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Pursuing Grounded Theory in Law

South-North Experiences in
Developing Women's Law



Preface



Grounded Theory, Snowballs and Dung Beetles

The origins of this book lie in two distinct but intertwined initiatives for North-South co-operation. One between the University of Oslo and the University of Zimbabwe to establish, with funding from the Norwegian Agency for Development Co-operation (NORAD), a Southern and Eastern African regional Women's Law Programme. The other initiative was between the Women and Law in Southern African Research Trust and DANIDA. An initial focus in both these projects was devising appropriate methodologies for research into women's legal position in the African context. Thus the decision was made to write a simple and succinct handbook for use in the Women's Law Programme at University of Zimbabwe and in the WLSA projects. However, it became rapidly apparent as the book developed that in both projects research methodologies were constantly being adapted and evolved to meet local needs. There was, also, constant exchange of perspectives and methodologies between the North and the South, each region inspiring and embellishing the work of the other. Thus, in a grounded response to what was taking place the book gradually expanded. It was also realized that these grounded methodologies and methods had a much broader applica-

tion both internationally and inter-disciplinarily than was initially realized.

The aim of this book is to provide a framework, located in grounded theory, through which the Women's Law researcher can engage empirical knowledge and data collected on women's lived experiences, on law, local customs, practices and procedures in a constant dialogue with theoretical generalizations about the position of women. From this empirical base it is hoped that she will be able to build apposite theories on the legal position of women.

Grounded theory is an iterative¹ process in which data and theory, lived reality and perceptions about norms are constantly engaged with each other to help the researcher decide what data to collect and how to interpret it. The interaction between developing theories and methodology is constant, as preliminary assumptions direct the data collection and then the collected data, when analysed, indicates new directions and new sources of data.

In the Northern Hemisphere this approach is often referred to as «the snowball method», however in a region where there is little, if any snow, a new metaphor needed to be found. The metaphor we find most apposite is that of the dung beetle. In the African «bush» dung beetles are constantly «compiling» balls of animal dung in which they lay their eggs. The «dung beetle method» that is described in this book, is a grounded research process in which the researcher collects data, sifts and analyses it, considers the implications of her findings, determines what to collect next to meet her needs, and continues the collection and analysis cycle. Through this process new methodologies, perspectives and theories are hatched.

This book is a result of a research based teaching programme. We would thus like to extend our thanks to the scholars from the University of Zimbabwe and the University of Oslo who have participated. We are particularly grateful to the Ph.D. scholars within the programme; the late Jennifer Okumu Wengi, Amy Tsanga, Janet Macharia-Kabeberi and Mary Maboreke. We are also grateful to Ann Stewart and Abdul Paliwala from the School of Law at the University of Warwick and Jon T. Johnsen at the Faculty of Law in Oslo for commenting on drafts of the book.

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Part I

Theories and Perspectives in Women's Law



Introduction

Summary: The need for new research methodologies into issues that involve women and the law is discussed. The background to the book is explained, the target audiences identified and applications for the methods in the book are suggested.

1.1 Target Audience for this Book

In essence this book calls for an approach that integrates empirical data about men's and women's lived experiences into legal research. Consequently the target audience for this book is quite wide. University lecturers conducting courses in women's law, women's studies, gender studies, law and development studies and those dealing with customary law and «living law» are primary targets. Lecturers in law who are running courses in different schools of jurisprudence and research methodologies should also find it useful.

The book is also designed to assist students for higher degrees and undergraduates writing dissertations to come to grips with the research, analysis and writing process. Researchers and consultants undertaking investigations into legal issues affecting women and gender relations should also find useful material and suggestions in the book.

Legal practitioners looking for ways of collecting data on local norms, customs and practices or for generating arguments for law reform could also utilize some of the suggestions that are made on ways of conducting research. Another target group, at both the academic and practical level, are social scientists looking for better ways to understand the operation and functioning of law. Social workers, administrators or members of professional groups dissatisfied with the way in which the law deals with their clients, might use some of the chapters to assist them in interrogating the legal system and pinpointing the cause of their dissatisfaction. The methodologies and methods discussed can also be employed by researchers conducting empirical research in other fields.

1.2 Using the Book

The book should be sufficiently self explanatory for a postgraduate researcher who moves through it step by step to do so without a great deal of outside assistance. Having someone with whom to discuss the ideas and suggestions made by the authors would be a plus, but a researcher isolated from immediate academic contact should find the book helpful in deciding how to proceed with her research.

Undergraduate students, depending on the ideas and theories that they have been previously exposed to, might need more specific guidance in dealing with and interpreting some of the chapters. In general we believe that if the book is used in a step by step manner, following the chapters in their chronological order, it is largely self explanatory.

1.3 The Theoretical and Empirical Location of the Book

The book is sited in the web of problems, needs and relationships that affect women in their dealings with the law and the law's dealing with women. Although women and their interactions with the law are the focus of the book, we believe that the methodologies and methods that are discussed can be adapted to other types of investigations where there is a conjunction of law and reality. Which is literally everywhere.

Women are generally regarded as being disadvantaged economically, socially and legally. Yet efforts that are made to improve their position sometimes fall short of their objective or may even adversely affect the position of the women that they were intended to benefit. Well meaning legislators, development experts, legal researchers, women activists and others who want to have an impact on the position of women often do so from inadequately researched premises.

Our underlying belief in writing this book is that effective means have to be developed to carry out research into the position of women in law and society. One of the criticisms directed at the legal systems of the world is that they address predominantly male problems, are male constructs, male ordered and male dominated. Yet there is very little empirical research to establish what the actual

needs of different groups of women are and how they might be addressed by the legal systems of the world.

Although this book is inspired by approaches from Scandinavia and other Western countries in developing research and analysis techniques, we have attempted to establish a point of departure which facilitates the development of locality sensitive theories.

In Southern and Eastern African countries there is a growing realization that reform agendas set in the West, are not always appropriate to the needs of other regions. Although the initiatives and concerns of other countries and cultures or international human rights agencies may prompt and inform law reform, programmes reform needs to be based in the local environment, taking into account local needs and realities.

1.4 Legal Education Regimes

Although there has been innovation in law curricula at many universities, such as teaching law in context, introducing critical legal studies and feminist jurisprudence, a top-down theoretical approach is retained. There is little empirical research or appreciation of the lived realities of people's lives and the effect of their intersections and interactions with law.

A major difficulty in effecting change in the law lies in the inadequacy of the tools available to lawyers and legal researchers in reconceptualizing the law based on people's lived experiences. The barriers to progress and new approaches often arise from the nature of institutions of higher legal education. Almost universally, legal education remains conservative and confined within relatively narrow parameters of form and content.

Many of the law faculties in the Southern and Eastern African region began during the colonial period and were closely linked to the legal and educational systems of the metropolitan countries involved in the colonization process. Western law, such as Roman-Dutch law, British common law or as in the case of Mozambique the Portuguese civil codes, dominated the teaching and research processes. Staff members are aligned to the paradigm of Western law rather than to indigenous systems of law. Some efforts have been made to develop locally derived curricula. For example the impetus for launching the University College and the Law Faculty in Dar es Salaam in 1961,

was part of the national struggle against colonialism in the educational field generally and the legal area particularly.² A study of law in its local social, economic and political environment was seen as a vital part of the process of «ideological decolonization». However, the curricula at many law faculties in Southern and Eastern Africa are still based on the colonial paradigms.

Curriculum design in many Southern and Eastern African countries is still predicated on the assumption that the imported Western law is universally applicable. If indigenous systems of law are covered in the curriculum it is usually as discrete optional subjects. Customary law is often taught from a legal centralist perspective based on court precedents and interpretation of legislation. This approach persists despite the well accepted argument that Western law is moulded on the life experiences, rationales and interests of white, Western, middle-class males (Dahl 1987, Smart 1989, Fitzpatrick 1993). Despite increasing levels of criticism emanating from critical legal studies and Western feminist jurisprudence, there is little real progress in making significant changes to the format of legal education.

1.5 Correcting the Imbalances

Demanding that there should be greater emphasis in teaching and research on the reconceptualization of law to take proper account of the needs of the women and other marginalised groups, is nothing but rhetoric if those who make the demands do not have the tools to establish their case. Means are needed to create these new concepts and deliver an effective way to address the needs of the groups on behalf of whom they argue. If change is to be stimulated there is a need to critically re-examine the way in which women's legal rights are mediated and investigated, how law is taught and what law is taught at institutions of higher education. Ultimately, approaches to law reform and the reshaping of the legal system for the benefit of women need to be profoundly reconsidered.

2. A thorough account of a struggle over the form and content of the law curriculum is given by J. Kanyiwanyi: «Twenty Five Years of Teaching Law in Dar Es Salaam» in *Zimbabwe Law Review* (Kanyiwanyi 1989-90). The current curriculum however includes the study of Islamic Law, customary law and training in fieldwork. See also Reg Austin's article «Access to Legal Education and the Legal Profession in Zimbabwe», in *Zimbabwe Law Review* (Austin 1987).

The former Vice Chancellor at the University of Zimbabwe stated that to be effective academic scholarship has to:

«... forge a new orientation, an orientation that must take cognisance of local cultural demands, local aspirations, and local susceptibilities.» (Kamba 1990:27)

For the lawyer this means developing a much more open methodology when dealing with the problems that need to be researched. Forming partnerships with researchers from other disciplines and using a variety of social research methods, are all ways in which the legal researcher can move forward in addressing the needs of the population.

However, without an adequate framework for combining all these demands with suitable research techniques, the call for reforms will be nothing more than words in the wind.

1.6 Taking a Grounded and Relational Women's Law Approach

One answer to the challenge is the development of an approach to law based in the reality of human life. Such an approach involves building up legal and social science knowledge which encompasses the practices and perceptions of women and men in Southern and Eastern Africa. To achieve this holistic understanding we suggest and explore, in this book, the use of a grounded theory approach. In using grounded theory the aim is to engage empirical knowledge about gender relations and local practices and procedures, in a constant dialogue with theoretical generalization and concept building.

Legal concepts and theories need to be critically analysed through the medium of women's and men's lived experiences. To do this legal researchers need to have first hand knowledge of local practices and procedures in the area they are researching. This requires lawyers to acquire skills in data collection, fieldwork methods, interpretation of fieldwork data and integration of the findings into a framework of legal analysis.

Thus the primary purpose of this book is to discuss and describe theories and methods that might be employed in carrying out research into the lived realities of women's and men's lives, so that the

resultant findings can be channelled back into the law in terms of dynamic interpretation and reform initiatives that address the needs of those that the research is designed to assist.

Towards this end it draws heavily on the critical analysis of the Western paradigms of law which was developed by Scandinavian women's law researchers to describe, understand and improve the position of women in law and society (Dahl 1987). Women's law is a legal discipline which explores the reality of women's lives and from that perspective «interrogates» and investigates the law. The approach which is pursued in this book, adds a relational perspective to the initial woman focused approach. It is borne of the realization of the necessity of looking at the broad based construction of the position of women and the position of men and the relationship between them. In this way woman focused and gender relational perspectives are combined. In African societies where individual and communal rights and obligations coexist, account has to be taken of relationships based on marriage and kinship and how these influence the position of women and men and shape gender relations.

1.7 What to Research?

A primary tenet of this book is that there is a constant interplay between different systems of law and their social, economic and cultural surroundings. Together these elements shape the environment in which decisions in courts, families, social groups, wherever people live, are made and choices exercised. As the framework suggested is flexible and adaptable to a wide range of needs and topics, virtually any area of the law or reality can be investigated and the findings used to provide new insights into the legal and social position of individuals within the community.

The women's law scholar is likely to be engaged in efforts to investigate empirically and from this generate critiques and arguments as to how judges, lawmakers and administrators could and, perhaps, should interpret or amend the law. Not only the so called formal or state legal system has to be scrutinized but also other fora and mechanisms for dispute resolution and regulation need to be closely examined.

At an essentially practical and activist level, the women's law researcher must ensure that any recommendations for law reform are

rooted in reality. To do this she needs to consider the social effects of current laws and assess the possible impact of reform, and whether it is sustainable and appropriate to the needs of the community.

A central focus in the book is the evolution of methodologies to discover how gender relations affect and are affected by the complex interplay between local, imported and international law in plural systems of law. Our approach is premised on the view that law is a process which both influences and is influenced by the interaction between gendered human actors. To provide insights into the complex and varied possibilities and limitations affecting women's use or non-use of seemingly beneficial reforms the law needs to be examined in its socio-economic and socio-cultural contexts.

Women's law is thus a field of study which has much in common with other group or sector focused and problem oriented disciplines. It adds a gender perspective to research which focuses on the interplay between state law and folk law in the management of indigenous people's rights.

1.8 The Arrangement of the Book

This book takes its departure point in the research process. It falls into three distinct parts.

The first part from Chapters 1–6 deals with some of the existing approaches to analysis of the law and legal research, as well as critiques of those approaches from a women's law perspective and various alternative theoretical and methodological approaches. Chapter 2 considers the problems of legal pluralism and its analysis and how this has affected the position of women in the Southern and Eastern African context. Various theories and approaches to legal pluralism are compared and contrasted as to their efficacy in evolving useful theories to improve the legal situation of women. These include the conventional legal approach, often termed legal centralism or «lawyer's legal pluralism», and that of legal anthropologists, often termed «anthropologist's legal pluralism». The limitations of the legal centralist approaches are addressed and the case is made for the integration of the various theoretical perspectives and anthropological concepts that underlie these different understandings of legal pluralism. Chapter 3 emphasizes the need to extend the scope of sources to the practices of the lower court and informal dispute resolution agencies

such as the family, the workplace, the traditional healer or local administrative agencies. Chapter 4 examines legal pluralism within the Scandinavian context with particular reference to empirical research on women's legal and social position within Scandinavian societies. Chapter 5 considers some existing theories about the position of women in law and society and contrasts these with the grounded method of generating theory to describe, understand and explain the position of women. Chapter 6 discusses research techniques and analytical frameworks designed to capture and explore changing law and gender relations. The actors and structures framework helps the researcher to explore the relationship between women's and men's individual and collective action and changes in the legal, economic and socio-cultural structures. This perspective is presented as a particularly useful tool for obtaining a dynamic and processual understanding of gender and legal change in the context of societies where state-law interplays with other normative orders.

Part two of the book focuses on the research process. Chapter 7 discusses the choice and formulation of a research topic and its development into a research proposal. Chapter 8 deals with the process of demarcating in both the theoretical and practical sense the chosen field of research. Chapter 9 moves on from the process of developing and refining the research topic and the proposal to the stage of deciding on the research methods and the essentially practical process of designing the research that is to be carried out in the field. Chapter 10 introduces the concepts of Grand or Grounded theory and how they might be employed to direct and inform the research process. This chapter recommends the adoption of a grounded theory approach where, despite having clear objectives at the start of the research, the researcher remains open to new directions and research initiatives that are informed by a constant monitoring of the research process.

The third part of the book deals with the actual conduct of the research in the field, the subsequent analysis of the data and writing up of the research. Chapters 11 and 12 focus on the data collection methods that can be employed when using the women's law method as well as giving practical advice on the recording and protection of data. Chapter 13 gives guidance on the all important process of data analysis. Chapter 14 gives some practical advice on how to commence the writing process and makes some suggestions on possible styles and presentation formats that might be adopted. The final

chapter is an example of how the women's law methodology, when employed in a specific project, develops and grows along with that project while at the same time, in a grounded manner, directing and informing the development of the research project.

At the end of each chapter a list of suggested further readings on the topic covered is given for the use of students and researchers. A comprehensive bibliography is also provided.

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Actors, Norms and Structures as Perspectives in Women's Law

Summary: The principle of taking women's lived experiences as the starting point is discussed in relation to an actor perspective on gender and legal pluralism. Strategic human action may be directed at maintaining or changing structures or finding ways to exploit opportunities within social, administrative or legal structures, some tools to explore this phenomena are discussed.

6.1 Introduction

Legal pluralism affects men's and women's lives. Yet scarce attention has so far been paid to the gendered outcome of the interplay between different norms which takes place in the process of problem and dispute resolution. There is therefore a need to identify techniques within the research and analysis process that reveal the interactions between the law and other normative structures from a gender perspective.

One way of exploring the effects of the interplay of norms between and within the different fora is by employing an actors and structures analysis. By focusing on the woman and her relationships with men and with other women and the society in which she is embedded, we may uncover the norms, expectations and social and economic forces which influence problem solving and dispute resolution.

6.2 Actors, Norms and Structures in Relationships

The actor perspective is particularly useful in obtaining a dynamic and processual understanding of gender and legal change in the con-

text of societies where state-law interplays with other normative orders. It assumes that social and legal change takes place through interaction between human beings as individuals or groups and not through some seemingly abstract medium such as «The Law».

It enables us to start out with women's experiences in the process of life management and look at the normative structures that impinge on her life. Thus legal pluralism can be viewed as a combination of legal, social and cultural norms, values and institutions which provide individuals and groups, the rulers as well as the ruled, with a variety of options and choices as to how achieve their aims and goals. The reinforcement or change of gender boundaries through rights and obligations, freedoms and restrictions is seen as a continuous process of action, negotiation and argumentation (Hillum 1995). These processes can be studied through the practices adopted, and the decisions and arrangements made, by the actors.

The actor structure approach draws on interdisciplinary development studies which have since the 1980's paid increasing attention to the interaction between the «external» and «internal» factors which constantly inform the process of legal change (Adelman and Paliwala 1993). In recent law and development studies the relationship between the «local» and the «external» legal and economic influences is seen of as a process of interaction rather than one of imposition. It is an approach which allows the researchers and the women researched the opportunity to act as agents of change rather than as passive observers or «victims».

The actor structure perspective also draws on recent historical studies which examine how gendered actions, interests and conflicts were a driving force behind the formation of new states, the development of indirect rule and the creation of state customary law in former African colonies. How African women and men in different age and status groups responded to the colonial legal and post colonial legal systems and, in spite of unequal power relations, manipulated them to achieve their own aims and goals, is charted by such studies (Chanock 1985, Rwezaura 1985, 1989, Parpart 1988, Schmidt 1992).

A closer look at the interaction between the different actors who were involved in the enactment of the Natives Adultery Punishment Ordinance in Rhodesia in 1916 reveals the race, gender and generational struggles which were present in the process of legal development in the colonial period (Mittlebeeler 1976, Folbre 1988).

AS A RESPONSE to the individual marriage and divorce rights which were introduced in the early phase of colonialism in Rhodesia, women had taken themselves sexual and reproductive liberties. African chiefs and elders complained to the Native Commissioners of the increasing infidelity of wives: You have taken away our old power to control marriage, but you have done nothing to make the woman stand by her contract which she has entered into by her own free will.

The basic strategy of male elders in terms of regaining control of gender relationships was to redefine custom. They argued that, in custom, adultery had been punished severely, sometimes by death. The colonial administrators, who experienced women's increasing promiscuity as threatening the social order as well as the system of indirect rule, responded willingly to the male elders and their customary claims. The attorney general agreed that criminal law had to be the solution. He admitted that the Government might have gone too far in tampering with African customs. The campaign for the betterment of the African woman had been too advanced. Now restrictive legislation was needed in order to bring African law and custom «half-way back again». The Native Adultery Punishment Ordinance was introduced as a reaction to the liberal legislative policy. It stipulated a fine not exceeding 100 pounds, or imprisonment with hard labour not exceeding one year for both the African woman or man committing adultery (Mittlebeeler 1976:126).

In this case males with potential power and influence within their communities, and whose compliance was needed by the colonial government, were able to manipulate the colonial legal system to protect at least some of their interests.

