Addressing training challenges: the Judicial College of Zimbabwe

An analysis of the training needs of magistrates trained by the Judicial College of Zimbabwe

Olivia Zvedi

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Dedication

To all who made it possible for me to go through this programme

And to

Shingie

Tinopiwa

Rob

Nellia and Basi

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International instruments

The Universal Declaration of Human Rights (as proclaimed by United Nations General Assembly Resolution 217A(III) 10 December 1948)

The International Covenant on Civil and Political Rights (effective 23 March 1976)

The Declaration on The Elimination of Violence Against Women

The International Covenant on Economic, Social and Cultural Rights (effective 23 September 1981)

The Convention on the Elimination of all forms of Discrimination Against Women (effective 3 September 1981)

The Convention on the Rights of the Child (as Adopted by the General Assembly of the United Nations on 20 November 1989)

Beijing Declaration and Platform for Action Fourth World Conference on Women Chapter IV Strategic Objectives And Actions On Violence Against Women UN Doc A CONF 177/20 Oct 1995

General Recommendation 12 of the Eighth Session of the CEDAW Committee On Violence Against Women, 1989.

African Charter on Human and People's Rights

Protocol to the African Charter on Human and People's Rights on the Rights Of Women in Africa (as Adopted by the Conference of Heads of Government July 2003 Maputo)

List of abbreviations

CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRC	Convention on the Rights of the Child.
DEVAW	Declaration on the Elimination of Violence Against Women
ZWLA	Zimbabwe Women Lawyers Association

Tables of statutes

The Judicial College Of Zimbabwe Act Chapter 7:17

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CHAPTER ONE

Introduction

A brief introduction

This study focuses on the current training of magistrates offered by the Judicial College of Zimbabwe. In this chapter the research problem is introduced. A review of literature and international conventions justifying the need to train judicial officers is undertaken. An analysis justifying the need to train judicial officers to be gender alert is thus pursued. The analytical framework adopted in the conduct of this study has been grounded.

The emphasis in this chapter is thus the need to move away from the legal centralist methods of training magistrates. The view being that there is need to create more gender sensitive courts through training. A definition gender sensitivity in the courts is thus undertaken in this chapter. A case review of how gender insensitivity by a judicial officer can result in a gross miscarriage of justice is undertaken. The Malawian High Court judgment confirmation case no. 12/99 of *Rashid Hussein James and the Republic* is hence reviewed in defining gender sensitivity in the courts.

To give the reader some perspective, a brief description of the structure and jurisdiction of magistrate's courts is undertaken. The pre-research assumptions and questions emanating from them are also outlined in this chapter. In conclusion the chapter gives an insight into the objectives of carrying out the study, and a brief overview of other chapters.

Justifying the problem: Why analyze training needs for magistrates?

The justice delivery system is a necessary avenue through which women gain access to the actualization of their rights. This avenue can be painstaking and frustrating for women if those who implement the law are not alive to women's needs. The role played by magistrates in the actualization of women's rights can therefore not be underplayed. Women who come before the courts to enforce their rights must be assured of the efficacy of the system. They need to be guaranteed that their expectations will be met. Section 10(c) of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) puts an obligation upon states parties to ensure that discrimination against women is eliminated to ensure them equal rights with men. This section in particular obliges states parties to ensure equality between men and women through:

> 'The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging co-education and *other types of education which will help achieve this aim,* in particular by the revision of textbooks and school programmes and the adaptation of teaching methods.'

The restructuring of legal education to meet the above objectives can therefore not be left out. Equality before the law cannot simply be achieved by enacting laws or through law reform. Strategies aimed at law reform and women's empowerment alone will not work if the magistrates who apply these laws are not sensitive to women's expectations and needs. Norma Wikler rightly observes:

> …attempts to secure equal treatment for women and men in the courts by eliminating judicial gender bias through education and institutional reform, cannot be overlooked.[1]

In the same article Wikler highlights four components as being crucial to the actualization of women's rights. According to her, the four relevant ingredients to realizing women's rights are:

> '(1) the legal framework (2) legal literacy (3) access to the courts and (4) *fair treatment in the courts* …….. (my emphasis) Fair treatment for women in the courts requires that the behaviour of judges as well as lawyers and court personnel do not reflect gender based myths, biases or stereotypes.'[2]

The need to focus on procedural and administrative aspects of the law as tools for women's empowerment in the exercise of their rights through the justice delivery system is also well articulated by Margaret Schuler. Schuler makes the pertinent observation:

> 'To be truly effective any legal change benefiting women must respond to women's real interests (my emphasis)…
>
> In family law, an area most often weighted against women, the degree to which the system will permit legislative changes or applications of the law favourable to women is also conditioned by the character of law and the state ….
>
> The law generally condones domestic violence by protecting the patriarchal family from intervention by outside forces. Victims of violence, including genital mutilation, battering, rape and murder of women are often further victimized by legal systems that treat the perpetrator with leniency… Accordingly, the need to create political pressure on the legal system at both its structural and substantive points, hence becomes fundamental.'[3]

In therefore trying to make concrete women's rights, the training of judicial officers cannot be left out or isolated. Magistrates deal with the majority of cases that affect women's lives either in the areas of family or criminal law. By virtue of their multiple roles women end up in court for various reasons. Women may appear in court claiming maintenance or as victims of gender specific violence. They may also end up in court charged with the commission of gender-generated crimes, such as abortion, infanticide and shoplifting. More often than not, when this happens, it is the magistrates who handle such court cases. Article 2 of the International Covenant

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1 Norma Wikler in *Exclusion of women from justice: Emerging strategies for reform,* at page 96.

2 In the same article at page 96.

3 Margaret Schuler in *Empowerment and the law: Strategies of third world women,* 1986

On Civil and Political Rights places an obligation on state parties to the covenant to ensure and guarantee remedies especially judicial remedies for situations in which human rights violations have occurred.

Article 2(3)(a) and (b) in particular state:

> 'Each state party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have *an effective remedy* … (my emphasis)
>
> (b) To ensure that any person claming such a remedy shall have his right thereto determined *by competent, judicial, administrative or legislative authorities,* or by other competent authorities provided for by the legal system of the state….'

Competent judicial administrative or legislative authorities in the justice delivery system can only be guaranteed through training.[4] Equipping magistrates with adjudication skills other than teaching them or focusing on substantive law during training thus needs to be re-envisioned. In order to address practical challenges and women's legal needs on the ground, magistrates need to be alive to their own prejudices acquired either through:

> 'Socialization, gender-based myths, biases and stereotypes…'[5]

The need for judicial officers to be alive to women's specific legal needs particularly in cases involving women and children as victims of gender-based violence hence emerge as central. Being a magistrate myself, central to my approach during adjudication has been the propensity to apply law as taught. Over the past 13 years that I have participated in justice delivery, the routine training received in the field from those more senior has always remained core in my work. Never before in my career had I found any need to question the training I had received until my enrolment in the women's law course. The same can equally be argued of other magistrates participating in justice delivery in Zimbabwe. Magistrates at most are required to interpret the law and apply it to any set of facts as presented before them. Thinking beyond the courtroom and visualizing the experiences of litigants appearing before them is a skill which can only be acquired with training and exposure to one's own level of gender sensitivity. This, to a large extent, determines the quality of justice a magistrate dispenses.

'Focusing on the norms which are applied by the state court systems,'[6] is hence core in the training magistrates receive. There is therefore very little exposure to:

> 'exploring women's experiences with law… beyond the borders of legal centralism.'[7]

Many magistrates therefore having been trained within the confines and framework of legal centralism, may often end up taking an armchair approach in the courtroom when dealing with

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4 As per article 2(3)(b) of ICCPR
5 Norma Wikler in *Exclusion of women from justice: Emerging strategies for reform.*
6 Anne Hellum in *Pursuing grounded theory in law* at page 31.
7 Anne Hellum in *Pursuing grounded theory in law* at page 31.

cases involving women. Applying the law as traditionally taught and laid down in the books hence becomes the norm for magistrates.

The traditional or orthodox way of training lawyers and magistrates may therefore often result in injustice. Women in the courts as litigants may end up being denied justice due to gender insensitivity by judicial officers. Women form a sizeable number of the litigants that magistrates deal with in cases such as rape, maintenance applications and assault. When women appear in court as victims of such crimes, judicial officers should therefore be alive and alert to their experiences. They must be able to exercise their discretion without any bias. In Zimbabwe poor working conditions and poor remuneration have always characterized the conditions of service for magistrates. The result is that there has therefore always been a shortage of magistrates. The magistracy is therefore not a fully professionalized bench. While a few magistrates are lawyers by profession the majority are lay magistrates trained by the Judicial College of Zimbabwe to fill in always vacant posts. In Bulawayo where the major part of this research was conducted, out of a total of eleven magistrates at the provincial courts, only one is degreed.

Realizing therefore that professionals do not stay long in the civil service, it became apparent that the judicial college trains the majority of magistrates who deal mostly with women. As a result, it became necessary to investigate the type of training offered by the college within the purview of the women's law approach. The justification for doing this being:

> 'Women's law as a discipline takes women's lived experiences as a starting point in determining what are women's legal needs and aspirations. It places emphasis on what women themselves perceive as their needs and what they place their emphasis on.'[8]

The need to critique the professional framework within which magistrates are trained, groomed and absorbed thus became a necessity. Amy Tsanga in her book, *Taking law to the people*, rightly observes that:

> 'Given the variety of factors which may impede the exercise of rights, the alternative approach to legal services contrasts with the traditional approach in that it not only focuses on *transforming those factors which hamper the exercise of rights* ….but in a combination of solutions to achieve change.' [9]

Inadequately trained and gender blind magistrates may therefore stand in the way of women in the process of exercising their rights. Transforming the training magistrates receive cannot therefore be ignored. It is relevant to women's legal needs. Several international human rights conventions and protocols to conventions call for states parties to ensure gender sensitization of judicial officers through training.

Article 4(1) of the Declaration of Elimination of Violence Against Women particularly provides:

> 'States parties should take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and

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8 Julie Stewart in 'The women's law experience in Zimbabwe: Teaching, researching and developing women's law at the University of Zimbabwe'.

9 Amy S. Tsanga in *Taking Law to the People, Gender Law reform and community legal education in Zimbabwe*, 2003 at page 17.

> punish violence against women *receive training to sensitize them to the needs of women.'*

In the same spirit as general recommendation 12 of the Convention on the Elimination of all forms of Discrimination Against Women, the general recommendation Section 24(b) calls upon states parties:

> '…to ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. *Gender – sensitive training of judicial* and law enforcement officers and other public officials is essential for the effective implementation of the convention.'

Article 8(9) of the Draft Protocol to the African Charter and the Beijing Declaration and Platform for Action, Fourth World Conference on Women Chapter IV: Strategic Objective D.1.124(g) (h) and (n), also advocate for the actualization of women's rights, particularly through gender sensitization of judicial officers through training. Zimbabwe has ratified CEDAW. The majority of magistrates who preside in our courts in Zimbabwe are trained by the judicial college. Their gender sensitization hence remains of paramount importance. One way of implementing general recommendation 12 of the CEDAW committee is therefore to move towards the gender sensitization of magistrates through training.

Defining gender sensitivity in the courts: A feminist perspective

One burning question that has of course remained unanswered in the above discussion is: *What, then, amounts to the definition of gender sensitivity in the courts?*

According to Norma Wikler, 'Judicial gender bias takes several forms and it is critically important to identify and differentiate them.'[10]

She identifies the four major forms of judicial gender bias as:

> '(1) The first assumption is that women conform to a single profile or small range of profiles regardless of their individual differences;
>
> (2) The second is the pervasive tendency to regard men as more credible than women;
>
> (3) A third source of bias consists simply of the ignorance and misinformation of many judges about the economic and social realities of most women; and finally
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> (4) Male identification with males is a fourth element of gender bias.'[11]

A Malawian case High Court Judgment, confirmation case number 12 of 1999 in my view best illustrates the first, second and fourth points made by Wikler in her article.

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[10] Norma Wikler in *Exclusion of women from justice: Emerging strategies for reform* at page 100.

[11] Norma Wikler in the article cited above at pages 100-101.

In the case, *Rashid Hussein James v The Republic*, the accused, a 27 year old man, lodged an appeal against a 12 year prison sentence that had been imposed upon him by a Lilongwe principal resident magistrate for a rape conviction. He appealed against sentence only on the basis that the 12 year prison sentence imposed upon him for rape was shocking. The brief facts of the case alleged that on 15 September 1998, the appellant raped the complainant, one Nakwenda Duda at or near Mloza private school at around 1900 hours. Part of the complainant's evidence at the trial read as follows:

> She lived in area 23 and had a small shop at the market. On the date in question she was coming from the market when the accused person followed and assailed her. When he caught up with her he grabbed her hand and felled her to the ground. He asked to have sex with her. When she refused he sealed her mouth and had sex with her against her will. After raping her he proceeded to cut her private parts and told his three friends that those who wanted to have sex with her should pay him K.500. The three paid him K500 and had sex with her. After the ordeal she left for home via the police station. Blood was coming out of her private parts when she went to make the report. At the police station she made a report that the accused person had raped her and cut her private parts. One of the police officers who testified as a state witness, a Sgt Nkunika gave the following evidence:
>
> 'The complainant reported to say that she had been raped by accused and his friends. Additionally they cut her vagina. When she reported I saw her vagina and blood was coming. A report was given to her to take to hospital.'[12]

The police did not offer her any assistance in transporting her to hospital. She failed to immediately go to hospital because she was in pain. She only managed to go to hospital after three days where a medical report was compiled. The judge later used the delay against her. Despite the fact that the appellant had only appealed against sentence, the judge who handled the appeal also went out of his way to deal with the conviction. He quashed the conviction and cited a number of reasons for his decision.

