Judicial training on the use of human rights to promote gender equality: An overview of the jurisprudence of the equality programme in Kenya

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Introduction

The way in which justice is administered in a society is one of the basic indicators of its wellbeing. As highlighted by the Universal Declaration of Human Rights:

> '… it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law' (UNHCHR, 2002).

It is for national legal systems and the administration of justice to ensure that this goal is achieved.

Judicial education is a relatively new idea in the common law tradition, only recognized as having a role to play in the last 20 years and then only in some jurisdictions (Hatchard and Slinn, 1999).

In many countries, even traditional legal training tends to ignore the comparative and international dimension, with the result that often lawyers and judges have not been introduced to the remarkable and comprehensive developments of statements of international human rights norms and of the international monitoring bodies and regional courts. The basic problem about international human rights law is not so much its applicability or inapplicability in national systems – the basic problem is how little is known around the world of its provisions (African Regional Conference on African women, 1999). Magistrates and judges therefore have a professional responsibility to maintain their educational and practical proficiency through regular professional training.

The International Women Judges Foundation is currently implementing an innovate education project with its project partners, judicial members of the International Association of Women Judges in East Africa – Kenya, Uganda, Tanzania and Zimbabwe – entitled 'Towards a jurisprudence of equality: women judges and human rights law' (the Jurisprudence of Equality Programme, known simply as JEP). The project is equipping judges with the knowledge and skills needed to resolve cases arising in their national courts which involve discrimination and/or violence against women, in accordance with the principles enshrined in international and regional human rights legislation.

In recognition of the important role played by the judiciary, Kathleen Mahoney (1994) observed that:

> 'In many ways the judiciary in particular is the institution on which women's rights ultimately depend. Judges are responsible for deciding how and when international human rights law generally and the women's convention specifically will be applied at the local level and the degree to which legal systems can be made to conform to international standards. An effective theory of equality is essential, but as important is the use judges make of it. Experience has shown that even the most progressive legal reforms can be thwarted by a strike of the judicial pen'(Mahoney in Cook, 1994: 437–464).

Women's international human rights law

International conventions and other international documents, starting with the Universal Declaration of Human Rights adopted by the United Nations General Assembly on 10 December 1948, require that all persons be afforded equal protection of the law. For instance, the African Charter on Human and People's Rights article 2 states:

> 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.'

This provision promises equal protection of women and guarantees their right to non-discrimination. Article 3 further states:

1. Every individual shall be equal before the law

2. Every individual shall be entitled to equal protection of the law.

At the Fourth World Conference in Beijing, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and 189 nations reaffirmed their commitment to promote and protect human rights for all people. As of March 2005, the convention had been ratified by 179 states. Of the 53 countries in Africa at least 43 had ratified CEDAW but some have also entered a number of reservations which strike at the heart of the convention. Most of the reservations were made on cultural grounds, excluding obligations in one of the most crucial spheres for women – the family.

Article 1 of CEDAW provides a definition of discrimination against women, and comprehensively addresses women's rights to equality and non-discrimination in the civil, political, economic, social and cultural fields. It requires states parties to pursue a policy of eliminating such discrimination against women, and to taking all appropriate measures to eliminate such discrimination, whether committed by public authorities or by any person or organization.

Article 2 of CEDAW requires states parties to incorporate the principle of equality of women and men into their national constitutions or other appropriate legislation, and ensure through law and other appropriate means, the practical realization of this principle. States parties are also obliged to adopt legislation prohibiting discrimination, to establish legal protection for women on an equal basis with men, as well as to provide effective remedies against acts of discrimination against women.

Article 18 of CEDAW obliges states parties to submit to the Secretary-General a report on the legislative, judicial, administrative or other measures that they have adopted to implement the convention. The CEDAW committee that monitors implementation has stressed the relevance of the convention in domestic litigation.