An actor perspective does not imply that women and men are seen as totally free to change the rules affecting their social positions which in its turn inform their gender relationship. People's choice of action may be limited by the social or family structure, the legal structure, the religious structure or the economic structure they think and act within. The focus of such analysis is therefore on different actors and the structurally imposed possibilities that influence how they can pursue their goals or resolve their problems.

Anthony Giddens concept of structuration is an analytical framework which is helpful in understanding the changing nature and role of such structures. Structuration theory is based on the assumption that structure is both enabling and constraining, but does not totally

determine the actor's behaviour. This is because there is an inherent and constant relationship between structure and the actions of the actor or agent of change (Giddens 1984:169). The process of changing law and gender relations can be compared with the model Giddens employs in his theory of structuration (Giddens 1984:5-34):

Structure \longleftrightarrow Action

The model shows what Giddens terms duality of structures. Using the broad framework within which the women's law researcher operates – the law and society – the interactions between these two entities can be modelled using Giddens theory. Using this modelling technique the manner in which legal, social, cultural and economic structures influence people's behaviour and in turn the structures can be shown.

Law \longleftrightarrow Society \longleftrightarrow Individual

The purpose behind the concept of structuration is to capture the dynamic nature of structures. The theory assumes that individuals or groups are responding and acting with knowledge of the conditions they have to cope with. There is a constant state of flux between the actors and the structures as new knowledge changes the actors' perception of reality, and in its turn their acceptance of the normative structure or the belief system which informs their perception of the relationship between themselves and others.

Let us take customs and practices as an example. As a «structure» in law customary law contains both ideals and practices. One description of customary law is:

«... a set of norms which the actors in a social situation abstract from practice and which they invest with binding authority.» (Hamnett 1975:16)

This description assumes a regular pattern of behaviour and a feeling of commitment. Thus even if there is new knowledge and a change in living conditions people may change their ideas but not their practice. However, people may change their practices without consciously adjusting their ideas. Thus the process of changing customary law and gender relations will often reflect elements of old cus-

tomary legal concepts and gender values combined with new practices and gender values. The maintenance research undertaken by the WLSA, Botswana, team illustrates this phenomenon (WLSA Botswana 1992):

THE RESEARCH team observed that many single mothers approached the chiefs courts because they wanted maintenance from the father of their children. According to «the customary law in the books» women lacked legal capacity. The customary law «in the books» did not recognize individual claims for maintenance. All the same, many chiefs courts awarded single mothers a lump sum of maintenance within the conceptual framework of seduction damages. This practice represented a continuity with former practices which had held the father of the child responsible for his actions. Yet, it represented a significant change because seduction damages was originally a claim which was meant to compensate the father of the unmarried mother for the reduction of his daughters bride-price value. The chiefs court had indirectly taken up two legal principles which were embodied in statutory law, the principle of a legal age of majority and the principle of individual right to claim maintenance from the father of their children.

This example also illustrates the significance of the economic structure. The changing practice cannot be understood unless the present economic situation is taken into account. The majority of the households in Botswana are female headed while a large part of the male population are migrant workers. The changing practice could be a response to this social and economic development.

Each course of action that an individual is involved in, in the process of resolving such problems creates new interactions. Flowing from these new «attractors» and «distractors» come into play and, thus, there are constant variations and expansions of the processes and norms that are applied to similar problems. The analytic process can be used to produce insights into normative legal theory, as it shows that even presumed logical and orderly legal development is bound to be affected by external factors, however subtle they may seem. In other words, the systems are reflexive.

This approach calls attention to the different responses which may occur in relation to technological, economic or legal innovations. The actors, whose conduct constitutes the practices which may reproduce or change the structures, are in Giddens terms posi-

tioned or situated in «time-space» (Giddens 1984:83-92). They are also positioned, *inter alia*, in terms of gender, class, ethnicity and age. An example of such an approach is Anne Hellum's comparison of the reproductive strategies of different groups of childless Zimbabwean women:

IN SPITE of the adoption of fertility-neutral marriage and divorce legislation, fertility has remained an absolute value in Zimbabwean society. The patrilineal Shona women are still expected to procreate in order to secure the continuity of their husband's patrilineage. The patrilineal fertility considerations which, initially, were embodied in the institution of lobolo are contested by large groups of women. Hellum observed that rural women, poor high density women and professional career women found various ways, in which they could meet the patrilineal demands for continuity of the line.

Many rural women who had procreative problems during marriage would secretly have sex with other men. This indicates a tension in their views of marriage and bloodlines. On the one hand by their actions, they rejected the belief that a child had to be of the same blood and semen as its father. Many women regarded the patrilineal kinship construction as a myth men had created in order to dominate women. Yet on the other hand they kept their extra-marital affairs a secret because they knew that their husband would not accept them. Nonetheless through this procreative strategy they achieved their goal which was to have a child and at the same time satisfied the husband's needs for a child. However, through this deception they supported the system they rejected, as they did not openly challenge the patrilineal fertility expectations which they regarded as a source of their subordination.

It was observed that some professional elite women who did not find the qualities they were looking for in their male partners decided to have a child on their own. Modern medical practitioners indicated that under the circumstances they found it ethical to assist single career women who were economically well off. They considered it to be in the interest of the child, the woman, the woman's family and the society at large that the professional career woman's desire to have a child was fulfilled. The Children's Protection and Adoption Act which allowed a single woman to adopt was also referred to. In this context the woman's wishes and values were supported by the ethical considerations of the medical practitioner and legislation. The patrilineal continuity considerations were openly challenged (Hellum 1998).

These women were reacting, as were the other actors they approached, to the cultural, legal, social and economic dynamics of the society.

6.3 Actor Perspectives on Changing Law and Gender Relations

The use of the actor perspective adds a dynamic and process oriented dimension to the initial, individual focused and rule oriented women's law approach. Thus the woman is not the sole focus of analysis. This approach borne of the realization that her actions cannot be explained solely by reference to her own character and beliefs. By looking at the broad based construction of the position of women and men and the gendered relationship between them, woman focused and gender relational perspectives can be combined.

In African societies where individual and communal rights and obligations coexist, account must be taken of the relationships based on marriage and kinship which influence the position of women and men and their gender relationships. There are many such relationships that regulate behaviour patterns and affect access to resources, such as father-daughter, mother-son, brother-sister, wife-brother-in-law and husband-sister-in-law relationships. The impact of the kinship structure, as well as its capacity to react to specific circumstances, is illustrated by the inheritance research which was undertaken by the Zimbabwean WLSA team. A rural widow from Bikita pointed out that the position of the widow was not really an issue of custom but family relationships which affected the way in which the property would be dealt with:

«I think that every family has its own laws here in Bikita. What happens when a man dies, with regard to his property, depends on the relationship that existed between the widow and her husband's parents. If the relationship was good, there is no reason for the widow to alienate herself from her husband's family. Even when she has gone to the relevant offices to collect money from the estate, she would be open about it and may even be helped and escorted everywhere by her husband's family. She may in turn even offer some of the money to her in-laws. If the relationship was bad, the widow will most likely do everything without consulting her in-laws.» (WLSA Zimbabwe 1994)

Gender is not a simple male female dichotomy played out in one dimension but a relationship that is affected by multiple forces. The relationships are complex, as men's and women's lives are deeply embedded in social settings. There are individual, communal and customary and statutory rights and obligations which in times of severe economic constraints create conflicts between women and women, men and women and men and men (Stewart and Ncube et al 1997(a) and (b)). The maintenance research undertaken by WLSA in six countries in Southern Africa showed that many women were reluctant to take unwilling fathers to court. According to the research reports these fears emanated from the belief that the father of their child might bewitch the children causing them to die, in order to evade payment (WLSA Botswana 1992:160, WLSA Lesotho 1991:161, WLSA Swaziland 1992:43).

One question that such findings raise is: Why is the man reluctant to take responsibility for his child? It could be lack of resources or resentment, lack of actual rights and access to the child, or just plain irresponsibility. To understand the reasons for these perceived threats from the man it may be necessary to further explore the maintenance conflict in the light of a broader range of relationships. Attention would need to be directed to the whole range of individually created and communally perceived statutory and customary maintenance obligations which rest on the man. He may be trying to «juggle» his obligations as an eldest son to maintain both his mother and the extra-marital children of his sisters with his own statutorily imposed maintenance obligations to his own children.

Anthropological research indicates that men are often caught up in a contradictory position between the statutory rules which inform the relationship to the mother of his extra-marital child and the customary norms which inform the mother-son and the sister-brother relationship. Women may try to discourage competitors for a man's resources from making claims against him:

ANTHROPOLOGICAL RESEARCH undertaken in the Molopelole area in Botswana showed that unmarried mothers often avoided claiming maintenance for their children because the mothers or sisters of their boyfriends threatened that they would kill the child by means of witchcraft if court action was undertaken (Ingstad 1988).

To understand the generational, gender struggle which is mediated in the interplay between state-court sanctioned and spiritually sanc-

tioned claims, contemporary economic crises which offer older women few opportunities for self sustainability have to be taken into account. In order to survive, such women are often forced to defend their declining kinship rights through every available means.

Whether a new practice should be seen as a substantive change in the position of women raises difficult methodological questions. For example an increase in the rate of registered marriages is usually seen as an indicator of female emancipation. This is due to the fact that marriage registration requires the free consent of the individual woman. Conversely, it has often been assumed that the traditional marriage contract was a matter between the male heads of the bride's and the groom's household. It may, however, be that the traditional marriage procedures embodied mechanisms which took the desires and interests of the individual parties into account.

Holleman's description of the local Shona customs in the 1950's showed that the majority of Shona marriages were elopement marriages; that is an arrangement where the girl runs away with her boyfriend (Holleman 1952):

THE ARRANGEMENT was usually kept a secret from the girl's family while it was customary for the young man to obtain the consent from his father. This was a means by which a young couple could influence the negotiation process. Likewise a couple would inform key family members, such as an aunt in the case of the woman, as to her intentions, and the man would do likewise and negotiations would be commenced to organize the marriage.

Thus it could be argued that a civil marriage is nothing more than, at least at the level of consent, a change of form and not one of substance for the woman. This is a relatively simplistic analysis of a complex phenomena, which needs to be much more carefully explored. Nonetheless even at this level of analysis it opens up a range of possible avenues of further research and analysis using an actor structure perspective.

6.4 Gender, Law and Power

When studying the gendered outcome of human interaction in terms of daily practice or dispute resolution, it is important to ex-

plere and analyse the power relations involved. In the book *Power in Human Societies* Adams observes that:

«When we speak of an individual's power, we are speaking of the totality of influence deriving from the totality of controls that he exercises, directly or indirectly.» (Adams 1977:388).

Therefore power is seen as a relational concept; it does not exist outside relationships nor is it something that a person simply possesses. When studying power in relational terms we are interested in whether an individual A exercises control over individuals B and C such that they modify, or are constrained in, the exercise of their possible options and actions.

As women's law researchers we may want, in explaining these processes, to study the distribution of control between the parties themselves and third-parties who are involved in the problem and dispute resolution process from women's perspectives. In identifying the power relations one approach is to look for multiple identities in various actors or various groups:

JENNIFER OKUMU WENGI'S study of the National Resistance Courts in Uganda examines how the gender identities of women as plaintiffs, audience, witnesses and judges influences the outcome of the dispute resolution process in different types of cases in urban and rural courts (Okumu Wengi 1995). Another example is Aase Gundersen's study with Nina Berg of a popular court outside Maputo. She observed that the local judges had different points of identification. Their identity was formed by being members with a specific status related to the family and the community. However because of the election process the judges also identified with the ideology of the socialist party, FRELIMO (Gundersen 1992:275).

Power is not merely relational, it is also situational, as its efficacy is specific to a given context. Use of the courts to pursue rights and enforce obligations is assumed to be a part of the empowerment of women. However, one might question to what extent does the existence of a court decision in favour of the woman empower her as an individual in the daily struggle in her local environment? In order to make sensible suppositions about this issue it is not sufficient to study only court records or court proceedings. To discover whether a woman has been empowered what happened after the court case, needs to be investigated. Has her husband, for example, stopped beating her as a result of

the judgement? Perhaps he has increased the ferocity of the beatings. Has she lost the support of her husband's family because she took the case to court instead of using them to mediate?

This analysis of power is directly linked to the efficacy of the law, the legal system and enforcement procedures. Whereas these structures may be effective in their own terms they cannot provide constant and effective enforcement in an alien, administratively or geographically remote environment. Compliance and the power to enforce compliance are important components of power.

6.5 Women's «Choice of Law»: Actions, Identities and Resources

Pursuing a similar line of investigation, it is assumed by many women's activists that knowledge about the law is a key factor in the empowerment of women. Such an assumption is predicated on the belief that people can make clear and definitive choices as to the appropriate course of action and which system of law to adopt in the resolution of the problem. It is also assumed that women and men confronted with a problem or a dispute should make a clear choice between customary law and state law, there is a further supposition that in an either/or situation «like» people make similar choices. However, these assumptions do not always correspond to social reality.

In the process of theorizing about women's choices of strategy, data needs to be gathered about where their feelings or loyalties lie, what their expectations are and whether they envisage themselves obtaining access to essential resources, through the interventions of others. Such a conceptual framework pulls together diverse aspects of human interaction in relation to problem and dispute resolution which escape the attention of the doctrinal, choice of law approach.

Identities and resources have been suggested as key concepts in analysing women's use or non-use of seemingly beneficial rules which change the norms associated with their status and role in the context of legal pluralism (Bentzon 1992, Ncube and Stewart et al 1997(a)).

A woman's resources include her personal, physical and mental capacity to handle emerging problems and tasks. Other examples of resources are kinship, friendship, property, money and education. Legal resources in terms of knowledge about her statutory rights is also a part of a woman's opportunity structure. A woman's use and

non-use of her legal rights and freedoms must be considered in the light of the wider socio-cultural opportunity structure she operates within. Her resources cannot be determined *a priori*. They are affected by her positioning in terms of age, religion, ethnicity and class. Gender may turn out to be a barrier or a resource.

THE INHERITANCE research conducted by the Zimbabwean WLSA team shows that some widows take the initiative in defending what would be treated as their husband's estate against the claims from their deceased husband's relatives. The discussions with such women focused on what kind of property men and women would be expected to own. Thus by using the argument that certain property was more female than male she could protect her interests, thus using gender as a resource. When her husband's relatives wanted the deceased's blankets a widow from Greendale in Harare argued: «Why should I be asked to bring out the blankets? Do you know that there are some men who never buy blankets in all their lives. Some can't even buy a shirt to put on their own bodies. Women often themselves have to buy these things for fear of being embarrassed when friends come to visit. It's therefore not fair to demand for blankets. I will tell the relatives that their son had no blankets.» Likewise a widow in Bikita explained that after her husband's death she took no overt action but merely «sat» in the village and in that way used her position as a woman and her condition of widowhood to force others to respond to her rights and needs (WLSA Zimbabwe 1994).

Women's decisions to use or not use state law are likely to be influenced by their identities. A woman with a manifest and coherent identity within her local environment may decline to exercise, or feel no need to enforce, her rights through the formal legal system, particularly so if the dominant local norms are in conflict with those of the legal system. This proposition is illustrated by the appointment of (the) «inkhosana» (heir to the status and position of a deceased male) on the death of a husband in Swaziland. In the case recounted below one woman asserted a right to be treated as the senior wife based on her social status while another with a clearly superior legal right declined to assert it, both probably based their actions on their perception of self and status outside the law:

The inheritance research which was undertaken by the Swaziland WLSA team established that there was broad consensus in Swazi

society that in a polygamous marriage the «inkhosana» is chosen according to the status of his mother. According to the informants the ranking is as follows:

- 1) Princess irrespective of circumstances regarding her marriage;
- 2) Chief's daughter;
- 3) A wife married by kwendizia i.e. a specially arranged marriage;
- 4) A wife with the same clan name as that of the deceased's grandmother;
- 5) Ordinary wives.

In one of the selected case studies, there were eight wives. A Princess was the seventh. She had been separated from the husband, but at his death she returned and was declared the senior wife. In addition although she herself had no biological child with the deceased, 'her child' by a younger sister, sent by her family to procreate on her behalf, was appointed «inkhosana». The first wife who had married the deceased by civil rites did not contest the decision. The Master of the High Court who ultimately made the formal appointment was not informed about the existence of a civil rights marriage, which ought, according to general law, to have preceded the customary ones even that of the princess (WLSA Swaziland 1994).

Thus it might be argued that both women acted in response to their local situation based perceptions of themselves and their social entitlements, regardless of what the law might have provided.

6.6 Multiplex Identities, Human Interaction and Legal Change

Contrary to many external perceptions of African society it is incorrect to assume there is consensus on a uniform set of expectations and norms defining the status and position of women. Thus theories which do not assume consensus over norms and expectations, but emphasize the active participation of individuals and groups in creating norms and ideals during interaction are the logical ones to embrace. Further when society is undergoing rapid social change such as industrialization and urbanization, we can expect male and female gender identities to alter. In multicultural and socially differentiated African societies it is to be expected that women from different races, classes, ethnic and religious groups will make different decisions as to whether or not to use the state law, customs and practices or other means to improve their position:

THE MAINTENANCE research which was undertaken by the Zimbabwean WLSA team indicated a difference between how economically independent women and financially dependent, poor, women responded to the question as to whether they would take a man to court in order to obtain economic support. Poor women who were interviewed said they had no choice but to do so, whatever the problems involved. The economically independent women generally felt it was humiliating for them to force the men to provide for the children they had fathered, they did not wish to perpetuate the relationship in any form and, more importantly, did not need to do so (WLSA Zimbabwe 1992:60).

A characteristic feature of African law and society is, as already mentioned, the coexistence of traditional and modern ways of life and forms of knowledge. Coexisting norms, values and perceptions are often reflected in what may be termed women's and men's multiple identities. To capture women's multiple identities concepts which give room for ambiguities, contradictions and dilemmas need to be developed. Mary Maboreke's research on homicide brides in Zimbabwe deals with this phenomenon:

IN 1990 THE group Women and Law in Development Africa Programme (WILDAF) urged the Zimbabwe Child Protection Society to take action in a case concerning the delivery of a homicide bride. The background was that the father of a minor child, Serenia, was alleged to have stabbed a man. The deceased's family demanded a girl, 10 heads of cattle, 3 goats and 3 bags of maize as compensation for the loss. The girl's role is to bear a replacement child for the family of the deceased. Thus as soon as she is sexually mature she has sexual relations with a member of the deceased's family so that she can bear a son who will be given the same name as the deceased. It is believed that if no girl is provided for this purpose, the spirit of the dead person may become restless and vengeful and cause loss of life within the «killer's» own family.

The High Court in Harare placed the girl in the charge of the Zimbabwe Child Welfare Society which placed her in a children's home.

The WILDAF group had taken action in order to empower the young girl. But was she empowered through the legal action which was taken? What would the identities and resources of the young girl have been if she had been handed over to the killer's family? What were her identities and resources as a child living in a children's home? The dilemma, according to Maboreke, is that one

source of such a girl's potential power is attached to her position as «the mother of the deceased». In this case as it turned out she was rejected by both her own family and the family of the deceased. She was feared and ostracised by friends and neighbours in the local community (Maboreke 1996).

One might have said of this intervention that, «fools rush in where angels fear to tread». This is not to imply that in the light of the subsequent research that action would not have been pursued, but the pertinent question would be what action and for what purpose? The motivation of the various actors and the capacity of the structures to effectively intervene needs to be thoroughly investigated.

The researcher should remain aware of the fact that structures in society are not neutral entities, they are composed of, directed and shaped by individuals. Exploring the identities of the individuals in structures is an important component in women's law research. For example researching the gender and cultural profiles of judicial officers can give insight into the development of various aspects of the law within the state court system.

