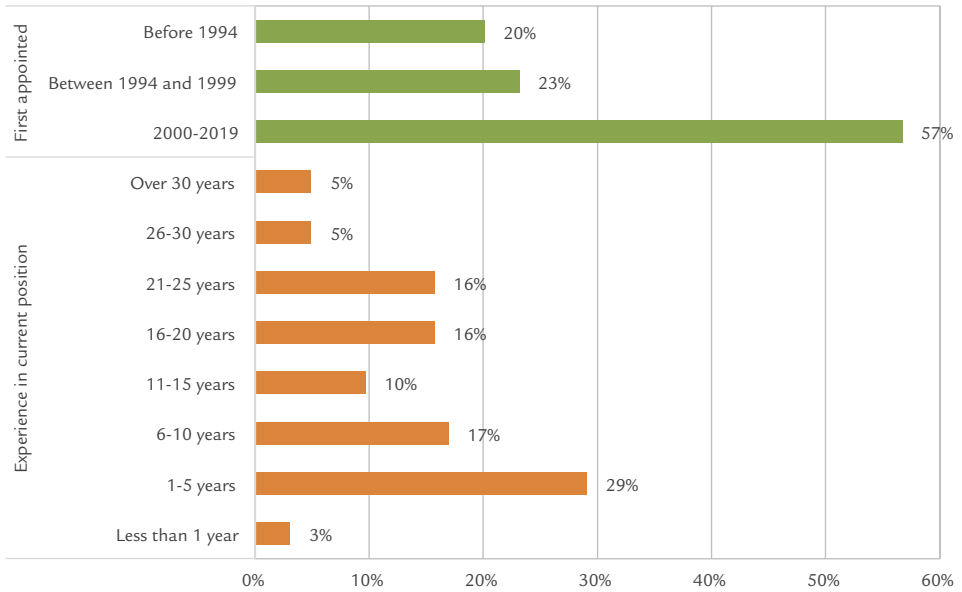
By contrast, all current High Court judges have been appointed since 1994.<sup>9</sup> This may be because judges are generally older when they are appointed, and form a much smaller group.

<sup>8</sup> For the rest of the analysis we exclude the group of 25-34, and 65+ due to low case numbers

<sup>9</sup> Office of the Chief Justice, Spreadsheet of Permanent Judges, 6 June 2019, on file with the DGRU. The spreadsheet lists two judges (Judges Leach and Pickering) who were appointed in 1993, but to our knowledge both judges have since retired.

When asked how long a respondent has been in their current position (Table 1), about half of all respondents have spent at most 10 years in their current position (Figure 3), while about one in four respondents spent between 10 and 20 years in their current position. This data highlights the importance of issues such as work experience and career progression, issues that will be analysed in more detail in a subsequent section.

**Figure 3:** Respondent experience as judicial officer



Note: Respondents were asked: When were you first appointed as a judicial officer? (N=164); How long have you been in your current judicial post (ref. Table 1)? (N=165)



# Court Cases

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## Types of Cases

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The magistracy is divided into two levels of courts, with distinct jurisdiction and penal powers. District courts have jurisdiction over civil cases and criminal cases, except for charges of treason, murder, and rape. They can hear civil cases where the amount at issue does not exceed R100 000. They can impose maximum fines of R100 000 and up to three years in prison. Regional courts have criminal jurisdiction in all matters except for treason and, following a legislative amendment in 2008, have civil jurisdiction where the amounts at issue fall between R100 000 and R300 000. In terms of the Criminal Law (Sentencing) Amendment Act (No 38 of 2007) a Regional Magistrate's Court can sentence a person who has been found guilty of offences that include murder or rape to imprisonment for life. The court can also sentence people who have been found guilty of certain offences such as armed robbery or stealing a motor vehicle to prison for a period up to 20 years. A Regional Magistrate's Court can impose a maximum fine of R300 000.(Department of Justice and Constitutional Development, 2020).

Separating criminal and civil matters, we can see that most Magistrates deal with both, while only about 1 in 3 (31%) magistrates deal exclusively with criminal cases, and even fewer (11%) only hear civil matters (Figure 4).<sup>10</sup> However, in our sample regional court magistrates are much more likely to deal with criminal cases (51%), while

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<sup>10</sup> While subsequent discussions with magistrates revealed that family court cases are in practice often seen as a distinct group, we subsume them here under civil court cases.

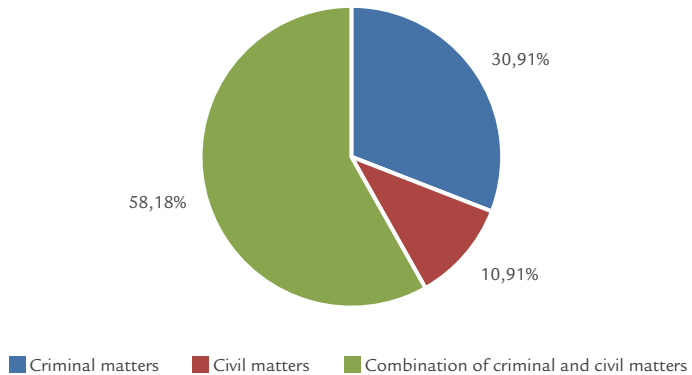


Not having civil experience would most probably render a magistrate un-appointable in the position of a permanent High Court judge.

only 7% of them deal with civil law cases (results not shown), and only 41% of them deal with both types of cases equally often (Figure 5). By comparison, two-thirds (65%) of magistrates at the district courts are dealing with both cases equally (23% deal primarily with criminal, and 12% with civil matters, results not shown). One consequence of this pattern is that although a predominant number of judges are appointed from the ranks of magistrates, not having civil experience would most probably render a magistrate un-appointable in the position of a permanent High Court judge. A further analysis of the group of respondents who often deal with both types of cases, does not show an obvious gender imbalance. However, younger magistrates seem to be more likely to fall within this category. In contrast, older respondents are more likely to only deal with criminal matters.<sup>11</sup>

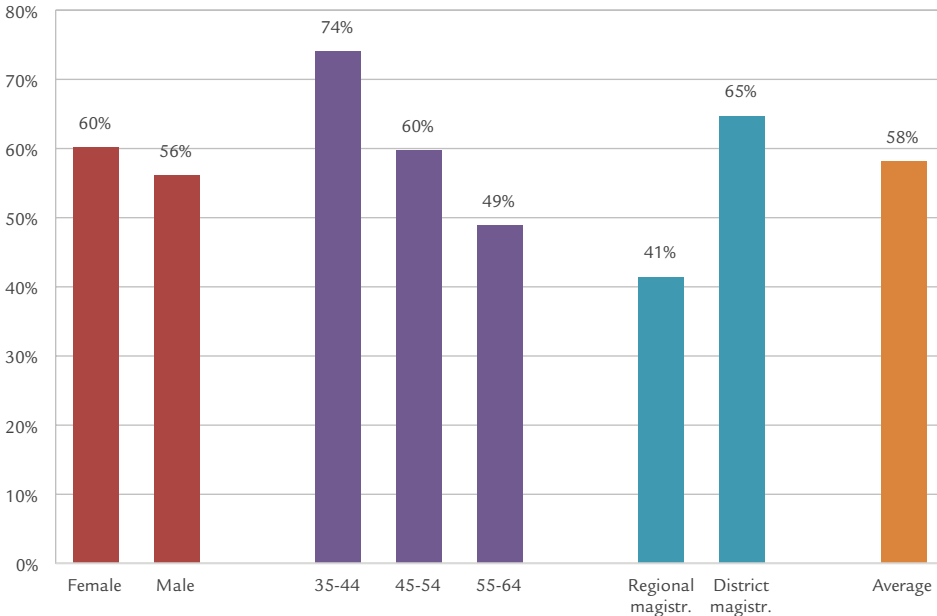
The recent increases in civil jurisdiction might be one reason why older magistrates are more likely to deal with criminal cases today. However, more research is needed to establish why more older magistrates tend to hear criminal matters exclusively. A further factor to be taken into account, as was pointed out during the focus group, is that combined civil and criminal experience would likely only be possible in larger courts.

**Figure 4:** *Types of cases magistrates deal with*



Note: N=165.

<sup>11</sup> Among 35-44-year old magistrates 22% mainly deal with criminal matters, compared to 32% among 45-54 and 34% among 55-64 year old judges.

**Figure 5:** Magistrates who deal with both types of cases

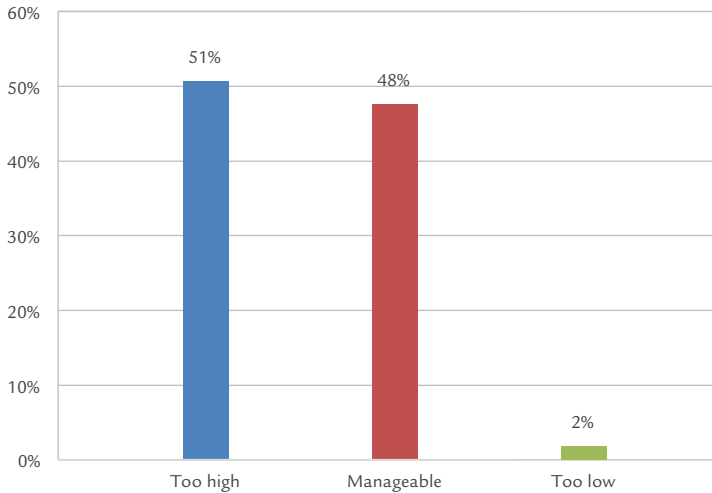
N= 165 (Gender), N=156(Age), N=163 (Type of permanent position)

Since 2010 Magistrates have been said to have experienced a significantly higher case workload (Sidimba, 2020). While we do not have comparable data spanning across the last decade to track changes in Magistrates' workload, we nevertheless asked if magistrates perceive their current workload as 'too high', 'manageable', or 'too low'. A concerning 50% of magistrates indicated that the current workload is too high (figure 6). If justice requires, among other things, time for judicial officers to deliberate on the case in front of them, the survey evidence suggests that too many magistrates do not have sufficient time to do so.

To get a more accurate picture of which magistrates in particular might be exposed to what they say is an unmanageable case load, we separate the data according to gender, age, and the type of cases a magistrate deals with. As Figure 7 shows, 50% of both male and female magistrates report that their workload is too high. Similarly, we do not see a difference according to age. However, among those who exclusively deal with civil matters 6 out of 10

A concerning 50% of magistrates indicated that the current workload is too high.