Equal protection and violence against women

The CEDAW Committee issued its General Recommendation Number 19 early in 1992, the first United Nations document specifically addressing the issue of violence against women. This ground-breaking document was followed by the Declaration on the Elimination of Violence Against Women (DEVAW). DEVAW was adopted formally in February 1994. DEVAW's definition of Violence is important for use by members of the judiciary:

> *Article 1*:the term 'violence against women' means any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Because violence is frequently involved for women appearing in court on a host of family and business issues, an understanding of violence and the nexus between violence and equality is essential for judges committed to human rights. The Judicial Education Programme incorporates the subject of violence against women as a major component of its training. It explores the prevalence of violence against women and, as Khan observes, 'women and children are often in great danger in the place where they should be safer: within their families. For many, "home" is where they face a regime of terror and violence at the hands of somebody close to them.'[1]

In the Judicial Education Programme training of trainers, Mrs Orloff[2] went ahead to develop the following as

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[1] Mehr Khan, Director of the innocent Research Centre;

[2] These characteristics were developed by Ms Orloff and used in the JEP training of trainers in July 1997 at Washington, DC, cited in 'Towards a jurisprudence of equality: A judicial training program on the use of international human rights law to promote the human rights of women and girls' (2001) by F. Butegwa, A. Tierney Goldstein and J. Lyons Wolf.

responsibilities of government, making reference to international iInstruments:

A. Governments must act to prevent, investigate and punish acts of violence against women perpetuated by private persons, including domestic violence.

   CEDAW 2(b), 2(c), 2(f), CEDAW General Recommendation 19: Paragraph 7, 8, 10. UN Declaration on Elimination of Violence Against Women: Article 4 (c).

B. Governments are specifically required to act affirmatively – UN Declaration on Elimination of Violence Against Women Article 4(c) CEDAW General Recommendation No 21: paragraph 17.

C. Courts are not only required to intervene, but doing so must offer victims effective relief (UN Declaration on Elimination of Violence Against Women: 4(a).

D. The crucial role of the judge: The International women's human rights law concerning violence is clear. In addition to knowing this law and understanding the nature of violence, judges have additional resources available to them in their courtrooms. The judge sets the tone in the courtroom and makes the most critical decisions affecting the lives of the victims, perpetrators and children. Judges need to understand how their decisions can play a critical role in preventing domestic violence injuries and deaths and how they can enhance the safety of battered women and their children and hold batterers accountable for their conduct. Judges and the sentences they impose can strongly reinforce the message that violence is a serious criminal matter for which the abuser will be held accountable. Judges should not underestimate their ability to influence the defendant's behaviour. Even a stern admonishment from the bench can help to deter the defendant from future violence.

Judicial colloquia

The status of international treaty law in domestic law is resolved differently in different countries depending on whether they apply the transformation theory or adoption theory. There is however a growing number of cases in which domestic courts and tribunals have referred directly or indirectly to international human rights law (Odhiambo. 2005). Hence judges and magistrates are increasingly using international human rights instruments as tools to attain the objectives of these instruments.

However it is also the case that judicial officers in many countries are often not fully aware of international human rights norms and the jurisprudence which has developed through these norms. This limits their usefulness and potential impact, as well as the capacity for judges to further increase respect for human rights.[3] Consequently 'there is a particular need to ensure that judges, lawyers, litigants and others are made aware of applicable human rights norms as stated in international and regional instruments and national constitutions and laws. It is crucially important for them to be aware of the provisions of those instruments which particularly pertain to women'(Victoria Falls Declaration, 1994).

In 1988, the Commonwealth Secretariat initiated a series of judicial colloquia to promote the domestic application of internationally and regionally agreed human rights norms. Judges at the first colloquium in Bangalore in 1988 adopted the Bangalore Principles which call for the creative and consistent development of human rights jurisprudence throughout the Commonwealth. The principles emphasise the need for practical measures to ensure that international and regional human rights norms, to which many member countries are states parties, are given full effect in national courts. The Bangalore Principles were reaffirmed at six subsequent judicial colloquia.

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[3] Division for the Advancement of Women Judicial Colloquium on the Application of International Human Rights Law at the Domestic Level.

The main objective of the judicial colloquium is to show how international human rights norms, particularly those contained in CEDAW can be incorporated into everyday judicial decision-making and the interpretation of laws at the domestic level in order to achieve equality for women and girls. It will provide an overview of relevant international human rights norms and an extensive opportunity for participants to discuss cases where international human rights norms have been used to benefit women and girls. In particular it will:

- illustrate how international law norms can be used to give effect to the underlying purpose of domestic law that aims to protect and enhance women's rights;
- assess how courts in different legal systems use international human rights treaty law to ensure that women and girls are guaranteed their rights to equality and non-discrimination;
- facilitate the exchange of experiences and best practices on the use of international human rights treaty law in domestic courts at different levels; and
- at the domestic level discuss strategies for more creative and widespread use of international human rights norms contained at the convention level .[4]

There have been subsequent colloquia organized focusing specifically on the promotion of the human rights of women and the girl child through the judiciary:

– Zimbabwe in 1994

– Hong Kong in 1996

– Guyana in 1997

– Tanzania in 2003

Another colloquium was held at the non-governmental organization forum during the United Nations Fourth World Conference on Women in Beijing in 1995.