Firstly he dismissed the medical report on the grounds that it lacked explanatory evidence from the doctor who had compiled it. He claimed that it was cushioned in so technical a medical language that it had no evidentiary use. He also queried why the complainant had only gone to hospital after three days. This was despite existence of evidence that she was in pain. The police had also done so shoddy a job of their work and shown great insensitivity by not transporting her to hospital.

In giving his second reason for quashing the conviction, the judge fits squarely into the observations made by Wikler. He pronounced the sex stereotype that:

> 'In rape cases, for a woman to convince the court with *a credible story* that sex occurred against her will, *she has to do more.* (my emphasis) She must show that besides lack of consent, when held by the rapist, she cried or shouted for help.'[13]

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12 In *Rashid Hussein James and The Republic Malawi* Confirmation Case No. 12/99.

13 *Rashid Hussein James and The Republic Malawi* Confirmation Case 12/99

The judge made this gender-biased finding despite the complainant's evidence in this case that the accused person had sealed her mouth. She therefore could not have done much by way of crying or shouting.

The appellant's evidence in his defence at the trial had been that the complainant had consented to sexual intercourse. The judge in support of his quashing the conviction, believed the appellant's story. Again in support of his belief, he made the following unfortunate stereotypical remark:

> 'I do not wish to be duped by talk of him forcing her down. *Who doesn't know that women are naturally difficult and pretentious when sex demands are in the fore.* (my emphasis) Maybe the woman wanted to have sex at the house of the appellant. No doubt *the man had to use any form of violence* to force her down. That he did and she *succumbed to sex in normal circumstances*.'[14]

The judge concluded that the facts of this case did not satisfy the elements of rape and quashed the conviction. The sentence of 12 years was therefore set aside. Sex was held according to him in normal circumstances. This judgment in my view clearly demonstrates how gender insensitivity and sex role stereotypes by gender inalert judicial officers can result in a gross miscarriage of justice. The dangers of, 'grouping women into a single profile and the tendency to regard men as more credible than women',[15] are best illustrated in this judgment.

To the judge the stereotypical belief that women are pretentious about not wanting to have sex when they want it is deeply rooted in his mind. Men therefore have to use some degree of violence in order to subdue women who pretend to not want sex. And when this happens, it does not amount to rape despite the fact that violence is used. Such gender bias in a decision by a high court judge does no better than to sum up most articulately what gender insensitivity in the courts amounts to.

In this regard men are therefore quite excused and justified in using some degree of violence to overcome the pretentiousness not to want sex by women. Gender sensitivity in the courts is therefore all about being able to discard patriarchal sentiments, values and sex role stereotypes about men and women by judicial officers. Changing one's own perception about these becomes pertinent for the judicial officer. It is also about being able to appreciate what constitutes a violation of women's human rights in matters such as rape, sexual assault and other forms of violence against women. Managing such cases accordingly with the required sensitivity in my view aptly constitutes a gender-sensitive court.

It is further about being able to appreciate and be alert to women's multiple gender roles and how they impact upon women and crime. Again, managing such cases with minds alive to such issues in the exercise of one's discretion creates a gender sensitive judicial officer and court.

Thus:

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14 *Rashid Hussein and The Republic* supra

15 Norma Wikler in *Exclusion of women from justice: Emerging strategies for reform*, quoted above.

> 'Accepting a particular culture amongst women and creating an enabling court environment can only come through the right attitude from judges. Insisting or not insisting on certain words or conduct in court only comes with the right attitude from judicial officers.'[16]

Gender sensitivity in the courts is therefore about changing attitudes, creating an enabling environment and exercising discretion with minds alert to the needs and expectations of women.

Judicial officers therefore need to move with the times and change their perceptions, traditional values and beliefs which may stand in the way of women's rights, in order to create gender-sensitive courts.

The Hussein judgment thus leaves one with many questions. The major question being how many women as victims of rape appear before judicial officers with such gender-biased and unfounded perceptions about women. Further to changing perceptions and values of judicial officers, gender sensitivity in the courts also amounts to being conscious and knowledgeable about women's rights and implementing them in the exercise of one's discretion.

Joanne Fedler and Ize Olckers sum up gender sensitivity in the courts by making the observation:

> 'A good decision maker should engage in such non-legal processes such as self introspection, self criticism, obtaining feedback and evaluation.'[17]

For the successful establishment of gender sensitive courts, magistrates should therefore be able to pursue deeper knowledge of the women appearing before them. They should also seek to find ways of inhibiting and eventually triumphing over their own learned personal prejudices, so that they do not stand in the way of actualizing women's rights in the execution of their duties. While the above cannot be an exhaustive definition of gender sensitivity in the courts, it however sets out and defines the parameters within which gender sensitivity will be discussed in this thesis.

Finally, from a feminist stand point, radical changes may therefore be required in the current training of judicial officers in order to achieve gender sensitivity in the courts.

The structure and jurisdiction of magistrate's courts in Zimbabwe

In order for one to fully appreciate and understand some of the unfolding findings in this thesis, it is pertinent to outline the structure and jurisdiction of magistrate's courts in Zimbabwe.

The illustration below thus highlights the hierarchy and structure of the magistracy in Zimbabwe. At the top of the hierarchy is the Chief Magistrate, followed by regional magistrates, provincial magistrates in charge of provinces, provincial magistrates, senior magistrates and finally magistrates. The chief magistrate is at the top in the hierarchy of magistrates in Zimbabwe. He or she mostly performs administrative functions and is responsible for the running of all magisterial

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16 Chief Magistrate N.D.A Batema of Jinja Uganda in an interview with him on 1.9.03. N.D.A Batema is also a trainer with the Jurisprudence of equality programme.

17 In *Ideological virgins and other myths* at pages 4-5.

stations and courts in the country. All the 133 magistrates in the country therefore report to and are answerable to him.

Structure and Hierarchy

Chief Magistrate
↓

Regional Magistrates Western Division (5)	Regional Magistrates Central Division (3)	Regional Magistrates Eastern Division (11)

Provincial Magistrates — Heading Provinces

Prov H Mat North	Prov H Mat South	Prov H Mash East	Prov H Mash West	Prov H Mash Cent	Prov H Midlands	Prov H Manic	Prov H Masvingo

Provincial Magistrates

Senior Magistrates

Magistrates

Jurisdiction

For purposes of jurisdiction, the Chief Magistrate, if ever he presides in court cases, exercises the jurisdiction similar to that exercised by regional magistrates. He however rarely presides in court. Regional magistrates specialize and mostly preside in rape trials and other serious criminal matters requiring their jurisdiction. They are also vested with reviewing powers and scrutinize the work of all other magistrates falling below their grade in terms of the Magistrates Court Act Chapter 7:10. By the powers vested in them regional magistrates can either certify cases as being in accordance with real and substantial justice or withhold their certificates. Where cases appear not to be in accordance with real and substantial justice regional magistrates refer these to high court judges.

For the purposes of the jurisdiction of regional magistrates, the country is divided into three divisions. These divisions are demarcated in such a way as to incorporate all the country's eight provinces.

The three divisions are thus:

- The Eastern Division encompassing Mashonaland East, Mashonaland West, Mashonaland Central and Manicaland provinces.
- The Western Division incorporating Matebeleland North and Matebeleland South provinces
- The Central Division which comprises the Midlands and Masvingo provinces.

Regional magistrates can therefore only try cases falling within their divisions. In terms of the Magistrates Court Act Chapter 7.10 provincial magistrates are inferred with the jurisdiction to try cases only falling within their provinces of jurisdiction.

The country is divided into eight provinces. For the purposes of jurisdiction, provincial magistrate's courts are in each of the country's eight provinces. A provincial magistrate heads each of the eight provinces, as illustrated in the diagram above.

Falling under the provincial head in each province are other provincial, senior, and junior magistrates. These are posted at various magisterial stations within the province depending on the size of province. They too are bound in terms of jurisdiction by their areas. They cannot try cases which fall out of their stipulated provinces or areas of jurisdiction.

The table below gives the sentencing jurisdiction for magistrates in both monetary and penitentiary terms.

Table showing sentencing jurisdiction for magistrates

	Ordinary jurisdiction in terms of S(50) of MCA	Special jurisdiction for certain offences only in terms of S51(1) M.C.A
Magistrate on summary trial	Two years or a level seven fine which is now $400 000, formerly $80 000.	The same sentencing jurisdiction is inferred upon magistrates, senior magistrates and provincial magistrates for offences with special jurisdiction.
Senior magistrate	Four years or a level nine fine which is now $750 000, formerly $150 000	A level eleven fine which is now $1 250 000 or seven years is applicable to all magistrates referred to above.
Regional magistrate	Ten years or a level twelve fine which is now $1 500 000, formerly $300 000.	Twelve years or a level thirteen fine now $2 000 000 was formerly $400 000.
		For sexual offences, see S51(4) Twenty years or a level fourteen fine now $2 500 000 formerly $500 000

The new standard scale of fines was gazetted and came into operation on 19 September 2003. Magistrates in passing sentence for any matter are thus guided and bound by the above stipulated jurisdictions.

Pre-research assumptions and the arising research questions

The current study on the training needs for magistrates arose out of the following assumptions:

- That there is a need for changes in the current training of magistrates trained by the Judicial College of Zimbabwe
- That the current training module for magistrates by the judicial college does not include the women's law perspective.
- That consequently women do not receive quality justice as a result of the training that magistrates receive from the judicial college.
- That there is no specific emphasis and exposure to international women's human rights instruments in the current training of magistrates by the judicial college.
- That cases presided over by magistrates in the areas of both criminal and family law reflect a gender bias because magistrates are insensitive to women's real life experiences.

Research questions

The research thus sought to answer and address the following arising questions:

- Is there any need for changes in the current training of magistrates trained by the Judicial College of Zimbabwe?
- Does the current training module for magistrates by the Judicial College of Zimbabwe include the women's law perspective?
- What implications does the training currently offered by the college have on the quality of justice women receive?
- Is there any specific emphasis and exposure to international women's human rights conventions in the current training of magistrates offered by the judicial college?
- Do cases presided over by magistrates reflect a gender bias because of the insensitivity of magistrates to women's real life experiences?

Objectives of the study

The major objective in conducting this study is to influence changes in the current training curriculum of magistrates trained by the Judicial College of Zimbabwe, from the perspective of including women's specific legal needs. The alternative approach to service provision in justice delivery through the gender sensitive training of magistrates is therefore aimed at.

Further influencing changes in the current training methods offered by the college is also one of the fundamental objectives.

Through changes in training curriculum and training methods, the college should therefore be able to produce magistrates who:

- Are gender alert and sensitive in the daily exercise of their discretion and jurisdiction;
- Act innovatively and are able to identify human rights violations in particular of women or children;
- Are not influenced by traditional values and sex role stereotypes in the exercise of their discretion;
- Understand women's multiple roles and are able to identify their needs when they appear in court.

I conclude my justification of the objectives of this study by quoting Norma Wikler and Margaret Schuler. Norma Wikler observes:

> 'Laws are not self executing, judges breathe life into them through the exercise of judicial discretion in fact finding – and decision making. When judicial behaviour is guided by the judges own sex-based biases and stereotypes, even the most enlightened legal reforms may be rendered meaningless.'[18]

[18] Norma Wikler in "Exclusion of Women From Justice Strategies For Reform" at p98

In order to make magistrates 'breathe' meaningful life into laws, changing centralist-based training methods remains a priority objective, hence the current study.

> 'Challenging the legal system can be accomplished in a number of ways from consciousness raising to litigation, to civil disobedience …. Strategies that articulate alternatives to current norms and practices … Thus any programme vis a vis the law if it is to achieve this goal must include activities that will address all three components of the legal system, being the structural, cultural and substantive components of the legal system … Often legal structures and legal institutions are seen as inaccessible or unable to respond to the interests of the people they are meant to serve. The problem being of attitudes and behaviour or the culture of the law. From this perspective, the problem stems from the manner in which those who administer the law as well as the population in general have been conditioned to regard the law. Cultural issues may range from acceptance of discriminatory and unjust practices to basic ignorance about the possibilities and limitations of the law.'[19]

Thus as Schuler points out, one way of quenching the quest for justice for women is to find strategies aimed at reforming the substantive component of the law and through conducting research and education. Finding strategies aimed at reforming the current education of judicial officers thus remains the primary goal of conducting this study.

A brief overview of the chapters

The remainder of this thesis will focus on the following issues. The methodological journey and the processes engaged in collecting data are presented in chapter two.

In the third chapter findings into the current training of magistrates offered by the judicial college are laid out. Chapter four assesses the strengths and weaknesses of the post-training programme. A pursuit is followed to speak for women's legal needs in the fifth chapter by presenting a review of observed court cases and records. In the final chapter six ways of mapping the way forward are charted. Some changes to the current training offered, in order to enhance gender sensitivity in the courts through training are suggested.

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[19] Schuler in *Empowerment and the law: Strategies of third world women*.

CHAPTER TWO

Methodological challenges: An analysis of the data gathering process

Situating the study: Identifying relevant actors and structures

The methodological journey and the processes engaged in collecting data are presented in this chapter.

Identifying the areas where the research was conducted and why these areas were chosen for carrying out the research is therefore explained. Chapter two also addresses how information collected in the field influenced and affected initial research assumptions and questions. How these had to be restructured in conformity with field findings is thus visited.