**Figure 6: Case workload**

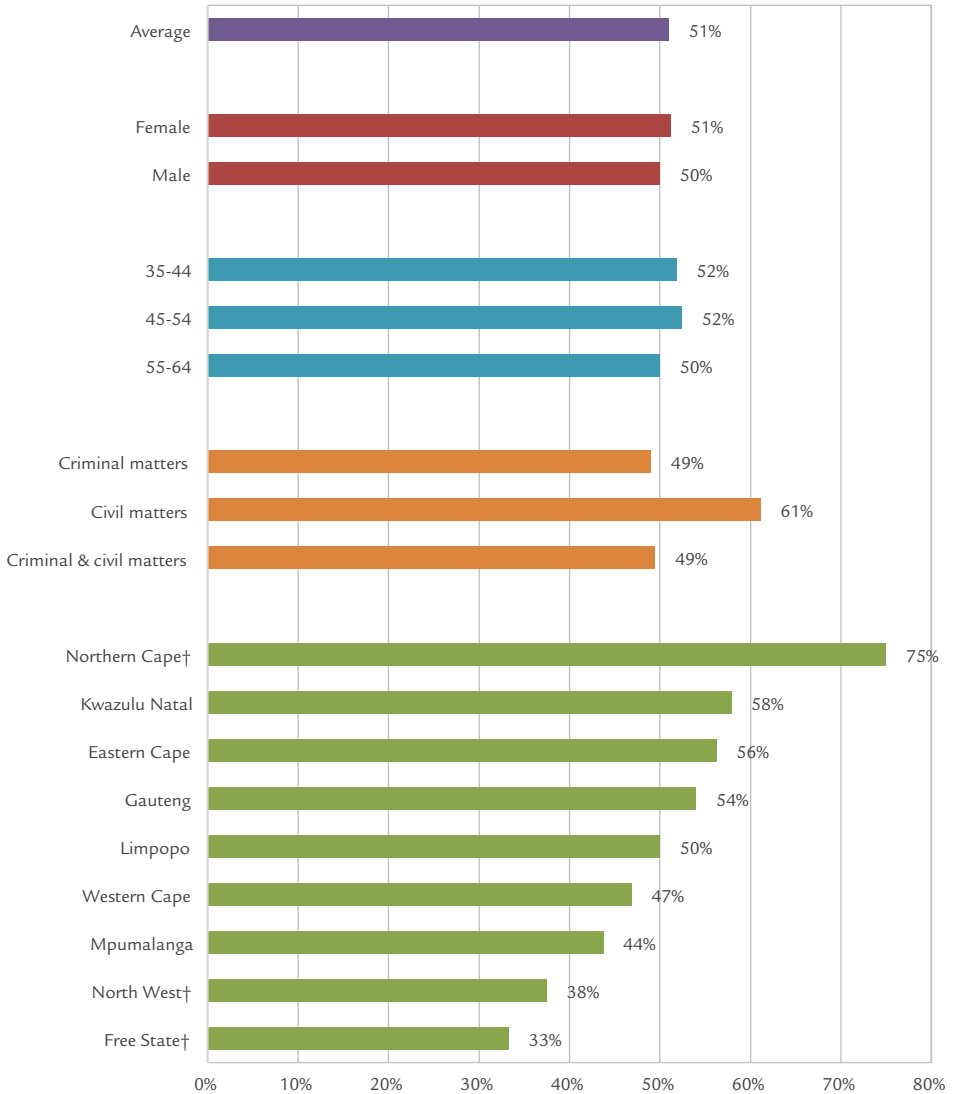


Note: N=164.

respondents say that their workload is too high, this is 10 percentage points higher than magistrates who exclusively deal with criminal matters or a combination of both.

We also see substantial differences according to the province in which the respondent is based. Even after excluding the three provinces with less than 10 respondents, we still see a 14-percentage point gap between KwaZulu-Natal (58%) and Mpumalanga (44%). Unfortunately, it is not possible to explain the geographic differences based on the available survey data.

Interpreting the responses relating to workload proved to be one of the more complex aspects of analysing responses to this survey. Magistrates' responses regarding their workload appear, on the face of it, to be contradicted by information from other sources. For example, the average court hours as reported on in the NPA Annual Reports have reduced steadily year-on-year from 4 hours 9 minutes in 2002/3 down to only 3 hours 6 minutes in 2017/18 (Dullah Omar Institute, 2018). In a recent speech the Deputy Minister of Justice said:

**Figure 7: Case workload too high by gender, age, type of cases, and**

Note: N=161. †= less than 10 respondents in category (Northern Cape=4, North West=8, Free State=6).

*“I would like to give recognition to the fact that our regional courts are carrying an increased case load, more than they did in the past, given that civil matters, divorces and now matters relating to PAIA, PAJA and PEPUDA fall within the domain of our regional courts.*

*But there are also concerns regarding the performance of some of our regional courts: for example, how is it possible that one regional court magistrate in the Eastern Cape can clock an average of 05:00 court hours a day and finalize more 8,3 civil matters per day, whilst another regional court magistrate in the same province only does an average of 02:08 court hours per day, and finalises only 0,16 criminal cases per day and no civil matters.*

*Another regional court magistrate in Gauteng only finalised 6 criminal cases in a year and recorded an average of only 24 minutes of court time per day”(Government of South Africa, 2019).*

On the other hand, magistrates in the focus group were adamant that the number of hours they spend doing family and civil law has grown exponentially. Magistrates also observed that the number of criminal matters that are finalised is going down, and attributed this to an increase in the amount of family law work done by magistrates, especially in the district courts.

How can these seemingly contradictory accounts of magistrates' workload be reconciled? While more research is required to better understand these dynamics, the survey data, as well as subsequent discussions with magistrates suggest two core drivers of this difference. First, there appears to be insufficient training in civil and family court matters. Neither the professional experience, nor the training of prosecutors is focussed on civil law, but rather emphasizes criminal law. Although magistrates do receive training in both civil and criminal law, there is no exam required as is the case with attorneys being admitted to the side bar or advocates being admitted to the bar. New appointees to the magistracy must complete a training requirement. New district court magistrates go through a month of civil and a month of criminal training, with a

There appears to be insufficient training in civil and family court matters.

month of work in between the two trainings.<sup>12</sup> Similarly, new regional court magistrates also go through a two-month training program, with one month focused on civil and one on criminal cases.<sup>13</sup> In the past, magistrates used to complete a six-month probation period before getting their permanent appointment. During the probation period, magistrates were assigned a mentor on the court, a magistrate with more experience. However, this system was stopped as a result of labour law changes and the perception that it ran counter to transformation.

These changes coincide with the second aspect – a broader shift in what is expected of magistrates in family and civil court cases. Magistrates and the focus group identified the impact of the Childrens’ Act, which is said to have doubled the workload in the children’s court. The Protection from Harassment Act was also identified as having increased the workload in family courts. Other legislation such as the National Credit Act and the Extension of Security of Tenure Act was said to have led to magistrates performing work they had not previously done, and additionally, to require magistrates to play a more active and inquisitorial role than they would previously have done. Relatedly, magistrates reported that the amount of chamber work required of them has been steadily increasing, particularly in family court and civil court work, even though this type of work does not ordinarily get recorded as court hours. Workloads in the criminal courts are hampered by the reliance on other court personnel – an absent interpreter or clerk of the court has a knock-on effect on the work of a magistrate and management of these support staff does not fall in the ambit of the magistracy.

A further factor noted by magistrates in the focus group regarding court hours concerns the apparent use of different reporting tools by the National Prosecuting

Workloads in the criminal courts are hampered by the reliance on other court personnel.

12 Telephone Interview With District Magistrate 1 (June 3, 2015), Telephone Interview With District Magistrate 2 (June 7, 2015), Telephone Interview With District Magistrate 3 (June 9, 2015).

13 Telephone Interview With Chief Magistrate (June 9, 2015), Telephone Interview With Regional Magistrate 1 (June 4, 2015).

Authority and the courts, which do not 'speak to each other'. It was stated, for example, that a case which was set down for trial but subsequently mediated would be counted as finalised for the NPA, but not for the magistrate.

Taken together, the gaps in training as well as the broader changes may hamper magistrates' ability to work effectively. This in turn may lead to magistrates feeling that they are overworked.

# Opportunities for Support Among Magistrates?

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Given such high perceived workloads, it is appropriate to ask whether magistrates value and have access to different mechanisms that could help them to cope with their daily work. To assess the kind of support that magistrates value and measure the extent to which they receive such support, we employed two separate batteries of questions.

First, we asked the following: ‘To what extent do you feel the following are important to you? 1) Support for dealing with stressful conditions at work; 2) Time to discuss work with colleagues; 3) Opportunities to sit in other courts. We used a 4-point scale for each question (Important, somewhat important, not important, not sure).

Second, we asked whether these measures are currently available to them using a 5-point scale (non-existent, poor, adequate, good, excellent)<sup>14</sup>. Taken together, the responses reveal important similarities and differences. Virtually all respondents said that support for dealing with stressful conditions is very important. Yet, few magistrates said that they also get adequate support. By subtracting the ‘importance’ from the ‘availability’ score, we can calculate an *expectation gap*. The size of the gap could be used as a tool to prioritize the implementation of policy recommendations. On average, this gap is a staggering 82% for the first question referring to support with stressful conditions, remaining relatively stable across gender and age categories as well as the type of cases magistrates deal with (Figure 8).

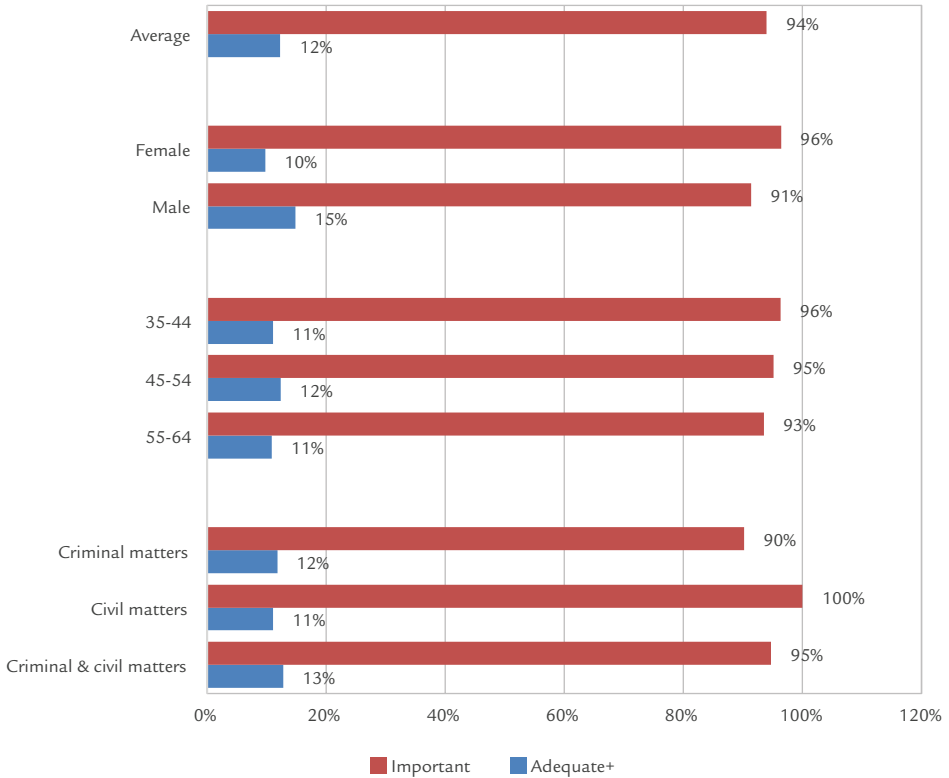
Virtually all respondents said that support for dealing with stressful conditions is very important. Yet, few magistrates said that they also get adequate support.

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14 For this part of the analysis we combine the percentages for ‘adequate, good, and excellent) into ‘Adequate’.