At the Victoria Falls in August 1994, senior judges from the Commonwealth countries met to discuss promotion of the human rights of women and children through the judiciary. The meeting produced the Victoria Falls Declaration on the Promotion of the Human Rights of Women. At paragraph 5, the participants noted that '…discrimination against women can be direct or indirect.' They noted that indirect discrimination requires particular scrutiny by the judiciary.

The participants further emphasized the need to ensure not only formal, but also substantive equality for women and for that purpose, 'affirmative action may be adopted if necessary'(Butegwa, Tierney Goldstein and Lyons Wolf, 2001).

The Arusha colloquium held in September 2003 focused on the application of CEDAW at the domestic level. The judges and magistrates from eleven African countries examined, in particular, judicial developments and trends in the areas of women and girls' human rights as related to nationality, family law and violence against women and the extent to which domestic jurisdictions have incorporated international human rights law in their decisions in those named areas. The Arusha Declaration called for judicial activism as will be noted at paragraph 2:

> 'In determining whether a rule or practice is discriminatory on the basis of sex always look beyond the letter of the law and to consider the practical implications of the rule or practice.'

Further, in paragraph 6, a call is made for judicial officers 'whenever appropriate, to make recommendations in

[4] See at http://www.un.or/womenwatch/daw/meetings/colloq/gove-parties 05.htm

one's judgments on how domestic law and/or policy might be reformed to bring it into conformity with the state's obligations under the convention.'[5]

These commitments require the judiciary to combine impartiality with responsiveness to the individual members of society, at whose service only the system of justice must work.

A former Chief Justice of Australia, Sir Anthony Mason, has said:

> 'We must recognize that the courts are institutions which belong to the people and that the judges exercise their powers for the people. The requirement that judges respond to the needs of the individual members of society contains within it the expectation that judges will intervene in order to achieve justice.'[6]

Judges play a role in preserving *dejure* and *de facto* inequality. Judges likewise can and should play an important role in implementing the principles enunciated at the judicial colloquia for promoting the human rights of women.

Structure of the JEP programme

The International Women Judges Foundation and its project partners set out to close the gap between rhetoric and reality by implementing a unique judicial education project while members of the judiciary will be the immediate beneficiaries of the JEP training; ultimately the project is designed to bring about changes in the law that will improve the status of all women.[7] JEP is implemented in two, closely related steps:

Step one – Taskforces and 3ts training

Initially, International Women Judges Foundation members in each participating nation form a taskforce responsible for administering all aspects of the project in their respective countries. The foundation's expert facilitators conduct a ten day 'Train the trainers' (3Ts) workshop for the training teams drawn from the participating nations. I was privileged to attend the December 2001 Train the trainers workshop as a trainee. Judy Lyons Wolf, formerly with the Georgetown Law School and now a private consultant and Florence Butegwa, a member of the Organisation of African States Human Rights Commission were the expert facilitators.

Trainee candidates were magistrates and judges from Tanzania, Uganda, Zimbabwe and Kenya. In addition, there were two female judges from Nigeria as observers as a prelude to initiating the JEP in their country. The workshop provided an opportunity for participants to meet and share professional experiences with peers from neighbouring Commonwealth countries.