6.7 Conclusion

This chapter has shown how the intricate intertwining of peoples lives is revealed once attempts are made to understand the forces that affect the decisions of human actors. To make meaningful assessments of the power relations and the structures that influence women's lives, it is clear that empirical research in the practice of their daily life as actors in different fora has to be undertaken. The following chapters go into more detail on the practical aspects of conducting empirical research.

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Part II

Pursuing Grounded Theory: Problem Formulation, Demarcation and Research Design



Problem Formulation in the Research Process

Summary: Formulating the research problem is a key stage in the research process. Ways in which the researcher can proceed with the formulation of the research problem are discussed. We start with the identification of an interesting area of study. Move to justifying the selection of the topic. Preparing a preliminary bibliography and carrying out background reading. Compiling a literature review is addressed. Formulating the research problems/assumptions and questions, sketching the sources of information and methods of data collection are also discussed. Finally the preparation of the research proposal is outlined.

7.1 Introduction

In the preceding chapters we have examined how and why the discipline of women's law evolved. Within the context of women's law we have explained why there is a need to conduct empirical research to explore women's lived realities and people's customs and practices. In the following chapters we deal with the process of formulating and designing interdisciplinary women's law research. The first part of the actual field research process, determining and describing the research topic, is outlined step by step in this chapter.

There are two main stages in this process and these constantly overlap with each other and with the more detailed process of research design as described in Chapter 9. These stages are: Firstly formulating the research topic, the research problem, the assumptions that underlie the study and the main research questions. Secondly, the researcher has to prepare the more formal Research Proposal which is normally required for obtaining academic approval of the project and/or, obtaining funding.

In deciding on the topic and whether it is worth pursuing, the researcher should go through the steps listed below. In some cases the

researcher may be required to do this by her supervisor before the latter is prepared to sanction the topic and prior to the submission of a formal proposal. However, regardless of what is formally required we would recommend that the researcher undertakes the selection process in full, as this will improve the quality of the research proposal when it is presented.¹⁶

7.2 Selecting a Research Area

The research process commences with the identification of an area, or issue, of interest to the researcher or by the imposition of a topic that has been commissioned by some other person or body.

It is a sensible rule of thumb for the researcher to choose a topic which captures her immediate and long term interest. She needs at this stage to be able to clearly identify the aspects of the topic that have caught her interest and the specific issues she wants to research and what, in a broad sense, it is hoped will be achieved through the research. She must, also from the very beginning, be convinced that the area she has chosen to research is one which she «can live with», over a long period of intensive work.

The researcher who is contracted to undertake a particular research project, may be faced with an imposed topic for which she has little enthusiasm, and may not have a choice in the matter. However, in formulating the more precise problem she should, wherever this is permissible look for angles on the research that will inspire her interest. Although contracted research projects are often of shorter duration than academic research, the researcher still needs to feel a keen interest in the topic if the work is to be satisfactorily completed. If the interest is weak, the imaginative capacity of the researcher will also be weak and the chances for new discoveries small.

7.3 Preliminary Formulation of the Research Topic

After the first step of identifying an area which appears to have potential for investigation the researcher, usually, needs to narrow the ambit of the projected research.

16. In the next chapter, Demarcating the Field of Study, we consider some of the more specific issues of refining the research topic and the research methods.

The selection of the area of research may be inspired by the researcher's experiences. It is legitimate and often advisable for a researcher to be influenced by her own experiences in selecting and defining an area or issue to research. One's practical experiences may provide the background data around which to begin the process of problem formulation. The use of experiential data in the whole research process is discussed in more detail in Chapter 9 on research design.

Especially for novice researchers pursuing an undergraduate dissertation, diploma programme or M.Phil. thesis, it is wise to choose a topic within a field where competent supervision is available at an institution with which the researcher is connected.

7.4 Preliminary Bibliography and Significance of the Research

Once a rough delimitation of the research topic has been made, the researcher moves to the compiling of a preliminary bibliography which forms the foundation for her background reading. The primary purpose of background reading is to determine what are the unanswered questions and issues in the field which the researcher wishes to investigate.

Compilation of a bibliography can be accomplished with the assistance of a librarian, who will help in familiarizing the researcher with the index and classification system in use at the relevant library, document facility or archives. Consulting a librarian can save a lot of time and frustration. She is often the best person to consult not just on the system of indexing and classification in use at her library, but also on how to access the relevant literature on the area of research, and how to access material through inter-library loans or on line data bases. However, the librarian is not a substitute for the researcher's own search for literature.

Within women's law a thorough survey of the existing law and the commentaries on it is an essential prerequisite for the commencement of the research process. Thus there will need to be a careful assessment of the relevant law as a part of the preliminary phases of the research project.

The women's law researcher is, almost inevitably, going to draw on a wide range of sources in terms of theoretical perspectives and

description of the actual problem area. Research oriented towards solving problems in real life must take a cross-cut through different areas of law and be multi-disciplinary. This is particularly important in women's law studies with their emphasis on the actual lived conditions of women and their interaction with law. Thus it is important that the ongoing literature survey goes beyond conventional legal sources: That is statutes, case law and legal textbooks; in order to gather relevant literature in neighbouring disciplines such as anthropology, sociology, demography or history.

Once the preliminary bibliography has been compiled the material must be read carefully to ascertain the areas, within the selected topic, which remain in need of research or further research.

A main objective of women's law studies is to develop new theory based on empirical research. But not for the sake of theory alone. The practical usefulness of the research is an important element in women's law research.

There is normally no point in carrying out a research project on a topic that has been adequately investigated by others. However, new applications of existing theories or confirmation of the relevance of existing theory in new settings do add to existing knowledge and understanding.

The preliminary literature review goes hand in hand with a description of the theoretical significance and practical relevance of the research. The researcher makes a case for conducting the study and in so doing explains the potential significance of the projected research within the context of the existing research in the area.

A useful literature review is one which focuses on the material that is directly relevant to the study and makes an evaluation and critique of that literature in relation to the proposed study. The survey must be cast in such a way as to focus on and link with the research questions and themes. There is no point in regurgitating mounds of irrelevant material.

Whereas it is very important that the researcher does not skimp on this preliminary phase of the research process it should be realized that the literature review is an ongoing process throughout the research. As and when new issues are uncovered the researcher should reconsider the literature already collected and ensure that the necessary additions to the literature survey or review are made.

7.5 The Topic Outline

Once the researcher has completed the preliminary reading she should have a clearer idea as to what her specific topic will be. She should then try to formulate her topic as tightly and concisely as possible.

Choosing the topic is, even after the preliminary reading, a complex process. Many researchers and dissertation students make the mistake of believing that a topic must be broadly defined so as to afford them the opportunity to consult a wide range of literature and access a large data collection base. This concern of potential researchers and dissertation students about too narrowly defined topics is easily overcome by the simple process of beginning by doing a background literature and law survey. From this it soon becomes clear that many topics that seem quite narrow at their inception become extremely deep and complex once the body of available research materials have been examined.

An example will serve to show how broad and amorphous topics are very problematic to research. Final year dissertation topics initially put forward by law students at the University of Zimbabwe have included the following:

- «Women and the Criminal Justice System in Zimbabwe»
- «Women's Law in Zimbabwe»
- «Women and Family Law in Zimbabwe»
- «Women and Property in Zimbabwe»

These topics, apart from being too general and vague, are inherently indeterminate and are thus not good research topics. The topic has to be focused so that it reflects the specific issue of concern to the researcher within family law or women's law in Zimbabwe or within the criminal justice system.

The first topic, «Women and the Criminal Justice System in Zimbabwe» prompts the question: Is the focus women as victims, women as perpetrators, women as witnesses, women as law enforcers, women as adjudicators or perhaps what are the appropriate forms of punishments for women? Once this process is started, it is evident that each aspect could be further explored and is a broad research topic in itself. Women as perpetrators could be narrowed down to focus on particular types of crimes such as infanticide, prostitution, assault, murder or commercial and other crimes. Each

crime would, if a holistic approach is taken, provide more than an enough scope for very deep and useful research.

Thus after a little deeper thinking on the issue, combined with the literature review, the researcher can refine the topic for research so it has a narrower and more accomplishable ambit. Once the topic has been formulated it should be followed by a brief introduction describing more specifically the problem to be researched and the principal research questions that the problem seems to raise.

7.6 Research Problem and Principal Research Questions

The research problem is the main issue or issues which require investigation. Such issues may be formulated in terms of a statement of a problem to be investigated and further developed by formulating principal research questions. The broad general area of interest is thus further refined to ensure that there are a number of specific and clear issues to be addressed. Thereafter the researcher can move to further levels of refinement and specificity.

There is, however, a need to emphasize that the principal research question is not written in stone and may and often does change or, at least, the emphasis may change once the process of data collection, particularly field work has commenced. For example:

THE WLSA ZIMBABWE study on inheritance began with a great deal of emphasis on ascertaining the extent to which widows in Zimbabwe were dispossessed of their deceased husband's property after his death by his relatives. Once the data collection was under way it became increasingly clear that dispossession of widows was not as widespread a problem as the researchers had initially assumed. This changed the emphasis of the research in such a way that the areas of emphasis were then controlled by the nature and substance of the data collected, the grounded theory research methodology was followed. For instance, the data increasingly revealed the wide gap between the customary law applied by the higher courts and the actual practices of the people on the ground. As a result the researchers increasingly focused on this dichotomy and sought to understand and explain it. However, the primary research questions remained in place namely how deceased estates were administered and distributed in Zimbabwe, what affected

these processes and the impact that these had on the economic and social position of widows.

7.7 Assumptions/Suppositions

The researcher should also list her main assumptions and suppositions that underlie her ideas about the major problem or problems that she has chosen to research. Assumptions and suppositions, in this context, are formed by theorizing about how certain phenomena are connected and interrelated. These ideas may be informed by the researcher's own experiences and observations or sources from the literature.

The choice of women's access to and control of land in communal and resettlement areas as a research topic may, for example, have been underpinned by the following assumptions:

- That women have limited access to communal and resettlement land because the law discriminates against them.
- That women have no control over the use of communal and resettlement land because they have no independent entitlement to such land.
- That lack of independent access and control of land results in their having no control of the fruits of their labour on the land.
- That the enactment of laws providing for equal access and control laws will improve the status of women and give them control of their agricultural production.

There may also be other assumptions that should have been considered. To uncover these the researcher should review her motives and objectives in conducting the research and articulate the underlying values that she is addressing. As we have discussed earlier a thorough appreciation and articulation of the researcher's underlying concerns and how this affects the formulation of assumptions, is one of the strengths of women's law. It is, however, a weakness if the researcher just generates a few assumptions and does not consciously take her motivation and the sources from which she derived the assumptions into account.

7.8 Detailed Research Questions

Having stated her assumptions the researcher will be in a better position to formulate the main questions she needs to answer. Based on the assumptions that she has generated the research questions for the land study might be formulated as follows:

- What rights do women have according to general law and custom to use and enjoyment of communal and resettlement land?
- If women are not individually entitled to communal and resettlement land, how does this affect their access to and control over such land?
- Do women who work communal and resettlement land have access to and control of the fruits from their labour on such land? If not, why not?
- Will the enactment of laws providing for equal access and control by both men and women of communal and resettlement land improve the status of women in these areas and give them control of their agricultural production?

In carrying out this exercise it is important to check that every assumption is addressed by a research question and that every research question relates to an assumption. Any mismatches need to be addressed and either new assumptions and questions derived or superfluous questions and assumptions deleted. This is an ongoing exercise throughout the research as the assumptions are constantly changing as one proceeds, thus the research questions have to be modified.

It is very important that the first set of research questions as well as the later questions are carefully formulated as they control the boundaries of the research project.

The assumptions and questions and their perceived significance and importance in addressing the research problem should be prioritized. Thus if there is a subsequent need to adjust or trim the scope of the project, the researcher has a rational basis on which to make such decisions rather than making hasty and ill informed decisions in the field.

7.9 Sources and Methods

Before a topic is finally settled upon, the potential viability of the project needs to be thoroughly reviewed. Can it be effectively accomplished? For each major research question the researcher must decide how to source the appropriate data to provide an answer to the question. She must also consider where this data can be found and how to collect it.

For example some of the questions may be answered by studying legal sources such as textbooks, acts, cases, court records or administrative records. Some of the questions, probably, can only be answered through interviews with the interested parties, adjudicators of disputes or with key informants.¹⁷ It is seldom that major research questions can be answered by information from only one source. Thus there will need to be constant adjustments in the research project as it is implemented.

The availability of literature on the topic may also influence the allocation of time between library and field research. The less literature there is in the area of research, the greater the need for field research. A researcher who concludes that existing literature on the topic is influenced by untenable theories or outmoded perspectives may also need to undertake extensive field research to effectively challenge the accepted thinking.

7.10 Reviewing the Problem Formulation and the Research Process

Before making the final decision as to what to research, the researcher should review the topic and research problem in the light of the total research process including the design and planning processes and the development of the data collection methods. This will enable the researcher not only to focus on the problem which she wishes to investigate but also to consider the scope of the research in the light of other factors which inevitably affect the research project.

Factors which may affect the implementation of the research project include the availability of and access to data and information which is needed to answer the research questions. Other factors

17. For a more thorough discussion of data collection methods, see Chapter 11.

which are important are the time that the researcher has to complete the research and the available financial and other material resources.¹⁸ The financial, personnel and time elements of the research «budget» should not be ignored. It is better to have a small incisive study that makes a contribution to the overall scholarship in the field than an overly ambitious project which is not completed or which is too shallow to make a useful contribution to the field of knowledge on the topic.

7.11 The Research Proposal

Once the researcher is satisfied with the preliminary formulation of the research topic, the assumptions and the research questions or they have been accepted by a supervisor, then the preparation of the research proposal can commence.

A research proposal is essentially a detailed and extended topic outline including a brief presentation of the intended methodology. The Research Proposal is the document which will not only fully explain and justify the research, but also describe and explain the research process or methodology proposed for the research. It should also contain an extended literature review going beyond the short summary presented with the topic outline.

The Research Proposal usually commences with a brief introduction describing the general problem area and the specific area.¹⁹ The research topic and principal research question are clearly stated at the start of the document. This is followed by an explanation of the importance of the proposed research followed by a brief presentation of the significance and/or contribution to be made by the research.

The researcher then sets out her main, preliminary assumptions and suppositions based on personal experiences, ideas gained from reading other studies and from her own conjecturing on the problem. Next come the main research questions.

The next component of a research proposal is the literature review which helps to place the proposed research within the wider

academic framework and forms the background for the justification of the research.

The literature review should be followed by a brief description of the design of the project, the sources and the data collection methods which the researcher intends to utilise in her study.

Where the researcher is putting forward a proposal for funding, a time and money budget will also need to be included with the proposal when it is submitted.

7.12 Summary

The process of topic formulation (which is on-going), and preparation of the research proposal can be summarised as follows:

- 1 Introduction: Background to the topic, why is this area of interest to me?
- 2 Topic: A more precisely defined and specifically targeted aspect of the problem that you have described in the Introduction.
- 3 Research problem or major research questions: That is what needs to be dealt with in addressing the topic as posed.
- 4 Significance or objective of the research: That is how the research will contribute to knowledge or provide possible solutions.
- 5 Assumptions: These are the ideas, notions, conjectures that underlie your conceptualization of the problem.
- 6 Research questions: The questions you think need to be investigated to answer the problem and the assumptions about the problem.
- 7 Legal position: Survey of the current knowledge/state of the law and existing research on the specific topic, and
- 8 Literature review: That is a more broadly based general review on the topic in question.
- 9 Methods: An outline of the methods that you intend to use to find the data which may answer the research questions.
- 10 Budget: What will it cost?

7.13 Thesis Sentence and Key Words

The intense focus that takes place when the proposal is being drawn up, provides an opportunity to devise some useful tools to keep the

18. These factors are dealt with in detail in Chapter 9. Thus before the research problem is finally adopted this Chapter should be read thoroughly.

19. Some donors and other bodies have prescribed formats for the presentation of proposals, if this is the case in a project you are proposing this must be followed precisely. However the general advice in this chapter on formulating research proposals should still be useful.

research on track and within manageable bounds. Maintaining control of the research process is vital, especially where extensive reading is done and empirical research undertaken using grounded theory.

One way of focusing and limiting the ambit of one's research is the formulation of a preliminary thesis sentence. The thesis sentence will help control the area of investigation and help avoid the indeterminate pursuit of subsidiary and irrelevant matters. The earlier a clear thesis sentence is formulated, the sooner working limits can be imposed on what may be potentially indeterminate research.

For example the thesis sentence for the proposed research discussed above of women's rights in communal and resettlement land might be:

- «Women's access to and control over land in communal and resettlement areas in Zimbabwe.»

This focusing process can be taken one stage further, usually only for the benefit of the researcher, to the identification of key words. Keeping these key words in mind, or writing them down and displaying them prominently helps the researcher to decide whether the literature being accessed or the data being collected is relevant to the study.

In the above example the internal key words would be «women, land, access and control». The external or boundary controls would be «communal, resettlement, Zimbabwe». If the materials or data being accessed are not related to the internal key words, then in all probability they are not relevant to the study. If they do relate to the internal key words, then the next question is: Do they have a relationship to or explain women's access to and control of land in resettlement and communal areas in Zimbabwe?

Reverse use can be made of the thesis sentence and the key words, for example data or literature may relate to communal and/or resettlement land in Zimbabwe, but does not have anything to do with women's access to or control of that land. If this is the case then the researcher has to think very carefully about including such material in the literature survey. The fact that it refers to communal and resettlement land is not of itself sufficient for its inclusion.

7.14 Conclusion

Many researchers and students embarking on a research project are eager to get into the field and get on with the work. To commence the field work without a clear idea of what is to be undertaken and how it is to be accomplished, will probably end with a poor quality piece of work that does not achieve what the researcher intended. There is no conflict between the demand for a rigorously formulated research topic and a carefully prepared research proposal and the application of grounded theory. In the next chapter about demarcation we consider in more detail how the researcher can further refine the research topic, and thereafter we move on to the details of the research design and research plan, that is how to go about the actual research.

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8

Demarcation of the Field of Study

Summary: The demarcation (delimitation) of the field of study depends on the formulation of the topic for research and the available resources (persons, power, money and time etc.) for the study. This applies whether the study is to be planned as a survey, a single-case study or a multi-case study. The chapter starts with the common forms of demarcating a research project and ends with comments on some specific problems concerning case studies.

8.1 Introduction

Demarcating the field of study is part of the initial problem formulation but is dealt with as a separate chapter, because of its complexity. Having decided on a topic of research there will, probably, be a need to determine what, within that topic, can effectively be studied in the time allowed and with the resources at hand. Thus the field of study needs to be demarcated. For example a researcher might want to undertake a study of the custody rights of divorced or separated parents of minor children. Although it might be possible to cover all aspects of custody, in reality, to make it meaningful, there will be a need to focus on certain aspects of custody. Some of the questions that might be posed are whether it is to be an investigation exclusively within the boundaries of the law and the determinations of the courts, to expand it to include the views and experiences of parents or even to look at the way that the matter is handled outside the purview of the formal law.

Conversely the researcher might decide to broaden the study in one direction and include parental attitudes and narrow it in another by confining the study to certain levels of the court system. The researcher might ignore the court system and focus on private arrangements between the parents. The geographical ambit might be limited to urban areas or certain suburbs of a city. The study could limit

itself to customary arrangements or could be a comparison of a number of different custody regimes both nationally and internationally.

This process is referred to as demarcating the field of study and it usually involves, for the women's law researcher, reference to a number of different components such as the act or actions under scrutiny, the actors, units of study, time, space and discipline focus. Discipline focus arises in women's law because there is likely to be, in addition to the legal component, an interdisciplinary component, so the disciplinary emphasis has to be determined. The question then becomes whether it is likely to be a primarily legal, sociological, psychological, historical or some other focus that predominates?