An exploration of the methods that were used to assemble data and why these methods were preferred is also presented.

The chapter ends with an insight into what the general limitations of the study were.

The long road to fieldwork began with the problem formulation as early as August 2003. My idea originally was to assess the training needs and shortage of magistrates in Zimbabwe and how this impacted on women and their use of the courts.

Falling into the common trap of wanting to research everything characterized problem formulation at the outset. With appropriate guidance the topic was later narrowed down to looking at training needs for magistrates.

But who then had to be problematized in assessing the training needs for magistrates? Seeing that the judicial college trained the majority of magistrates who stay most in the civil service, the college thus became the site for investigation.

The study was therefore conducted in Zimbabwe in the two provinces of Mashonaland West and Matebeleland North. The judicial college itself being situated in the capital city of Zimbabwe, Harare, the problem directed that part of the study be undertaken in the Mashonaland West province where Harare is situated. Having problematized too the training of magistrates, the chosen topic directed that part of the study be undertaken at some of the country's courts. For purposes of easy access the Bulawayo provincial magistrate's court and the regional magistrate's court thus came up as research sites since I am employed in Bulawayo as a regional magistrate. The major part of the study was therefore conducted in Bulawayo, the second largest city in Zimbabwe which is in the Matebeleland North province. Working as well as residing in Bulawayo, the Bulawayo courts were more convenient to access. Fieldwork for the study was therefore conducted in the Mashonaland West and Matebeleland North provinces. By virtue of the fact that regional magistrate's courts operate from provincial capitals, the Western Division of the regional magistrate's courts also became incorporated in the study, as their offices are in

Bulawayo. As previously highlighted in the illustration on the structure of magistrates, the Western Division incorporates the whole of Matebeleland North and South provinces. The districts and towns which fall under Matebeleland North and South provinces were hence also incorporated in the study and these are listed below. Matebeleland North province includes:

- Bulawayo
- Western commonage
- Hwange
- Victoria Falls
- Lupane
- Tsholotsho
- Nkayi
- Inyathi
- Binga

All the above centres are magisterial stations in the province and are manned by resident magistrates. The following are districts in the province which do not have resident magistrates but are run as periodical or circuit courts:

- Fort Rixon
- Nyamandlovu
- Mbembesi
- Matopo
- Figtree

The areas incorporated under Matebeleland South province on the other hand are:

- Gwanda
- Plumtree
- Beitbridge
- Filabusi
- Kezi

A part of my task or duty as a regional magistrate in the Western Division is to scrutinize cases tried by magistrates in any of the above centres. Matters in which sentences above 3–12 months imprisonment are passed are therefore sent to the regional courts in Bulawayo for scrutiny where I am stationed. Action research hence became an important methodological tool in the process of scrutinizing some of the cases. Having situated the judicial college in Harare and the courts

identified for the fieldwork in Bulawayo, fieldwork meant travelling between Bulawayo and Harare often. Bulawayo is a distance of about 439 kms west of Harare and takes five to six hours of travelling by road. I often had to commute between Bulawayo and Harare by bus during fieldwork to conduct interviews. Apart from the judicial college, other structures relevant to the study which were located in Harare were:

- The Supreme Court
- The High Court
- The Chief Magistrate's office
- The Provincial Magistrate's office (Rotten Row Harare)
- The Women Leadership and Governance Institute
- The Zimbabwe Women's Resource Centre and Network.

In Bulawayo structures which were identified as relevant to the study were as follows:

- The regional court in Bulawayo
- The provincial magistrate's courts at Tredgold Building in the city
- Western Commonage Court in Mpopoma in the western suburbs
- The Legal Projects Centre in the city
- Zimbabwe Women Lawyers Association and
- The Musasa Project.

Having identified these structures as fundamental to the study, the next important step was to identify key actors within these structures who mattered to the study.

The list which follows below highlights the actors identified as key informants to the study:

- The principal of the Judicial College of Zimbabwe
- Both judges and magistrates in the jurisprudence of equality training programme
- Judicial college trainers
- The Chief Magistrate
- Magistrates
- Magistrates who are former students of the college
- Director/coordinators of non-governmental organizations
- Lawyers in private practice
- Gender or curriculum development trainers

Women who had been through the courts were also targeted as relevant actors in the identification of needs.

Being in the justice delivery system, it was not very difficult to geographically locate the relevant structures. Securing interviews could however not easily be negotiated over the phone. It was therefore easier to negotiate and arrange for interviews by paying physical visits to relevant structures. In one instance however, one Supreme Court judge was very helpful and it was easy to secure an appointment for an interview with her over the phone while I was in Bulawayo. Permission to interview magistrates and observe court records and proceedings also had to be sought. The chief magistrate himself could also not be interviewed without the relevant authority from the Ministry of Justice.

The bureaucratic process that ensued thereafter was a long and winding one. Authority to conduct the research and to also interview the chief magistrate was only received two months later on 11 of November 2003 having been sought on 2 September 2003.

Exploiting arising opportunities could not be missed. Any opportunity that availed itself and could be manipulated to gather data was exploited. Field interviews therefore kicked off as early as 1 September 2003 with an interview with a chief magistrate from Jinja, Uganda who was one of the students in the women's law programme. Being involved as a trainer in an ongoing judicial education programme for judges and magistrates, namely the jurisprudence of equality training programme (JEP), it was necessary to tap on his experience with training judicial officers before he left for his home country.

Having been the focal point of study, field visits in earnest began with the judicial college. With no separate structures of its own, the judicial college is housed at the High Court offices at Mapondera building in Samora Machel avenue, Harare. Lectures for students are however conducted at the Harare magistrate's court at Rotten Row building which is distance of about two to three kms away from the High Court. A visit had thus to be undertaken to the High Court where the judicial college is situated to arrange for an interview with the principal. Fortunately for me not much was encountered by way of bureaucracy and an interview was secured for the following day. The interview with him led me to arrange for my next interview with one of the trainers at the college.

Data collection from the college could not be tackled as a one-off visit. The interview with the principal paved the way for the accumulation of more data. Because of the number of subjects covered for the non-graduate training course, it became obvious that in-depth course curriculums could not be fully discovered and covered justly during the time allocated for interviews. A request had therefore to be made to enable me to access the detailed course curriculums. More visits had to be made to the college to collect such data.

Because of the shortage of trainers being experienced by the college at the time of conducting this study, I was only able to interview the principal who teaches some of the courses and the gender trainer. The research methodology adopted having been grounded in the sense that women's lived experiences with the courts and magistrates trained by the college were explored, the iterative process of the grounded theory could not be ignored. One therefore had to go back and interview some key informants again. The college principal had to be interviewed again before writing the thesis to assess the feasibility of the recommendations that were going to be made.

Having gained insight into the nature and content of the college's training curriculum this then paved the way for the further collection of data. Court observations, interviews with judges, magistrates, lawyers and the observation of decided court records were thus embarked upon with an insight of the nature of training offered by the college. Most individual interviews took between 45-60 minutes. A few however went slightly beyond an hour, such as interviews with the principal of the judicial college and the Chief Magistrate.

Addressing field challenges: Changes and additions to the research assumptions and questions

The major assumption held during the problem formulation stage was that only substantive law subjects were taught during training at the judicial college. That being the case I believed that magistrates trained by the college were insensitive to women's needs because there was no exposure to any gender training at all. I had further assumed that current training did not at all expose magistrates to international human rights instruments. My belief was therefore that magistrates were not applying women's rights conventions to practical daily use because of ignorance.

Once in the field, the process of data collection, however, presented major challenges to these initial major assumptions.

My assumption on the lack of gender training was thus completely shattered as the college does offer gender training. A course on gender laws and communication skills is part of the college's training curriculum. I had to therefore reshape this assumption and ask new questions.

The other assumption that training does not expose magistrates to international women's rights conventions also did not stand the test once on the ground. Data gathered revealed that the course on gender laws also exposes students to some international women's rights conventions. Further, a course on human rights is also offered.

As a result of the unfolding data, these two assumptions thus had to be reshaped to answer the following questions:

(i) To what extent does the course on gender laws and communication skills adequately impart skills for magistrates to be gender alert and put into practice skills learnt?

(ii) How effectively does the course on human rights address women's rights to enable magistrates to identify what conduct amounts to a violation of women's rights?

(iii) How best can the training be improved to promote the use of international human rights conventions by magistrates in their work?

Information gathered in the field also directed that additional research questions be asked. It turned out during fieldwork that the college also offered an in-service training programme for practising magistrates. Further, female litigants in the maintenance courts raised concern that their voices were not being heard in court. Interviews with magistrates also revealed that the training period was too short. Observations of court records revealed that some magistrates were dealing with matters beyond their jurisdiction. Following these emerging trends, additional research

questions therefore had to be asked. The research thus sought to address the following additional questions:

(i) To what extent does the current training cover issues of jurisdiction for magistrates?

(ii) Do magistrates allow women's voices to be heard in the maintenance courts?

(iii) How effective is the in-service training programme in addressing gender sensitization of magistrates?

(iv) Is the training period of 18 months sufficient for the non-graduate course?

I often had to go forwards and backwards in shaping and reshaping new assumptions and research questions as data gathered dictated the course to follow. In this case, credit should thus be given to the flexibility of the grounded theory, as the continuous iterative process did not rigidly limit one's study to assumptions originally held.

Methods of data collection

The methods that were used to collect data for the study are listed below:

- Key informant interviews
- Individual interviews
- Group discussions
- Court observations
- Scrutiny of court records
- Action research and
- Workshops.

Data for the study was collected over a period of about four to five months between September 2003 and February 2004.

Key informant interviews

In-depth interviews were held with actors who had been identified as key informants. Ten key informant interviews were conducted. Eight of the interviews were held in Harare while the rest were conducted in Bulawayo. Amongst the key informants interviewed were my superiors at work such as judges and the Chief Magistrate. I therefore had to be on guard and let the interview take its course as the situation dictated while at the same time making sure that the information that I required was obtained. There are times when I felt that a question asked had not been sufficiently addressed by the respondent. In order not to sound rude in such circumstances, the technique I adopted was to allow the informant to talk and exhaust their point and then later in the interview, lead them back to the question again. Other means of putting across the question again

had however to be innovatively thought of on the ground. For example one of the questions asked during interviews with High Court judges was whether during the course of reviewing the work of magistrates they had come across matters showing gender insensitivity. In response to this question one of the Judges had simply answered in the affirmative. Later during the interview I asked the judge whether there were cases where she felt magistrates were sending women to prison when they could benefit from community service. Thereafter she was able to give examples of such cases.

All key informant interviews were held at the offices of informants and notes were taken down during the process.

Structured questions were used to conduct all the interviews and notes taken down during the interviews.

Individual interviews

In all, fourteen individual interviews were conducted. Individual interviews were conducted with five magistrates who are graduates of the judicial college. Three provincial magistrates and two regional magistrates were also interviewed. One lawyer in private practice who is a former regional magistrate and four lawyers who are legal officers, one with the Zimbabwe Women Lawyers Association and three with the Legal Projects Centre were also interviewed. Structured questions were also used in conducting the interviews.

Tenseness initially surrounded interviews with more junior magistrates. Tact had therefore to be used to make the atmosphere more comfortable by occasionally throwing in some social questions. Again, all interviews were conducted at the offices of the informants and notes were recorded during interviews. It became necessary for me to interview subordinates in this case because magistrates trained by the judicial college fall in a grade below the position of regional magistrate which position I hold.

Group discussions

One group discussion was held with a group of eight women who had been through the maintenance court. The group interview was made possible through an empowerment workshop organized by the Zimbabwe Women Lawyers Association. Participants in the group gave accounts of what their experiences with the courts had been like. Notes were recorded during the discussion and later compiled in detail.

Court observations

Court proceedings were also observed during the data collection process. One observation was done at the criminal court at the Harare magistrate's court while the rest of the observations were conducted at the Bulawayo courts. In Bulawayo the maintenance and juvenile courts were observed. The major limitation however was that one could not sneak into the courts unnoticed as a silent observer. Being a regional magistrate at the same court where the research was being conducted, I could not therefore simply walk into court and start making observations and taking notes without invoking suspicion. Presiding magistrates for courts that were to be observed had therefore to be approached before court proceedings commenced. This presented the disadvantage

of researching one's own organization as those under observation put on their best behaviour. The disadvantage was that magistrates would in turn be on guard and were alert in the handling of cases and enquiries. However, in some instances, there were some momentary lapses when the magistrates forgot they were under observation and went back to their usual way of handling cases. It is such instances which were then used to enrich the data collection process, as will be illustrated in the findings.

Examination of court records

During interviews with some judges who review the work of magistrates and also handle appeals from the magistrate's courts, it emerged that gender bias and insensitivity in the courts seemed to manifest itself more in cases of domestic violence and in the maintenance courts. For purposes of the research the following categories of cases were therefore targeted for the examination of court records:

1) Rape cases

2) Assault cases

3) Maintenance

4) Custody and guardianship applications

In examining both rape and assault cases, those that had been tried between 1999 and 2003 were targeted. Because I was in the system, problem cases were easy to identify. This was done by looking for completed cases with sentences, which appeared to be manifestly lenient and inconsistent with the nature of the offence that had been committed. The procedure followed was thus to peruse the criminal record book for each year where completed cases and the sentences passed are entered and recorded.

A list from the perusal would then be compiled for cases that needed to be pulled out and examined. This worked well in identifying cases of insensitivity in:

- Rape cases
- Assault cases
- Maintenance cases where defaulters had been prosecuted.