The curriculum

The workshop curriculum is designed to familiarize the trainees with substantive human rights law, particularly on CEDAW and the African Charter on Human and People's Rights, among others.[8] The general principle of law in most common law jurisdictions is that ratification of an international treaty by a state does not, ipso facto, transform that instrument into a piece of domestic law. Hence courts cannot directly enforce treaties

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[5] See at: http://www.un.or/womenwatch/daw/meetings/colloq/communique-Arusha 03.htm

[6] See at http://www.lawlink.nsw.gov.av/sc/sc.ns/pages/ipp-191004

[7] The International Association of Women Judges and the International Women Judge's Foundation

[8] African Charter on the Welfare and Rights of the Child and in conjunction with the Convention on the Rights of the Child; the International Covenant on Economic, Social and Cultural Rights; the Declaration on the Elimination of Violence Against Women (DEVAW)

unless their provisions are locally enacted or otherwise incorporated into the domestic law (Ncube, 1998). The trainees were therefore introduced to the principles articulated at Bangalore in 1988 and at Victoria Falls in 1994 which provide guidance to the application of women's human rights law to domestic laws. As Principle 7 of the Bangalore Principles on the domestic application of international human rights norms states:

> 'It is within the proper nature of the judicial process and well established judicial functions for national courts to have regard to international obligations which a country undertakes – whether or not they have been incorporated into domestic law – for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law.'

At the same time, the trainees learned how to convey this information at seminars they would conduct in their own countries through highly interactive instruction that included case studies, role playing activities and small group discussions. One of the goals of JEP is to create a cadre of judicial and academic trainers who are prepared to lead JEP training session for their colleagues. The method of delivery also challenges judges to participate and to take responsibility for their own continuing education (Mahoney,1994).

Step two- JEP seminar

Following each train the trainers workshop, the training teams prepare and conduct three-day JEP seminars for approximately 30 jurists in their own countries. The paramount goal of the jurisprudence of equality project is to transform the law and the legal-judicial environment in ways that will promote and protect women's rights so they may participate fully, equally and without fear of their communities. In order to achieve this, the programme is designed to give participants:

- A basic introduction to women's international human rights law, especially equal protection.
- Experience in applying women's international human rights law to concrete legal problems involving discrimination and violence against women.
- Multiple opportunities to reflect on and generalize what they learn in the workshop and discuss how they will use what they have learned in the future (Butegwa *et al*., 2001).

The prevalence of stereotypes and implications for judicial processes

Gender bias arises from stereotyped assumptions about the role of women and men. While stereotypes can either be positive or negative, they are generally unfair and misleading, tending to reduce individuals to a rigid, inflexible image. They do not take account of the fact that human beings are complex and multidimensional, with unique attributes. Stereotypes suggest that people or groups of people are the same, when, in fact, they are quite different. Stereotypes about human beings tend to dehumanize people, placing all members of a group into one, simple category.[9]

Article 5 of CEDAW calls upon states parties to take all appropriate measures:

> (a) 'to modify the social and cultural pattern of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.'

Stereotypes lead to gender bias which in turn impairs the credibility and fairness of the judicial system. Therefore the first steps taken in the JEP training are in learning to identify stereotypes. This helps participants

[9] Stereotypes definition and vocabulary glossary: http://the_english_dept_tripod.com/stereo2.htm

understand that stereotypes pervade every aspect of life and affect judicial work. It forms a basis for the need and usefulness of human rights principles and law in judicial process.

A recent decision of the Kenyan court of appeal illustrates problems of gender stereotypes and how that affects judicial work. This was in the case of *Mary Rono vs Jane Rono and William Rono* CA No 66 of 2002, Appeal from Eld. H.C. Probate and Administration Cause No 40 of 1988. This was a succession matter relating to the estate of Stephen Rono Rongoei Cherono who died intestate. He left a number of properties, both movable and immoveable. He was survived by two wives and nine children (six daughters and three sons). In the Probate and Administration Cause No 40/88, the High Court in Eldoret granted letters of administration to the two widows and the eldest son without objection from other members of the family. Disputes however arose about the distribution of the assets and liabilities. The second widow together with her children was dissatisfied with the judgement and appealed.

Proposals put forward by the first house in respect of the land was that the first house's share would be 108 acres and the second house would have 70 acres, with 22 acres going to the three sons each and 14 acres to the girls each.

The second house objected to this proposal citing discrimination and proposed a 50/50 share of land between the two houses. Lady Justice Nambuye held;

> 'Statute law recognizes both sexes to be eligible for inheritance. I also note that it is on record that the deceased treated his children equally. It follows that all daughters will get equal shares and all sons will get equal shares. However, due to the fact that daughters have an option to marry, the daughters will not get equal shares to boys. As for the widows if they were to get equal shares then the second widow will be disadvantaged, as she does not have sons. Her share should be slightly more than that of the first widow whose sons will have bigger shares than the daughters of the second house.'[10]

In its ruling the Court of Appeal held the constitution outlaws discrimination section 82 (1). However in the same section, the protection is taken away by provisions in section 82 (4) which allows discrimination in matters of personal law. It states:

> 'Subsection (1) shall not apply to any law so far as the law makes provision…
>
> (a)….
>
> (b) with respect to adoption, marriage, divorce, burial, devolution of property on death or either matters of personal law;
>
> (c) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or
>
> (d) whereby persons of a description mentioned in subsection (3) may be subjected to a disability or restriction or may be accorded a privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons for any other description, is reasonably justifiable in a democratic society.