In order to explore the demarcation process, we look first at general problems of demarcation and then at specific problems that need to be addressed.

8.2 General Demarcation Problems

In addressing demarcation, both theoretical and practical, considerations have to be taken into account. Firstly the researcher needs to have a clear idea of the aim of the study and her suppositions about the key elements which it is assumed will affect or influence the research.

If the aim of the study is to identify, describe and enumerate a particular phenomena a survey may be the best tool to use. In such cases the research is static in terms of time, that is, it is designed to discover what is taking place at the time of the research. Such a study will, probably, also be designed to investigate a representative sample in relation to the issues and the number of people affected by them. Such research is often meticulously planned in advance of the data collection, the sample is known, not deviated from and the questions are fixed, as well as framed in a closed answer fashion.

If the aim of the research is to study a complex set of inter-relationships and explain why certain actions are undertaken or how law and other factors influence behaviour and decisions, then a narrowly circumscribed field of study termed a domain, will be needed. Examples of domains are an organization, a family or a village. In interpreting the actions and decisions of the individuals or groups who are the focus of such a study, external influences and factors will also

have to be taken into account. Thus a single case or multiple case study method might be chosen. The demarcation in time and space, that is which time period to consider, where to research, who to interview, what to collect and for how long, will be built up as the result of the iterative process in the course of the research. Put differently the researcher undertakes preliminary work and then widens, narrows or alters the research field plan depending on what is found and how this is perceived as being affected by other factors and influences, that is she «iterates», goes back to the original topic and, in the light of the research, considers her next step.

The task of the researcher is to circumscribe a manageable field of reality from the total flow of events by putting boundaries round it both in terms of what is relevant to her research problem, as well as determining how and where she can best employ her resources and apply the adopted research methods.

8.3 Factors in Demarcating the Research

There are various parameters that can be considered when demarcating the field of study. Five significant aspects of this process are discussed below. These are the domain, that is the human area of the research; the number of units to be researched in ensuring that adequate data are sourced; the geographical boundaries of the study; time and the disciplinary boundary (Devons & Gluckman 1964).

8.3.1 The Domain, Kind of Activities and the Actors Involved

The researcher must decide which individuals and/or groups and relationships she is interested in studying and within those which actors and activities she will focus on. She might choose the various ways in which disputes over access to land between widows and their husband's family are handled by a third party. Here the domain is the extended family and the informal dispute resolution arena. The activity is the handling of inheritance disputes. The actors are widows, the immediate family members involved in the problem, community mediators and judicial officers.

Such a study will, almost inevitably, involve a grounded approach as the researcher probably does not know in advance who, according to local norms, deals with inheritance disputes or who is among the

competitors with the widow. Thus the researcher will have to explore the domain and determine who are the actors and what are the structures to be researched. Where the researcher wishes to establish the existence of particular norms or the possibility of new emerging norms, a fairly broad study will need to be considered. Thus a number of basically similar problem cases, need to be studied so that patterns and typologies can be developed. In this context determining and demarcating the number of cases and units of study is an on-going but organized process.

Sometimes the data that it is assumed would be needed to explore certain topics, may be difficult to access because of legal or policy barriers to its provision. Examination of state archives, private papers and administrative records usually requires special permission, some materials may be classified and information is unlikely to be readily available. These issues need to be explored before the demarcation of the study is completed. For example information about prison or hospital practices may not be readily available to the researcher and considerable time might need to be spent in trying to obtain permission to examine records or interview officials. Thus the researcher may need to consider whether there are alternative ways in which such data can be accessed, perhaps by interviews with those who have experienced the problems that are being researched. This is one of the reasons why a pilot study is such an important part of the research design, as it allows the researcher to determine some of the problems likely to be encountered before the main research phase and to adjust the demarcation of the study accordingly.

8.3.2 Number of Units

In a quantitative study the validity of the conclusions will depend on the number of units (people, groups or organizations, i.e. whatever is the basic unit to be studied). In rare situations you may be able to include all the possible units in your chosen universe in the study, but normally this is not possible and the chosen sample will have to be selected so that it represents the predetermined variables (men-women, married-unmarried, urban-rural, etc.).

Usually decisions about numbers in a quantitative study are taken at the outset or after a pilot study and not changed thereafter.

In a qualitative study the choice of the number of units is an iterative process, but there may be a broadly laid down target and a divi-

sion of the targeted sample by groups or sectors of the population. For example in the investigation into the experiences of widows in inheritance disputes the decision as to how many cases to select from each forum and which fora to select, would depend on the researcher's preliminary suppositions about factors which influence the legal and social status of widows. The researcher might broaden or narrow the sample based on the iterative process. The selection will also depend on whether the aim of the researcher is to describe the situation of widows in general or to understand the forces at play in disputes between the widows and other persons. In the first of these a survey based on a representative sampling of cases or widows could be used to ascertain their overall situation. In the latter a defined number of cases handled by different fora would need to be studied in detail and rigorous comparisons and analysis of the factors involved undertaken, thus a more iterative process would need to be employed.

8.3.3 Delimitation of a Field of Study by Area, Geographical Demarcation

The decision on where to research in terms of physical area also needs to be carefully considered. In the light of the theoretical assumptions it might be considered important to cover both urban and rural areas. Within both areas there may be further sub-categories that require consideration such as densely and sparsely inhabited areas. In the Southern African context these are often described as high and low density urban areas and commercial or subsistence farming areas. To some extent the researcher will need to define her own boundaries and descriptors to suit the study. For example regional divisions characterized by different cultural norms and practices or different economic conditions might be considered relevant in terms of the selected methodology.

There might be practical reasons for giving preference to certain areas, be they geographical, ethnic or defined by some other means, and avoiding others. The researcher might want to choose an area she knows well, especially when undertaking such research for the first time. Although, as we have discussed earlier, there may be some advantages in doing this, such a decision should be carefully considered, and if it is decided to proceed along such lines at least one other area should be researched as well.

Some areas might be theoretically relevant but practically difficult to reach and obtaining special permission to enter them may be difficult. Some selected areas might be dangerous to enter because of war or civil unrest.

THE MOZAMBIQUE WLSA research was severely limited geographically by the continued civil war in that country, and it is only when peace returns to the whole country that the research teams will be free to conduct their research in all parts of the country.

At the time the researcher is due to enter the field, there may be other constraints that arise and the researcher has to be able to adapt and modify the research design to meet such situations.

A researcher pursuing the topic «Women's access to and control of communal and resettlement land in Zimbabwe» would need to undertake field research in both communal and resettlement areas in Zimbabwe. The ultimate choice of the areas to visit would need to be further explored and adjusted in accordance with the logistics of the research design and research objectives. The researcher may need to consider whether the location of the land in question might affect the position of women in relation to it. Likewise the researcher may wish, based on her assumptions or hypotheses, to investigate women's access to and control of such land by reference to various ethnic groups. She might wish to compare matrilineal and patrilineal groups to determine whether these forms of family arrangement have any impact on the position of women in relation to such land. Although one would not, normally, consider that the urban-rural dichotomy would be relevant to such a study, it might be of significance in relation to communal lands situated near urban areas. There might also be merit in looking at areas from which there is known to be significant male migration into urban areas and those where this is not so common. Where the forms of land occupation rights conferred in a particular form of land are not uniform, as with resettlement areas, the researcher would need to investigate the different forms of occupation rights and compare the effects they have on women's rights to the land. Thus there would, in terms of the research design, be an internal comparison within the various land occupation patterns and an external comparison with other land holding patterns.

8.3.4 Delimitation of a Study in Time

The dimension of time influences a study in different ways. A study may deal with phenomena at a certain point in time, this is termed a synchronic study (a same time frame study). An example is a survey aimed at collecting demographic data within a short time and there is no intention to compare this with the past or future statistics.

Studies where a period of time or comparisons across time frames are considered, as in historical investigations into development and change or linear studies of long term change, are termed diachronic studies. Other examples of time studies are studies of development and change in cyclical time such as the seasons of a year or as measured against the phases of a person's life, childhood, adulthood, old age. A researcher may be engaged in such a study for the whole of the period thus demarcated, however, where the data collection period is likely to be very long publication of data may be in phases, with a final analysis at a latter stage. Such long term studies are not always appropriate for individual research and are better tackled by groups or organisations with a long term resources and staffing.

One way of charting development and change, is to collect data using identical methods at set intervals over a period of time and then analysing the data collected to determine what changes have taken place and the factors that affect these changes. The choice of the length of period will, *inter alia*, depend on the estimated speed of change of the factors included in the study. If the aim is to study continuity and change in social and legal gender relations, it may be necessary to choose fairly long time spans between the sets of data to be collected. «An adequate model of practise's capacity to revise structure may involve a two to three generations development perspective.» (Ortner 1984).

In order to obtain these data archive studies as well as interviews with various generations may be used as a source of data. Both are useful. The archival materials would probably only provide static versions of the former period (time), thus the generational interviews could be used to source peoples perceptions of change and how individuals perceive their own past.

AN EXAMPLE of this kind of study is Janet Kabeberi-Macharia's study on teenage pregnancies. She analysed the changes in the patterns and forms of control over the sexual behaviour of teenage girls in certain ethnic groups in Kenya. As a starting point she car-

ried out interviews with her grandmother and her mother and draws on her own experiences as a daughter, thus she had reference points and a time frame that in this case stretches from the turn of the century. To flesh this out further, historical data from many sources would be required, but the study is demarcated by clear time frames and periods with reference to which further investigations of customs and practices can be carried out, but the whole is demarcated by the focus on teenage girls (Kabeberi-Macharia 1995).

If the researcher is seeking to identify factors that affect changes in social mores and influence, legal change she will need, *inter alia*, to look at the interplay of the legal system and socio-economic factors which affect its functioning. For this purpose it may be useful to undertake a study which has both synchronic and diachronic dimensions. This technique can be used when investigating the construction and deconstruction of customary law, as it sets a frame within which the changes in customs and practices can be mapped as against perceived or recorded past practices.

Van Velsen suggests recording the actions of individuals over a period of time in order to perceive and describe the processes of operation – that is how actors in different situations make use of different norms to suit the requirements of particular situations (Van Velsen 1979).

8.3.5 Demarcation: A Discipline Perspective

We have discussed in the previous chapters the need for an interdisciplinary approach in dealing with issues related to women and law. But how does the women's law researcher make an appropriate apportionment between social science methods and legal methods? The next question is then, which of the social science methods will most effectively supplement the conventional legal tools.

For the women's law researcher the answer is both simple and complex. It largely depends on the objectives of the study and on an assessment of accessible sources of relevant data. How the study is finally demarcated in disciplinary terms will depend on the formulation of the research problem and the purpose of the research. The validity of the research findings and the basis for generalization will in their turn depend on these factors.

For example a synchronic study designed to investigate dispute

and conflict resolution in a single institution or forum in one geographical area, will probably require data on the operation or influence of the law as well as socio-economic data on other factors that might affect the processes. From the women's law perspective such a study gives the researcher the opportunity to study how the form of law, the form of argumentation and the power relations which are at work within that environment affect the position of women. Such a study primarily draws on the disciplines of law and sociology. An example is the late Jennifer Okumu Wengi's study of women's legal position in the Resistance Committee Courts (NRC) in Uganda.

OKUMU WENGI wanted to find out how the interaction between the female audience, the female plaintiffs and the female judges influenced the outcome of cases in the national resistance courts. She observed cases in several urban courts in Kampala and two rural courts. Interviews with judges, witnesses and plaintiffs supplemented court observations and court records. Her comparison between urban courts showed similar trends. In the urban melting pot the NRC courts were frequently used by women from the lower classes. In certain types of cases the female judges and the audience played an active and supportive role which influenced the outcome in the favour of women. A comparison between urban and the rural courts showed significant differences regarding women's access to and participation in the courts as well as the eventual outcome of the dispute. Rural women did not approach the NRC court to the same extent as urban women and the court tended to apply a more conservative version of custom (Okumu Wengi 1995).

This study was carried out by a single researcher employing techniques from various disciplines such as law, sociology and gender studies, as they fitted into her data collection needs, her analysis and her overall framework.

In some larger projects researchers from different disciplines work together and by pooling their skills across the disciplines enrich the final research product.

THE WLSA PROJECT is an example of research carried out by interdisciplinary research groups. However the co-operation in such groups can take a long time to develop. The WLSA Zimbabwe research group is composed of researchers with backgrounds in law, sociology, psychology and political science. (A description

of this project and its search for a methodology is provided in Chapter 15). Initially the approach was largely legal centralist as in the maintenance research. This was expanded to a more exploratory approach, with better use of other social science methods in the inheritance phase of the research with focus on the position of widowed women. Most recently in the family forms and access to resources phase of the research exploring from the perspective of women, their experiences of family structures and how these determine access to resources demonstrated a further move away from law as the starting point in such studies. Law became the reference point at the end of the study rather than the framework that shaped its thrust from the beginning. The WLSA research clearly reflects a constant shifting of disciplinary emphasis.

8.4 Combining Demarcation Parameters

Most research projects and studies are demarcated in multiple ways such as domain, geographical area, discipline and sampling. The point is that demarcation is very important in keeping the focus of the research clear and avoiding random data collection exercises. At first blush this might be seen as a contradiction of the grounded theory and iterative process. In fact it is a complement to it, as, by having a clearly demarcated frame within which the research is to be conducted, the flexibility sought by the iterative process is maintained without the risk of lack of cohesion. This does not mean that the researcher cannot go beyond the predetermined boundaries, but in doing so the previous demarcations have to be carefully reconsidered and the departure justified.

We now consider some other ways in which the researcher can delimit and demarcate her research.

8.5 Case Studies

Women's law researchers as well as other students of law in context often use case studies as a method in their research. Case studies are very useful ways of ascertaining both the lived realities of women's lives and how women may or may not use the law. The researcher can transcend the strict limits of the legal case as defined by the parameters of the law and a particular legal action into broader explo-

rations of the society. However, it is important that what is meant by a case and a case study is clarified.

8.5.1 What is a Case?

To the lawyer, on the verge of embarking on women's law research, a case study probably means an analysis of a judgement or judgements of the courts in a given area of the law. Whereas to the social scientist it means an in depth investigation into how an individual or group of individuals have dealt with certain issues, view their lives or interact with the wider society regardless of whether the matter was regarded as a problem or not, that is trouble or trouble-less cases. According to Yin:

«A case study is an empirical inquiry that investigates a contemporary phenomenon within its real life context when boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used.» (Yin 1984)

Thus a case in this context can be described as a frame around a phenomena or a part of a domain, as well as a basic unit of analysis. A case study may consist of one case, that is a single-case study, or a number of cases, a multiple-case study. A case study could involve many sources and methods of data collection or relatively few, as always it is a matter of what is appropriate. For the lawyer these sources seem relatively familiar. However, there is an all important difference in emphasis which is determined by the intellectual demarcation of the boundaries of the research. A conventional legal researcher is interested in the case as a means of describing the legal position within the area of research. The social scientist is interested in understanding and explaining the outcome of the case within its broader context. The women's law researcher is generally interested in describing, understanding and explaining the position of women in law and society. The women's law researcher thus, but this depends on the topic, wants to find a middle course between the narrow legal focus of the case study in legal method and the wider social science case study which is directed towards mapping a whole plethora of practices and customs and gaining a broad based understanding of the society and its members.

The obvious place for a legal researcher to begin incursions into the wider research area, is to examine what can be obtained from the

conventional field of study for lawyers, that is trouble-cases dealt with by the superior courts and accessible in court records, reported judgements and discussed in law journals (Epstein 1979). But, in women's law studies, it has become clear that studying the law and cases alone does not reveal the reality of women's positions. It has been observed that women do not even feature in many areas of the conventional sources of law (Fastvold and Hellum 1988, Ketscher 1990, Petersen 1992). To transcend this gap in our understanding, the researcher can expand her field of research using case studies.

8.5.2 The Extended Case Method in Legal Research

From a legal focus the researcher can move to a more «extended» case method (van Velsen 1979). The researcher having started with a legal focus may identify the need for further information on the actual handling of the case and the processes and procedure followed at the relevant forum or fora. There may also be an interest in discovering how the various actors behave while the matter is being dealt with. Among the significant players who do not appear in court records are the audience, the non judicial court officials and administrative staff. If these are to be included in the study and their effects charted, the study needs to be expanded to observation of court hearings and administrative practices. This allows a more effective interrogation of the legal system from a wider range of perspectives.

The way in which the legal practitioners or judges define the boundaries of the action is a process of demarcation within the legal system. A number of research projects show that lay and professional judges in courts apply different parameters in demarcating the boundaries of a case. Different types of courts have different models for reaching a decision. The superior court's way of reaching a decision is often referred to as the model of subsumption. The reasoning employed is rule and precedent oriented.

For example in the supreme court in a dispute over property the existence or otherwise of a marriage may be a critical issue. In the rule oriented approach the question to be asked is: Was the marriage registered? There is no interest in factors that might have hindered the registration process. The court is not interested in the fact that drought hindered the payment of lobolo or the registration could not be carried out because of the risks connected with moving around in an area ravaged by civil war.

In contrast to this is a model for conflict resolution where special weight is placed on the effects of the decision for the local society. In such a case the dispute resolution agency considers the matter in a broader context and takes into account information beyond those considered in the rule oriented model.

The researcher in studying these contrasted models could use the professional and the lay judges' demarcations of the relevant data in seemingly similar cases as the basis for identifying the cases to be further investigated. The next stage in such research would be to explore the individual choices, actions and decisions of the judges and parties. To obtain these the researcher would need to conduct interviews with the participants in the cases to discover what affected their decisions.

Still within an analysis of the legal system and its functioning the researcher may realize that a judgement by the court, of itself, may only be a part of the analysis of the issues. An important question that needs to be pursued is: How was the judgment implemented? Was it respected or ignored? Did it improve the position of the party seeking relief?

Thus within the sphere of the law and its immediate environs, there is considerable opportunity to expand the ambit of research so as to obtain a broader perspective and deeper insights into what effects the lives of women. An example of such a study is Gundersen and Berg's research into the functioning of the Locality Courts in Mozambique with a special focus on courts on women's legal position:

THE STARTING point was a search for conventional legal sources on women's position in the formal legal system. A search was also made to uncover the view of women in official state politics. The constitutional provisions as well as the preparatory documents pertaining to law reform were examined. All this was done so that a comparison could be made between the laws, theories and principles created in the new, post, independence legal system, for women and the way in which these were employed in the Locality Courts staffed with lay judges.

The Locality Courts were not courts of record, written records of court proceedings were not made. Thus in extending the case study the next step in the field work was observation of court hearings. About 50 cases heard in one court and 5 in another were observed and complete records from the commencement of the legal

action, the hearing, the voting on the matter and the final judgement were taped.

As a third step systematic notes were taken on everything which took place in the courtroom. A record was made of the setting, the behaviour and the oral and body language of all persons present during the hearing and during the voting. Thus the atmosphere in the courtroom, the way of handling the fact finding process, the form of examination of parties and witnesses, the role of the audience etc. were observed.

A fourth step was to conduct interviews with parties connected with the individual cases to get a full understanding of the background of the conflict and the handling of the case and the final results.

A fifth step was interviewing key informants to get an overall impression of the work of the courts and the views held on their operation by women's organisations and key personnel in the higher strata of the legal world and government (Berg and Gundersen 1990).

The objective of evaluating the functioning of the Locality Courts from a women's law perspective demarcated the project and in a sense dictated the five steps that were followed. Within this frame there was no need to look at informal conflict solving at family and village level nor at trouble-less cases. The focus was clear and the purpose of the research clearly defined and well demarcated. However, as discussed earlier the legal system is not the only source of dispute resolution. We now turn to consider the ways in which informal dispute resolution can be researched in a controlled manner, and effectively demarcated.