**Figure 8:** Support for dealing with stressful conditions at work

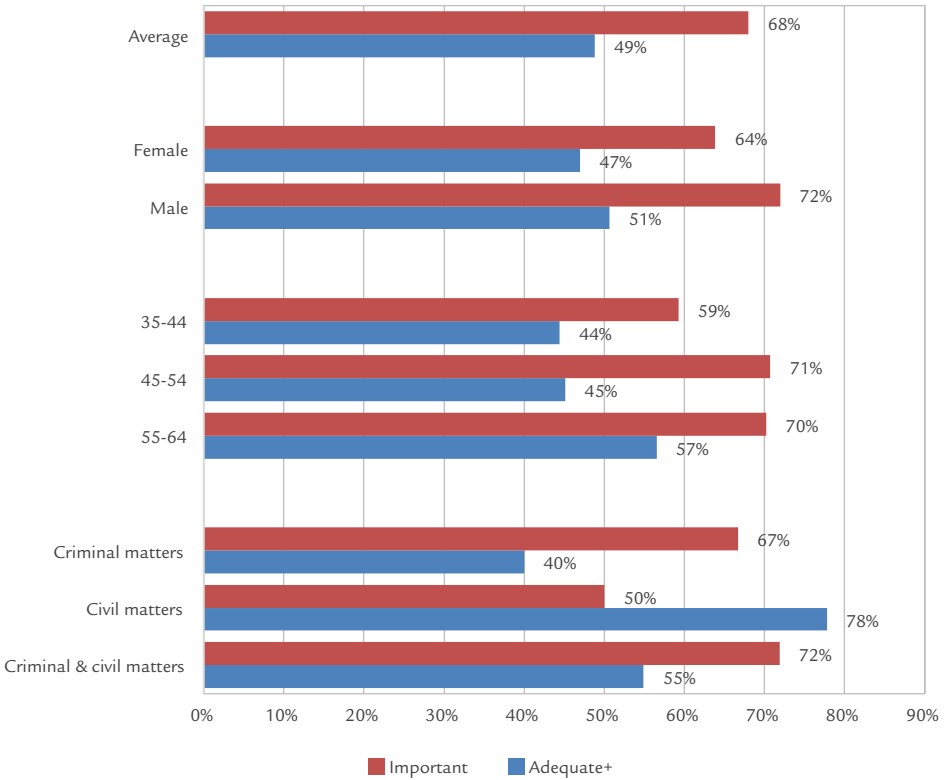


Respondents were asked: To what extent do you feel the following are important to you? Support for dealing with stressful conditions at work

Considering the first concrete and low-cost measure magistrates might use to cope with their high workload – discussing work with colleagues – we see that there is often insufficient time to do so (Figure 9). While the expectation gap decreases to 19%, only one group (magistrates who deal exclusively with civil matters) has a higher level of supply than demand for this type of support. Overall, less than 50% of respondents say that there is adequate time to discuss work with colleagues. Magistrates in the focus group pointed out that in courts with few, or especially only one, magistrate it would be difficult to make contact with colleagues.

Another important way to deal with the heavy workload and improve one’s ability to deal with difficult cases is by

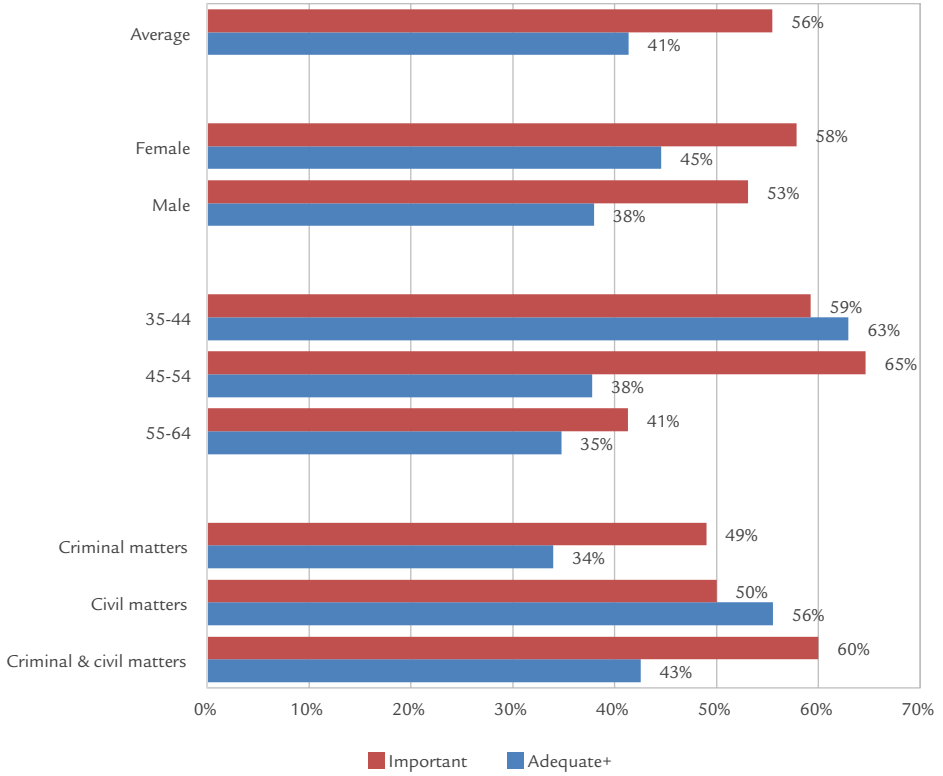
**Figure 9: Time to discuss work with colleagues**



vRespondents were asked: To what extent do you feel the following are important to you? Time to discuss work with colleagues

learning from colleagues as they hear cases (Figure 10). It is encouraging to see that especially the youngest cohort of magistrates says that there are enough opportunities to do so. However, there remains an imbalance between how important it is and the extent to which it is available to many other respondents – especially those that deal with criminal cases. On average, the expectation gap is 15%. This discrepancy between what magistrates value and the support they receive is a recurring theme in our survey. Before looking at the effects of this in more detail by measuring the extent of stress and how it manifests, we first look at the broader work environment.

**Figure 10: Opportunities to sit in other courts**



Respondents were asked: To what extent do you feel the following are important to you? Opportunities to sit in other courts

# Work Environment and Court Staff

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How do magistrates evaluate their immediate work environment at the courts? We asked respondents to assess their work conditions through a battery of eight questions. Collectively these questions describe their physical work environment (6 questions) and the administrative support they receive from court staff (2 questions). We aggregate the questions into two indices. Each of the questions has a 4-point scale (1=poor, 2=adequate, 3=good, 4=excellent).<sup>15</sup>

From Figure 11 we can immediately see that on average, magistrates say that the physical infrastructure of the court building, their office, as well as their sense of safety and security are all inadequate (1,6). This overall assessment of the work environment does not differ substantially according to gender, or age. Although the index scores vary according to what type of cases a magistrate works on primarily (1,8 for criminal, and 1,5 for civil cases), and the province s/he works in, these remain minor. For example, of the provinces with more than 10 respondents, only the Eastern Cape (1,7) and the Western Cape (1,7) have an average score that broadly falls within the 'Adequate' category. Yet not a single province has an average above 2.

In comparison, magistrates evaluate the support from court staff more positively. Only two groups (men, and those dealing primarily with criminal matters) say that on average they feel adequately supported. In contrast, especially women and those dealing with civil matters do

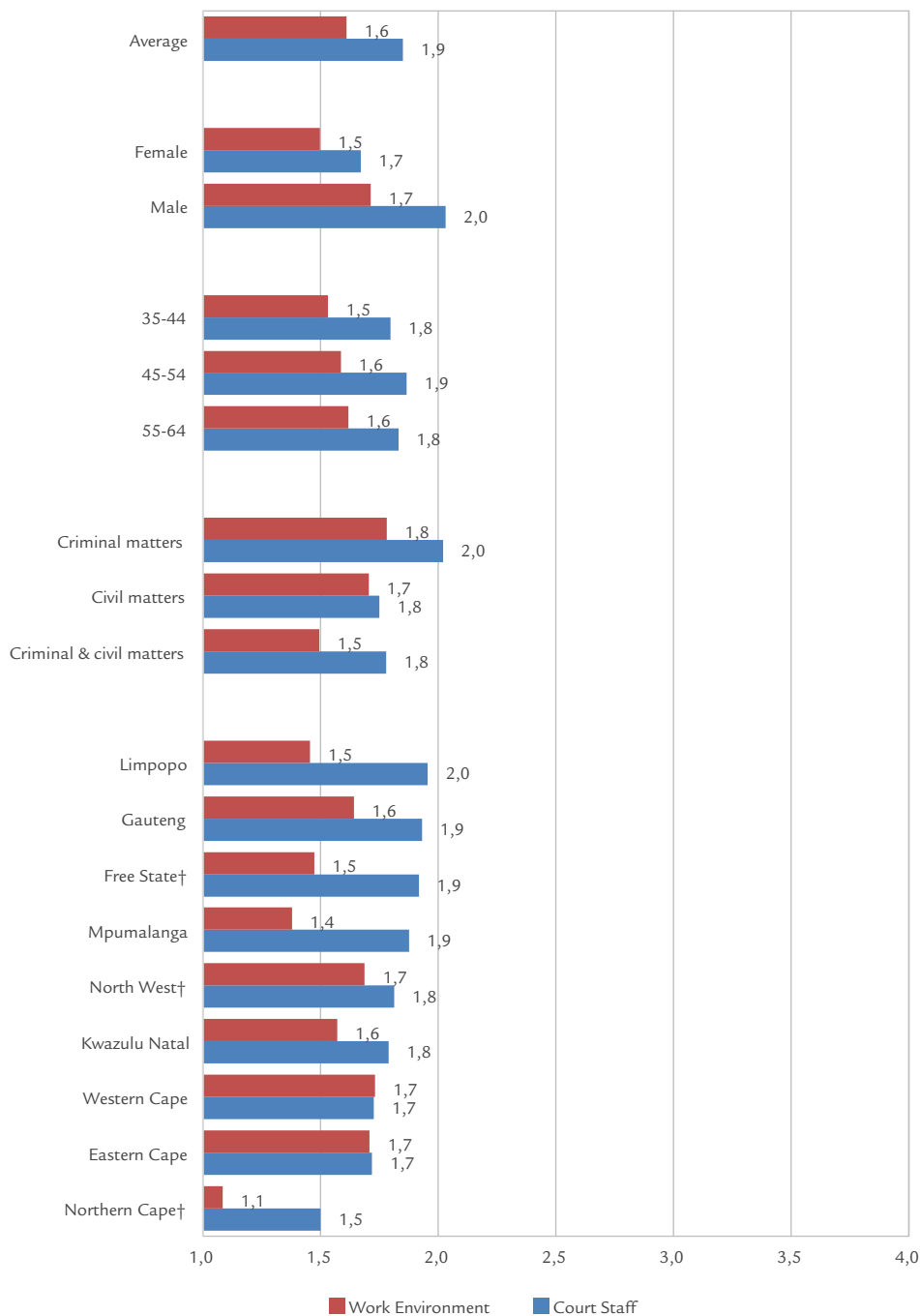
Magistrates say that the physical infrastructure of the court building, their office, as well as their sense of safety and security are all inadequate.

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15 **Work Environment Index:** (Physical quality of building + Maintenance of building + physical quality of personal workspace + Space to meet and interact with colleagues + Security in court in general + Security in court room) / 6. The validity of this scale was confirmed using factor analysis and a reliability test (Cronbach's Alpha = .831).

**Court Staff Index:** (Amount of admin support + Quality of admin support) / 2. The two items are correlated at .818  $p < .0.001$  (2-tailed).