In all, 145 records were perused in the criminal records offices for cases in the above categories. The format adopted for examining records in the civil category was simply to pull out completed records for a particular year for the following cases:

- Maintenance cases
- Custody and guardianship applications and
- Peace order applications, which were domestic violence related.

In all 90 records were examined for the above category of cases.

Notes were then taken down from cases of interest that were relevant to the study.

Action research

This study coincided with my professional duties. Cases which came from various stations within the Western Division for scrutiny to my office were hence perused as part of the study. Some assault cases were particularly identified for the study during the process and data gathered. The research hence took an active nature in that where insensitivity was identified in the cases being scrutinized, a 'scrutiny minute' raising concern on the issues identified would be addressed to the relevant magistrates.

Where the concern was of grave issues as happened during the course of some completed case observations, the issues were taken up with the provincial magistrate in charge of the particular station to take corrective measures, and advise magistrates concerned accordingly.

Workshops

Some working workshops relevant to the study coincided with fieldwork. On 11 November 2003 a maintenance empowerment workshop was attended at the Zimbabwe Women Lawyers' Association premises in Bulawayo.

From 13 to 15 November 2003, a gender sensitization workshop held by ZWLA for regional magistrates was attended at the Bronte Hotel in Harare. All regional magistrates and provincial magistrates in charge of provinces in the country attended the workshop.

Both workshops being relevant to the study I was carrying out were therefore exploited to collect some data.

At the gender sensitization workshop, provincial heads who chair provincial training committees for the judicial college in-service training programme were thus interviewed.

In the process, opportunities which availed themselves in the course of one's duties were thus exploited to best advantage as a means of data collection.

General limitations of the study

Hurdles were of course encountered during the study, for instance, one of the non-governmental organizations, Musasa Project which I had hoped would be a source of relevant data in the assessment of insensitivity in the courts did not seem to be comfortable enough to allow any researchers to interview staff.

Initial efforts made to secure interviews were greeted with several demands which when met still did not yield much fruit. A letter from the Women's Law Centre specifically addressed to the organization was requested in preference to the general one that I had.

When this requirement was met, an interview was eventually secured. Disappointment however still awaited me on the date the interview had been scheduled. On my arrival for the appointment, the co-ordinator advised me to come back and make another appointment stating she was going out. I requested instead to interview other officers in the organization, including a former magistrate who was now working for the organization. Despite the fact that the former magistrate had expressed a willingness to participate in the interview provided permission to interview her had been granted, the request was turned down.

With appointments already lined up with other organizations and with limited time within which to gather data, it proved too costly to spend more time on one organization which did not seem keen to assist. As an organization that deals with women who are victims of domestic violence, I had hoped that their insights into women's lived experiences with the courts, particularly regarding the manner in which cases of domestic violence are handled, would provide a database for women's legal needs and thus highlight areas to be addressed in the training of magistrates. This apathy in co-operation by service providers who seek to further women's empowerment can only detract from other efforts and strategies aimed at improving the lives of women. The second limitation encountered during the study was the identification of gender experts with a legal background.

Only two interviews were conducted with lawyers who also have expertise on gender issues to give input on how gender should be mainstreamed in the current training by the college.

While other informants with gender expertise were identified, they were not very comfortable with the fact that they did not have any legal training background and were thus not very forthcoming. The above basically constituted the long methodological journey on data gathering. And in the process I had to learn patience; when things did not work out at the pace I expected I had to wait and allow events to unfold at their own pace.

Initially, my idea had been to start off and finish my fieldwork early, events however did not unfold that way. Even with structures that I had confidence would be easy to access, the process proved not so simple.

To be more specific when I visited the Chief Magistrate's office to request to interview him and conduct the research, I had taken it for granted that because I was in the system, interviews and permission to conduct the research could be quickly and easily granted. It turned out however that it was not to be so. I had to be patient and play the waiting game. It finally paid off!

CHAPTER THREE

An assessment of the non-graduate magistrates' training course

Brief introduction

A brief overview of the structure of the judicial college is undertaken in this chapter. The enrolment of students and the recruitment of trainers is discussed. The heart of this chapter discusses and assesses the current training curriculum offered by the college. Parallels between the current training, namely legal centralism, are drawn. Interviews with magistrates and trainers from the college are also discussed to assess the need for any changes in the current training curriculum.

Structure of the Judicial College of Zimbabwe

The Judicial College of Zimbabwe is a statutory body established by an act of Parliament in terms of Section (3) of the Judicial College Act Chapter 7:17. It is a body corporate capable of suing and being sued in its own name. The college is controlled by a council, namely the Judicial College Council, headed by the Chief Justice of the country.

The college first opened its doors in 1995 as an informal body in the Ministry of Justice, then sponsored by the British government. At inception, the college was controlled by a national committee. The Secretary for Justice as head of the ministry headed the college national committee.

In 1997, the then Chief Justice was invited to take over chairmanship of the national committee and having changed complexion, the Chief Justice suggested that the committee should also comprise other major stakeholders.

As from 1 September 1999, the college was separated from the Ministry of Justice and began operating as a statutory body under the Judicial College Act Chapter 7:17.

The council of the judicial college hence replaced the national committee of the college. Apart from the Chief Justice who heads the council, other members of the council include:

- The Judge President of the High Court.
- The Attorney General
- The Secretary for Justice
- The Chief Magistrate

- The Director of Public Prosecutions
- The President of the Law Society
- A representative from the Legal Resources Foundation
- The Registrar of the High Court,
- The Registrar of the Supreme Court
- The Registrar of Deeds and Companies

Section (7) of the Act gives an exhaustive list of those who constitute the council members. The college is headed by a principal and should have five trainers. The principal is responsible for the day to day running of the college and also teaches some of the subjects.

Enrolment

Section 4(1) (a) of the Judicial College Act gives the functions of the college as:

> 'to provide training for judges, magistrates, prosecutors, legal practitioners and other officers of court, members of the police force, prison service and persons concerned in the administration of justice and the law.'

A strict interpretation of section (4) of the College Act in my view suggests that the primary purpose of the college's establishment was to handle the training of officers who were already working within the justice delivery system.

However, whether it remained possible for the college to continue to pursue the primary objectives for its establishment remains to be seen in the discussion that follows.

In an interview with the principal of the college, it emerged that the college runs a two-tier programme. A non-graduate training programme to train lay magistrates, magistrates and prosecutors who are without any professional legal training background for appointment to the bench is offered. A post training programme for magistrates who are already in service is also conducted. Due to circumstances beyond its control and with constant shortages within the magistracy, the college's core business now seems to be conducting training for the non-graduate training course.

That being the case, who is eligible to enrol for the non-graduate training course particularly if they have not received any previous legal training? The basic minimum qualification for one to be eligible for the programmes are:

- Five O levels including English language
- Any two A levels with a preference for the arts
- Between the ages of 22-30

Advertisements for enrolment are placed in the local press inviting applications from interested members of the public. Successful candidates are thereafter enrolled for the programme. On

successful completion of the course, graduands are then seconded to the Ministry of Justice as either magistrates or prosecutors.

Recruitment of trainers

The principal of the college is responsible for the day to day administrative functions of the college. He is also responsible for implementing policy on behalf of the college and can hire expert staff on behalf of the college. The principal and trainers at the time of conducting this study were officials from the Ministry of Justice. Magistrates or law officers were therefore seconded from the Ministry of Justice to conduct training for the non-graduate programme. The principal himself is a chief law officer in the Attorney General's office. The trainers and principal are therefore all legal professionals who must have had five years of working experience. At the time the study was conducted, the college was however experiencing staff turnover and there were only two trainers instead of five.

In a recent follow-up interview, the principal however advised that the public service commission had now agreed to create a separate establishment of posts for the college. This means that it will no longer be necessary for trainers to be seconded from the Ministry of Justice. The post of director has now been created to replace the principal's post, while five positions were created for trainers.

At the time of writing, four applications had been submitted for the director's post while 42 applications had been submitted for the positions of trainers. Qualifications required to fill both the director's and trainers' posts are a law degree for the trainers and a law degree, preferably with post graduate qualifications, for the director's post. A background in court management and court administration is also preferred and emphasized in selecting suitable candidates.

The principal has the mandate to hire expert staff to conduct training where he feels this is required.

The current training curriculum, legal centralist or grounded?

Wikler, in her article, 'Educating judges about gender bias in the courts', makes the observation that:

> 'Judicial practice and judicial education both take place in a climate of attitude and expectation that can be called a normative environment which can either support or oppose gender bias.'[20]

How then can a 'normative environment' which supports gender bias be eradicated? According to Wikler, the answer lies in institutionalizing the subject on gender bias in judicial education as a continuous process. Further there is a need for:

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[20] In *Women, courts and equality* at page 242.

> 'Material on gender bias to be incorporated into other courses such as those on matrimonial law and criminal evidence.'[21]

What then appears to be the 'normative environment' in the training curriculum offered by the Judicial College of Zimbabwe for the non-graduate programme is the next point of discussion.

The principal of the college in an interview shed light on the origins and background of the programme design. He explained:

> 'The principal and council deliberated on what the programme and syllabus content should be, and all subjects dealt with within the legal system were included in the programme. The chief magistrate and the Director of Public Prosecutions knew what they wanted to be included as well in the programme and therefore contributed. Thereafter syllabuses were then formulated for approval by the council. Initially 20 subjects were offered on the programme but one subject was later dropped. Nineteen subjects are currently now offered for the non-graduate programme and training is done over a period of 18 months.'[22]

The 19 subjects which are offered for the non-graduate training are:

Subject	Total hours per subject
Criminal law	84
Criminal procedure	70
Road traffic offences	30
Statutory offences	20
Evidence	56
Statutory interpretation	33
Introduction to law and Zimbabwean legal systems	17
Family law	39
Constitutional law	21
Delict	48
Human rights	24
Judicial administration	52
Law of contract	53

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21 Norma Wikler in *Women, courts and equality* at page 242

22 In an interview at the Judicial College in September 2003 with Mr R Shana Principal

Inquests and inquiries	15
Mental Health Act	20
Accounts	19
Sentencing	42
Civil procedure	60
Gender laws and communication skills	20

Thus looking at the above subjects the normative environment for the college seems to be substantive law teaching.

One subject on environmental law was dropped after the second class after it was realized that magistrates do not meet the subject during their daily court work. All the 19 courses are examinable and students can only graduate after passing them. Two segments of nine months each constitute the programme. During the first nine months ten courses are taught and students are examined at the end of nine months. Successful candidates proceed to the final segment of the programme where the remaining nine courses are taught. Final examinations are sat at the end of the second segment. The second segment also includes a four-week attachment period at the courts.

Upon successful completion of the programme, graduands are awarded a magistrates or prosecutors certificate by the Ministry of Justice, and are eligible for employment as either magistrates or prosecutors.

Those who join the magistracy undergo in-service training for a period of 12 months at a provincial court. The provincial magistrates in charge of the particular station, supervise the in-service training after which the magistrates are sworn in. After swearing in, magistrates are sent back to the judicial college for an induction course.

The induction programme is on sentencing, judgment writing and gives insights on being supervisors and managers of court. During the induction period, judges come to teach on sentence and provincial magistrates on ethics.

After joining the bench, former students of the college attend in-service training as and when they form part of a target group for a training programme.

Firstly an analysis of the programme content reveals that it is heavily loaded and comprehensive. The training period is 18 months for a training programme with 19 courses. Applying the law of averages this means that each course therefore lasts between 4 to 5 weeks, of learning every day during normal working days.

While the curriculum or course content may not be the same, about ten of the courses on offer for the non-graduate programme are also subjects that I covered for the four year degree programme. With students enrolling for the programme coming straight from A level, the 18 month training period may not be sufficient to impart skills to a magistrate who can effectively deliver justice in the courtroom.

A further scrutiny of the subjects on offer reveals a bias towards training on substantive law subjects.

Thus the programme is pregnant with substantive law subjects, apart from courses like:

- Gender laws and communication skills
- Accounts
- Judicial administration
- Human rights.

Seeing that students are taken straight from high school without any prior legal background for enrolment, there is justification in teaching them about the substantive law. However, to what extent emphasis on substantive law matters alone sufficiently addresses legal needs for the litigants, in particular the women that magistrates will meet on the ground in the courtroom, remains an issue for debate.

The principal of the college in an interview explained:

> 'The need to introduce gender laws and communication skills was a realization that there is a need for communication and gender in the courtroom. It is not beneficial to teach gender alone without communication from an activist point of view because it does not bring out the biases in them as magistrates.'[23]

The move to introduce gender laws and communication skills as a subject was a commendable effort by the college.

The subject creates a sound theoretical basis for raising the awareness of magistrates on issues of gender. Findings during this study however suggest that while current training seems to sufficiently address theoretical gender issues, it is lacking in equipping magistrates with practical skills to employ theories learnt in practice. The observation, for instance, of decided court cases handled by some magistrates who are former students of the college, revealed that the level of gender sensitivity amongst magistrates, particularly in the exercise of their daily discretion, is still very low. For example, it emerged that some magistrates trained by the college were trying rape matters as cases of either attempted rape or indecent assault.

Thus while the course is theoretically well planned and structured, it does not address how trainees can effectively translate the theories learnt into practical use.