8.5.3 Case Studies of Informal Conflict Management

In examining informal conflict resolution the researcher first has to find out where such decisions and arrangements are reached. Who are the participants and why are they preferred to the formal courts or other state agencies?

At this stage the focus is still on the mediation of conflicts by recourse to a third party. However, new kinds of activities and new actors need to be included in the study and new ways identified to locate these fora. It may be relatively easy to identify these, especially where the role of the third party is institutionalized such as the fam-

ily council, the headman, the chief or the barrio in Mozambique. None of these are formally integrated into the formal court system, but nonetheless they are identifiable as dispute resolving entities.

Judicial officers may, as a matter of practice, refer parties to other agencies before they will finally determine a matter. Parties in a legal action may be referred to marriage counselling units, social workers or other agencies. Such agencies indicate a need to broaden the research boundaries thus requiring a wider demarcation of the field of study than might have been originally contemplated.

It may be difficult to identify the informal problem and dispute resolution agencies before the actual fieldwork. The reason is that the third party might be chosen on an ad hoc basis. The researcher will in such situations have to rely on the iterative process. When, in course of the field work information comes to light on such persons, it should be followed up. As pointed out earlier if the study has been broadly demarcated and the researcher has a clear idea of general direction, such further explorations should be containable within the broad parameters of the study.

8.5.4 Extension of the Field of Study with Trouble-less Cases

The case studies undertaken by lawyers are inevitably trouble-cases as unless there is an unresolved dispute the parties will not normally approach the courts. If a study is confined to trouble-cases no account will be taken of how individuals resolve their difficulties amicably and interact according to accepted societal norms. Thus the demarcation of the field may need to take into account ways of identifying the realm of interplay between the legal and socio-economic factors which affect the position and status of the women being studied.

«In fact, it is the common trouble-less cases of normal practice that usually constitute the normative frame of reference by which trouble cases are being judged. Adequate attention to them would, moreover, provide guidelines and specific clues for the probe into the illuminating prehistory of many a trouble case itself, and thus facilitate the difficult execution of what has become known as the extended case method.» (Holleman 1973:594).

Some seemingly trouble-less cases can be found in official archives such as records of uncontested decisions where the role of the court

is largely to formalize the agreement of the parties. But trouble-less cases are often difficult to identify as the parties do not usually publicize the fact that there was an issue to be resolved. One way to track down such cases is to ask during interviews with the public or specific individuals how they handle matters like those under investigation. When it is stated that it was sorted out amicably then that might be identified as a trouble-less case worth exploring further. Such explorations are important in building up typologies and forms of customs and practices as they are followed in the community.

Trouble-cases being investigated often have a co-extensive background with seemingly trouble-less cases involving similar issues. Also the very same actors may have experienced the same problems in the past and found solutions as trouble-less cases then the same problems resurface as a trouble-case requiring external resolution. This is another dimension in the demarcation, the same parties supplying data at multiple levels.

8.6 Defining the Boundaries of an Extended Case Study: The Semi-Autonomous Social Field

In extending the case beyond the frame of formal legal determinations the field is widened to the study of both trouble and trouble-less cases on the same issue the concept of the semi-autonomous social field may help in identifying and demarcating the research field (Moore 1978). The semi-autonomous social field can be described as a frame around a rule-generating and rule-upholding activity. It is important for the researcher not to confuse semi-autonomous social fields with the institutions being researched such as courts, villages, households or workplaces.

The concept is a useful tool in the demarcation of the field of study at the interface between different sets of norms. The group of actors and institutions which are affected by or generate a certain set of rules, define the organizational outline of the semi-autonomous social field. The researcher might investigate whether internal and external norms are in conflict or harmony. She might look at the choices made by the actors in the face of conflicts and the options and counter controlling forces they create. A study of the norms that inform the individual's sense of obligation and duties and those on

which the actors base their claims for certain rights, can be very revealing.

The use of the semi-autonomous social field as a tool of demarcation is much easier to theorize about than to put into practice. The problem is not only that the actors may at the same time be involved in more than one field and that the boundaries of any one field are seemingly elastic, but an actor as she crosses between the fields, carries parts of the rules generated in one field with her into another. How to explore the intersection between different semi-autonomous social fields is dealt with in Chapter 2 (4.2).

Figuratively the fields could be seen as amoebas in motion constantly merging, separating and covering each other. In situations of overlap between the fields the actor makes a choice as to which field she will utilize to resolve the problems or regulate the phenomena. It is easy to assume that choice is possible and that the actor was aware of the options, however, assuming that choice is possible, it is undoubtedly influenced by external pressures working on the actor experiencing the actual situation. But her choice, knowingly or unknowingly, could also be influenced by previous experiences in another context. To be able to make meaningful suppositions about women's use or non use of formal legal rights, the researcher will have to include research which considers other factors that influence choice such as family loyalties, expectations and available avenues to access resources, thus the field is further demarcated.

Another problem with the use of the semi-autonomous social field as a tool of research is concerned with the following questions: When is an observed behaviour deviant? When should it be considered the manifestation of a new norm?

THE ZIMBABWE group of researchers in the WLSA project on Inheritance posed that question (as did some of the other groups) in relation to the finding in some cases that women received in the family regulated distribution process, the whole or part of the property left by deceased husband or father. This was contrary to the preconceived norm according to which the eldest son was successor to the property. The question was posed whether this finding could be interpreted as the formation of a new customary rule? The question is situation specific and can not be answered without extensive data about the arguments or justifications given for the «deviant» behaviour, thus case studies would have to be conducted to collect such data. The researchers solved (avoided) the problem

by arguing that rather than finding new norms they were uncovering evidence of the underlying principles and procedures in customary inheritance determinations. This was to become an important stage in the reconceptualization of women's rights under customary law (WLSA 1994).

8.7 Conclusion

Demarcating the field of study and determining appropriate cases to study and the breadth of those studies is a very important stage in the development of a research project. This chapter has sought to show how this can be accomplished. The researcher should, however, not feel confined by these concepts but rather see them as useful tools to make wider exploratory studies more manageable.

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9

Designing and Planning the Research

Summary: This chapter describes some of the major steps in designing and planning the research. Where to collect the relevant data from whom, and the appropriate methods to use are discussed. How to make optimal use of limited resources such as personnel, money and time are explored. The choice between qualitative and quantitative sources and methods is discussed as are concerns over the validity of the data to be collected using various research methods.

9.1 Introduction

The research design is the process of creating a systematically organized framework which guides and directs the collection, analysis and write up of the data that needs to be collected. The major decisions about the research topic, demarcation of the boundaries of the research and the methodology should have already been determined. However, decisions as to the relevant and appropriate sources and methods to employ in conducting the data collection still need to be taken.

9.2 Quantitative and Qualitative Methods

An initial choice that has to be made based on the purpose of the research and the research questions is between qualitative and quantitative methods and sources. Because of the exploratory nature of women's law research and its emphasis on concept and theory, building this book focuses on qualitative methods, however, the two methods can be used to complement each other in a single study.

9.2.1 Quantitative Methods

Quantitative research methods are primarily intended to provide sta-

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Quantitative research methods are primarily intended to provide sta-

tistical data and analysis of broad numerical trends. However, they can be used to provide background data in qualitative studies. Using quantitative methods, for example a survey, a researcher might seek to obtain a statistical profile of men's and women's use of courts. C. R. Cutshall's book *Justice for the People. Community Courts and Transformation in Zimbabwe* contains a quantitative analysis of gendered litigation patterns in Zimbabwe. The author collected demographic data about the litigants, such as their gender, age and economic position, this was extracted from community court records in different parts of the country and used to build up profiles of court usage (Cutshall 1991).

A survey might be used for comparative intra-national and international research to document gender inequalities. For example UN statistics have been compiled that indicate that women in, so called, developing and industrialized countries carry out from 66% to 75% of all basic work within the community. Yet women's wages on a world scale make up only 10% of the total wages that are earned. Only 1% of the world's private property is owned by women. A researcher may want to devise a macro survey that will test the accuracy of this data in her own region, country or area. This could be a study in itself or used as part of a study on women's socio-economic position or on women's access to resources.

9.2.2 Qualitative Methods

Undertaking qualitative research implies use of small samples and collection of data based on life histories, detailed accounts of specific life events or in depth interviews with key informants.²⁰ The researcher may want to ascertain why men's and women's use of courts differ. To answer such questions the researcher will need to use qualitative methods and sources which are not concerned with numbers and overviews, but with providing deeper insight into the issues and discovering what affects people's decisions to use or not use the courts to resolve disputes.

In a study to determine women's utilization of maintenance law in rural areas, quantitative methods, if used alone, would be unlikely to raise profound questions about the existing principles and concepts underlying the general law of maintenance or the social factors that

20. See Chapter 11, Observation and Interviewing.

mediate women's access to such courts. The use of qualitative methods should, however, reveal issues such as the relevance of the law that is available in the courts to women and the social or cultural problems they have in accessing the courts. The empirical data collected in a qualitative study may facilitate a review of not only the courts that deal with maintenance but also the law of maintenance itself.

Similarly, if a researcher has decided to explore how a particular society classifies and validates marriage relationships and translates those into rights and obligations between the parties, qualitative methods are indicated. By using qualitative methods the researcher can obtain data on how people define marriage and the obligations it attracts.

9.2.3 Combining Qualitative and Quantitative Methods

If the researcher wants to establish the frequency of the problem under investigation, or the prevalence of a practice discovered in the course of the fieldwork or document general community views on that practice, then quantitative methods such as closed interviews could be used to supplement the qualitative fieldwork data.

Combining the information from qualitative and quantitative data can be useful as Jennifer Okumu Wengi's and Amy Tsanga's thesis shows,²¹

BEFORE STARTING her in depth study of women's access and participation in a selected number of Resistance Courts, she did a countrywide quantitative study of the composition of these courts, and the nature and numbers of claims that were dealt with. This enabled her to present her in depth study in the light of a broader overview (Okumu Wengi 1995).

Amy Tsanga in her study on popular legal education in Zimbabwe used a short questionnaire which was routinely filled in by the advice volunteer as part of their job in the paralegal scheme. These questionnaires provided an overview of the local populations' reactions to the content of the different pamphlets. It provided an important background for her in depth qualitative analysis of factors influencing the efficacy of the different modes of dissemination of legal information employed in the programme (Tsanga 1997).

21. Jon T. Johnsen's analysis of the Legal Aid Office in Finmark in Northern Norway which offers legal aid to the Sami population combines qualitative and quantitative methods (Johnsen 1997).

In these studies the quantitative material provided a broader background for the qualitative studies.

Sometimes, problems arise because the quantitative data has been collected with a different objective from that of the qualitative study. Care needs to be taken in such studies to ensure that qualitative and quantitative terms are carefully distinguished from each other. Likewise qualitatively and quantitatively derived findings should be carefully separated and not confused. The use of the concept of «family» illustrates this problem. In quantitative research it is often treated as being synonymous with household whereas in qualitative research it may cover different types of relationships that are uncovered in the field. If the researcher undertakes a quantitative survey of family incomes based on household occupation and also conducts in-depth interviews in which individuals define who are family and how resources are shared, it would be misleading to use the term family in the study without careful qualification of each usage. The units of study would not be the same.

These are important issues to be addressed at the design stage so that incompatible or incomparable data are not unwittingly collected. The researcher might, however, deliberately choose to collect data about families using various family typologies for the purposes of comparison or to facilitate a critical evaluation of concepts and theories, but that is by design and not an unintended result of careless planning.

9.3 Appropriate Sources and Methods for the Field Research

Field research generally refers to the collection of primary data in its unprocessed form. Such as the gathering of data by conducting structured and unstructured interviews or group discussions, through administering interview schedules, distributing questionnaires and through various forms of observation. In other words, field research usually means collecting data from unwritten sources.

9.3.1 Relevance

In preparing the research proposal the researcher should have considered the possible sources of the data required to answer the research

questions. By demarcating her field of study she has settled on the situations and activities to explore as well as the institutions and actors to approach. However, it is important to constantly review the relevance of the data that is being sourced in answering the research questions. Thus the researcher needs to reinvolve the use of the thesis sentence and use it as a reference point for relevance.²²

9.3.2 Accessibility

At this stage of the research process it is very important to determine whether the sources to be accessed in the field are both available and accessible. Accessibility needs to be assessed geographically, administratively and practically. In theory, examining court records seems to be a logical starting place for research into the operation of the legal system, however, the researcher should appreciate that records may be poorly kept, illegible or non-existent.

CHUMA HIMONGA noted this problem in relation to her study *Family Property Disputes the Predicament of Women and Children in a Zambian Urban Community*. She also found that the issue that she was interested in, namely the distribution of property, was not dealt with in relation to most divorce actions. Thus sources of data that she had assumed, while designing the research, would be readily available, were not (Himonga 1990).

Another problem may be, that records of certain types of cases may be available but not readily accessible because special permission may be required to access them or they are only available to the parties or to lawyers involved in the litigation. Researchers would not normally be permitted to sit in on cases that are held in camera, although a permission might be granted to a researcher known to the court or ministry officials. To avoid these and similar problems of inaccessibility of data the researcher should try to investigate the feasibility of using such sources when the research is being designed, even before the pilot study is conducted.²³

22. For a discussion of the thesis sentence, see Chapter 7, Problem Formulation in the Research Process.

23. In Himonga's case this was not possible before she went into the field as the research was designed in London and the field was to be in Zambia.

9.3.3 Appropriate Methods

Before embarking on the field research the appropriate methods for obtaining information from the chosen sources should be considered. Ultimately the decision as to the methods to use are determined by the research problem and the research questions or issues to be answered or clarified by the research. A wide variety of methods such as passive and active observation, participant observation, unstructured interviews, group discussions, focused interviews, structured interviews, questionnaires and surveys are described and discussed in Chapter 11, Observation and Interviewing. Selecting which of the methods to use depends on the data that is to be sourced.

For example research that involves ascertaining the conditions under which women are given audience and how they are treated in maintenance cases, would have to involve both interviews with female litigants, court officials, members of the audience and observation of court hearings. Perusal of court records and administrative files might also be undertaken.

Research focusing on the problems faced by women in bringing maintenance claims to court might be tackled through both observation of administrative routines and oral interviews with claimant women, court officials, family members and others having a bearing on the issue. In such a study observing the administrative office's normal routine over an extended period might provide more realistic insight into organization, office hierarchies and the way individuals are treated than a few interviews with claimants and administrative officers. Also, at least one extended case study involving interviews with the actors who might have had a bearing on the woman's decision whether to pursue her claim, or not, should be conducted.

When designing the finer details of the research, the researcher should be alert to the difference between what people state as the operative norms and the actual practice that they themselves employ. The researcher should design the research so that these differences are revealed. Suffice it to say at this point that this conflict, between theory (ideal) and practice, is present in most interviews and especially so in interviews with key informants who are usually well aware of the «official line» they should be following.

If, for example, the aim of the research is to find out people's customs and practices on a particular matter group discussions, alone, will not suffice. What people, collectively, refer to as custom often

differs from what they do and how they behave. By interviewing and observing different people who have been involved in the resolution of certain problems or conflicts in the local community, the researcher can build up data that uncovers the customs and practices of people as they employ them at the local, daily level.

9.3.4 Validity

In the social sciences triangulation is a method of evaluating empirical data. Triangulation means trying to address the same research question using more than one source:

TO DOCUMENT what was perceived as an emerging custom that widows could be appointed heirs, the WLSA Zimbabwe research team consulted a series of different sources such as community court records, interviews with community court presiding officers, chiefs, widows and family members (WLSA Zimbabwe 1994).

The validity of the research results and the research conclusions are closely linked to the quality of the sources that are used in the research. Validity is double edged, it refers to the perceived reliability and accuracy of the data and also to whether the data is advancing the end objectives of the research. Different disciplines have developed different criteria which enable the researchers to test the validity of their research results. These criteria are dealt with in more detail in Chapter 13, Analysing and Interpreting Data.

However, at the design stage the researcher needs to ensure that a sufficiently wide range of sources are included to allow for meaningful triangulation and internal validation of the findings.

9.4 Using Experiential Data in Research Design

In Chapter 7, Problem Formulation in the Research Process, we encouraged the researcher to make active use of her professional and personal experiences as sources for problem formulation and research assumptions. In the social sciences this type of data is termed experiential data (Giddens 1984). Memory work is a method of evoking «hidden» experiential data as it helps bring individual or collective experiences to the surface for conscious consideration (Haug 1990).

African lawyers who have in the main been trained in Western jurisprudence often overlook and, thereby, disqualify their own experiences gained growing up in the African community when they set out to describe and analyse African customary laws. Memory work is a way of breaking through this barrier.²⁴

MANY OF the WLSA researchers, after the publication of the maintenance research, realized that they had overlooked their own knowledge of maintenance provisions as they are implemented in the rural areas. They realized that they had discounted important aspects of rural women's management of maintenance problems in the process of collecting, recording and analysing data about maintenance. In essence they had disregarded the knowledge of elderly women in the rural areas because it did not relate to the formal maintenance laws.

The Zambian research team reported at a regional meeting that many of the elderly women they had interviewed said that the main strategy they employed in obtaining assistance was «doing nothing». Based on their own experience of the rural areas as children the researchers later realized that this was an important strategy. It was a way of invoking the intervention of the ancestral spirits. However, the researchers steeped in the Western legal tradition had dismissed this data as irrelevant. Once this experience had been recounted, there was a heightened appreciation of the importance of indigenous researchers invoking experiential data from their own lives and using this to compare with the data gathered from respondents.

The researcher's own recollections can be very useful sources of data on local customs and practices and the basis, if carefully used, of a research project. In her dissertation on polygyny in Zimbabwe, Tsitsi Nzira uses the history of her own family as an extended case study (Nzira 1995). She starts out with her memory of her own experiences:

NZIRA GREW up in a polygynous family as the third of five girls, her own mother as the first wife had borne three daughters.

24. An example of how the researchers within the WLSA project took notice of their experiences in their planning of the next research phase is discussed in Chapter 10. As a means of formulating research questions and assumptions, they explored their collective experiences regarding death of male relatives and the position of the widow in connection with handling of the deceased's estate.

Around the time of her birth her father married a second wife who also had girl children. Thereafter her father married a third wife who bore him the sons he was seeking. In describing the relationships between the different wives, between the different mothers and the children from the different marriages and between the children within polygynous marriages, Nzira explores the history of her own family.

The starting point in her research is her own recollections of her family and her life within the family. However, this would be a very one sided view of the family and polygyny. Thus she extended the study by exploring the experiences of other members of the family. Their recollections served to embellish her data and also served as a triangulation of her own experiences.

The researcher's own memory may, as demonstrated in this example, provide deeper and richer insights into customs and practices than other sources. There is, however, a danger that the researcher will forget or excludes important aspects of these customs and practices from her memory. By using other people's memories the researcher may, like Nzira, undertake a validity test by triangulating her data with that of others. What they remember can also serve as a corroboration and correction of her own recollections.

A personal memory case could serve as a model on which to base other extended case studies. Tsitsi Nzira already had a grounded profile of polygynous families and an idea of who might be significant others. This would be a starting point for extensive and comprehensive research into the phenomenon of polygyny using the next question technique. Using the next question technique is discussed in Chapter 10, Grand or Grounded Theory.