**Figure 11: Physical work environment and administrative support**



Note: Both indices are on a 4-point scale (1=poor, 2=adequate, 3=good, 4=excellent). †= less than 10 respondents in category (Northern Cape=4, North West=8, Free State=6).

not feel supported. Moreover, the amount and quality of the administrative support seems to be best in Limpopo and Gauteng, and worst in the Eastern Cape and the Northern Cape. In sum, the work environment too often does not meet the expectation of magistrates across the country. These findings have been echoed by several magistrates in the focus group discussion. On the one hand, magistrates mentioned regional differences due to historical reasons (e.g. former TBVC states), as well as broader structural issues such as slow response times from offices of government departments that are tasked with the maintenance of court houses (such as the Department of Public Works). On the other hand, unavailable court clerks and interpreters, as well as outdated laptops were frequently cited as frustrations among magistrates. However, the Efficiency and Enhancement Committees at district and regional level were mentioned as avenues to solve some of these problems.

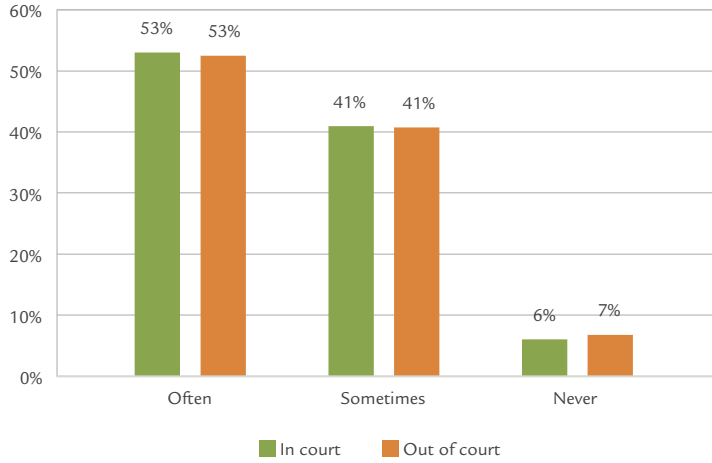
Unavailable court clerks and interpreters, as well as outdated laptops were frequently cited as frustrations among magistrates.

## Court Safety

To better understand magistrates' poor rating of their work environment, it is worth focusing on a basic condition – safety and security. We asked magistrates 'Are you ever concerned about your personal security as a result of your judicial role when you are 1) in court, 2) out of court? More than 50% of respondents said that they are often concerned about their personal safety both in and outside of court (Figure 12).

By breaking down the data even further, it is clear that female magistrates are substantially more likely to be concerned about their safety in court, however, this 16-percentage point difference disappears when considering magistrates' personal safety outside the court (Figure 13). Again, there are no differences between the different age groups, and according to the type of cases a magistrate primarily deals with (with the partial exception of civil matters/safety in court). Instead, geography seems to play a larger role as there are notable differences when

**Figure 12:** *Concerned about personal safety in and out of court*



Note: N=164 (in court), and N=164 (out of court).

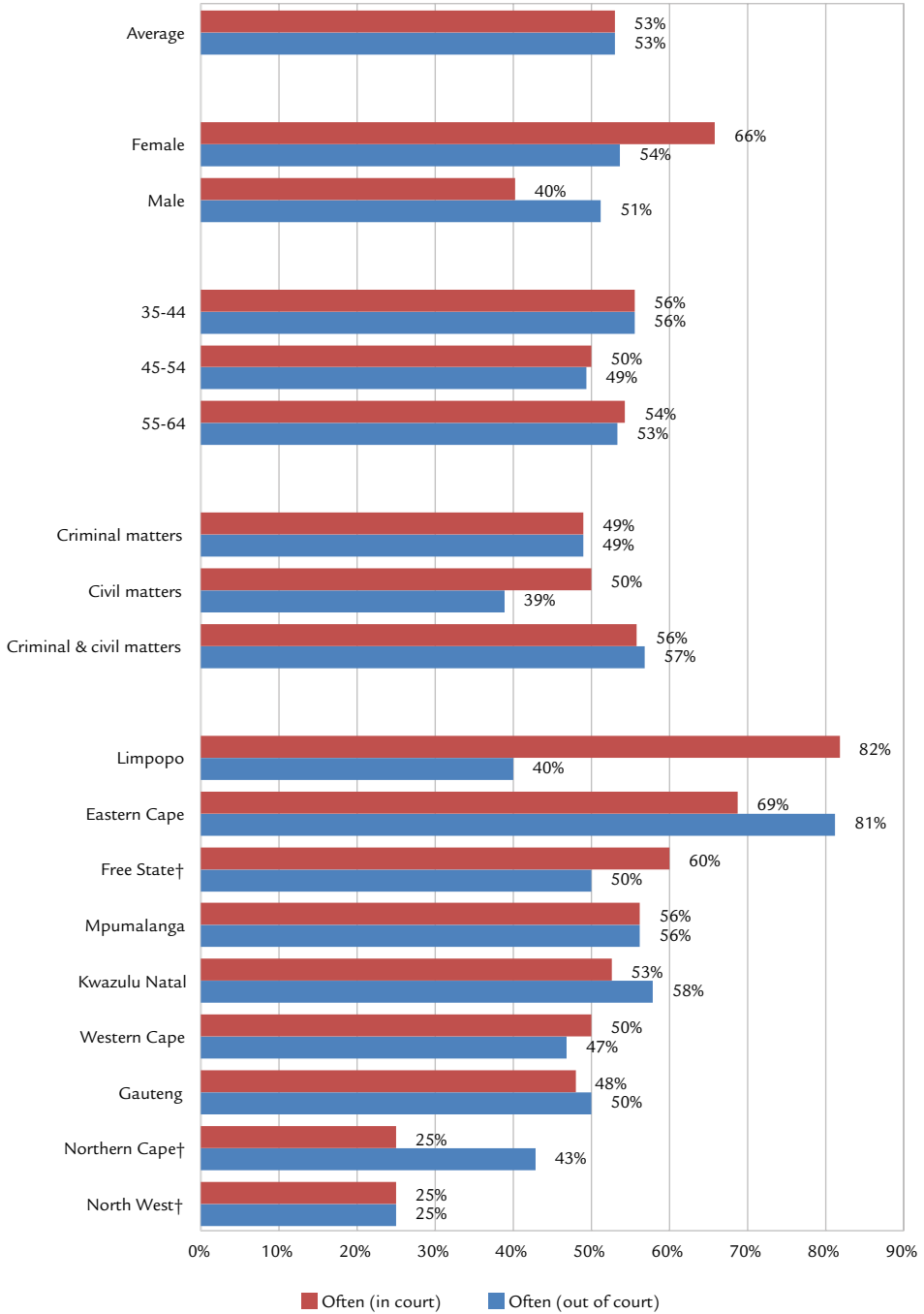
comparing scores at the province level. Respondents from the Eastern Cape not only reported comparatively low levels of infrastructural and administrative support (see Figure 11 above), but they are also among the most concerned about their safety in and out of court. By contrast, magistrates in Gauteng communicated higher levels of support while being less concerned about their personal safety.

It is not surprising that magistrates who feel unsafe in and out of court have also been personally threatened or harmed before.<sup>16</sup> Across all respondents, 44% of magistrates said that they have been personally threatened or harmed because of their judicial role (figure 14). While we see a difference between men (40%) and women (50%), age also has an effect. Older magistrates are more likely to have been threatened. This could be due to the way the question was phrased, however, as it asked about the respondent's experience as a whole, rather than his or her experience over the past 12 months. Magistrates' fear of being harmed are not unwarranted. For example, several

44% of magistrates said that they have been personally threatened or harmed because of their judicial role.

16 The Eta coefficients between having been personally threatened or harmed and feeling unsafe in court is .229, and .265 when considering the area outside of court.

**Figure 13: Concerned about personal safety in and out of court (often)**



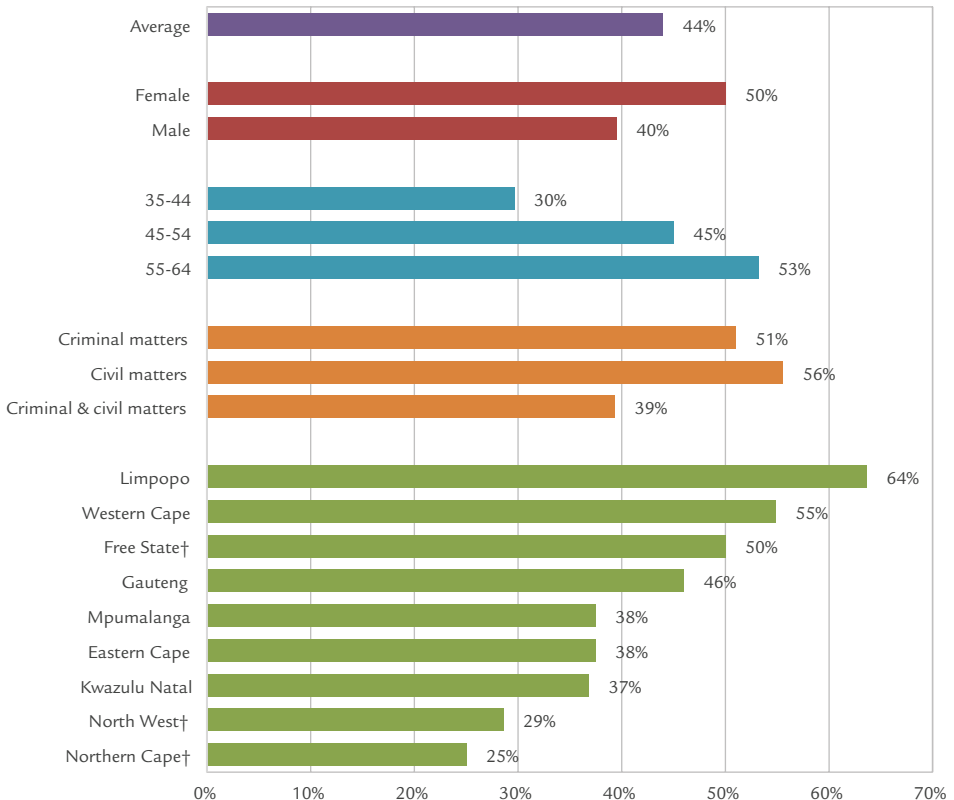
Note: This represents the percentage of respondents who said 'often.' †= less than 10 respondents in category (Northern Cape=4, North West=8, Free State=6).



magistrates have recently been gunned down in a series of assassinations.<sup>17</sup>

Respondents who often deal with both civil and criminal cases are less likely to have been threatened before. However, as we have seen earlier, this could be because younger magistrates are more likely to fall into this category. Lastly, we also see that magistrates in Limpopo (64%) and the Western Cape (55%) are far more likely to have been personally threatened before, than their colleagues in the Eastern Cape (38%), or KwaZulu Natal (37%).