The Hon. Justice Phillip Waki made reference to the non-discrimination clauses in the Universal Declaration of Human Rights (1948), the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the

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[10] Eld. H.C. Probate and Administration Cause No 40 of 1988

African Charter on Human and Peoples Rights. He further made references to the domestic application of international human rights norms, as stated in the Bangalore Principles and *Longwe vs International Hotels* High Court of Zambia 1993 (4 LRC 221) on implications of ratification of conventions by a state. He then went ahead to distribute the estate to the wives of the deceased in equal share and to all children in equal share irrespective of sex (Hon. Mr Justice Waki is a JEP trainer).

The relationship of international law and domestic law

The African Charter on Human and Peoples Rights provides in Article 18 (3):

> 'The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in international declarations and conventions.'

The general principle of law in most common law jurisdiction is that ratification of an international treaty by a state does not *ipso facto*, transform that instrument into a piece of domestic law. Hence, courts cannot directly enforce treaties unless their provisions are locally enacted or incorporated into the domestic law (Rwezaura, 1998).

There is however a presumption that the law-making bodies do not intend to act in breach of the state's international obligations. In the context of implementing legislation, this means that domestic courts should interpret domestic implementing legislation in conformity with a convention in so far as the domestic legislation permits. In other words they should do so where there is no obvious inconsistency between the domestic law and the international law (Bayefsky, undated). As Justice Musamali noted in *Sara Longwe v Intercontinental Hotels* High Court of Zambia, 1993 (4 LRC 221):

> ' …ratification of such [instruments] by a nation state without reservations is a clear testimony of the willingness by that state to be bound by the provision of such (an instrument). Since there is that willingness, if an issue comes before this court which would not be covered by local legislation but would be covered by such international [instrument], I would take judicial notice of that treaty or convention in my resolution of the dispute.'

In *Dow v Attorney-General of Botswana* 1992 LRC (Const) 623 (CA), the Supreme Court of Botswana also declared that although international treaties were not binding within Botswana unless enacted by parliament, courts ought not to interpret legislation in a manner that conflicted with Botswana's international obligations. After making reference to Botswana's ratification of several international human rights treaties, Amissah, JP observed that, even if:

> '…it is accepted that those treaties and conventions do not confer enforceable rights on individuals within the state until parliament has legislated its provisions into the law of the land in so far as such relevant international treaties and conventions may be referred to as an aid to construction of enactments, including the constitution, I find myself at a loss to understand the complaint mode against their use in that manner in the interpretation of what no doubt are some difficult provisions of the constitution.'

This position has been given credence at various judicial colloquia starting with the one held at Bangalore (1988) which set out the Bangalore Principles. One of these principles is that where a treaty has been ratified but not yet incorporated into domestic law, it would still be taken into account by a court for purposes of deciding cases when the domestic law, whether constitutional, statute or common law, is ambiguous, uncertain or incomplete. (Bangalore Principle No.4). These principles have been confirmed and reaffirmed at subsequent judicial colloquia.

At the Victoria Falls declaration:

> 'Participants agreed that it is essential to promote a culture of respect for internationally and regionally stated human rights norms and particularly those affecting women. Such norms should be applied in the domestic courts of all jurisdictions and given full effect. They ought not to be considered as alien to domestic law in national courts' (Victoria Falls Declaration,1994).

The Arusha Declaration (2003) on the role of the domestic judge calls upon judicial officers *inter alia*, whenever possible and relevant, to cite articles of the convention and the committee's general recommendations in decisions when interpreting domestic law.