Equally important is that the researcher has, by means of her memory work, addressed the biases that she may have on the topic of polygyny and identified some of the motivating factors behind her work. Another way in which prior personal experiences can be used as a part of planning the field work is described by the Swedish sociologist Karin Widerberg. She used memory work as a pilot study in a research project on sexual harassment in the work-place (Widerberg 1989). She wrote down pertinent memories connected with the topic, how she remembered the incidents she herself had experienced and what struck her as significant at the time of writing about the incidents and how she perceived them. She remembered incidents that she had forgotten. The memories didn't come back all at

once but «popped up» during a longer time period. Widerberg thus concluded that in research where our own or other people's memories are accessed, the data should be collected over a long period, through repeated interviews. Thus a series of interviews on a topic or interrelated topics with some or all of the targeted respondents might be programmed into the research plan (Stewart and Ncube et al 1997).

Researchers who utilize personal experiences must, however, ensure that they organize and plan the research so that their personal involvement does not compromise or disqualify the scientific validity of the research. A researcher may for example be tempted to conduct her fieldwork in the area in which she grew up. On the plus side she has good contacts and possesses insider knowledge which she thinks may provide easy access to further information. However, before making a hasty decision she needs to consider how the relationships she is embedded in might affect her research. What are the interests and expectations of family, friends and neighbours? Will she feel constrained in conducting her research because of her role within the community?

If the researcher invokes her knowledge of the situations, through memory work, she can more effectively assess whether there are factors which might influence her research such that her integrity as a researcher could be compromised. If there is a likelihood of such compromise then she will need, at the very least, to select at least one additional area in which to collect data.

9.5 Participatory Action Research

Another form of research that is closely associated with the use of experiential data is that of participatory action research where the researcher chooses a topic that is connected with her existing work or with some projected reform that she wishes to achieve. In this type of research she is not «a distanced observer» but is directly and often intimately involved in the organization or community that she wishes to research.

Participatory action research can take a number of forms.²⁵ One form is where the researcher becomes a facilitator for a community or organization in assisting them to take control of the process of change and direct their own destinies. In this kind of participatory

action research the researcher and the researched define the objectives of the research, conduct the research, analyse the data and collectively produce the findings and seek a solution to the problem. This is an appropriate methodology for the legal researcher who is interested in the question of information dissemination and collective action within communities.²⁶

Another form of participatory action research that is defined by W. Foote Whyte as a legitimate form of data gathering, is where the researcher is a legitimate and participating member of the group, organization or the community which she is studying (Foot Whyte 1991). This form of data gathering gives an inside picture of the entity which is being studied, its rules, policies, organizational structure, how it addresses problems and issues and implements action. An example of this type of participatory action research is Amy Tsanga's thesis on popular legal education in Zimbabwe (Tsanga 1997).

Another example of participatory action research is Johnlife Mawire's postgraduate diploma dissertation in women's law *A Study of Sexual Harassment as it Affects Women in Formal Employment in Zimbabwe. With Particular Reference to Women Working in the Private Sector*.

Mawire was employed by the Ministry of Public Service Labour and Social Welfare as a Senior Labour Relations Officer. In his work he came across definitions of sexual harassment in codes of conduct, prepared by various undertakings, which were sent to the Ministry for Registration. He was also a member of a committee

25. There are different definitions of the term action research (Johnsen 1976). Some researchers regard all practice oriented research as action research (Axselsen 1973). Other researchers maintain that the main objective of action research is to improve the action (Mathiesen 1980). The relationship between action and research is seen as a dialectic process where the results of the action research are used to improve the action while the improved action in its turn is evaluated by the researcher.

26. At the Faculty of Law in Oslo the ideal of interaction between theory and practice stimulated action-oriented legal research and education. In 1968 ex-convicts, criminologists, lawyers and sociologists founded the «Norwegian Society for Criminal Reform» (KROM) for the improvement of prison-conditions in a short-term perspective and for more profound changes in criminal policy in a long-term perspective (Mathiesen 1974). Another example is the establishment of the law student clinic (Juss-Buss) in 1972 (de Capua 1994, Johnsen 1990) and Free Legal Advice for Women in 1974 (Dahl 1987, Hellum 1990). A thorough description and discussion of legal action research defined as «action research where the theoretical and practical legal methods are applied in order to the academic and society oriented aims and goals» is found in Jøn T. Johnsen *Juridisk Aksjonsforskning (Legal Action Research)* (Johnsen 1976).

which made recommendations to the Minister as to how the problem should be dealt with (Mawire 1995).

Thus he was researcher and researched and involved in the evolution of new laws and policies.

9.6 The Design of the Research Instruments

Before going into the field the researcher designs her data collection tools. It is important that this is done before the research is commenced as it is most unsatisfactory for this to be done while trying to conduct the first interview. It is almost inevitable that the instruments will be refined in the field but they still must be carefully planned in the initial stages of the research.

9.6.1 Interview Guides

One of the most effective ways of collecting qualitative data from individuals or groups is by way of open ended interviews or discussions which are directed by an interview or discussion guide. At the design stage the researcher needs to determine what information needs to be solicited from interviews and discussion and generally formulate her field work checklists or guides. An interview guide outlines the issues and points which must be covered in the course of the interview but does not reduce them to question form. During the interview or discussion this checklist of issues and points which should be canvassed is followed. However, the researcher is free to follow up relevant points as they are raised by her respondents. The content of the answers will then determine the next question and the interview will proceed from issue to issue and point to point as regulated by the interview guide or checklist. This gives freedom to follow up relevant issues and points raised without being a slave to a rigid questionnaire method. This enables the researcher to probe deeply on issues that are unclear, interesting or considered likely to be useful to an understanding of the research problem. The researcher can and should, as the field research proceeds adjust and supplement the list of questions and issues to be pursued. This type of flexibility is the hallmark of good research. However, it depends on well informed and responsive researchers

and is not usually appropriate for interviews being carried out by research assistants working on their own.

As noted earlier some research problems may require both qualitative and quantitative data. It is perfectly possible to have an interview guide that is preceded by a data capture form that contains questions on age, educational and marital status as well as other demographic data which can be filled in very easily after which the researcher moves onto a more free flowing interview. Experience indicates that it may be preferable to pursue the questions on demographic data at the end of the interview as, very often, the direct question method can be intimidating at the commencement of the interview whereas later on it seems to be more a matter of supplementing and clarifying issues. Such data may emerge during the interview without any form of specific questioning taking place and thus the conversational style is maintained.

9.6.2 Written Data Capture Forms

Where quantitative compilation of data from written sources is required, usually where materials are to be used as background data, such as incidence of certain types of cases, litigant profiles and adjudication trends, it is useful to design a data capture form that has various sections for recording the information. This controls the volume of information recorded and simplifies compilation of the data. Space can always be provided on the form for notes on unexpected features or interesting side issues.

9.6.3 Surveys and Questionnaires

The researcher may want to undertake a survey as a supplement to her qualitative research findings. If a survey is undertaken an appropriate questionnaire has to be composed and a representative sample determined. Both need to be tested in a pilot study. Inexperienced researchers should be warned that quantitative methods can present serious difficulties when the data has to be analysed. Researchers who devise long and complex questionnaires which are administered to hundreds of respondents by research assistants, may find themselves with mountains of questionnaires which they have great difficulty analysing and interpreting. In most cases this can be avoided if a pilot study is carried out and the assistance of a quantitative meth-

ods expert or a statistician is sought right from the beginning (Stewart, J. E. et al 1997).

It is also important to consider whether the target respondents in the survey are accessible through this means. How the different groups to be targeted in the chosen sample should be approached must also be considered. The preparation of a questionnaire to be filled in by respondents in an area with low literacy rates is clearly ill advised. Failure to appreciate this may create later communication barriers with the respondents as they can feel embarrassed by their non performance. This could lead to a general resistance against the researchers from such people.

Individuals rarely appreciate mailed surveys that require them to pay the return postage, return rates on mailed surveys are notoriously low.

9.6.4 Sampling

Sampling was briefly discussed in the last chapter, we now return to it in more detail. Sampling is based on the data that needs to be collected to address the research questions and from whom to collect the data.

The women's law researcher is often involved in research which does not require proving that a problem exists, but rather the investigation, in depth, of how that problem manifests itself in specific circumstances and the various ways in which it has been addressed or not addressed by the community or individual families. In such a study «the dung beetle method» of sampling might be used, that is finding out from members of the local population who has experienced the problem under investigation. The researcher needs to be constantly alert to the possibility of sourcing new informants during interviews and discussions.

To grasp the variations and complexities in perceptions, conceptualizations or practices within the chosen area of study, it is important to apply a framework which ensures that different sectors of the population, different geographical or land use areas or different fora for problem and dispute resolution are accessed.

The researcher might then choose a random sampling process such as, every tenth homestead in a rural area, every tenth person who consults a housing office or every tenth litigant in a certain type of court case.

However in a rural context these ideal sampling techniques are often inappropriate as there is no tenth homestead in the village so adaptations have to be made. Such research plans usually necessitate a pilot study, after which the sampling and research strategies are reviewed (Cheater 1990). Angela Cheater recounts the following experience in designing a survey from a distance without any prior pilot study:

«From township plans drawn up in the 1970's, in the early 1980's we attempted a household survey in the Kariba suburb of Nyamhunga, happily drawing the sample from what appeared to be unusually complete data held in Harare, in order to save time in the field. After three days of fruitlessly searching for the numbers in their physical locations on the plans, we discovered that the local township office hadn't liked the Harare numbering system. Therefore they had changed it, in an ad hoc and unrecorded fashion, without reference to higher authority ... however, like all good quantitative researchers with limited time and resources on our hands, we proceeded as if the basis for our sampling procedure had not been materially affected by this inconvenient discovery. However, I shall never use or publish the data from that survey, knowing full well that they are void.» (Cheater 1990)

In a qualitative study the researcher might demarcate a geographical area, determine the optimum number of interviews and observations that need to be undertaken and then fill this quota on a random basis (Stewart, J. E. and W. Ncube et al 1997). Using the technique of theoretical sampling this number can be extended or internally adjusted as the research findings indicate.

9.7 Testing the Research Tools: Pilot Study

Interview guides and questionnaires should always be pre-tested before the researcher goes into the field, this can be done on colleagues or friends. However, wherever possible a thorough pilot study should be carried out before the main field work is commenced. The pilot study offers an opportunity for the testing of the researcher's instruments on the actual research field so that they may be appropriately adjusted for the main study.

Where limited time or funding is available, a modification of the full pilot study can be undertaken early in the data collection phase

where the researcher rigorously reviews a small amount of data collected to test the feasibility of the research instruments, and to consider whether the data being collected is helping to answer the research questions. The researcher has to be flexible and must be able to assess the effectiveness of her instruments and methods at a very early stage of the research.

The pilot study gives the researcher an opportunity to revise and redesign her methods and instruments and to carry out a preliminary data analysis to ascertain whether or not the data being obtained through her selected methods is appropriate and sufficient to answer the research questions. Such a review may even help in the reformulation and tightening of the research problem. A pilot study also helps in gaining a more grounded feel of the time requirements for each of the various stages of the research. Many experienced researchers argue that with funds and time permitting, a pilot study ought to be regarded as mandatory since it provides early indicators and warning signals on almost all the issues and difficulties that will face the researcher on the field. This will then enable the researcher to address and adjust to these difficulties very early on in the research process before it is too late to take effective, and time saving, remedial action.

There is no point in undertaking a pilot study if the data collected is not analysed in the way that it is anticipated that the data collected in the main study is to be analysed. The pilot study is not just to examine the collection methods but is rather a complete, mini, project. In the Zimbabwe WLSA Maintenance Study the pilot study data was not analysed, and thus it was not until the analysis of the main study data that it was discovered that the data collected in the survey questionnaire, could not be analysed effectively by computer and that, anyway, it did not really address the main research questions as they had been refined during the study. Researchers collect data and learn, to adapt an old aphorism.

9.8 Constant Reviewing of the Research Design

The research design is, as already mentioned, a master plan for the development and construction of the research. It articulates how the researcher's initial assumptions and suppositions are constantly adjusted throughout the research process. A researcher is not a slave of the research design but its master.

A research design can and should be readjusted as the research progresses and whenever it is found to be inhibiting or constraining the proper exploration of the research objectives it should be adjusted. In other words a balance has to be found between flexibility and rigidity. This approach is entirely consistent with the notion of grounded theory that we have been advocating throughout this book. The design must enable the researcher to explore broadly and yet remain within the parameters of the research topic, more precisely this is the issue of relevance.

Sometimes even carefully laid research plans can go awry for a variety of reasons, such as climatic change.

THE WLSA RESEARCH into inheritance was affected, regionally, by the most devastating drought in decades. Consequently many of the interviewees were puzzled by the concern of the researchers with problems of inheritance when it seemed to them that there was nothing to inherit and that the major issue at the time was just staying alive. The research had been designed in years of plenty, and the problems that arose could not have been foreseen, the researchers had to continue but the possibility of the drought giving a skewed picture of inheritance from that which would normally prevail, had to be taken into account in the data analysis.

9.9 The Research Plan

At the planning stage the researcher should construct an overall research plan. This is a comprehensive and detailed schedule of the tasks and activities to be undertaken, the persons involved, the time limits and the economic resources available. To do this the researcher should determine the different tasks which have to be carried out such as:

- Literature review
- Research design; what, how, who and where
- Research instruments; interview guide etc.
- Research permit
- Pilot study
- Analysis of pilot study
- Reconsider and refine questions, assumptions and instruments
- Data collection

- Recording of data
- Analysis of data
- Follow ups on gaps in the data
- Write up
- Editing
- Publication
- Dissemination of findings where appropriate

Many of these tasks are parallel processes; such as data collection, recording and analysis of data and the time tabling will probably overlap. However, it is critical that the researcher undertakes careful consideration of the time available, the personnel and the economic resources at hand. How much data can and should be collected will depend on factors like time, money and personnel.

In relation to tasks listed above the researcher will have to consider issues such as:

- Personnel, who is going to carry out the different tasks?
- Logistics, how will the research proceed?
- Time budget, how long is each task going to take?
- Scheduling the actual dates when the tasks will be completed.
- Budget, how much is each task going to cost?

9.9.1 Personnel

In research projects which involve more than one researcher it is important to plan who is going to carry out the different tasks. Decisions regarding the division of labour within a research team is linked to making efficient use of the human resources available. Thus individual members of the research team may be assigned different roles based on their perceived capacities. Some people are particularly adept at interviewing whereas others have more incisive skills in analysis.

To facilitate the development of grounded theory it is vital where group research is being carried out that the researchers share and discuss the basic theoretical and empirical knowledge which is acquired in the course of the research process. In such projects regular meetings and discussions are vital if the researchers are to retain a cohesive research process. A good co-ordinator and organizer is a vital person in a group research project, an individual researcher can gain a great

deal from having such a person to consult as they organize their own research.

9.9.2 Logistics

Logistics is a term that originated in a military context and means the overall practical organization and implementation of a campaign. A research project is similar to a campaign as there are many component parts that have to be considered, fitted together and, at times, pursued simultaneously. Research is not a linear process which moves mechanically from one stage in the research plan to the next. From the commencement of the research process, analysis and the application of grounded theory to the development of the research is, and ought to be, ongoing.²⁷ For example the literature review is also an ongoing activity, nonetheless some researchers regard it as a preliminary activity and do not return to the literature review except to edit it during the write up phase. However, as the research proceeds relevant literature which was not identified at the start of the research and which may have influenced the direction of the research, it needs to be incorporated into the literature review of marked for reconsideration during the analysis stage.

The initial research tools will, as already pointed out, have to be adjusted in the process of field work. The research problem may also need to be adjusted and refined in the process of fieldwork and data analysis. However, the researcher needs to take care to ensure that she is preserving her initial focus and only amending the research process after careful consideration of the objectives of the research. At this point it is useful to go back to the research topic and in particular the thesis sentence and review the reasons for change and whether such change will assist in answering the primary research question.

Before embarking on the field research the need to obtain permission to interview officials, access an area or observe events should be investigated. It is most inconvenient to discover that special permission from head office in a capital city is needed to carry out interviews or observations when you are already in a remote part of the country.

When visiting an unfamiliar area a list of contacts is very useful as

27. See Chapter 10, Grand or Grounded Theory.

this facilitates the data collection. Always have a detailed map of the research area in the research equipment. Ascertaining the terrain that you will be covering is a sensible move as this will determine the kind of vehicle that may be needed to accomplish the research, how long trips will take and the supplies needed for the journey.

It is important to ascertain in advance who is likely to be present at any particular point of time in an area and their personal availability. One would not think of barging into the office of a senior government official and demanding an interview. Advanced planning avoids such problems. It may not always be possible to contact individuals in rural or even urban areas in advance, nonetheless peremptory demands on their time should not be made. A little sensitivity often smooths the way and time will be found. Many novice researchers seriously underestimate the time it takes to conduct an interview, and if there has not been a pilot study they may end up with overlapping appointments. It is preferable that the researcher has to fill in time waiting for a scheduled appointment rather than that a respondent is kept waiting.

9.9.3 Time Budget

Because so many research projects are deficient in time, budgeting the end product, despite considerable hard work, is often very scrappy and looks, just what it is, a hastily thrown together amalgam of the research data collected in the field and a few random conclusions.

It is difficult to indicate how much time should be allotted for each phase as the time varies as to the academic intensity of the research. A Ph.D. takes a minimum, in most cases, of three years full time work, 6–9 months on the preliminary literature survey and decisions about a final topic, 2–4 months data collection. Around 6–12 months are needed to analyse the data and the rest of the time, which becomes increasingly inadequate, is spent on the write up, editing and revision. Shorter projects will also involve data collection but the intensity of the analysis and the extent of theorising is usually far less, so this will affect the time budget.

One of the most underbudgeted elements in the time table is that of data analysis and the write up of the research. Most researchers can make realistic assessments of the field work phase but grossly underestimate the amount of time that needs to be spent in the library and on the analysis, write up and editing phases. Failure to appreci-

ate how long data analysis and write up take, also leads to underbudgeting in the financial arena. Thus just when the fruits of the work are evident the project has to be wound up or valuable time has to be spent on searching for more funds.

Fitting the time budget into a calendared schedule helps the formulation of the research design. The researcher can then review whether her overall plan is feasible. Throughout the research she can determine how the research is progressing in relation to the original time frame and make adjustments where necessary, perhaps an extension of time or funding may be needed to complete the research satisfactorily. Preparing a time budget also helps the researcher make a realistic appraisal of the likely costs of the research.

The table below represents a time frame for a relatively short project, 16 months, with one full time researcher being involved.

Activity Plan			J	F	M	A	M	J	J	A	S	O	N	D
Literature review	X	X	X	X	X									
Detailed planning		X	X											
Pilot study				X	X									
Analysis of pilot study					X	X								
Review						X								
Data collection							X	X						
Analysis								X	X	X				
Write up										X	X	X		
New year														
Editing	X	X	X											
Revision		X	X	X										
Publication			X	X	X									
Information dissemination		X	X	X	X	O	N	G	O	I	N	G		

Decisions as to when to carry out the different tasks will depend on various practical considerations. It is important to remember that potential informants may not be available when data collection logically fits into the research plan.

The researcher needs to consider whether or not her targeted research subjects will be available when she wants to carry out the field

research. It has long been suggested that times of high agricultural activity in rural areas are not suited for conducting research as the subjects are likely to be too busy to give time to researchers. However, this is also a time when people are most likely to be in their home areas. Provided the researcher is prepared to fit in with the daily timetable of the people as they go about their activities it can be a very fruitful time to go into the field. Recent WLSA research into Family Forms and Women's Access to Resources established that during the rainy season people were working their land allocation and were more generally available than had been initially contemplated. The biggest problem was not the availability of the interviewees but the transport logistics of dealing with muddy and impassable roads. The time frame for the research had forced the teams to research during the rainy season, the finding on availability of interviewees was a form of enforced grounded analysis.