The content covered by the gender course discusses topics such as: introduction to communications; non-verbal aspects; proxemics and kinesics; court language, bias and barriers to communication; introduction to gender; gender, culture and the law; the boy and girl child problems and needs; grand versus grounded theory explaining the reality; women and the law: criminal law, civil law and social welfare issues. Other topics covered include crimes of poverty by women, abortion, infanticide, concealment of birth, baby dumping, loitering for purposes of prostitution, gender and civil laws, custody, guardianship, maintenance, divorce, gender and

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[23] In an interview at the Judicial College Sept 2003.

human rights. The topic on gender and human rights discusses the CEDAW constitution and international human rights instruments such as the Convention on the Rights of the Child.

The teaching methodology for the gender course consists of twenty lectures, which are coupled with discussions. The course syllabus gives the objectives of the course as, amongst other things, to:

> (1) Appreciate the diversity and complexity of communication, especially as the subject is applied in the field of law and gender studies:
>
> (2) To understand what gender is so that students are able to be gender sensitive in the field of law and in dealings with women in their daily activities, with more specific reference to laws that pertain to women.[24]

Students are thus assessed on the basis of:

- Course work made up of one written test – 20 per cent
- One groupwork presentation – 10 per cent
- One individual assignment – 5 per cent
- Final examination 65 per cent

The methodology employed for teaching the course apart from the one group presentation is thus basically theoretical. There is no exposure to practical work in the form of, for instance, mock trials on hypothetical court cases in order to measure the level of sensitivity gained from the theory part of the course. Thus a largely theoretical methodology may not be sufficient to enable trainees to address practical courtroom challenges to overcome gender bias and social stereotypes. Chapter five will thus discuss how failure to impart practical courtroom skills may end up denying women and children access to justice in the process.

As discussed in chapter two, one of the major assumptions that was challenged in the early stages of this study was the assumption that the non-graduate programme does not expose students to international human rights instruments, in particular for women, such as:

- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
- Declaration on the Elimination of Violence Against Women (DEVAW) and
- Convention on the Rights of the Child.

The subject of gender and communication skills discusses the Convention On The Elimination Of Discrimination Against Women and the Convention On The Rights of the Child. The Declaration on the Elimination of Violence Against Women is however not discussed.

Similarly the module on human rights does not discuss DEVAW nor does it discuss any international women's human rights conventions.

The course outline for the human rights course gives the objectives of the course as to:

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[24] Judicial College of Zimbabwe *Gender laws and communication skills* manual.

> '…help create a human rights culture i.e. a culture in which everyone understands and strives to protect human rights, a culture of tolerance and respect for all.'[25]

Lectures consist of a discussion of the following topics:

- Understanding human rights
- Definitions of human rights
- Human rights from a global perspective
- Classification of human rights
- The Zimbabwean Bill Of Rights

No topic under the module is thus specifically devoted to defining what women's human rights are and what it is that amounts to a violation of women and children's rights such as:

- The right to life and cross-section between it and domestic violence
- The right to the protection of the family and what it entails for children
- The principle of the best interests of the children.

Hence while comprehensive and detailed in discussing human rights in general, the human rights module does not factor in gender. No specific mention is thus made in the objectives of the need to create a culture of awareness of what amounts to a violation of women and children's rights.

Again like the gender course the methodology adopted for teaching the course takes the form of lectures, and there is no exposure to practical work.

To again quote Wikler:

> …material on gender bias should be incorporated into judicial education and also incorporated into other courses such as those on
>
> - Matrimonial law and
> - Criminal evidence".[26]

My earlier discussion highlighted the fact that the emphasis on training for the non-graduate course is to teach substantive law subjects. None of the other subjects offered mainstream gender into their training curriculum.

The emphasis on training is hence legalistic; course outlines have not at all mainstreamed gender in their syllabuses for subjects such as:

- Criminal Law
- Criminal Procedure

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25 Judicial College Human Rights Module.

26 Norma Wikler in *Women, courts and equality* at page 242.

- Family Law
- Constitutional Law
- Statutory Interpretation

Thus there is need for any judicial educational system to:

> …develop curriculum materials for judges that would examine the effects of gender on interpretation and application of courtroom interaction.[27]

It is a fact that:

> '…paper provision of equality is insufficient to deliver real equality to women or even to men, it is necessary to have a woman centred perspective that explores the lived realities of women's lives, identifies the core potential of gender equality and recognizes the surrounding penumbra of essential biological differences between men and women. This is necessary if we are to actualize the supposedly women friendly human rights agendas that are contained in a variety of different national and international instruments'[28]

While the move by the judicial college to introduce the subject on gender laws and communication skills is commendable, the main fabric of the non-graduate training programme still remains heavily painted with legal centralism, which is reflected in the curriculum for the majority of subjects offered.

The council for the judicial college which was responsible for deliberating on the programme design for the college comprises the 'cream' or top members of the judiciary. The outcome was hence the birth of a legal centralist tailored training programme. Unfortunately such a programme does no good to impart practical skills for magistrates to:

> …explore the lived realities of women … and recognize the surrounding penumbra of essential biological differences between men and women.[29]

One can therefore argue that the top–down approach was employed in devising the programme design for the non-graduate training programme – justifiably, if one looks at the composition of the council for the judicial college.

Conducting research into women's lived experiences, in particular through an examination of cases that speak to their experiences, and assessing their legal needs before programme design might have paved the way for a training programme more grounded in reality. Due to the limited scope of this paper, it is not possible to discuss each course syllabus content in detail as has been done for the gender and human rights courses. Four course outlines for syllabuses not discussed are, however, annexed at the end of the thesis to illustrate that gender is not mainstreamed into the rest of the subjects offered on the non-graduate programme. These are family law, criminal law, criminal procedure and constitutional law course outlines.

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27 Norma Wikler in *Human rights in the 21st century*, at page 100.

28 Julie Stewart in *Women's law in legal education and practice in Pakistan*, at page 62.

29 Stewart in the same text quoted above at page 62.

Interviews with magistrates trained by the college

Part of the methodology adopted in this study included interviewing magistrates trained by the college to assess their level of gender sensitivity and whether they put into practice the theories they have learnt.

Three individual interviews were held with magistrates who had been trained by the college prior to the introduction of the subject on gender laws and communication skills. A combined interview was held with two students who had recently graduated from the college and had done the gender course. The three who had not done the gender course during their training (two males and one female) had however attended one or two gender sensitization workshops organized by ZWLA. The interviews also sought to assess their level of awareness of international human rights instruments, particularly those dealing with women. Their personal assessment of the non-graduate training programme was also sought. The following were comments made by one of the two magistrates who had done the gender course on his perception of gender sensitivity in the courts when sentencing women:

> 'I think it is true that women may be pushed by their gender roles to find sustenance for their children, so they end up being pushed into the streets, for instance to change foreign currency. I have tried women who deal in foreign currency as money changers on the pavements. Initially I was lenient with them but because of the high *rate of recidivism* I now pass short, sharp, custodial sentences.'[30]

The other magistrate who participated in the combined interview echoed similar sentiments and had this to say:

> 'I have always considered the aspect of gender roles in my sentence. But as the woman graduates from the first offence, the sentence has to be more severe; one may start with a fine, community service and finally imprisonment. The court should not be obscured by the fact that the offender is a woman. If we were to do that then that would be a travesty of justice. *If the woman is a recidivist then surely there is need for stiffer sentences such as imprisonment*.'[31]

Of central concern in the minds of both magistrates was the issue of recidivism. Visualizing the lives of women who became recidivist in the commission of gender generated economic crimes beyond the courtroom, seemed to be far from their minds. Whether women's roles to clothe, feed, pay rent and send their children to school also automatically stopped after being fined and convicted for the first time seemed not to be a central issue in their minds.

Thus while the introduction of the gender course in the non-graduate programme is a step in the right direction, the legal centralist bias in the programme seems to still manifest itself in the

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30 In a combined interview with the two magistrates on 11 November 2003 at Bulawayo Provincial Magistrates Court. These two had done the course on Gender laws and communication

31 In the same interview at Bulawayo Provincial Court.

exercise of discretion by magistrates. The absence of practical skills and alertness to women's multiple gender roles is manifest in the above sentiments.

Sentiments echoed by the other three magistrates who had studied environmental law instead of gender laws and communication skills were similar.

Of the five magistrates, four had elementary exposure to international human rights instruments and conventions and were at least aware of CEDAW. The fifth, a female magistrate who during an interview had expressed that she made practical use of international conventions in her daily work, remarked when asked to give examples of the conventions she had used as follows:

> 'To be honest, I cannot remember any of them but I do use them. We were exposed to international women's conventions during the human rights course.'[32]

Thus the major question became how could she use what she cannot remember? As previously discussed earlier, the course syllabus on human rights does not have a topic discussing international human rights conventions for women.

None of the magistrates interviewed, for instance, were aware of the Declaration on the Elimination of Violence Against Women. When asked whether they could relate theories learnt during training to practice, one magistrate in relation to the human rights course commented that:

> 'At the moment since my appointment to the bench, I have not had any practical application of the subject.'[33]

On the whole, the overall assessment of the non-graduate training programme given by all the five magistrates was that the training period was too short for such a comprehensive programme. That magistrates who graduate from the programme are therefore released into the field before they are ripe for the bench can thus not be disputed.

Perusal of court records also seemed to suggest that training is inadequate as will emerge later in this discussion. The level of insensitivity that emerged in the handling of some cases raises questions with regard to the actualization of women and children's rights in our courts. Commenting on their assessment of the course some of the magistrates had this to say:

> 'I feel more time is needed. I think two years would be sufficient. We had to strain ourselves and writing two papers per day was taxing. I think the training period is too short and indeed takes a heavy toll on those undergoing training. It can be seen by the number of people who drop out. They say if you fail a subject you drop out. In our group when we started we were 50 and ended up being 38, meaning 12 people dropped out. It may meet the ministry's needs and flood the corridors with magistrates but for most people its too short.'[34]

Another commented thus:

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32 In an interview at Bulawayo Provincial Courts on 20 November 2003. This magistrate did Environmental law and not gender and communications. She however had attended ZWLA workshops.

33 During an interview at Bulawayo Provincial Magistrate's Court on 11 November 2003.

34 In an interview at Bulawayo Provincial Court on 11 November 2003.

> 'That was a crash programme and it was heavy. We were expected to learn a lot in a very short period of time. I believe two and a half years would be a sufficient time for training. Two years at college and then half a year doing practical work.'[35]

And yet another commented:

> 'The period of training was 18 months and it had two or three short breaks of one or two weeks. Considering the pressure that we underwent, I think it was more of a crash programme. It needs more time. I think two and a half to three years would be a sufficient period of training.'[36]

What calibre of a magistrate then is the non-graduate programme producing? One who has lenses to view and actualize women's rights or one who may actually be eroding them? Chapter 5 seeks to address this critical question.

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35 In an interview at Bulawayo Magistrate Court on 20 November 2003.

36 In an interview on 3 Decembner 2002 Bulawayo Provincial Magistrates Court.

CHAPTER FOUR

An assessment of the post-training programme:

Continuing education for magistrates

Current training curriculum

The judicial college also offers a continuing educational programme for magistrates who are already practising. In this chapter the strengths and weaknesses of the post-training programme are assessed. The efficacy of provincial training committees in identifying training needs for practising magistrates is discussed. An analysis is also undertaken of the impact of the ZWLA training workshops on gender sensitization for magistrates. Whether such training is effective in making magistrates address issues of gender bias in the courts forms part of the discussion in this chapter. In winding up the chapter, a comparative analysis of the in-service training of magistrates in other jurisdictions, particularly on gender issues, is undertaken.

Magistrates who are already practising in the field attend in-service training workshops as and when they form part of an identified target group for training.

In chapter three reference has been made to the point that in terms of the Judicial College of Zimbabwe Act, Chapter 7:17 the primary function for which the college seems to have been established was to conduct in-service training for magistrates and other officers in justice delivery. However, despite the fact that in-service training seems to have been the primary objective for establishing the college, the post-training programme has no curriculum set and is needs driven.

While this is not a bad idea, the pertinent issue that arises is the need for the people who identify training needs to be alert to women's legal needs and issues of gender.

Provincial training committees headed by provincial heads in charge of each of the country's eight provinces chair provincial training committees which are tasked to identify training needs for magistrates and other agencies within the court set up for their provinces. The year's in service training for magistrates before appointment to the bench after they have graduated from the non-graduate programme also falls under the provincial training committee.

Again there is no set curriculum or designed programme for the in-service trainees. Training basically consists of doing clerical work in all the relevant clerk of court's offices before one is moved over to the prosecution department. Thereafter one is sworn in.

Provincial training committees are therefore mandated to do a needs analysis for each province. Each committee identifies what they feel are needs in their particular province and forwards them to the judicial college.

The college, depending on the availability of funds, then arranges to conduct training. Three training programmes are budgeted for per province each year. The limited resources however restrict the number of provincial training workshops that the college can do and for the year under study, no workshops had been conducted for want of resources. The judges who handle review and appeal cases also liaise with the college and highlight areas that need to be addressed by training. Depending on what the judges have identified as needs, the college then goes out into the field to do a needs analysis in order to design a training programme.

The national sentencing programme, designed in 1996, was an initiative for what judges and regional magistrates had identified as training needs. The Law Society also contributes in the identification of training needs and gives input on identifying areas of concern.

Non-governmental organizations have also identified areas of need such as gender sensitization and in some instances have conducted training workshops in this regard.

Trainers

Training is conducted by:

- Judges
- Regional magistrates
- Provincial magistrates and
- Non-governmental organizations such as ZWLA and Musasa have also participated in continuing education for magistrates and have provided training and participated as trainers for topics that they have identified as needing training.