Kenyan magistrates and judges who have undergone the jurisprudence of equality training have adopted a similar stand concerning the effect on domestic law of unincorporated international treaties. In Succession Cause No 464 of 1998, the deceased died intestate and was survived by six children, four girls and two boys. A dispute arose over the distribution of property. The matter had been heard by a previous judge when Hon. Justice Muga Apondi took it over in the year 2003 and heard it to its conclusion. In arriving at his decision Justice Apondi referred to the United Nations conventions that prohibit discrimination against women and children. He took cognisance of the fact that Kenya had ratified CEDAW and went ahead to distribute the estate equitably amongst the children. (Mr Justice Apondi who was appointed to the higher bench in 2002 has been through the JEP training).

In re Njoroge Machokire, Succession Cause No. 192, Chief Magistrate's Court at Thika, August 19, 2002:

Jane Watiri petitioned the court to award her one half of a parcel of land that belonged to her deceased father on which she lived with her four children. Her brother objected, arguing that he had cultivated a larger portion of the land during his father's lifetime than his sister and therefore was entitled to that larger portion. Chief Magistrate Omondi found that under Kikuyu customary law, an unmarried woman like Watiri lacked equal inheritance rights because of the expectation that she would get married. Magistrate Omondi held that this customary provision discriminated against women, in violation of section 82(1) of the Kenyan constitution, which prohibits discrimination on the basis of sex. It also violated article 18(3) of the Banjul Charter and article 15(1)-(3) of CEDAW, which provide for legal equality between men and women. Consequently, the magistrate awarded Watiri and her brother each an equal share of their father's property (She had attended the JEP training).

In *Mburu Chuchu v Nungari Mvururi and 2 Others* HCCA No. 335 of 1999**,** a man alleged his sisters were not entitled to inherit their parents' land. The Hon. Justice Philip Waki,[11] then a High Court Judge, observed in his judgement that:

> 'That existing view may test the conscience of modern day activists who would justifiably plead that the custom is discriminatory to women and contrary to international instruments assented to by this country, prohibiting discrimination on the basis of sex. I alluded to the United Nations Convention on the Elimination of Desicrimination Against Women (CEDAW), which Kenya ratified on the 9 March 1984… Perhaps it is time that serious thought was given to implementing article 5 of CEDAW, which again this country has undertaken to do but has taken no steps to. Our hopes are that the current constitutional review process… will examine the issue separately. For now I only bemoan the binding precedents of the court of appeal of entitlement to land by unmarried women as determined by custom.'

Therefore one can safely say there is a growing acceptance of recourse to International human rights norms by domestic courts within and beyond the eastern and southern African jurisdictions.

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[11] Now a Judge of the Court of Appeal.

Structure of the programme

Training of judicial officers

The jurisprudence of equality programme is designed for very special kinds of trainees. They are not simply judges and magistrates but judicial officers who are used to a lot of respect and are usually associated with great learning. They wield considerable power and prestige in their day to day working environment (Butegwa *et al*.,2001) and as adults there is a deep psychological need to be perceived by oneself and others as being self-directing (Gomathi, 1994).

In recognition of training as a vital tool in strengthening the skills and knowledge of judges and magistrates, the participatory approach was preferred. This method allowed both the participants and trainers to participate in the creation and acquisition of knowledge. It encouraged sharing with one another and participants were able to look at a problem from different dimensions, including different ways of interpreting law. Participants therefore became resources to each other and a valuable compliment to the trainers input.

Case studies required participants to apply women's international human rights law to concrete problems of discrimination or violence against women with at least one case devoted to the following areas;

- a family law issue
- a criminal law issue
- an issue involving violence
- an issue involving customary law.

Participants examine ways in which magistrates and judges can apply women's international human rights law to protect women's rights where there is a lacuna in the domestic law.

Training as apposed to education

Judges and magistrates, like most adults, do not like the word 'education'. It is seen as imputing to them an unwarranted deficiency in education, knowledge or skills. Adults tend to prefer the term 'training' which is associated with 'value addition' to one's existing knowledge and skills. Judicial officers targeted by JEP are busy and knowledgeable individuals and they learn because there is need to know something in order to cope with a particular situation. This is what informed our decision (Justice Waki and myself) to christen the JEP training in Kenya 'workshop', capturing the promise of the participatory approach and sharing of knowledge.