Nonetheless, careful consideration should be given to the timing of the data collection as other activities can always be carried out while a more propitious time is awaited for the collection of data.

In urban areas although data can be collected throughout the year the researcher may need to decide at what time of day to collect the data. If for example the target population are likely to be in employment there is little point in going during the day, it is better to seek out the informants in the evening or over the weekend. During the day even though there may be people present, they may not be sufficiently representative of the area or the groupings within the area.

9.9.4 Financial Budget

Financial budgeting, in any detail, falls outside the scope of this book. However we can give a few hints as to what needs to be considered.

The cost of each task listed in the research plan has to be carefully considered and worked into a budget. Looking at sample budgets from other projects is one way of getting a general idea as to what needs to be considered. The costs of various services, such as transport and vehicle hire, accommodation, subsistence needs in the field should all be obtained before the budget is attempted. Equipment, stationery, data recording and preparation costs also need to be calculated as does the cost of producing the research report.

In long term and group projects salary or stipend and other per-

sonnel costs need to be carefully calculated as lack of adequate remuneration can severely dampen the ardour of even the most dedicated researcher.

9.10 Conclusion

Needless to say, no research plan will be perfect and there will always be a need to replan and draw new schedules of activities as the original plan is tested against realities. In this chapter we have discussed the critical nature of the research design. On its efficiency and practicality hangs the fate of the research project. The use of grounded theory, the collection and recording of data is discussed in the next three chapters.

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Grand or Grounded Theories

Summary: This chapter draws together a number of the themes of this book. It both looks back in terms of the use and application of theory and forward to the data collection and analysis phases of a research project. It involves the description of tools that are used in extending the field of analysis and developing new theoretical perspectives during the research. In more concrete terms it describes the processes that are followed from the finalization of the planning of the research to the collection of data as well as some factors that influence the data collection.

10.1 Introduction

In the previous chapters we have considered some of the theories that might be adopted in research into issues affecting women's legal and social status. We have also made some suggestions about research design and problem formulation, and some ways of demarcating the field have been explored. We now turn to ways in which by selecting from these techniques and perspectives, the researcher can move into the development of theoretical positions relevant to women's law.

10.2 Proceeding from the Research Design

«The research design is an action plan for getting from the initial set of questions to be answered to some set of conclusions about these questions. Between those sets of questions and the concluding answers lie a number of major steps including the choice, collecting and analysis of data.» (Yin 1984)

The objective of this chapter is to examine how the researcher moves from the initial questions, to new questions that data collected to answer those questions generate. At the same time the researcher

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should be analysing and evaluating these initial theoretical assumptions and developing new concepts which in the end may develop into theories. In the following two chapters we describe data collection and data recording techniques. In pursuing these two aspects of the research it is, however, important to keep in mind the ideas behind grounded theory.

Data collection and analysis cannot be randomly and erratically pursued, there must be some overall direction. The problem of direction should have been largely dealt with by the research design. However, behind the research design there are various theories and assumptions that have guided the researcher to the formulation of the research problem and the research plan. These need to be specifically confronted and addressed during the research process, the first stage is to articulate them and the second stage is to proceed in a logical manner to address their significance to the study and to the academic area under study.

10.3 Theories and Hypotheses

Theories and hypotheses are central concepts in empirical research. However, these terms do not have uniform meanings throughout the research world. One definition drawn from the social sciences describes a theory as a set of connected hypotheses, where a hypothesis is defined as a proposition about a causal relationship between empirical phenomena. Another definition refers to theory as an accepted explanation and hypotheses as assumptions which are considered reasonable. What the researcher is seeking to do regardless of the chosen definition of these terms, is to harness the process of ordered and logical thought to carry out effective analysis of collected data and to evolve appropriate theories to understand and explain her empirical findings. In women's law research setting out to explain why women don't use legislation that seemingly improve their lot it is, as pointed out in Chapter 13, the latter definition which is invoked.

The next question to be addressed is what is theorizing, how is it done and what are the characteristics of the process. There is nothing remarkable about theorizing nor is it an activity exclusively indulged in by academics and scientists. Most people are constantly trying to understand and explain events and daily happenings. The hall mark

of, what we will term here, «scientific» theorizing is that it is carried out consciously and in an orderly manner with a specific purpose in mind.

The following example illustrates the difference between explanations based on common sense reasoning and the understanding of a phenomenon based on research. Southern and Eastern African newspapers sometimes carry stories about widows being deprived of their deceased husband's assets because one of his relatives has «grabbed the property». The common sense based explanation, put out by journalists, usually refers to the greediness of the «grabbing» relative. However, the women's law researcher should go further and explore the various dimensions of the problem: Is grabbing a reality? If so: Who grabs? From which kind of widow do they grab? When do they grab? Where do they grab? What do they grab? Why do they grab? What is their justification, if any, for their actions? What role does the law play?

From this kind of research the researcher can build up a theory about «grabbing» and «grabbers». Before such research has taken place any considerations of the issue are probably based on speculations and assumptions.

10.4 Theory Building

The next questions to be addressed are: How are theories built up within an exploratory research process? What data needs to be collected? What guides the process of theorizing? We discussed earlier the problems associated with the adoption of grand theories as the controlling elements in a research methodology. It was noted that whereas they served as useful pointers and gave general guidance in the initial stages of the research and provided ideas that might be returned to at the analysis stage, such theories were not particularly helpful in describing and understanding the position of different women living different lives.

The women's law researcher who wishes to explore the lived reality of different women's lives in different social contexts and investigate the efficacy or relevance of the law to those lives, must handle this task exploratorily. Based on her findings the researcher must try to develop theories that will be appropriate tools for the analysis of women's social and legal status. Such theories from an action per-

spective should facilitate the improvement of women's status.

Adopting the women's law approach does not mean abandoning a detailed and thorough examination of the law. Women's law researchers have to be effective «black letter» lawyers, for, without these skills the research results cannot be channelled back into the law. Rather, what is being sought beyond the formal law, is the ability to select from a wide spectrum of sources so as to create and contribute to a legal science which is more responsive to social transformation, in particular to changing gender relations.

The next question is how does one move from the present state of knowledge to a deeper and more profound understanding of the position of women, such that new theories can be developed.

The process of theory building based on empirical data might be termed in the Southern African context «the dung beetle method». In the process of gathering material the contents are sorted and sifted. As the data are considered and the «ball of dung» analysed comparisons made with other «balls of dung» generate new insights, and from these concepts, hypotheses and theories can be derived. Thus grounded theory is developed throughout the research process. We now turn to some of the techniques that are useful in developing grounded theory.

10.5 Discovering Grounded Theory

Glaser and Strauss (1967) suggest six skills or tools which the researcher can employ in the research process and which act as guidelines in the grounded research process.

10.5.1 An Open Mind

The researcher needs to start as far as possible with an open mind, meaning without a rigidly pre-conceived or imposed theory. What we mean by this is that the researcher should not have confined the ambit of the study by the imposition of one of the grand or meta theories. In this context such formal theories should be regarded as more in the form of what Giddens calls «sensing devices» (Giddens 1984).

However, this demand for «openness» by Glaser and Strauss should not be taken as a synonym for a «tabula rasa», a mind not in-

fluenced by experiences and impressions. This is obviously impossible! What an open mind means is that the researcher should be aware of her basic assumptions and suppositions and of the basis for them, and should take nothing for granted. We all have assumptions and ideas about how the phenomena we are going to study are inter-related and have predetermined views and ideas (assumptions) about the predominant characteristics of events, phenomena and people. Such assumptions consciously or unconsciously affect the choice of data to be collected.

In pursuing a grounded theory approach the researcher should «name» these assumptions and try to identify their origins. The researcher may be influenced in her views of the issue by common myths such as gender stereotypes about the roles and characteristics of men and women. For example her assumptions about the issues to be researched could have been based on experiences in private life, in employment, as a member of a particular society, through reports in newspapers or prompted by television programmes. These assumptions may or may not be supported by empirical data. Thus, an open mind also means to be prepared for a revision of the original ideas and questions that influenced the initial problem formulation and, consequently, the data collection process.

This process of identifying the factors that affect the formulation of a research topic and the assumptions that are made about what to research and the tentative hypotheses that are put forward, can be a difficult task. Throughout our lives we absorb views and impressions which affect our perceptions of the world, these become deeply imbedded in our unconscious minds. Thus it may be difficult to bring these more or less unconscious sources of assumptions and their basis to the surface for conscious consideration.

One way in which the researcher can address this problem is to use memory-work (Haug 1987, Freeman 1993). We have discussed this extensively in the previous chapter.

10.5.2 Next Question Technique

The second tool to be developed in the pursuit of grounded theory is the next question technique. Data collection and theory building are parallel processes. The analysis of data must be concurrent with and guide the data gathering process. An inflexible research design formulated in advance of the field work is unrealistic and can not, in re-

ality, be made. What is needed is a general plan which is constantly reviewed and amended in the light of the progress of the research, the uncovering of new issues and directions. By using a field diary²⁸ the researcher has a tool in which the first steps taken and reactions to these can be recorded. This provides a means by which the early experiences can be reviewed and, based on these, various revisions can be made to the content of questionnaires and focused interviews, such as adding new questions or removing those that are superfluous or inappropriate. Likewise more broad based revisions might be made to the overall research design based on the early experiences and initial data collected in the field.²⁹

Even where your first experiences confirm your initial suppositions there is a need to ask the next question: Will these initial findings be valid in all cases and in all situations? This is an ongoing process throughout the entire research period. In the process of generating grounded theory there is no need to maintain a division between the pilot study and the main study. Even if a pilot study is undertaken it is usually to determine the feasibility of the study, and where significant data is uncovered, it will be included in the final analysis. Where new directions and perspectives are uncovered during the collection of qualitative data in a pilot study, this enriches the rest of the research and is a critical part of the development of grounded theory.

When grounded theory is employed as the guiding methodology, review of the research plan occurs frequently during the research process, not only after the initial phase. It is an iterative process, increasing or reducing the types and forms of questions and number of units to include in the study, as well as precisely what data to seek and where to seek it.

An example of the «next question» technique is well illustrated in one of the WLSA projects on maintenance.

IN SWAZILAND it was discovered that claims for maintenance were connected with cases dealing with the breakdown of marriage involving desertion, separation or divorce. Unmarried mothers were effectively absent from the data collected on court actions. The obvious question was why they were not using the courts to claim maintenance? In the original data capture forms there were ques-

28. This is discussed in more detail in Chapter 12.

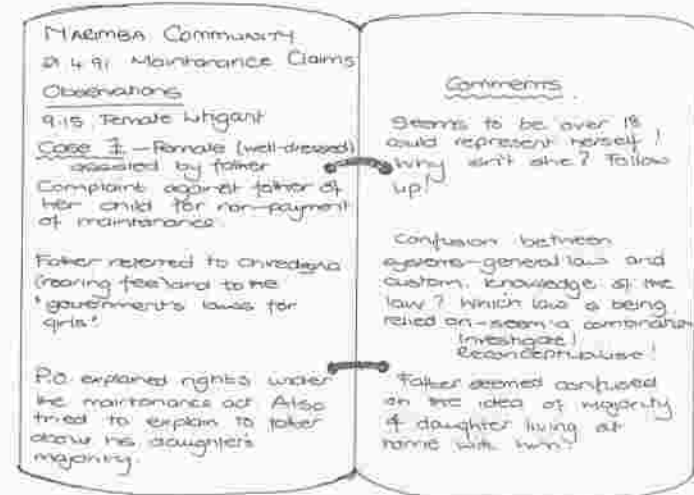
29. See Chapter 8, Demarcation of the Field of Study.

tions to be answered by women both litigants and non litigants about their views and attitudes towards the use of courts as a means of pursuing maintenance claims.

The early finding that the unmarried mothers were absent in the court records inevitably lead to questions about structural factors. Was there a common factor in the social situation of unmarried mothers which prevented their going to courts? This had to be further explored, it would not be enough to ask the original questions as the women might omit reference to personal motives and problems when there was a directed question.

In fact, as it transpired, most of unmarried mothers were living in their natal home under the authority and protection of the head of household and thus one explanation was that they probably had no choice in the matter. Alternatively one might begin theorising about women's exercise of options, and from that develop ideas about how they decide to access and use available resources. For example one hypothesis was that support from her natal family might be of greater benefit in the long term than ad hoc and at best periodic maintenance from the father of the child which often had to be vigorously pursued through the courts.

This iterative process should be followed not only in relation to the overall design but also at the daily level. The field notes on the data collected should be reviewed before going on to the next data capture opportunity. Likewise each day's data should be provisionally analysed before going on to the next day's field observation or inter-



view and the result of the analysis taken down in what Strauss (1990) calls a «memo». The presentation of raw data and the comments on the data should be kept separately. When you go back to your notes you must be able to distinguish between observed material and your interpretations. The sample page, set out below from a well kept note book records on one page the raw data collected and on the other page comments on that data for future reference and building up the theory are made.

As can be seen under the observations column only those things that can be actually observed are listed, on the accompanying page headed «Comments», the researcher has noted some of her interpretations and assumptions and issues that she wishes to pursue further and points pertinent to the further refinement of the research plan.

10.5.3 Concept Building

Thirdly, we turn to concept building. The efficacy of this process depends on the gradual build up, during the research, of the data and observations and comments on that data. If the researcher has started preliminary classifications in the field and begun considering the implications of these for the overall development of ideas and theories, then the most difficult part of the process of theorizing has been tackled.

We have emphasized the need to constantly review the data and consider the development of the research in the light of these revisions. For example in the research design there were probably some initial assumptions about the ways in which the data would be collected and classified. Initial assumptions might have been made about the importance of age groupings and the sex of the informants or the type of problems that might arise and how they would be resolved. During the data collection it might transpire that there are other factors to be considered, these could complement or displace the initial classifications depending on their relative significance.

THIS IS ILLUSTRATED by the WLSA Zimbabwe Inheritance study where a primary issue to be investigated was that of a widow's right to inherit her deceased husband's property. What became evident at an early stage in the data collection was that the type of property was a significant factor in whether or not the widow would have any long term rights or control over it. Different forms of property were treated differently by the members of the

families and by the various administrative agencies. Various categories of property and the way they were dealt with were built up during the data collection phase. For example rights in land were classified based on whether they were in communal, resettlement or commercial farming areas, as each was treated differently. During the field research it emerged that there were many factors that affected the way in which widows fared after the death of their husbands. The type of property, its location, the controlling interests in the property or its cultural significance determined how it would be dealt with, rather than the provisions of the formal law.

The conceptualizing and reconceptualizing through ordering and re-ordering of the implications of observations under various categories or variables is an ongoing exercise, and cannot be postponed until all the pre-planned data collection is completed.

During the research, abstract concepts need to be kept under constant review. The concept legal knowledge is such an abstract notion. It can have a number of different meanings and which one or ones are adopted by the researcher will have a significant effect on the development of the research, the ultimate findings and the conclusions.

FOR EXAMPLE the researcher might seek to discover knowledge of the formal law. During the initial phase of the research it may transpire that although those interviewed do not know the formal legal provisions in a given area they may have a broad notion of what is right and fair under the circumstances. They may be aware that there is «a government law» on the issue or have knowledge of where to go for assistance with regard to a particular issue. Thus whereas knowledge in this context might have initially referred to the awareness of the content of a specific piece of legislation it might, through the iterative process, be modified to a focus on knowledge of rights in a more general sense. Thus the definition of knowledge of the law changes during the research. Obviously this will profoundly affect the findings to be made on the extent of knowledge of the law. A different way of conceptualizing legal knowledge might be by reference to people's knowledge of local customs and practices rather than to the formal law applied by the courts.

If the researcher starts with a research design to collect data on interviewee's knowledge of the content of legislation the finding at the

end of the research might be that there is ignorance of the law, but this could be a very misleading finding for a number of reasons. Some individuals may not be able to articulate their knowledge in the formal sense but may have adequate perceptions of the relevant norms in their practical consciousness, norms that have been internalized in the course of the socialization process and followed without deliberation or reflection. Ordinary individuals are aware of norms and often debate their content and defend their perceptions of local norms (Giddens 1984). But they do not usually articulate these as norms or legal concepts but as information they have acquired from various sources or imbibed as part of the community. Thus, both formal law and customs and practices can be found among the population as detailed and precise discursive knowledge or as applied unconsciously assimilated knowledge.

To avoid falling into the trap of assuming ignorance of the law when there is knowledge among the community of norms and practices, the researcher should ask a number of fundamental questions such as:

- Under what circumstances can it be said that legal knowledge/literacy is present or absent?
- Is knowledge of the law to be classified according to certain pre-determined criteria?

The concept of legal knowledge is under scrutiny during the research, its meaning and descriptive effectiveness analysed such that it may be reconceptualized and new theories about what is needed in this realm derived.

In analysis and theory building the researcher is faced with a further conundrum. How are the concepts that are developed, to be interpreted and used in the analysis? Perhaps the formulation and reformulation of concepts might facilitate other interpretations or have wider implications in the overall analysis. Concepts and theories that are developed during the research are also the subject of internal scrutiny as are the selected sources of data. The risk in not keeping the critical concepts open and under constant review is that at the end of the research a seemingly valid conclusion may be reached, for example that people are ignorant of the law, which may be misleading if in reality people are aware of the substance of the norm but not of its formalized content. The individuals in the com-

munity may be aware of their rights in a general sense and may know how to pursue them but they cannot name them in a formal legal sense. Abstract concepts that are often used uncritically without first problematizing them or considering their operational applicability are: justice, access to law, conflict resolution, law and customary law.

10.5.4 Constant Comparative Method

The fourth skill or tool to develop in the creation of grounded theory is that of ongoing comparison, the constant comparative method.

The purpose of comparing data as it is collected, is to use the finding of similarities and disparities between data collected from different areas in the ongoing reviewing of the original plans. Each comparison reveals new properties and characteristics of the subjects of investigation as well as insights into the fields and areas in which they function. Comparisons do not need to be undertaken on a grand scale, usually they are a natural part of all research. Research in women's law automatically invokes constant comparisons between different women, different situations and the different forces that affect the outcome of events. Comparisons must always be guided by the researcher's assumptions about the connections between different influencing factors. The contexts from which the data to be compared are to be sourced must also be carefully considered, there is no point in comparison merely for the sake of comparing. «Leaping» into comparisons without a thorough exploration of the relevance and purpose of the exercise is ill advised.

The technique of constant comparison could be used in a study of the factors which affect women's choice of one dispute resolution institution over other available institutions. Some early hypotheses might be based on the different kinds of procedures used in the fora to be compared. The research design would need to include institutions which are similar in some respects and others that are dissimilar. The researcher will need an open ended data collection method so that the litigants can give their impression of the courts and their experiences. Obviously, as such research develops the methods will be reviewed and questions refined so as to produce findings based on comparisons between the various fora. In the process of comparing the observations and interviews it should be possible to determine the significance and importance of formal versus informal procedures in women's choice of institutions.

10.5.5 Theoretical Selection or Sampling

Element five is theoretical selection or sampling which is a feature of grounded research that has been constantly alluded to throughout this book. In this context it goes beyond expanding particular predetermined data to be collected, into expanding the ambit of the research and what needs to be investigated. It could involve including new geographical areas, new concepts, new areas of the law or customs as new issues arise or questions are posed through the research process.

It is a process by which you decide on analytical grounds, what data to collect next and where to find it. It is an ongoing process by which new factors to be researched are added to the research design to explain or amplify earlier findings or address contradictions revealed by conflicting data.