The efficacy of provincial training committees in identifying training needs

The strength of provincial training committees comes from their composition. Similar in complexion to the council of the judicial college, the provincial training committees appear legal-centric in composition. The following is the list of members who sit on the committees in each province:

- The provincial magistrate heading the province as the chairperson
- The senior public prosecutor
- The area public prosecutor
- The senior clerk, and
- The senior court interpreter.

The committee, when sitting, comes up with an analysis of what they feel are peculiar needs for training identified for courts within their own locality. They then forward these identified needs to the judicial college stating:

- What their training needs are
- The objectives of conducting training on the identified need.

In interviews with some of the chairpersons of training committees in some of the provinces, their overall assessment of the committees in identifying needs for magistrates was that they were effective.

There are, however, constraints encountered during the process and one respondent's comment was:

> 'I have identified training needs in criminal cases such as the production of warned and cautioned statements. The old problem of understanding civil rules and civil procedure in the magistrate's court, and generally there is a problem with regard to etiquette. Those are the problems I identified, but for the past two years we have not held any training with the judicial college. The process is demanding in that you are asked to prepare a training budget and when you present it you are advised that funding is not available.'[37]

Also emerging from the training needs identified by the provincial magistrate is a bias towards training on substantive law subjects such as civil and criminal law. A legal centralist bias can thus not be ruled out in the process of needs assessment by provincial training committees. In an interview the chief magistrate acknowledged the importance of cross-pollinating ideas and consulting with other stakeholders involved in justice delivery in the process of needs assessment by the provincial training committees. He acknowledged that while the provincial training committees are effective in identifying needs for magistrates:

> '… they do not however consult non-governmental organizations working with women. What has actually happened is that it is these organizations which have come forward so that we can work with them.'[38]

Another observation made is that the provincial training committees do not include regional magistrates who are responsible for scrutinizing the work of magistrates who fall under their divisions. As one former regional magistrate who is now in private practice observed:

> 'The mistake being made is that the provincial training committees do not include regional magistrates who scrutinize cases dealt with by junior magistrates. The people who are in the committee are provincial heads and senior public prosecutors who rarely go into court and do not know what is happening in court. Regional magistrates and judges who review or scrutinize the work of magistrates could make an effective contribution within the provincial training committees.'[39]

In the final analysis, it seems that the efficacy of provincial training committees in identifying training needs largely depends on their composition. Their level of understanding of women's problems and what constitutes women's legal needs and their own personal perception on issues

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37 In an interview at a ZWLA gender training workshop, Bronte, Harare 14 November 2003.

38 In an interview at his office on 24 November 2003.

39 In an interview with him at his office in Bulawayo 23 October 2003.

of gender obviously play a part in what they will prioritize as needs for training. The needs assessment process may thus remain as legal-centric as those who constitute it if those responsible are not made gender sensitive. In the process, training may thus fail to practically address women's legal needs and actualize women's equality in the courtroom.

Impact of the Zimbabwe Women Lawyers Association training programme on gender sensitization of magistrates

When asked in an interview whether the in-service training programme addressed gender training, the chief magistrate commented:

> 'Specifically on gender training, we have been assisted twice by the international Association of Women Judges and by the Zimbabwe Women Lawyers Association. Our collaboration with the Zimbabwe Women Lawyers Association started in 2002.'[40]

Thus as part of the in-service training programme, the Zimbabwe Women Lawyers Association has, in collaboration with the Association of Magistrates, been conducting an in-service training programme aimed at promoting a gender sensitive judiciary. Through the programme, magistrates, senior magistrates, provincial and regional magistrates have attended training whenever they form part of an identified target group. Magistrates who have not received any gender sensitization training programmes before have thus been exposed to training through the ZWLA workshops.

Three of the magistrates who studied at the judicial college, prior to the introduction of the gender laws and communication skills course said they had first been exposed to training on gender through the ZWLA training workshops. As one magistrate commented:

> 'The only type of training I have received on gender is during the Zimbawe Women Lawyers Association training seminars. I have so far attended one workshop and the period of training was over three days in August 2003. I do not feel however, that the training was adequate enough to enable me to analyze cases presented before me adequately with a gender lens.'[41]

Another magistrate who had also been exposed to gender for the first time through the same training programme commented that:

> 'I have received training on gender sensitization through the training workshop organize d by ZWLA in August 2003. We were taught what gender is and I had a bias previously when gender issues were raised but from the training I was able to appreciate and understood that women are marginalized and there is need to level the playing field and treat them equally with the other sex.'[42]

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40 In an interview in Harare 24 November 2003.

41 During an interview at Bulawayo Magistrate Court on 3 December 2003.

42 In an interview Bulawayo Magistrates Court 23 November 2003.

The duration of the training workshops by ZWLA is usually between one and three days. An empowerment workshop I attended during the course of this study lasted one day while another on gender sensitization lasted for three days.

An assessment of some training manuals for workshops held in Masvingo and Harare reveal a good theoretical background to raising the level of gender awareness amongst magistrates. A review of workshops I attended revealed the same. Apart from the empowerment workshop which took a more grounded methodological approach by engaging magistrates with a group of clients who had been through the courts, the ZWLA workshops also seem to be largely theoretical. The content covered by ZWLA during their gender sensitization workshops include a discussion of the following topics: international and regional conventions, understanding gender stereotypes, power relations in the courts, ethics and gender within the justice delivery system and family law courts.

The theoretical methodology seems to have shortfalls and may not successfully impart practical skills to magistrates.

Thus at one of the workshops attended by regional magistrates and provincial heads, participants confirmed that despite training they still find it difficult to put what has been taught into practical use.

In contrast, however, the empowerment workshop seemed to work as it engaged women who had been through the courts in a more user-friendly environment with magistrates who handled their cases. In such an environment, magistrates were able to get women's feedback and perceptions about their needs and expectations of them. At the same time this invoked the magistrates who attended the workshop to think about their own level of sensitivity. The approach seemed to be more effective in increasing the level of sensitivity amongst magistrates. A court observation a week later in a maintenance court presided over by a magistrate who had attended the workshop showed that she was making a concerted effort to put into practice what had been raised by women at the workshop. At the workshop women had complained that magistrates were not listening to them and not making enquiries. Even though at times the magistrate would lapse and forget, she would quickly remember and call back litigants who wanted to express themselves. An opportunity would be given for them to express themselves. The ZWLA workshops seem to have great impact in addressing the theoretical level of awareness on gender issues amongst magistrates.

Methodologically, the organization could however make more impact to the in-service training by using more innovative methods of training during the workshops to impart practical skills to magistrates. Moot courts, drama and film may be used. Most important of all, an analysis from a feminist perspective of cases that have come before the courts, highlighting gender bias in the court on specific areas of the law could also be used.

In service training of magistrates by the Justice College of South Africa: A comparative analysis

At the beginning of this chapter, it emerged that the post-training programme has no curriculum and is needs driven.

There are several other factors that also influence in-service training. Training largely depends on what a particular province has singled out as priority training needs. This means that training for each province cannot be uniform. Training offered in Matebeleland North Province may thus not be received by a magistrate in Manicaland province.

In its strategic plan for 2003/2004 the Justice College of South Africa states in its mission statement that amongst its major challenges is the need to,

'develop our human resources and foster a culture of continuous development and learning'[43]

Amongst six of goals listed as goals of the college are the need:

> (a) To develop a human rights culture within the ranks of our department officials
>
> (b) To facilitate and to sensitize officials to issues of social context, race and gender, we include those topics in all courses offered by the college*
>
> (c) to afford officials the opportunity to attend short intensive workshops that deal specifically with domestic violence, maintenance and child law issues[44]

In pursuit of the above objectives, the college has a year's training programme designed indicating when training seminars and courses will be conducted. Commendable is the effort by the college to develop further professional training for serving officers.

While the college runs an entry level training programme for magistrates, prosecutors and interpreters similar to the non-graduate programmes for the judicial college, the difference is that for their in-service training, the college has developed an in-service training curriculum. To encourage gender awareness amongst the judiciary, the Justice College of South Africa has thus made gender training a regular part of the college's training curriculum. This is in line with the obligations imposed upon states parties to combat violence against women through providing gender sensitive training for judicial officers. The design of the college's training programmes is done on the basis of systematically identified training needs for customers. The vision of the college being to create judicial officers who are:

> '…sensitive to people's race and gender experiences, and respectful to everyone's dignity and human rights.[45]

Worthy of particular mention is the specific mention of the need to have:

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43 Justice College Strategic plan 2003/2004 page1.
44 Justice College Strategic plan 2003/2004 page 2
45 Justice College Strategic plan page 1.

> '…short intensive workshops that specifically deal with domestic violence, maintenance and child law issues.' [46]

Officials falling into a specific category for the in-service training are sent personal invitations from the course leader to attend the training seminars. The training needs assessment done by provincial training committees in Zimbabwe go a long way in identifying gaps for training as regards matters of substantive law. Addressing practical needs for their clients remains a challenge for judicial training institutions if they are to actualize women's rights, particularly in the courtroom. Useful lessons can be drawn from the South African experience as regards improving the training curriculum for judicial officers and judicial training institutions, particularly as regards in-service training. The need to mainstream gender in the current in-service training offered by the college cannot therefore be overlooked.

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46 In the strategic plan quoted above.

CHAPTER FIVE

Women as victims and offenders in the courts

Administering real and substantial justice or inducing a sense of shock: An analysis of court case studies

What meaning gender insensitivity has in the courts is visited through an analysis of observed court cases and records in this chapter.

The handling of rape, assault, maintenance and custody matters by magistrates is discussed. The chapter concludes with a justification of the need to train all magistrates in the light of observations made on court records and interviews held with High Court judges.

Wikler in one article already cited, correctly makes the observation that:

> 'Laws are not self executing, judges breath life into them.'

Equally magistrates fall into the same category as judges in this regard. A proper exercise of both their discretion and jurisdiction in the courtroom can result in guaranteeing equality, access to justice and the actualization of women, men and children's rights. Where discretion is not properly and carefully exercised, guaranteed human rights are eroded and in the finality access to justice denied.

Article 4 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, guarantees every woman certain rights. Article 4, particularly, states:

> 'Every woman shall be entitled to respect for her life, integrity and security of person. All forms of exploitation and inhuman and degrading punishment shall be prohibited.'[47]

Similar rights are also guaranteed by Article 3 of the Universal Declaration of Rights. Article 6 of the International Covenant on Civil and Political rights also guarantees the right to life, while Article 7 prohibits torture, cruel inhuman and degrading treatment or punishment. Articles 3(9) to 3(e) of the Declaration on the elimination of Violence Against Women also guarantees women the right to life and not to be subjected to torture and other cruel inhuman and degrading treatment.

However, if judicial officers who execute laws are not adequately trained to recognize domestic violence as torture, cruel, inhuman and degrading treatment, women may continue to enjoy paper equality and remain victims of inequality and discrimination in the courtroom. Cruel treatment of

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[47] As adopted by the Conference of Heads of State and Government Maputo, Mozambique July 2003.

women in the domestic arena continues to be condoned as a less serious form of violence as will emerge from the cases discussed below. In the *State v Themba Green Gumbo*:[48]

> The accused, a male adult, and the now deceased, a female adult, were lovers and stayed together. On the 9th of December 2000 on their way home from a beer drink, the deceased who was by then too drunk to walk, sat down in the middle of the path that they were using. When the accused person failed to persuade the now deceased to stand up and go home, he cut some mopani sticks and assaulted deceased several times. He went home to sleep and left deceased lying in the open. A passer by who found the deceased still lying on the roadside in the morning alerted locals. Deceased died while locals were preparing to take her to hospital using a scotch cart.

The doctor who examined the deceased observed the following marks of violence:

> 'Extensive continuous bruises and scratches of both lower limbs involving greater parts of both thighs. Copious amounts of alerted dark blood under the skin. The underlying skeletal muscle is dark and damaged. Paleness indicative of blood lost from assaulted areas. The cause of death is
>
> 1. haemorrhagic shock
>
> 2 skeletal muscle trauma and
>
> 3. assault."[49]

According to the medical report, nothing pertaining to her drunken state contributed to the deceased's death. Neither did the accused person himself attribute his own actions to drunkenness, instead, during the trial, he said that he wanted the deceased to get up and go home. In this case life was lost and the right to life violated. Upon trial, the magistrate who dealt with the case sentenced the accused person to 12 months imprisonment and suspended another 6 months. Effectively the accused person went to prison for 6 months. That the deceased was subjected to torture and cruelty cannot be doubted. She spent the night in the open, in severe pain and trauma. Above all she did not exit the world in the most humane and dignified of circumstances. She died while efforts were being made to transport her to hospital in a scotch cart. And for violating all these rights the perpetrator of the violence got away with a light sentence. Six months imprisonment.

In yet another case, *The State v David Ndou*:[50]

> The accused person David Ndou aged 31 years was charged with one count of attempted murder for attempting to kill his first wife. On the 14th of December 2001 he assaulted his first wife who was in her bedroom hut and accused her of infidelity. This was despite the fact that he is a polygamist. He throttled the complainant, punched her several times on the face with fists before using a log to strike her several

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48 In Court Record CRB Reg 182/03.

49 As per medical report compiled by Dr I Jekenya in the court record.

50 In court record CRB Reg 714/02.

> times on the left leg. Finally he also hit the complainant's head against the wall several times causing her to sustain the following injuries,
>
> 1. subconjuctival haemorrhage bilaterally
>
> 2. heavy scarring and laceration on forehead, right shoulder, left elbow and both arms and wrists.