**Figure 14:** Personally threatened or harmed because of judicial role (yes)



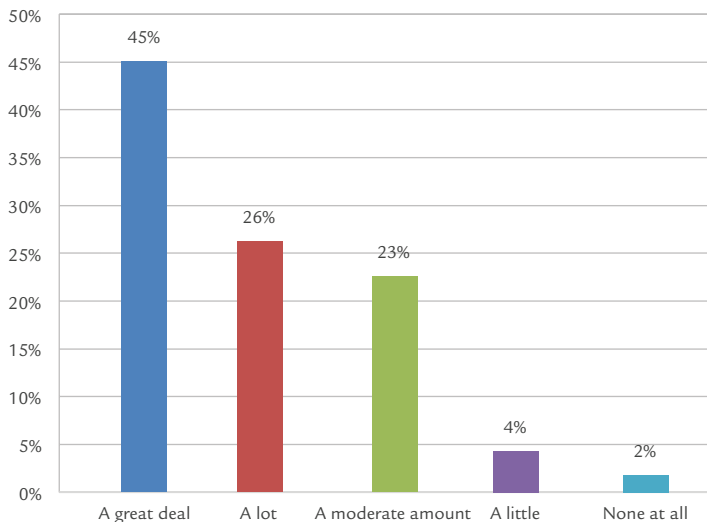
Note: This represents the percentage of respondents who said 'yes.' †= less than 10 respondents in category (Northern Cape=4, North West=8, Free State=6).

17 For more information, see: “Court accepts confessions from two arrested for premeditated murder of magistrate Victor Mabunda”; “Magistrate shot dead at Mitchells Plain filling station”; “Magistrate shot and killed in his driveway”.

# The Effects of an Unhealthy Work-Environment

Building on the earlier analysis that focused on respondents' workload, we also asked specifically about their stress levels and symptoms that are often associated with high stress levels. Given the significant amount of perceived work pressure outlined above, it is unsurprising that the majority of respondents experienced a great deal (45%), or a lot (26%) of stress (Figure 15).

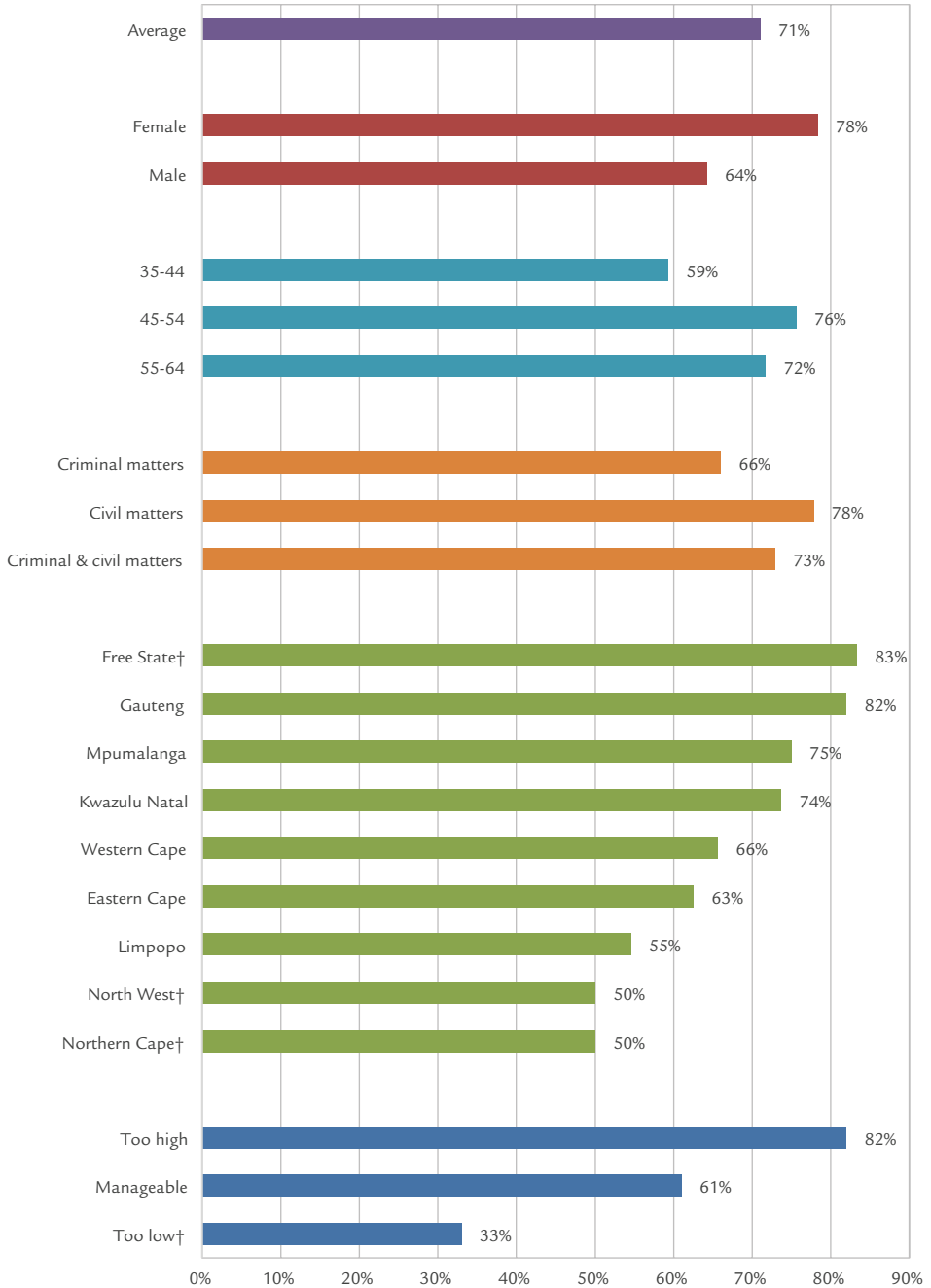
**Figure 15:** *Stress experienced over past 12 months*



Respondents were asked: Please indicate the amount of stress you have experienced over the past 12 months. N=162

Comparing respondents' stress levels along the same lines as before – gender, age, type of cases, and province – reveals some important differences (Figure 16). Female and older magistrates are more likely to report high levels of stress over the past 12 months. In contrast, respondents who are

**Figure 16: Stress experienced over past 12 months (a great deal / a lot)**



Note: This represents the percentage of respondents who said 'a great deal', or 'a lot'. †= less than 10 respondents in category (Northern Cape=4, North West=8, Free State=6, Too low=3).

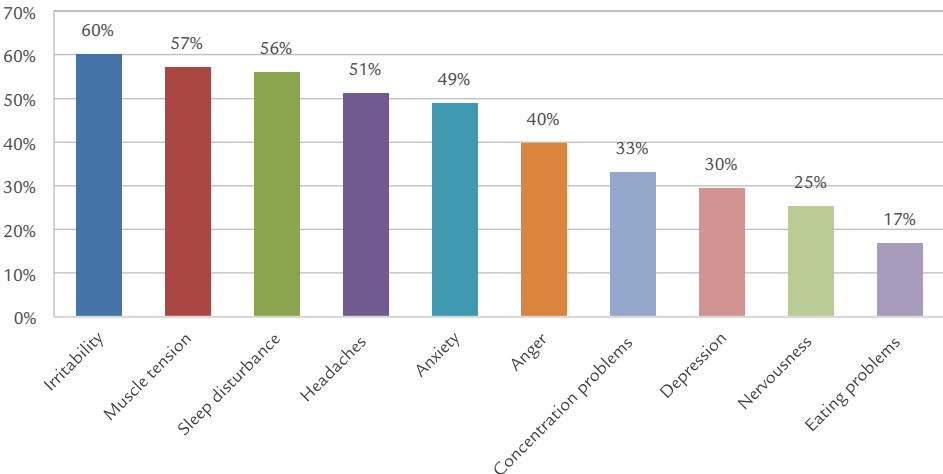
dealing exclusively with criminal cases and those working in Limpopo and the Eastern Cape are less likely to report high levels of stress.

Common wisdom suggests that a high case load and perceptions of a lack of safety and security are causes for increased levels of stress. This is confirmed by the data. Respondents who report a high case load and feel unsafe in and outside of the court, are also more likely to experience a great deal or a lot of stress.<sup>18</sup> To assess the relative impact of these and other factors, however, additional information is required – something we will return to in the paragraphs that follow.

Stress can manifest itself in several different ways. In the survey, we asked respondents to self-report whether they are experiencing any of the symptoms that are often connected to stress. As Figure 17 shows, more than half of respondents experienced irritability (60%), muscle tension (57%), sleep disturbance (56%), or headaches (51%). Moreover, one in three respondents reported depression, and almost 2 out of ten said that they suffered from eating

Respondents who report a high case load and feel unsafe in and outside of the court, are also more likely to experience a great deal or a lot of stress.

**Figure 17: Symptoms of stress**

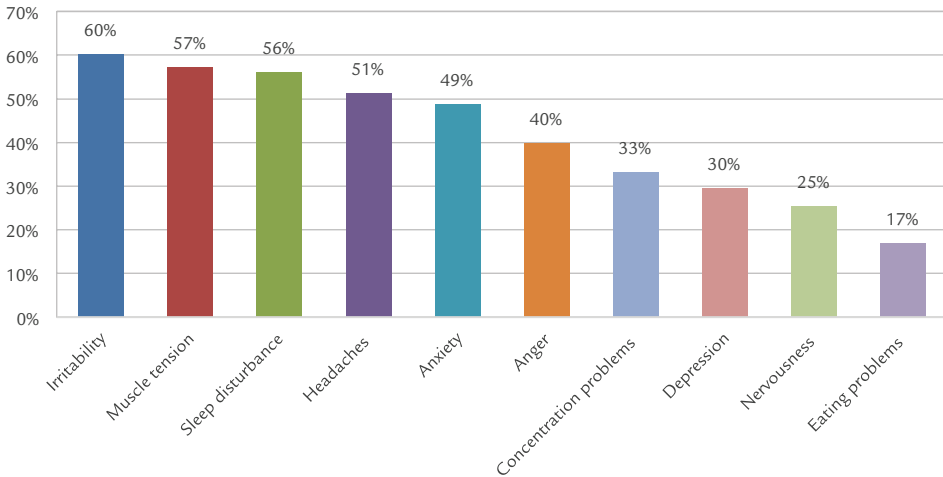


Note: N=166

18 This is confirmed through a bivariate Pearson correlation (2-tailed) between levels of stress and 1) high work load  $r=.304^{***}$ ; 2) unsafe in court  $r=.310^{***}$ ; 3) unsafe outside of court  $r=.186^*$ ; 4) personally threatened or harmed because of work  $r=.284^{***}$ . Correlation is significant at \*  $p<.05$ ; \*\*  $p<.01$ ; \*\*\*  $p<.001$ .

problems. While our data does not allow us to speak about long-term trends, it is nevertheless concerning to see how many magistrates are experiencing these symptoms, as well as how many symptoms are experienced by individual magistrates – on average, magistrates reported to experience four symptoms (Figure 18).