Composition of participants

One of the objectives of the International Association of Women Judges and International Women Judges Foundations is to encourage the exchange of information and research on legal issues of vital concern to women judges, using all forms of communication. In recognition of the need to sensitize the higher bench as well as the lower bench on the application of international human rights norms at the domestic level the Kenya Women Judges Association in the year 2000 nominated a magistrate and a judge (both women) to attend the train the trainer (3Ts) workshop. This was in recognition of the strongly held view that judges learn from other judges. In his first Judicial Studies Board lecture, Lord Bingham, the then Lord Chief Justice, stated:

> 'It is, however, as I would suggest, essential, if judicial education is to promote the end of judicial independence, that control of the content and the form of such education should rest squarely in the hands of the judges themselves…' (Judicial Studies Board, 1998).

During the second 3Ts training held at Entebbe, Uganda, the Kenya Women Judges Association made a deliberate move to nominate a female and a male judicial officer (Hon. Mr Justice Philip Waki from the High Court and myself, Praxedes Tororey from the magistracy) to attend the training. I believe I was nominated not only because I had demonstrated a keen interest in the JEP country training, but more importantly because I had a diploma in Women's Law attained from the University of Zimbabwe in 1996. The gender consideration was in recognition of cultural sensitivity and to guard against stereotyping the training as a 'woman's thing'. As Buckley says:

> 'It is of vital importance to appreciate that those seeking equal justice are not trying to improve a feminist agenda in the name of a traditional interest group. All they seek to do is to provide facts and new sensibilities which will assist judges in doing precisely what they do – administer justice – but to do it with precise knowledge and understanding' (Buckley, 1994).

These reasons also informed the selection of participants for the training in Kenya. The taskforce goal is to train all magistrates and judges. However, due to the training beng limited to about 25 participants at a time, care was taken to select magistrates and judges from different parts of the country so as to harness their experiences and hopefully share the knowledge and skills gained in their stations.

Follow up sessions

Two training sessions were conducted in a year and at the end of the year the taskforce organized a one-day follow-up session. All those who had participated in the training, were invited. Participants shared their experiences once more and submitted cases in which they decided with reference to women's international human rights law to the taskforce secretariat. Some of these find their way to the International Women Judges Associations office. The follow up sessions help evaluate the project. It is noted that gender training involves discussions of attitudes and behavioural change which take time.

Current state

So far the Kenya Women Judges Association has organized six workshops with funding from the International Women Judges Foundation. At the August 2004 judicial colloquium held in Mombasa, Kenya, the Chairperson of the Kenya Women Judges Association, Hon. Lady Justice Aluoch, reported on setbacks in the efforts made by JEP to train judicial officers on the application of women's international human rights law. Out of 50 trained judicial officers, only 18 survived the purge carried out in 2003 in a bid to weed the Kenyan judiciary of corruption. Out of six trained trainers I was the only one who remained serving. Now there are two of us after Hon. Mr Justice Waki successfully challenged the decision to have him retired.

There is therefore need for the programme to continue. Hon. Lady Justice Joyce Aluoch petitioned the Hon. Chief Justice Evans Gicheru to allow the training sessions to go on and for the judiciary to fund the same as the current funding arrangement was coming to an end. The Chief Justice acceded to the request and mandated the Kenya Women Judges Association to continue with the training programmes and also gave the go ahead for training in respect of succession and family law.

The chairperson of the Women Judges Association further recommended the JEP training manual for use by all judicial officers as it contains International Instruments and relevant laws pertaining to family issues.

Conclusion

The programme's ultimate goal is to build a true jurisprudence of equality based on universal principles of human rights and non-discrimination by transforming the law and the legal judicial environment in ways which will promote and protect women's rights to be free of violence and discrimination so that they can participate fully in the life of their communities without fear.

The value of the training cannot be overemphasized. My perception of gender issues today is different from what it was before I started undergoing gender training and acquiring knowledge and skills on the use of the women's international human rights instruments. As can be seen from the few cases I have touched on, a growing number of judicial officers are willing to explore the protection offered by international instruments to safeguard the human rights of women.

It would therefore be desirable that all judicial officers undergo the JEP training. The cost of such workshops is high as participants are usually taken away from their homes and familiar surroundings to a conducive atmosphere with opportunity for people who must work with each other to get together informally in the evenings.

This is however not to say that in the absence of huge funds the training sessions cannot go on. The training can be decentralized and conducted within the regions, minimizing on costs. This would create a great impact on the courts and the lives of women and girls whom the human rights instruments seek to protect.

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