The doctor further commented that:

> 'The injuries sustained and the asphyxia that caused haemorrhage into the eyes could have caused death. The patient suffered extreme pain and trauma during the experience and could have died. She is still in severe pain and traumatic shock'[51]

Despite evidence of such unwarranted abuse and violation of human rights the male magistrate who handled the case did not convict the accused person of attempted murder as charged. Instead he convicted him of the lesser charge of assault with intent to cause grievous bodily harm. He sentenced the accused to 12 months imprisonment. A more sensitive judicial officer might have given sentences in the region of seven to nine years imprisonment for both cases discussed above.

The limited scope of this paper does not make it possible to discuss other domestic-related cases of violence handled with similar leniency. What emerged however from observing court records was that magistrates still regard domestic violence as a lesser form of violence.

The handling of the above cases of gender-based violence by the male magistrates who tried the cases also confirm Rhonda Copelon's argument that:

> 'intimate violence remains on the margin: it is still considered different, less severe and less deserving of international condemnation and sanction than officially inflicted violence … state law enforcement practices still implicitly condone or minimize the seriousness of gender-based violence.'[52]

Through adequate training and gender sensitization, judicial officers should therefore be able to draw parallels between torture in both the private and public sphere. With proper training, magistrates should hence be in a position to understand and equate domestic violence as a violation of the right to life and amounting equally to cruel, inhuman and degrading treatment in the same manner they do state instigated terror and violence. Only then can women be guaranteed access to real and substantial justice through the state's court systems. State courts may thus remain arenas inducing further traumatic experiences and shock for women if staffed by gender blind judicial officers.

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51 As per medical report filled in CRB Reg 714/02.

52 Rhonda Copelon in *Human rights of women* at page 117 and 141.

Gender and jurisdiction: The implications for women and children

In an interview a supreme court female judge expressed the view that a gender sensitive judicial officer should always be alert that when women come to court:

> '…they carry with them a lot of baggage. When most women go to court the process is not that user-friendly, so that by the time she testifies, she is already traumatized. As a result she may forget to give relevant evidence or may say things which are not relevant to her case. It therefore needs a gender-sensitive judicial officer to be able to balance evidence and weigh it accordingly.'[53]

Thus as the Judge rightly pointed out, if the gender lens does not open the eyes of judicial officers, magistrates may in the exercise of their sentencing jurisdiction excessively punish women for acts arising out of their multiple gender roles.

A case in point in this instance is the case of the *State v Siwela Dube*:[54]

> In this case the accused, a young married mother of one, fought with her mentally incapacitated mother-in-law over laundry soap and a line to hang clothes on. She was the one used to doing the laundry for her mother-in-law, and on this date the mother-in-law wanted to do her own laundry. She pushed her away twice and she in the process fell to the ground sustaining some bruises not necessitating any medical attention. In fact the injuries were not serious. Upon trial for common assault she was sentenced to a term of imprisonment for five months.

While it was aggravating that she had assaulted her mother-in-law, her actions certainly did not warrant an effective prison sentence. A fine would have met the justice of the case considering that her gender roles had largely contributed to her commission of the offence. In particular she was:

- a mother of one
- she wanted to hang clothes and fought over soap
- she was looking after a mentally incapacitated mother-in-law at a tender age.

However, central in the magistrate's mind it seems, was the need to impose, as two magistrates expressed earlier in an interview, 'a short sharp' custodial sentence. Seeing that the accused person had assaulted her mother-in-law, it seems from the magistrate's sentence that, this fact outweighed all other factors, including her roles.

Apart from assault cases an analysis of sentencing trends in some attempted rape, rape and indecent assault cases revealed a considerable degree of gender insensitivity and a failure to appreciate what a violation of womanhood and the right to life meant for women.

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53 The Hon Justice E Gwaunza Supreme Court Judge. Interview at the Supreme Court 26 September 2003.

54 Case record Ent 1320/99.

In a clear lack of appreciation and understanding of the implications of gender, junior magistrates with no jurisdiction to try rape were trying rape matters and other serious cases of indecent assault in circumstances almost amounting to rape. Such cases are usually reserved for regional magistrates with the jurisdiction to pass sentences of up to 20 years in such cases in terms of the Sexual Offences Act, 8/2001. The result is that perpetrators of violence against women and children are treated with shocking leniency through an improper exercise of jurisdiction by some magistrates. Article 4(2) (a) to (c) of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa,[55] puts an obligation upon states to punish perpetrators of violence against women. In some observed cases, rapists and child molesters were sadly thrown back into the community pqsing a threat to protection of the family unit. In the case, *The State v Alous Gunda*:[56]

> The complainant, an 8 year old girl doing grade three was raped by accused, a cousin, with whom they were staying when she came back from school. The accused who was an apprentice at the National Railways of Zimbabwe called the complainant to his bedroom from the kitchen where she was having her lunch. When she came, the accused dragged her onto his bed, undressed himself and removed her pants. Accused made efforts to penetrate her and as a result of the pain she felt, complainant cried. Complainant's two year old young sister who was the only other person at home came and bit accused on his back with her teeth when she heard her elder sister crying. That is when the accused person got off the complainant. Complainant took her young sister and they locked themselves up in the toilet until their brother Farai arrived from school. The complainant then unlocked the door and made a report to him. A report was made to the police and complainant sent to hospital. Upon examination the doctor confirmed an attempt had been made to penetrate the child.

Legally, from the facts of this case, rape had occurred considering that the definition of rape states that:

> 'it is trite proposition that for the purposes of the crime of rape, penetration is effected if the male organ is in the slightest degree within the female body.'[57]

However, the accused person was charged with an attempted rape. The trial magistrate who dealt with the case had no jurisdiction to do so. Above all, the most shocking part is that he sentenced the accused person to pay a fine of $80 000 or, in default of payment, three months imprisonment. Not even a suspended prison sentence was imposed to take care of the accused person's future conduct. Having been asked to pay a fine, the rapist was again sent back into the community and family. Not only is access to justice for women and children denied in the process but rights such as the right of the family to be protected as a group unit of society are hence not guaranteed.

In yet another case, The State v Robsin Mtambo:[58]

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55 As adopted by the Conference of Head of State and Government, Maputo Mozambique July 2003.

56 Court record CRB W/C2702

57 In the *State v Sabawu and Anor* 1999(2) ZLR 314

58 In court record C.R.B mbe 104/01

> An adult male who was single and not married with no children had a charge of indecent assault preferred against him and got away with a postponed sentence. The facts revealed however that the offence committed amounted to rape. The accused person lured the complainant (who was in the company of two other young girls looking for some stray chickens) into his fields on the pretext of giving her some sweet reeds (*ipwa* in Shona). In the field the accused removed his erect organ from his trousers and placed it in between the complainant's legs making some coetal movements touching the complainant's private parts. Complainant cried and when her two colleagues came they found accused in a kneeling position doing his act.

He threatened the two with assault if they came nearer. They ran home to make a report. Upon sentence the magistrate, who again following the legal definition of rape in Zimbabwe had no jurisdiction to handle the matter, postponed the passing of sentence for a period of five years on condition he did not commit a similar offence. Again another rapist and child molester was returned back to the society. Legally for the purposes of rape in Zimbabwe mere contact between the male and female organ suffices for the commission of the crime. In again almost identical circumstances to the above, a grandfather who indecently assaulted his granddaughter on several occasions by taking her into his bed while naked got away with a sentence of 12 months imprisonment suspended on conditions of community service. The facts and circumstances of the case were that the accused had on several occasions invited the child into his blankets while naked, taken his organ and placed it between the child's thighs. He would then make some sexual movements until he ejaculated. A junior magistrate whose jurisdiction allowed him then to only pass a sentence of 12 months felt comfortable to deal with the matter. He gave the accused person community service, again sending him back to the family. In this particular case what made the accused person's moral blameworthiness high is the fact that he was the sole custodian of the child, both her mother and grandmother having died.

The cases discussed above, from a local perspective and even regionally, in the Malawian case of Hussein Rashid James discussed earlier, reveal that the low level of gender sensitivity amongst judges and magistrates can result in a gross miscarriage of justice. In the process, women and children are denied their rights and access to justice.

Article 18 of the African Charter on Human and People's Rights states that;

> (1) the family shall be the natural unit and basis of society. It shall be protected by the state, which shall take care of its physical and moral health.
>
> (3) The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and child as stipulated in international declarations and conventions.

Similar rights are also guaranteed under several international conventions, such as Articles 12 and 16(3) of the Universal Declaration of Rights and Articles 17 and 23 of the International Convention on Civil and Political Rights. Article 3(1) of the Convention on the Rights of the Child specifically puts an obligation on courts, administrative authorities and legislative bodies to ensure that in all matters involving children, the best interests of the child shall be paramount. However if rapists and child molesters are fined, handled with kid gloves and sent back into the

community, women and children's rights cannot be actualized and hence accessed through the courtroom.

Addressing women's needs in the maintenance and juvenile court: A mere myth or reality?

> 'Come back, come back. What did you want to say?'[59]

This was an afterthought by a magistrate during a session in a maintenance court. After initially turning down a request by a female litigant to say something in court, the magistrate later decided to call the woman back and gave her an opportunity to speak.

Because the court clerk ushering them into court had announced to the bench that the two had agreed on a figure for maintenance, when she made a request to say something, her request had been turned down. When eventually given the opportunity to speak, the woman requested to be shown the respondent's pay slip having failed to persuade him to show her the pay slip earlier during the course of negotiations outside the courtroom. While it did not the change figure of maintenance that she had initially been awarded, at least her need had been satisfied. She must have left the courtroom a happier woman with a more settled mind.

In a group discussion with eight women who had also been through the maintenance courts, women complained of similar behaviour by magistrates in the maintenance court. Once the clerk announced, on ushering them in, that a figure of maintenance had been agreed on outside, their right to be heard in court seemed narrowed down. As a group member put it:

> 'For me, it was my first time at court, and the respondent had come with this parents and aunts, so when we were asked to go and negotiate outside, I could not even say anything because his relatives were there. Eventually when we were called into court, he just mentioned a figure and I said we had agreed.'[60]

Lawyers working with women in non-governmental organizations also confirmed the same practice. As one lawyer observed:

> 'A maintenance court is supposed to be an enquiry, but maybe because of staff shortages, the process is rushed through, and most of the time women are cornered into agreements. Actually it's a nightmare to go through the whole process.'[61]

Another lawyer also observed that it is not only in matters of maintenance where women's voices are not heard, and as she put it:

> 'One other observation that I have made is that magistrates are also dealing with custody matters as chamber applications in cases where men are applying for custody. An order is just granted in chambers without making an enquiry and giving the mother an opportunity to be heard. In one case, I ended up making an urgent High Court

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59 During observations in a maintenance court at Bulawayo

60 Group discussion at ZWLA offices on 11 November 2003.

61 During an Interview at ZWLA 20 November 2003 Bulawayo.

> application to have the provisional order placing the child in the father's custody quashed. But this was only done two months later and the child had already been removed from the mother's custody.'[62]

Article 3(1) of the Convention on the Rights of the Child places an obligation upon courts to take into account in all actions concerning children the principle of the best interests of the child. Removing a child from its mother without carrying out an enquiry can certainly not be in child's best interests.

Article 8(a) of the Protocol to the African Charter on Human and Peoples Rights in Africa on the Rights of Women[63] requires states parties to:

> 'take appropriate measures to ensure effective access by women to judicial and legal services…'[64]

Similar rights are guaranteed by Articles 15(1) and 15(2) of the CEDAW. Article 15(2) in particular requires:

> '… States parties to accord women in civil matters a legal capacity identical to that of men and the same opportunity to exercise that capacity … and shall treat them equally in all stages of procedure in the courts and tribunals.'

Human rights cannot be guaranteed if women are denied an opportunity to be heard in court in favour of an agreement made outside court, most probably not made in good faith. Neither can rights be actualized by removing a child from its mother's custody without granting her an opportunity to be heard. When this happens, rights are eroded and access to justice and legal services denied. An observation of sentencing trends in cases where men default in paying maintenance also revealed total oblivion to women's legal needs. In one case,[65] an accused got away with a wholly suspended sentence for failing to pay a maintenance order of $3 000 per month in contravention of section (23) of the Maintenance Act Chapter 5:09. The accused had failed to pay the order for two years and three months. In other cases of a similar nature, the accused persons also got away with wholly suspended sentences. Despite lengthy periods of defaulting, it did not occur to the presiding magistrates that what women urgently needed in these cases were sentences that would push the defaulters to pay.

Article 25 of the Universal Declaration of Human Rights, in particular Article 25(1) states that:

> '…motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection.'

Similar rights are also guaranteed by Articles 7,10(1) and 11 of the International Covenant on Economic, Social and Cultural Rights.

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62 During an interview at Bulawayo Legal Projects Centre November 2003.

63 As adopted by the Conference of Heads of State and Government, Maputo Mozambique July 2003

64 African Charter

65 *The State v David Malunguza* CRB 10940/03

In order to make women and children's rights real, presiding magistrates in the discussed cases could have been of more assistance if the sentences had been suspended on conditions that the outstanding maintenance was paid by a particular date by the accused persons.

The above may seem to suggest that realizing women's rights in the maintenance and juvenile court may remain a mere myth more than a reality should training challenges for magistrates not be addressed.

Justifying training for all magistrates

All the cases discussed in this chapter were dealt with by magistrates trained by either the Judicial College of Zimbabwe or the University of Zimbabwe. Some have also received training on gender sensitization of magistrates organized by ZWLA.