**Figure 18:** Number of symptoms per Magistrate



Note: N=166

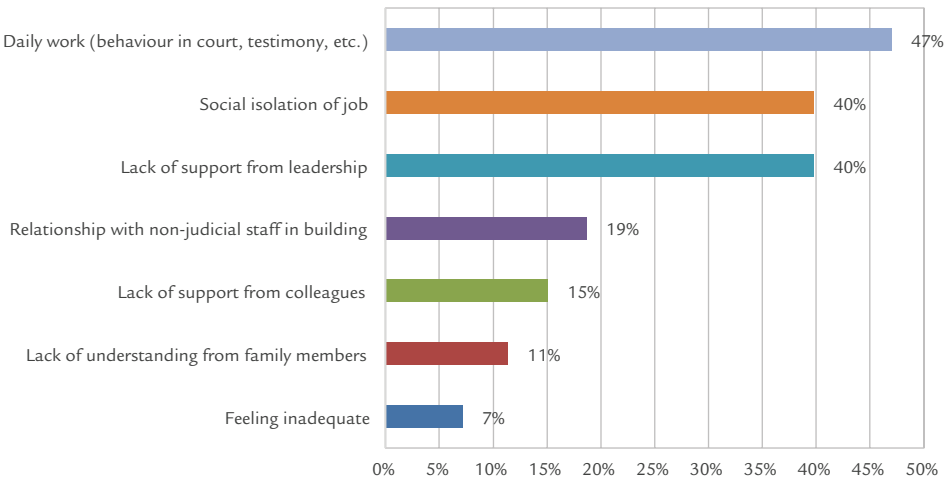
Almost half (47%) of magistrates said that aspects of their daily work are a major reason for their stress.

To better understand what causes magistrates' stress levels, we asked respondents to pick the top two reasons from a list of seven options (Figure 19). Almost half (47%) of magistrates said that aspects of their daily work (e.g. behaviour in court, testimony, etc.) are a major reason for their stress. Similarly, a sense of social isolation (40%) and insufficient support from their leadership (40%) were frequently mentioned as drivers of stress. These results, in conjunction with the relatively fewer mentions of issues with non-judicial staff, and a lack of support from colleagues, provide important signposts for future attempts of reform.

Magistrates in the focus group also identified other issues which arose in the survey as contributing to stress levels. For example, the increasing amount of legislation magistrates are required to deal with is said to have made

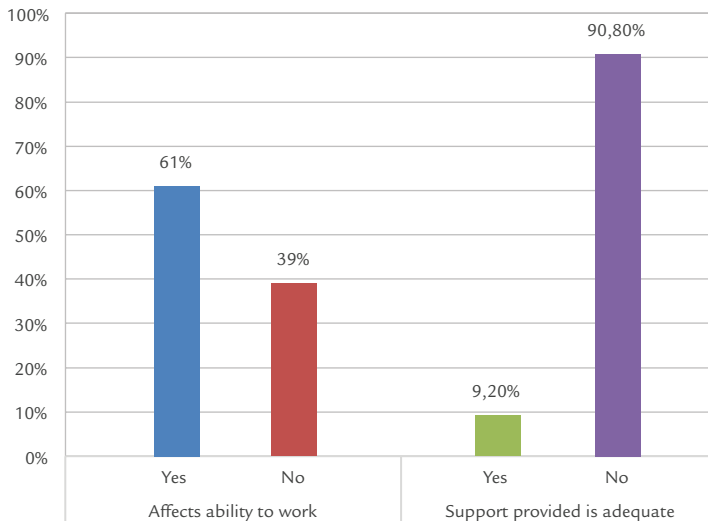
their workload increasingly complicated, and therefore stressful. Magistrates also noted that whilst the workload increased, the number of magistrates has not. Furthermore, the lack of control over their own budget was identified as a significant stressor, particularly having to 'beg the administration' for basic equipment.

**Figure 19:** What are the TWO main reasons for stress?



That reform at several levels is urgently needed is evident. Six out of ten (61%) of magistrates say that the stress they experience negatively affects their ability to work (Figure 20). This is further underscored by their almost unanimous assessment that the current levels of support provided to judicial officers to help them manage stress are not adequate (91%).

**Figure 20:** *The effects of stress and current levels of support to deal with it*



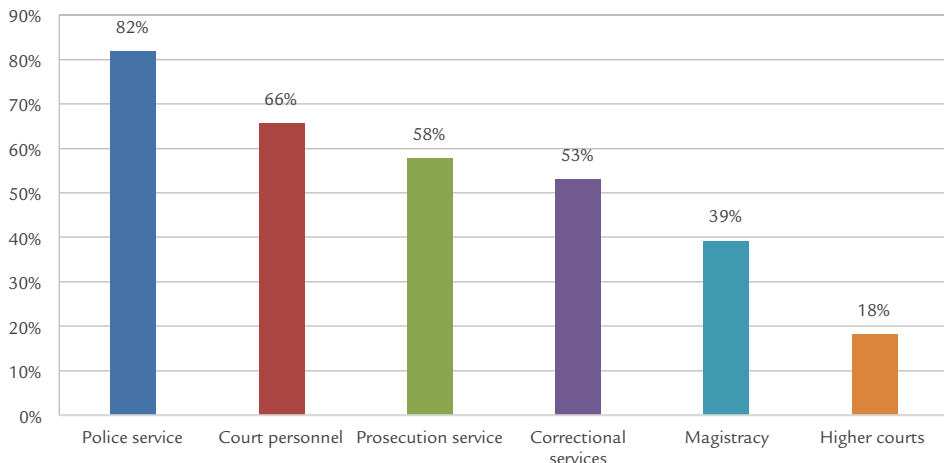
Note: Respondents were asked: Do you feel that stress affects your ability to work to your full potential? (N=162); Do you think that the kind of support provided to judicial officers to help them manage stress, is adequate? (N=163).

# Corruption in the System

In 2018 Afrobarometer asked South Africans how corrupt different actors in the justice system are. Half of South Africans (49%) said that *most*, or *all* members of the police are corrupt. Moreover, a third (32%) of South Africans had an equally negative view of magistrates and judges. With such high levels of perceived corruption among the public, we asked magistrates to evaluate different stakeholders in the criminal justice system. Although the exact question phrasing differs between the two surveys, the rank order between the two stakeholders is similar (Figure 21). More magistrates said that there is corruption in the police (82%), than in the magistracy (39%). However, these numbers should be interpreted cautiously, due to the broad phrasing of the survey question.

More magistrates said that there is corruption in the police (82%), than in the magistracy (39%).

**Figure 21:** Corruption among stakeholders in the criminal justice system



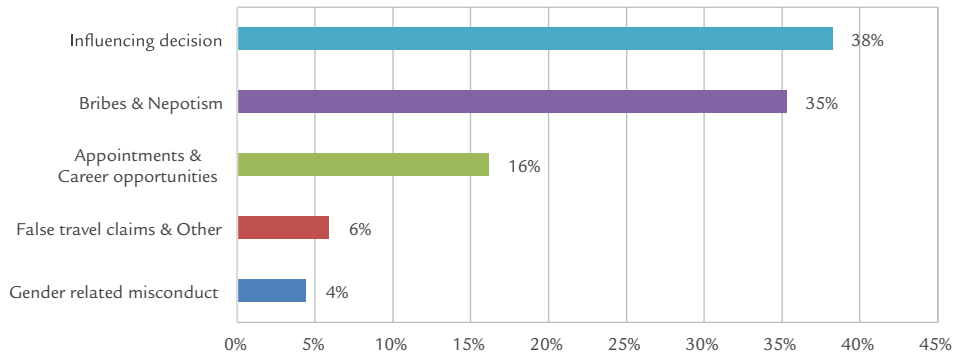
Note: Respondents were asked: Do you think any of the statements below are true about the stakeholders in the criminal justice system? There is corruption within the...(please tick as many as you think are relevant). N=147



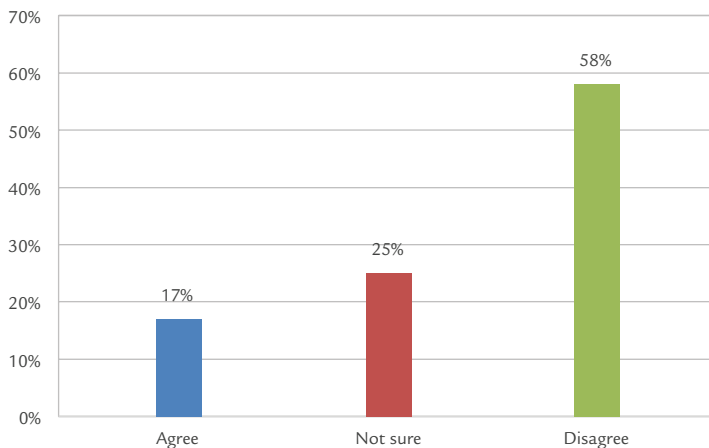
Acknowledging that asking about unlawful acts in survey research has several limitations, we nevertheless attempted to go beyond the broad initial question of whether respondents think that there is corruption among different stakeholders. Thus, to get a better understanding of the possible types of corruption in the magistracy, we asked respondents an open-ended follow-up question: "If you think there is corruption in the magistracy, what kinds of corruption do you mean?" We then categorized these answers into five groups: general bribes/nepotism, magistrates influencing decisions, appointments/career opportunities, gender related issues (e.g. asking for sexual favours), and other. As can be seen from Figure 22, of the 64 respondents who provided substantive answers, 35% referred to bribes and nepotism in general terms, while 4 out of 10 (38%) mentioned magistrates influencing judicial decisions. Substantially fewer magistrates think of colleagues engaging in corrupt acts when it comes to appointing someone to a new position, while only 4% mentioned gender related misconduct. Despite the comparatively fewer mentions of corruption in the appointment process, other survey questions revealed that less than half (47%) of respondents are of the view that the process of appointing magistrates is fair and transparent. The number drops even further, to 1 in 5 (21%) respondents, for the appointment procedure of acting magistrates.

Less than half (47%) of respondents are of the view that the process of appointing magistrates is fair and transparent.

Given the substantial levels of perceived corruption within the system, especially concerning the payment of bribes, influencing of court decisions and appointment procedures, it is pertinent to ask whether the reporting structures operate effectively and allow for the system to self-correct. While the functioning of the Magistrates Commission will be discussed in more detail elsewhere, it is worth noting magistrates view of the institutional process. Only 17% of respondents said that the reporting of and investigations into misconduct is effective and fair. This suggests significant gaps in the internal vertical accountability mechanisms in the Magistracy.

**Figure 22:** *Types of corruption in the magistracy*

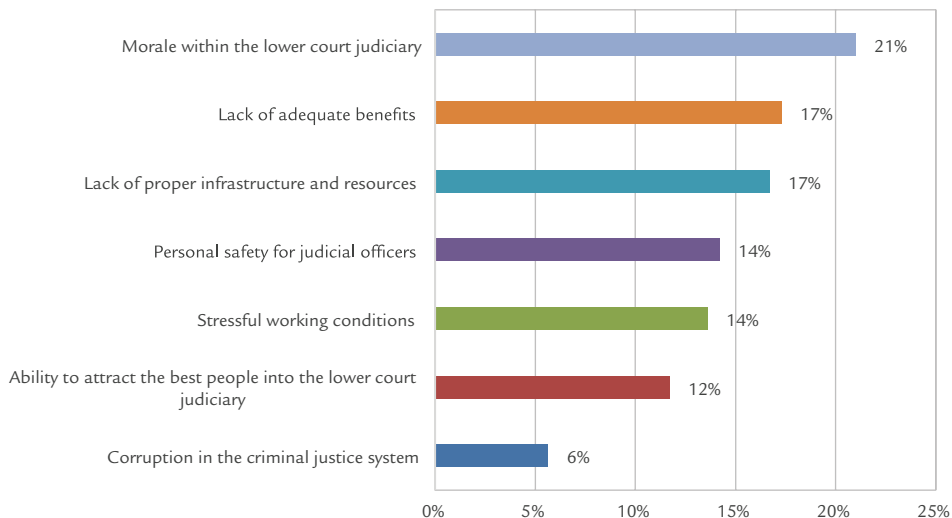
Note: Respondents were asked: If you think there is corruption in the magistracy, what kinds of corruption do you mean? N=64 respondents, making 68 distinct claims.

**Figure 23:** *Reporting and investigating misconduct is effective & fair*

Note: Respondents were asked: The system for reporting and investigating misconduct in the magistracy is effective and fair? (N=162).

When asked what the two most important issues in the magistrate courts are, corruption plays a less prominent role (Figure 24). Instead, among the magistrates surveyed 21% said that the morale within the lower court judiciary is the biggest issue, while only 6% mentioned corruption in the criminal justice system. To further put things into perspective, personal safety and a stressful working environment are regarded as twice as problematic as the current levels of corruption.

**Figure 24:** *Most important issues in magistrate courts*



Note: Respondents were asked: What issues in the lower courts concern you most? (N=163).



# Career Pathways and Training

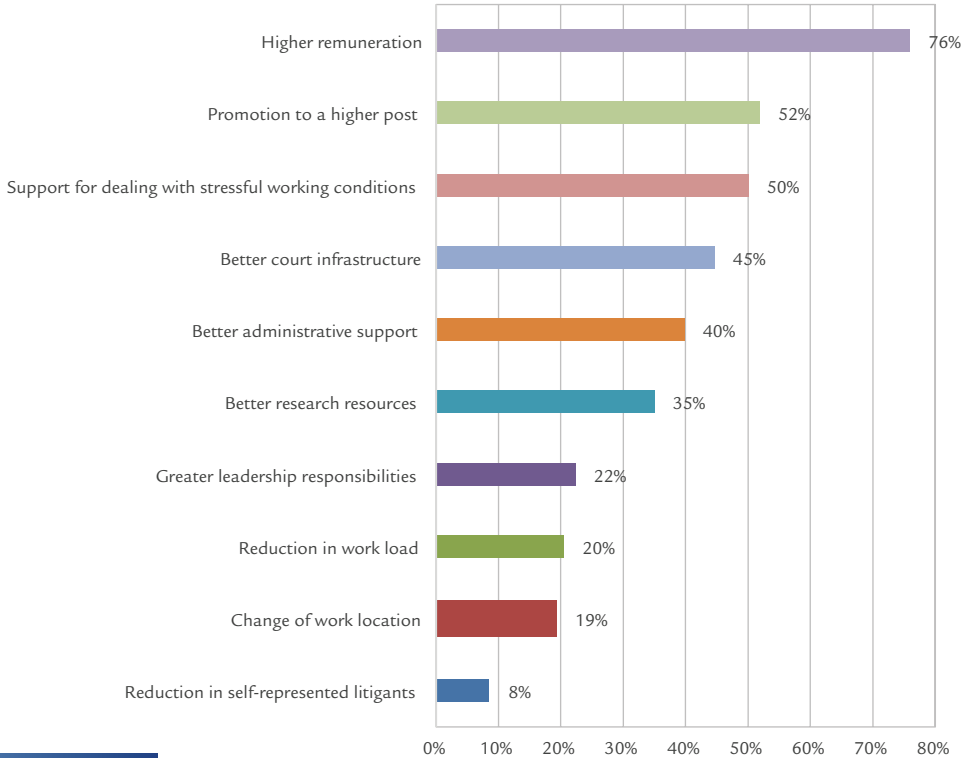
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So far, the survey has revealed that magistrates face several challenges such as a high workload, often inadequate structural support, as well as issues concerning safety and security. Thus, an important question to ask is what factors would make magistrates more likely to remain in the magistracy until full retirement age. Most of the factors that rank highly on the list we provided have already been highlighted in previous discussions (e.g. support for stressful working conditions (50%), improvements in court infrastructure (45%) and administrative support (40%) (Figure 25). However, the two most influential factors are remuneration (76%) and, relatedly, promotion to a higher post (52%).

The issue of adjusting remuneration to rising costs of living has been dragging on for as long as 14 years and is only one of several grievances regarding the current payment structure (Versluis, 2019). While determining the appropriate level of remuneration is beyond the scope of this study, it is nevertheless worth providing a few reference points to contextualize magistrates' views on their current level of remuneration. Compared to the average worker (formal, non-agricultural sector) in South Africa who earns approximately R257.000 per year, magistrates earn significantly more (between R971,649 (Magistrate) and R1,436,913 (Special Grade Chief / Regional Magistrate) (Business Tech, 2019; The Presidency of South Africa, 2018). When comparing magistrates' salaries with other members of the legal profession, however, the picture looks different. A senior associate at a South African law firm earns approximately R900.000 per year. A litigation specialist and deputy director of public prosecutions earns

more than R1.9 million a year, and a judge in the High Court earns almost R1.9 million a year (Versluis, 2019).

**Figure 25:** Factors impacting the likelihood of magistrates to stay in the judiciary

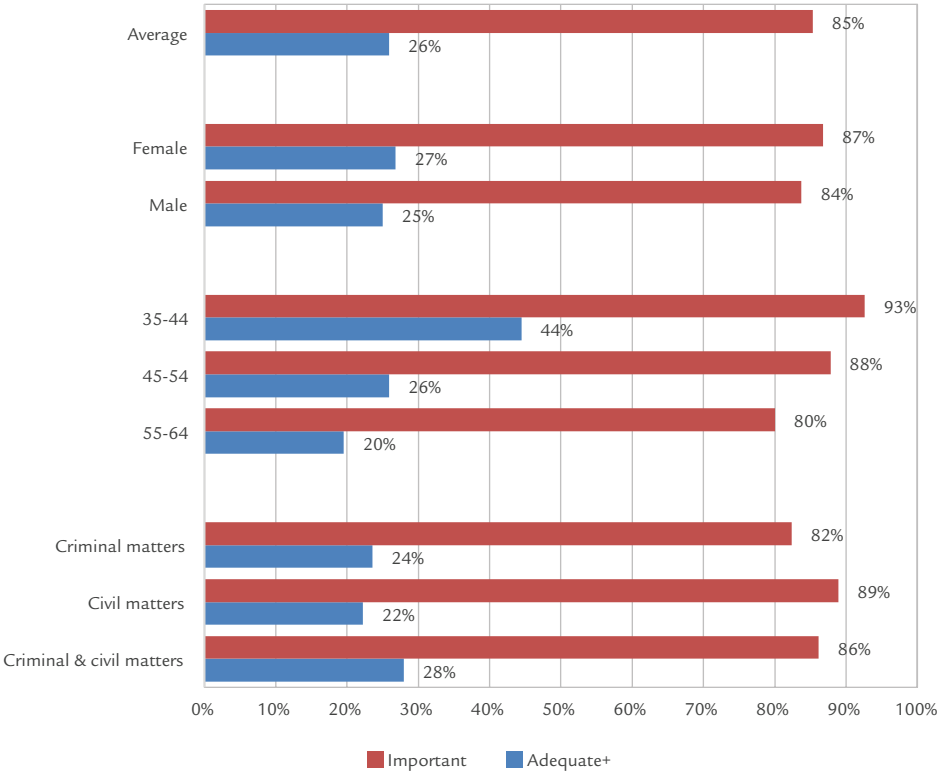


Note: Respondents were asked: Which of the following factors would make you more likely to remain in the judiciary until full retirement age? Please select as many options as apply to you.

Regarding career progression, the second most important factor that makes magistrates stay in the judiciary, we observe a severe information gap. Even though the majority of magistrates value additional information about opportunities for career progression (85%), this information seems rarely available (Figure 26). On average, the expectation gap is 59%. This gap is consistent across gender and the types of cases magistrates deal with primarily, but differs according to the age of the respondent.

Even though the majority of magistrates value additional information about opportunities for career progression (85%), this information seems rarely available.

**Figure 26: Opportunities for career progression**

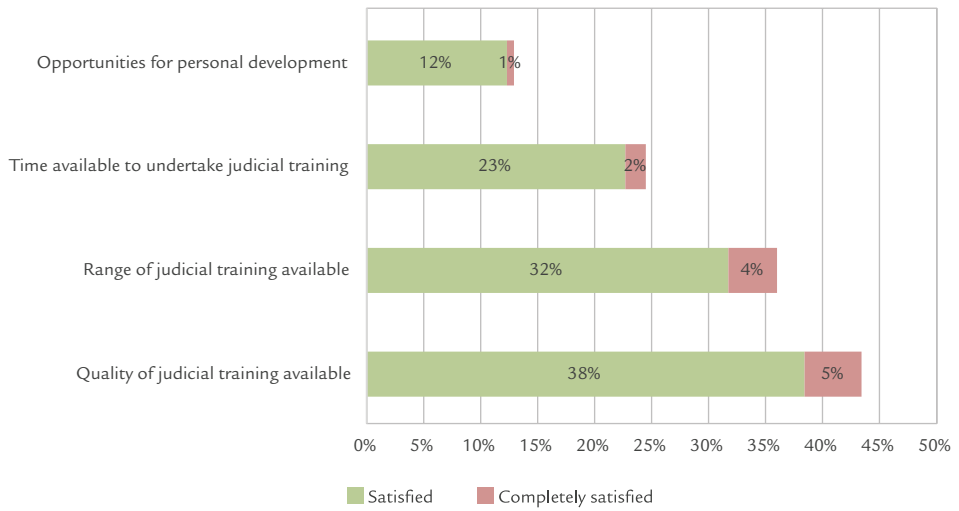


Respondents were asked: To what extent do you feel the following are important to you? Opportunities for career progression.

One way through which future reforms could address magistrates' often unmet desire for career progression is through personal development and training. Unfortunately, however, only a few magistrates are currently (completely) satisfied with what is available to them (Figure 27). Less than 20% are satisfied with opportunities for personal development in general, while only a quarter of respondents say that there is sufficient time available to undertake training, and only a minority of magistrates is satisfied with the current range (36%) and quality (43%) of judicial training.

Only a minority of magistrates is satisfied with the current range (36%) and quality (43%) of judicial training.

**Figure 27:** Satisfaction with available development and judicial training





# A Note on Gender

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Drawing together some of the findings from the previous sections, it is worth highlighting the areas where perceptions among male and female magistrates differ and where they do not. For example, when describing their workload, as well as opportunities for mutual support, we find no difference.

However, men are slightly more positive in their evaluations about their work environment and the court staff than women are. Yet, these differences seem somewhat secondary when compared to the overall negative assessment of the support structures by both groups.