Interviews with two High Court Judges and one Supreme Court Judge who handle appeals and also review work from magistrates justified the need for training particularly on gender sensitization and exposing magistrates to women's human rights instruments, particularly those related to domestic violence. As the Supreme Court Judge put it:

> 'Training on gender sensitization is required for all magistrates I suppose it is in the course of reviews and appeals that one gets to identify such insensitivity. One case that upset me so much was on review when I was still a High Court judge. This was a case where a 15 year old girl came home late and the brother beat her up very badly. She was dead the following morning. The brother got a very light sentence. It showed such great insensitivity on the part of the magistrate. Another was a rape case and the magistrate made a comment that the rapist had treated the victim as a prostitute, suggesting that prostitutes have no rights. One wonders what would happen if this particular magistrate were to try a case where a prostitute was a rape victim.
>
> The third was also a rape case where a nine year old was raped by her mother's boyfriend. Despite the credibility of the child's evidence, the magistrates let the culprit off the hook on the basis that the mother was of loose morals. On appeal by the state I was sitting with a male judge and I said this just won't do, this man shouldn't have been let off the hook. Magistrates should therefore be targeted for constant training and be made aware of human rights instruments, especially instruments dealing with issues of violence against women. A one-off approach may not be sufficient to improve their sensitivity. Perhaps the judicial college could mainstream that, incorporating instruments that deal with violence against women, either on their own or in consultation with us as the Jurisprudence of Equality Training Programme, we will be quite willing to assist.'[66]

The above are just a few of some of women's lived realities and experiences through some of the state's court systems either as victims or offenders. The court may just decide to subject a woman to further inhuman and degrading treatment for committing an offence arising out of her gender

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66 In an interview with her at the Supreme Court on 26 September 2003 the Hon Justice E Gwaunza.

roles by banishing her to a prison cell. The degrading picture in the prison cells is well summed up by J.N Samakayi Makarati as follows:

> 'Buckets were placed in the cell for use as toilets. Apart from the smell, the bucket could overflow and one would get splashed while using it.'[67]

Hence gender sensitive magistrates, before sending a woman to prison, should really ask themselves whether it is really necessary to do so.

Alternatively, as victims, women's rights may further be eroded by the very courts which seek to protect them, through the lenient treatment of perpetrators of violence against women and children. In the process, fundamental human rights and access to justice are denied.

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67 In *A tragedy of lives: Women in prison in Zimbabwe* at page 15.

CHAPTER SIX

The way forward: Some suggested changes to the current training

Non-graduate programme – Incorporating gender into other training courses: Some expert opinions

Some suggested changes to the current training offered are made in this chapter in order to enhance gender sensitivity in the courts. The chapter thus gives recommendations on how to incorporate gender training into the current college curriculum. Further to that, the chapter also looks at ways of including other engaging training methods to build on the level of gender sensitivity in the courts. Suggested changes for training are therefore given to both the non-graduate and post-graduate training programmes. In conclusion the chapter concludes by highlighting other areas of concern touching on training which need to be addressed. The implementation of recommendations made in this study is fundamental. It is in fact central to the objectives in conducting this research. The feasibility of implementing recommendations made in this study is thus examined at the end of this chapter.

The fact that gender should be mainstreamed into the college's training curriculum has emerged as central. However how this can best be achieved is the major issue. In an interview, chief magistrate N.D.A. Batema of Jinja, Uganda who is also a trainer with the Jurisprudence of Equality training Programme expressed the following view:

> 'Gender should be a discourse on its own, otherwise it may fall into the dangers of sidelining other issues. Let it be a compulsory main course in our judicial training and in our universities. However, emphasizing women's law may put off some. Approaching it in the area of subjects like gender and the law or gender and development will be more appropriate.'[68]

Lutha Shaba, Director of the Women Leadership and Governance Institute, a gender expert and lawyer by profession expressed a similar view. She felt that while gender should be mainstreamed into the judicial college training, this could be done in two ways. Either by having it as a main course which tied gender together with other subjects offered by the college, or alternatively by integrating gender into each of the college's subjects.

Given the dynamics of gender and the fact that gender is ever present in all situations of life it is recommended that gender be mainstreamed into each of the subjects offered by the college.

As Lutha Shaba further explained:

> 'Gender has to be mainstreamed but one has to be careful of how it should be done to curb resistance. The reminder in addition to the main course is necessary. Gender has

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68 In an interview Harare, Women's Law Centre, September 2003.

> to be a continuous thread throughout all the subjects, but one has to be alert on the 'how' part of it and not overemphasize gender to the point of resistance. There should be consistency, so that if under human rights we discuss that one is not to be subjected to cruel inhuman and degrading treatment we cannot have a woman in delict not being able to claim damages for being subjected to cruel, inhuman and degrading treatment in a marriage.'[69]

Below are some suggestions on how gender could be mainstreamed into some of the subjects from interviews held with Lutha Shaba and Mary Ndlovu. Mary Ndlovu is an educationist formerly with the Legal Resources Foundation with some expertise in curriculum and programme design. She particularly suggested that:

> '…for the non-graduate course they should start with the introduction to law and the main gender course. As they go on gender can then be mainstreamed into each course.'[70]

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69 During a interview at the Women Leadership and Governance Institute with the Director Lutha Shaba February 2004.

70 In an interview with her in Bulawayo 2 December 2003.

Subject topics to be discussed

1. Introduction to law & Zimbabwean legal systems	Where do you as a magistrate fit viz the judicial 'dare' set up? How do you as a court perceive yourself and how are you perceived by women users. What do they expect from you as a magistrate.
2. Gender laws & communication skills	Introducing practical skills on how to interact with other people, such as lawyers, witnesses, accused persons introduce role playing to make magistrates observe how they interact with other people.
3. Evidence	How do your personal perceptions, values, biases and stereotypes affect decision making in the process of weighing up evidence.
4. Criminal procedure	Handling bail applications: what are the implications for women
5. Criminal law	Gender generated crimes, what is your role as a judicial officer in assessing an appropriate sentence for crimes against womanhood, rape, attempted rape, domestic violence and the human rights implications.
6. Human rights	Understanding violence against women as a human rights issue a discussion of cases from other jurisdictions showing the use of citing international conventions in decision making 1. *Jonathan v Republic*[71] 2. Mkilima v Mwandambo 3. *DPP v Waziri*[72]
7. Mental health	Understanding gender-specific violence and trauma in the context of mental health: what does it constitute – medical expert may be used.
8. Family law	A discussion of Article 15 CEDAW and the implications for women and children. Articles 25 UDHR and other related instruments. The right to be heard in court.
9. Sentencing	Gender and jurisdiction the implications of not knowing your jurisdiction. Understanding imprisonment as degrading and cruel punishment for all. Women's gender roles and the implications of a prison sentence
10. Road traffic offences	Perceptions about male/female drivers and decision making
11. Judicial administration	Customer care and providing post-trial counselling for litigants

It will not be possible to cover suggestions for all the subjects in this paper, Professor Anne Hellum of the University of Oslo who has been involved in gender mainstreaming for the university suggested that the college could engage a consultant to do the mainstreaming.

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71 Criminal Appeal No 53 of 2001 High Court of Tanzania Civil Case No 61 of 2000 Morroco District.

72 Criminal Appeal No. 71 of 2001 High Court of Tanzania.

Use of alternative training methods

Methodologically, training can also be made more practical especially for the existing gender course by introducing more practical analytical training tools such as:

- Moot courts on hypothetical problems or cases
- Videos or films
- Drama
- Role plays
- Case study analyses.

Similar methods may also be used in other subjects if gender is eventually mainstreamed.

Developing a training manual

Documenting decided High Court judgments and hypothetical cases into a training manual to be used during the non-graduate training course for magistrates could be used to highlight:

- Use of international conventions in decision making
- Identifying stereotypes
- Identifying gender bias in decision making.

Training period

The training period for the non-graduate course could be increased to two years and this would enable practical fieldwork to be introduced. During practical fieldwork students could be asked to conduct research under the subject of 'Introduction to law and the Zimbabwean legal systems', to find out about women's perceptions of them and what they expect from them as future magistrates. Perceptions of magistrates already practising could also form part of the exercise, to encourage self-introspection as a way of developing the trainees alertness to women's expectations.

Changing the face of the council of the judicial college

The current composition of the council is too legalistic. There is a need to co-opt some gender experts and social scientists into the council in order to strike a balance between the social and legal divide in the process of curriculum development.

Post-training programme

There is need for curriculum development. Firstly, there is a need to develop a training curriculum for the 12 months non-graduate induction course. Secondly a set curriculum, mainstreaming gender along the lines adopted by the Justice College of South Africa should also be drafted for the in-service training and continuing education programme. Practising magistrates forming a particular target group can then be invited for training at different times of the year. It is therefore recommended that a yearly in-service training curriculum be developed.

National training taskforce

A national training taskforce should be formed and tasked to investigate the extent of gender bias in the courts[73] and develop a national judicial education programme for magistrates. It should comprise:

- Director of the judicial college;
- Directors of non-governmental organizations working with women;
- Judges;
- Gender experts;
- Law school experts;
- Social scientists; and
- Community leaders.

Through the taskforce, training by non-governmental organizations can thus become more coordinated instead of fragmented.

Availability of resources and implications for training

The above recommendations can only be achieved if the judicial college is well funded. Currently it is not well funded and donor funding, as the principal explained, is on hold. Already this has had an impact on in-service training. The in-service training programme is seriously under resourced and provincial training committees are frustrated by preparing training budgets for programmes which never materialize. Resources for use by magistrates at their stations are scarce, with no up-to-date libraries or computers.

Further, the college has no structures of its own and students have to walk from Rotten Row where they have lectures to the High Court whenever they want to use the library. If judicial training is to be an ongoing educational process, then the structural set up of the college should be a priority for the government to address. A site should therefore be identified and structures set up for the college under the public sector investment programme. The state has an obligation to

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73 Along similar lines described by Wikler in the United States in *Exclusion from justice.*

prioritize the training of magistrates by providing adequate funding to the judicial college in order to make justice accessible to women.

Feasibility of the study and implementation

On 10 February 2004, an interview was held with the principal of the college to assess the feasibility of implementing some of the recommendations I was going to make, in particular mainstreaming gender into the other subjects.

In the interview, he confirmed that the college was quite willing to mainstream gender into other subjects provided the areas that needed mainstreaming could be pointed out to him. Inadequate resources would however not permit the college to hire a gender consultant as suggested by Professor Anne Hellum.

Some elementary recommendations have been made and some topics pointed out that could be discussed under some of the subjects as pointed out during interviews with some experts. However another way of getting around the problem would be to co-opt some experts on gender onto the council of the judicial college who can then give some input on mainstreaming and other methodological approaches aimed at changing the gender course from being relatively theoretical to being more practical. The college has a television set and a video cassette recorder all meant for training. Videos such as 'The convict', from Uganda could thus be used for training purposes.

Drama, role plays, films and introducing moot courts on hypothetical cases were also accepted as alternative training methods.

Use of hypothetical cases to show gender bias was however preferred by the principal over use of documented cases of abuse from non-governmental organizations as the principal felt that if the cases had not been to court there might be some bias in the manner such cases are reported. Gender mainstreaming however needs to be well resourced in terms of both human and material resources. The above recommendations are therefore made with the college's limited resources in mind.

Conclusion

Article 12(1) (e)[74] and several international instruments already referred to earlier place an obligation upon state parties to:

> '…integrate gender sensitization and human rights education at all levels of education and curricula including teacher training.'

It is therefore the state's obligation to fulfill and actualize women's access to justice by providing well-trained judicial officers. The government should thus take training seriously and prioritize needs by adequately funding training budgets for both the non-graduate and in-service training

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[74] Protocol to the African Charter on Human and People's Rights on the Rights Of Women in Africa, Maputo, Mozambique July 2003.

programmes. Under-resourced courts staffed with over-worked and inadequately trained magistrates can only further frustrate the actualization of women and children's human rights thus denying them access to justice.

As Rhonda Copelon puts it:

> 'The absence of effective state response – the impunity – should likewise be a basis of state accountability.'[75]

The Zimbabwean government remains accountable. International obligations guaranteed by covenants that the state is party to should be honoured by funding or seeking funding for the training of magistrates by the judicial college.

Seeking donor funding to enhance the continuing education of judicial officers should hence be seriously considered if the government is not in a position to provide sufficient funds for training. The Justice College of South Africa has some training programmes which are donor funded. With government's limited resources, we also need to seriously think along similar lines with regard to seeking funding for the college, although if the government can incorporate such training needs into the ministry's budget it would probably help to instill a sense of the importance of such initiatives from the government's perspective.

Finally, in line with the national gender policy, both the Public Service Commission and the Ministry of Justice should come up with a long-term solution to retaining experienced magistrates. This would guarantee that the training offered by the judicial college is not fast tracked as a stop gap measure to fill in ever arising empty gaps with inexperienced officers.

Retaining trained and experienced officers would also enable the college to increase the training period and hence evenly distribute subjects.

This can only be made possible if conditions of service for magistrates are seriously addressed. How the current conditions of service for magistrates impact on training has not been fully addressed in this study. This therefore remains an issue for future research.

I sum up by quoting what the judicial college gender trainer said in an interview to highlight the importance of the government's commitment to training:

> 'There should be a massive drive by the Ministry of Justice for judicial officers to be taught what gender sensitivity is all about. The majority of clients in the civil court are women and therefore gender sensitivity amongst judicial officers is a must as they deal with women on a day to day basis.'[76]

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75 In Rachel Cook, *Human rights of women.*

76 Mrs A Chigumira then Judicial College gender trainer in an interview at Rotten Row magistrate's court Harare.

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