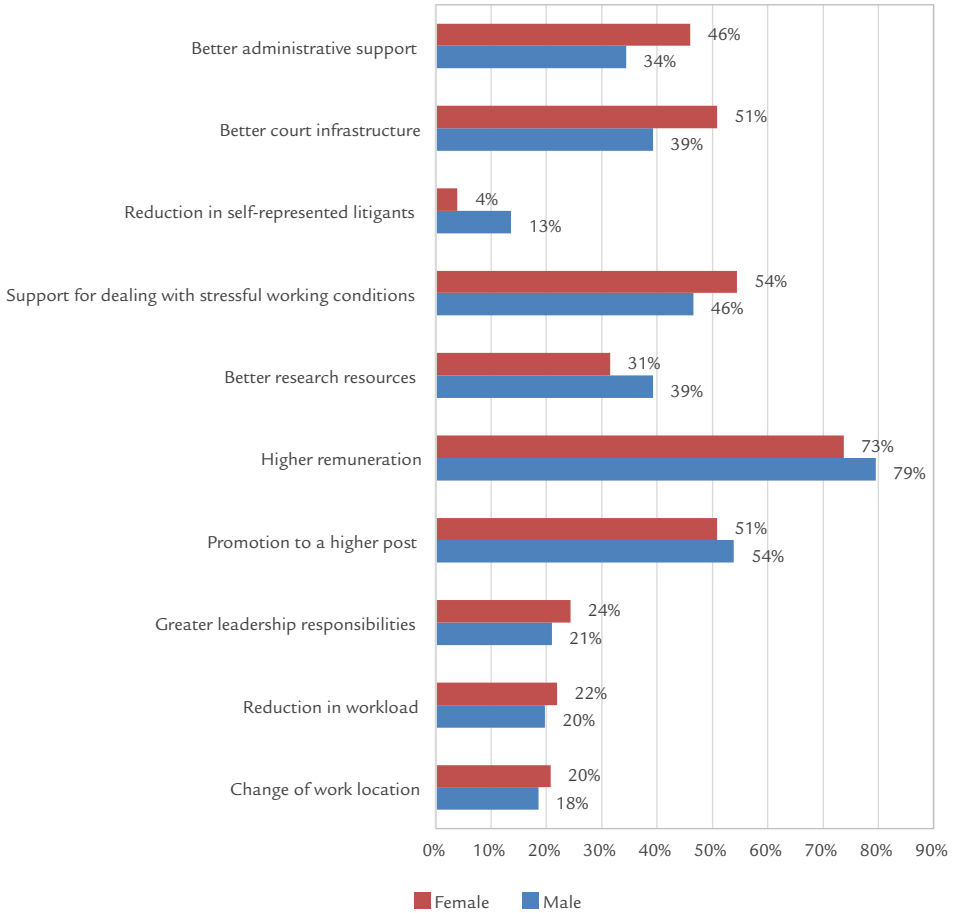
By comparison, we see more pronounced differences when comparing magistrates' assessment of personal safety and stress levels (10% and 12% difference respectively). Although these (as well as all other) differences need to be interpreted with caution given a margin of error of 7,3%, the areas in which we see the gender gaps are too important to be ignored and future policy changes ought to take the gendered nature of these pressures into account. Furthermore, additional research needs to be conducted to see how exactly these two factors affect other areas of work.

To provide some preliminary ideas of what women might care about most moving forward, we return to the question of what factors are most important to keep magistrates in the judiciary (Figure 25). This time, the factors are ranked according to how different men and women assess each factor.

Future policy changes ought to take the gendered nature of these pressures into account.



**Figure 28:** Factors impacting the likelihood of magistrates to stay in the judiciary by gender



2.5 While higher remuneration is important to both genders, better administrative support (10%), improved court infrastructure (8%), and better support for dealing with stressful work conditions is more important to women than men. This confirms the difference we observed earlier and suggests that future training and support programmes need to be tailored to these differing demands.



# Policy Recommendations and Further Research

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As outlined above, our findings suggest several avenues for future research and policy development. We group our suggestions into six related sets.

## Workload and Qualifications

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To better understand how varying caseloads affect court hours and case dispositions, future research should combine an analysis of case dispositions and direct stakeholder engagement (e.g. surveys or focus groups). The system of monitoring court hours needs further analysis, as does the nature and extent of judicial work that takes place in chambers. Magistrates deal with a wide variety of matters and according to those we spoke to, certain laws including the Prevention of Illegal Evictions Act, the Extension of Security of Tenure Act, the National Credit Act, and others have increased their workloads. Most significantly, the work of the Family Courts seems to have a significant impact on workloads.

Second, the substantial provincial differences in the proportion of magistrates who reported unmanageable workloads, suggest that there are challenges that are unique to different locations. Such differences should be taken into account when designing policy interventions. Further study of the issue of workload could also benchmark some objective standards (potentially drawing on the situation in comparable foreign jurisdictions) in order to identify more precisely where the problem areas are which cause magistrates to feel so overworked. Further measures such as better recruitment, changes in the operational practices

The system of monitoring court hours needs further analysis, as does the nature and extent of judicial work that takes place in chambers.

within the courts, and so on could then be considered further as potential solutions.

Moreover, the survey results demonstrate a need for more training and opportunities for magistrates to discuss work and learn from each other. This need is likely to be even higher among acting magistrates, who receive no formal training until appointed. 46% of respondents were not satisfied with or thought that the quality of training that they do receive could be better and 64% thought that the range of training available was unsatisfactory or could be better. It might be of value if the South African Judicial Education Institute (SAJEI) conducted an in-depth needs analysis of the magistrates to ensure that the training offered meets their needs.

Training in bursts of three or four weeks is insufficient. Without the right legal qualifications and an exam which tests whether a candidate is ready to deal with a particular area of law, it is difficult to say whether the candidate is ready for appointment. The previous system of mentoring candidates and not allowing them to put their names forward for regional court positions acted as a check to candidates who are not ready to put themselves forward. A revised system of mentorship could support candidates who are appropriately qualified. The removal of the requirement of an LLB for magistrates may need to be reconsidered. Qualification does not, in our view, form part of the requirement that a potential magistrate is fit and proper. Rather, to use the formulation of section 174(1) of the Constitution, a candidate's qualifications go to whether they are appropriately qualified. Candidates to be appointed as a magistrate should be required to possess a recognised law degree, and to undertake an examination and/or prescribed training prior to taking up a position.

Candidates to be appointed as a magistrate should be required to possess a recognised law degree, and to undertake an examination and/or prescribed training prior to taking up a position.

## Stress

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Magistrates experience high levels of stress. However, there are no programmes which adequately speak to the psychosocial care of magistrates who deal with extremely

traumatic cases on a daily basis. The Office of the Chief Justice has provided the judiciary with access to an anonymous phone-in support service since late 2019, but many magistrates were unaware of the service and they observe that it is not adequate. In the open-ended question in the survey about what kinds of support they would like to deal with stress, there was an overwhelming request for regular debriefing and counselling and stress management workshops. During the focus group discussion, the view was expressed that some magistrates may be wary of being perceived as weak if they sought help. Wellness initiatives would obviously need to work to avoid such stigmatisation.

Various options could be considered to address these concerns. Bearing in mind the number of participants who identified a lack of time to speak to their colleagues as a problem, some form of semi-formal, facilitated opportunity for dialogue and discussion among magistrates would make some difference. More formal professional psychosocial support services could also be made available. Whilst this would doubtless have budgetary implications, there would also be budgetary implications if magistrates were to experience stress so severe that it impacted on their health and ability to carry out their jobs. Supporting magistrates' mental health and stress coping mechanisms could end up being an initiative that is essential to the strength of the magistracy in general.

Specific manifestations of stress identified in the survey could also be targeted. A perceived lack of support from leadership may require targeted, facilitated engagements in order for leaders to be made aware of the gaps and make necessary changes. The effects of social isolation could be addressed through the type of initiatives discussed in the previous paragraphs. Both of these factors will also be important to address what appears to be a low level of morale within the magistracy. Issues such as the aspects of day to day work which cause stress could be followed up in further research, and specific interventions developed accordingly.

Supporting magistrates' mental health and stress coping mechanisms could end up being an initiative that is essential to the strength of the magistracy in general.

Magistrates observed that they also have challenges in their personal lives that exacerbate their stress levels when dealing with traumatic cases, and emphasised that it is not entirely possible to separate their personal issues from their work lives. Thus, it is important to have adequate mental health and stress coping mechanisms in place to help deal with the challenges that they face daily at work.

## Safety & Security

To some extent the concerns expressed by respondents in this survey may be an inevitable reflection of the general problems with safety and security in the country. There will naturally be budgetary limits as to how much can be done to address these concerns – it is unlikely to be possible for every magistrate to be provided with a bodyguard, for example. At the same time, magistrates cannot be expected to dispense justice while being left in harm's way themselves.

Security within the court buildings should be addressed as a matter of priority. It should be remembered that improved court security will benefit all court users, not magistrates alone.

For security outside the court building, magistrates should be provided with training to help make them aware of potential threats and how to respond to them. Facilitating the provision of private security at magistrates' homes, and providing for increased personal security in cases where the risk or threat to the safety of an individual magistrate has been established, could also be considered. Addressing security concerns might also lower stress levels.

It must be noted that the magistrates in the focus group observed that it is older magistrates (between ages 55 – 65) who have predominantly (55%) been personally threatened or harmed because of their judicial role. They attributed this to the fact that older magistrates have more experience and therefore are allocated more serious cases. Dealing with such serious cases may inevitably pose a threat to

Magistrates cannot be expected to dispense justice while being left in harm's way themselves.

their lives, by contrast with younger magistrates who are not allocated such cases.

## Infrastructure

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The survey revealed that overall, magistrates rate their work environment as inadequate. In particular, the level of IT infrastructure is of concern, especially currently during the Covid-19 lockdown. Magistrates consider computers to be 'tools of the trade' and not a 'nice to have'. A failure to provide magistrates with up to date laptops with cameras and current software was clearly articulated as a concern. Training that is provided virtually is not accessible, not is it possible to participate in online meetings, unless the right equipment is available.

An overwhelming 90% of those magistrates who had a declared disability felt that the facilities available to them were inadequate and impacted on their ability to do their job well. We would recommend that an audit of each court building is conducted to determine its accessibility for those with disabilities as this affects not only magistrates but ordinary citizens' ability to access the courts.

While the data also revealed differences between provinces, it is likely that there are also important differences between courts. Thus, rather than prescribing a fixed set of potentially expensive recommendations, further engagement with magistrates is necessary to find cost-effective solutions to their most pressing issues in the respective locations. Magistrates point to a difference between former homeland areas and other areas in terms of infrastructure.

## Remuneration

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While this study was not designed to evaluate the appropriateness of the current remuneration among magistrates, it did reveal that the issue of salary increases is an important issue that requires urgent attention. This issue was further highlighted by the fact that it

Magistrates consider computers to be 'tools of the trade' and not a 'nice to have'. A failure to provide magistrates with up to date laptops with cameras and current software was clearly articulated as a concern.

The high percentage of perceptions of corruption throughout all stakeholders in the court system is extremely concerning.

was considered as the most important factor impacting magistrates' likelihood of staying in the magistracy.

## Corruption

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The high percentage of perceptions of corruption throughout all stakeholders in the court system is extremely concerning. Added to this is a low percentage (17%) of respondents who think the system of addressing misconduct within the magistracy is efficient and fair. We recommend that the Magistrates Commission consider ways in which to communicate its processes and outcomes of investigations regularly. It may also be desirable for the Commission to re-evaluate aspects of the process, particularly the reporting and investigating of complaints, since these aspects were regarded as not being effective or fair by magistrates. We would recommend that further research is conducted into determining the levels of actual corruption within the justice ecosystem and that a coordinated effort from within all stakeholder departments is made to address any forms of corruption as a matter of urgency. The need for additional research on this issue was further highlighted by the response of magistrates in the focus group, who were surprised at the data relating to corruption and felt that the data was not reflective of their own experience (these participants felt that corruption was far less of an issue in the magistracy than the survey data suggested).



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