IN JENNIFER OKUMU Wengi's study the research design did not, at the start, include rural areas in the sampling of data. Constraints imposed by sparse resources had influenced the initial limitation to urban areas. Experiences in an early phase of the research process convinced her that comparison of the urban data with data from rural areas was important. The reasons for this were that in the initial urban data collection it was found that women members of the panel of judges took an active part in the proceedings and appeared very confident in their roles. This was somewhat contrary to the expectations of the researcher who had assumed through her own previous experience as a defendant in a case in a rural Resistance Court that women judges had little influence in such courts and that they were not articulate. To achieve a balanced analysis two rural Resistance Committee districts were included in the study (Okumu Wengi 1995).

Conversely the grounded assessment that very little would be added to the theoretical understanding of the topic by a broad data capture area, can lead to a trimming of the data collection exercise. Concomitant with this is, when and how does the researcher decide when to stop collecting data and broadening the research parameters? How does she know that it is time to abandon a particular avenue of enquiry?

10.5.6 Limitations on Theory Building

Thus we turn to a sixth element, the limitations on theory building. In most cases the available resources set limits on data collection, but then the question is whether the available resources were used in an effective and appropriate way?

This takes us to the review of the whole notion of development of grounded theory which involves: development of suppositions, models and theories. In conducting this review the women's law researcher's standpoint as a critical researcher as well as her primary objective to find effective ways in which to empower women in a meaningful fashion needs to be kept in focus. There is also the long term objective of carrying out research that is of practical use to women, even if the immediate purpose of the study being undertaken is to address other objectives.

All the above factors and considerations will influence what is considered significant by the researcher, but as the research progresses some concepts and relationships between concepts seem to be more relevant in explaining and understanding the issue or issues under scrutiny. These are the «core» concepts, they may or may not be the ones initially envisaged as key to the analysis. When new data cease to add new perspectives to these concepts the researcher has reached «saturation» and should now be able to formulate theories about the findings.

An example from the WLSA Lesotho Inheritance study illustrates this proposition:

IN THE LESOTHO study it was found that people in the rural as well as urban areas were aware of the written customary law provisions contained in written collection: The Laws of Lerotholi. These laid down that the eldest son of a deceased man should be successor to his father's status and in taking over his father's property he was responsible for support of the family. Despite knowledge of these laws, people wanted to allocate their property in such a way that a child who had helped to look after the parents could benefit after their death.

In researching this issue the concepts of an irresponsible heir and a deserving child were developed. A considerable number of respondents (who were aware of customary provisions) mentioned that parents have a duty to leave their property to a child who has helped with the welfare of their parents. When examining the profile of people who supported this course of action, the impression

was that it was a cross section of respondents across all ages and from both urban and rural areas. There were no major differences of opinion based on sex.

The researcher's wondered how much data they needed to collect to provide sufficient evidence to prove that this was a widely held view and should be considered by the legislature. As it was fairly evident that this was a consistently held view across all groups, it seemed that further data was unlikely to reveal a significantly different view. Thus, once new data ceased to come to light further research on this aspect of the study was unnecessary (WLSA Lesotho 1994).

With this critical perspective in mind results can be tested by considering whether they seem ready for presentation to the target group. Another assessment method is to determine whether the theories adequately address concrete problems met in the field and expressed by individuals, if they do then further data on that aspect of the research is probably not required.

10.6 Conclusion

Conducting research using the grounded theory method allows the researcher to develop an open but controlled framework in which she can theorize about the influencing factors that affect women as they interact with the various facets of the law. Thorough research in this way should give better insights into the appropriate measures to address these problems.

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Part III
*The Iterative Research Process:
Field Work and Data Analysis*



Observation and Interviewing

Summary: In this chapter the various forms of data that can be collected from the field and the influence that the collection techniques and the selection of the sources can have on the data, are discussed. In considering the various means of data collection observational data is discussed then conducting interviews and discussions, some alternative methods of data collection are also suggested. The chapter ends with some suggestions about approaching the target population.

11.1 Introduction

In the research design phase decisions will have been made on what type of data to collect, where to collect it and from whom. The data to be collected largely determines the appropriate data collection methods. In this chapter we discuss the various methods which can be used to collect observational and oral data. Thereafter the researcher can decide which of these, in the light of her research topic and the on going research and analysis process, seem to be best suited to her needs.

11.2 Data Collection Opportunities

When in the field researchers should be alert to the multitude of data collection opportunities that are presented to them outside those determined during the design phase and at later stages during the research process. The researcher also needs to be prepared to make on the spot decisions as to which data collection method to use. If for example the initial intention was to conduct an oral interview but there is a major social event in progress in which the targeted interviewee is a participant, this might be an opportunity to gain some observational data, followed up by a more formal interview at a later date. Also other possible interviewees and data collection opportuni-

ties may emerge during the proceedings, this is grounded theory methodology in practice.

Carefully planned data collection exercises do not always go as expected. For example observations of court proceedings may be frustrated as the matter may be postponed or there are no cases dealing with the targeted subject matter on the court roll. However, this might be an opportunity to seek impromptu interviews with individuals who are at the court or hold discussions with officials. Sometimes these «unplanned» data capture exercises can be among the most fruitful of the research period.

Even when the agenda is working to plan, the researcher needs to be aware of the other data capture opportunities that are constantly being presented. Almost every data capture exercise involves some form of observation. At a research site by watching and recording impressions of the area and the activities of the people, the researcher obtains invaluable background data to aid in the understanding and analysis of the oral and written information that is collected, and this again may influence the original assumptions.

Examining administrative records creates opportunities to observe how the office is run. If you are positioned near the public it is possible to observe and note, discreetly, how the public are treated by the officials. The state of the office may be of interest. Is it orderly? Are the files well organized? All these factors are potentially pertinent to the research findings. Arriving a little early for interview appointments with officials and sitting in a common concourse or in a busy reception area can yield a considerable amount of data.

IN A STUDY conducted in Zimbabwe during the Women's Law Diploma Programme in 1994 it was discovered, accidentally, merely by sitting and listening to what the mothers of new born babies were told by a clerk in a hospital, that women were being misinformed about the legal requirements for the registration of the births of their children. The clerk informed mothers that to register a birth they needed a range of witnesses not mentioned in and certainly not required by the Births and Deaths Registration Act. Such data was later triangulated with information obtained from women as to some of the reasons why they did not pursue the registration of their children's births.

Likewise a senior official who states that he or she always gives callers a full hearing and speaks to anyone who wishes to see them, may be

quite genuine in this belief, however an officious secretary or clerk may be turning people away, unbeknown to the official.

11.3 Passive or Direct Observational Data

The researcher may restrict herself to a role as passive observer when she is observing practices, proceedings, events social functions and rituals, and by observing human life and social interactions. This is distinct from participant observation where the researcher observes and participates in the events under scrutiny. In passive observation the observer is distanced, in the sense of non involvement, from the events and initially has only a visual and oral record of the proceedings.

Observing the subjects of a study as they interact with the society, their families or officialdom helps reveal why certain events occur and what influences the behaviour and attitudes of the subject population. The relationships between individuals, gender hierarchies and power structures when observed in action may help in the understanding of dispute resolution or resource allocation within the family group or the community.

Passive observation can be problematic in that the researcher does not necessarily know the full story and may draw unwarranted inferences. However as long as such materials are largely used as background data and kept in proper perspective it is of significant value.

A very common mode of observation used in studies with a legal basis is that of court observation both in the formal state courts and more informal peoples or customary law courts. Such observation gives a great deal of information about processes and procedures, interactions between the courts and litigants. The demeanour of men and women, the behaviour of the officials gives insights into how responsive the courts are to the needs of individuals.

Such data can thereafter be combined and triangulated with follow up interviews with the participants in the litigation or through interviews involving other members from the community.

11.4 Participant Observation

Participant observation is a method of data gathering, where the researcher is accepted and has a role as a member of the studied group

or community. This form of data gathering gives an inside picture of what happens, the organization of the activities and the group members' beliefs and interpretations of events and occurrences. The participant observer has two roles: that of the researcher and that of the active participant in the group or the community. While participating the researcher is also noting what is taking place and, far as possible, recording her impressions with an open and enquiring mind.

Very useful data was collected by researchers in the WLSA Inheritance Project as participant observers in family events such as funerals, property distribution exercises and the host of ceremonial activities that take place after a person's death. Such events are not usually analysed by the participants; however the researcher viewing them through the eyes of an observer may identify social structures and practices that control or affect the activities of the observed, which are not apparent to the members of the community.

Participant observation involves two way communication and over a period of time, or by virtue of the already present familiarity, the observed become more relaxed and more communicative. A particular advantage is that as the researcher is either a permanent or at least a semi permanent member of the community, she can follow up her observations over several days or occasions or engage members of the community in conversations about the events and practices.

In researching the familiar there is a danger of overlooking significant data as living for long time in a group may lead to taking things for granted. This is even more problematic where the researcher is a member of the community and accepts certain happenings as normal, when in relation to the research they may warrant further investigation.

As a participant observer the researcher has to decide how to introduce herself to the group, or to the research subjects. There are three well known approaches: overt, semi-overt and covert (Whyte 1984 and 91). Many participant observers have chosen a covert or semi-covert role to avoid influencing the social situation they were studying or to avoid negatively influencing their access to data. Where the researcher is already a member of the group to be researched she might choose not to mention her research interests and intention to use the group for research purposes. However, there is the risk that subsequently the subjects of the research may feel betrayed and this may be detrimental not only to her work but to atti-

tudes to other researchers in the future. The preferable approach is to be open about the research intentions and purpose and assume that the novelty of the researcher's presence will wear off (as is in fact a common experience).

11.5 Oral Sources of Data: Interviews and Group Discussions

There are various ways in which the researcher can elicit information from individuals or groups on matters affecting women and the law. These might be by exclusively oral methods or by way of written questions from which written or oral answers are produced.

The various forms of interview or discussion can be categorized according to how much influence the researcher exercises over the direction of the interview and thus how free the interviewee is to relate his or her own story or life history. The distributed questionnaire with closed questions or the interview schedule used in surveys give the respondent little, if any, scope for personal input. The researcher has predetermined what is sought and the possibility that the respondent may have additional insights or information beyond the questions asked is not catered for.

General surveys or closed questionnaires are useful in obtaining general impressions of attitudes and feelings about an issue or creating a broad profile about certain situations, they rarely contribute to in depth understanding of the issues.

In contrast, the more open forms of interview allow the respondents to include what they consider relevant or pertinent. Keeping track of the dialogue and making sure that the issues are thoroughly explored can be taxing. The women's law researcher focusing on women's lived reality and how events shaped their lives, is more likely to find rich seams of data by using the open interviews and discussions than by proceeding from predetermined assumptions addressed in closed interview schedules.

THE CONTRASTS between these two modes is illustrated by Finch (1984). On arriving for an arranged interview she discovered that a formal, very structured interview was already taking place with her targeted respondent. She was able to sit and observe this interview and to subsequently compare the information gathered by

using a restricted questionnaire format with the more open and flexible methods, open ended questions, that Finch herself employed. Her analysis was that the more flexible approach yielded far more pertinent information and that there was a responsive exchange of information rather than the mere collection of data.

This kind of approach, it can be argued, is more in line with the approach advocated by Oakley. What she cautions against is the false notion that the interviewer has to remain an objective disinterested observer, that she cannot become engaged in information exchange or in personal aspects of the interviewee's life. The fact that an exchange or discussion is entered into rather than a formal interview, does not disqualify the material gathered in that interview (Oakley 1981).

11.6 Selecting the Interviewee or Group

Finding the respondents and groups means asking about suitable persons who can identify your target persons. This might be local government or court officials, church leaders or members. Randomly selecting homesteads or areas can be effective if the information required is of a general nature, but when the data required is on a particular event or legal issue those who have experience of the phenomena need to be sought out.

Church or women's groups are ready sources of group interviews but they can be skewed as with those based on membership of political parties. Other ways of getting to the people are through co-operative societies, worker's groups and people gathered together for specific tasks and purposes. It is worthwhile seeking out a diversity of views and sources of views as a broad spectrum of groups and individuals lends credibility to your data.

Key informants are usually targeted in advance and arrangements made to see them, however, while in the field the opportunity to expand the range of key informants as a result of the suggestions of others should always be followed up. Often at the start of a piece of research the role of a particular individual or organization might not be seen as important but once in the field their significance becomes self evident.

If family issues are being pursued the simple solution is to start with one person and constantly cast the net wider, following up,

dung beetle like, each new lead. Control is maintained by constantly considering whether the next person is likely to be linked to the main research direction.

The same approach applies to case studies that are located via court or administrative records, the researcher begins with the record and then follows up the leads as and when they arise.

11.6.1 The Over Eager Respondent: Spontaneous, Automatic or Self Selection

Once the researcher is in the field there is a need to be wary of people, events or cases that seem to be thrust into her path. The question has to be asked whether they are really appropriate to the study.

Self selection, especially where the respondents thrust themselves at the researcher, needs to be carefully considered. However, the self selecting respondent should not be summarily dismissed. In the Mudzinganyama case discussed in Chapter 3 the appellant was very eager to tell his version of the events to the researchers and pursued them, on his bicycle, through the research area until they were located. As the case was a central case study it was possible to triangulate his version of the story with that of other people and a multi faceted picture of the dispute was built up.

Such a respondent's inputs need to be carefully evaluated as they may present a version of the events or the customs tailored to fit their perceived aims. Researchers can be seen by such people as a way of validating their claims within the community, even when no affirmation of the correctness of their position is given by the researcher.

11.6.2 The Reluctant Respondent

While some people select themselves for an interview others may be very shy or prevented from talking or constrained by the presence of others in what they say, for example by family members or kinspeople. These «others» may overwhelm or exclude the most useful respondent by their own process of selection.

There are times when a respondent does not want to participate and yet they may be regarded as very important to the data collection exercise. Persistent harassing is unlikely to reap success so different solutions need to be found. Patton (1990) suggests the one shot question, that just might elicit a reaction. While collecting survey

data from farmers, one farmer was encountered who did not want to take part in yet another survey. So instead of begging and pleading the researcher simply said:

«I am sorry I caught you at a bad time. But as long as I am here let me ask you one quick question. Is there anything you want to tell the bastards in St Pauls?»

A two hour discussion, covering the subject matter of the survey took place. A very effective piece of work. The farmer remained oblivious to the fact that he had been surveyed rather, it seems he had the pleasure of complaining. His parting remarks were:

«Well I've enjoyed talking to you, and I'm sorry about refusing to fill out your form. I just don't want to do a survey tonight.»

Obviously this kind of situation requires quick thinking, but that is the job of the researcher to get the information and think while on the move. There is the ethical question that the respondent was not really aware of the fact of the interview for data collection, however a request to be able to use the information can be made. Hopefully approval will be given.

Sometimes the person who has been targeted is reluctant to talk because they feel that they need to have a clear direction or express permission from a superior. Thus it may be necessary to go up the chain of command until someone is found who will authorise the interview. If permission can not be obtained then this is a finding in itself.

Making sure that the ground work has been done on the purpose of the research and informing officials and significant figures in the community before going into the field, is a vital part of the research process.

There is one potential problem with the involvement of local officials, especially where they arrange interviews and discussions and are present at the event and that is that they will often feel obliged to introduce the research topic. In some instances they may misunderstand what is wanted, or the focus of the research, and considerable time has to be spent sorting out the true purpose before any headway can be made. In some ways these problems are unavoidable. Where ever possible try and fully brief the official before the meeting and do not be afraid to, politely, restate the objectives of the meeting.

11.7 Conducting the Interview or Discussion

Once the researcher has secured the interview opportunity she needs to develop a rapport between herself and the respondents so they feel comfortable and confident in talking with her.

In the first part of the WLSA Zimbabwe research on the family, one targeted key informant was very worried about the implications of an interview. After much persuasion and negotiation with his superiors, he eventually, reluctantly, agreed to be interviewed. He made it very plain that he reserved the right to refuse to answer any question. This was readily agreed to. By the end of the interview, which turned into a discussion, he had answered fully every question put to him and was quite relaxed. However, if he had persisted in his refusal there would have been no option but to abandon the interview.

When commencing an interview it is a good idea to avoid questions that ask the interviewer to evaluate issues or give opinions. Initially until rapport has been established and a sense of direction and the level of the interview or discussion has been established, it is best to stick to descriptions and general issues with which the respondent feels at ease.

As the interview progresses the interviewer can begin to ask more probing questions and ask the interviewee or group to make assessments and evaluations, by which time the transition into the interview mode seems to be a natural progression of the dialogue (Whyte 1991). Such a format creates a logical and easy structure in which both parties feel comfortable.

For example asking a respondent in a rural area to evaluate the different ways in which estates have been distributed over a period of years or the way in which widows in general are treated after their husband's deaths may elicit a vague or indefinite response. The same person may be able to describe graphically what happened to specific widows, if the cases are dealt with individually. As the interview develops the respondent may be able to make an evaluation and discuss the different cases, but this is the result of the evoking of the images of the women and the case scenario. Thereafter the respondent may be prepared to draw comparisons and pass «judgement» on the treatment of the widows. Put differently many lay respondents can recount episodes and give quite detailed recollections from previous years, but might have difficulty in describing in an abstract fashion the normative behaviour or patterns that the researcher wishes to document.

According to Epstein, court members could expound the points involved in a case they had been hearing with great command and patience, but they were much less at home with the discussion of hypothetical issues (Epstein 1979).

However, by using the next question technique and probing for explanations of the events or decisions, respondents can contribute useful insights about the events that they have observed or been involved in.

Interviewees differ and some make sweeping generalizations or express opinions freely while others confine themselves to their own particular experiences. Both of these reactions to the interview process are potentially problematic when it comes to drawing inferences from the general to the particular or vice versa. The interviewer has a number of verification techniques that she can use to see whether the general applies to the particular or the particular can be extrapolated to the general. By asking how similar cases have been dealt with, the accuracy or appositeness of concrete examples can be tested by the interviewer attempting to generalize from the example (Burgess 1984). Also the interviewer can probe to determine whether the information given is consistent with the actual behaviour of the respondent. This can be done by asking, discreetly, whether, in practice, she performs the activities or has had the experiences that are described as universal in the community. The reverse process can also be used, which is to ask whether everyone in the community, by age or sex, or whatever is the relevant criterion, also fits the profile or has experienced the phenomena that has been described. It is important to realize that respondents like other people are not always consistent in thought and action.

Verification of the interview data can also be carried out by comparing the interview data with information from other sources, triangulation.

11.7.1 Framing the Question

In conducting interviews the researcher needs to keep the conversation flowing and should avoid asking closed questions. Closed questions are those that can be answered by a «No» or «Yes» or «Don't know» and usually do not lead to further unprompted conversation. In the context of the broadly exploratory and investigative research, framework which is an essential part of women's law research,

whether open or closed questions are used, has a significant impact on the involvement of the respondent in the provision of useful and pertinent data.

The researcher needs, especially at the start of an interview, to avoid asking leading questions. That is questions that contain within them a direction as to the expected answer. There is a clear difference between the following questions: «How was your husband's estate dealt with after his death?» and «Did your husband's family give you a fair share of his estate after his death?»

The first question should allow the respondent to explain what happened and put her own emphasis on the relevant data. The second question has already narrowed the area of investigation and this may skew the data to be obtained. The second question could be asked at the end of the interview by way of a wind up question, but by then the researcher should have data about the overall process that took place.

11.7.2 Interviewing and Listening

There is a very important element that must be kept in mind when conducting interviews or even listening during observation sessions and that is the ability to really listen. Great emphasis is, and must be, placed on getting the questions right and on having adequate interview guides but these are useless if we do not, as researchers, learn to listen.

Too often the researcher, especially one with legal training, can ask the questions, even fall into the cross examination mode, be ready with the next exploratory avenue but she is not listening to what the interviewee is saying. Rather she may be hearing what she expects to hear.

Listening is a very difficult task, it requires full, responsive and undivided attention to the speaker. Practice listening, that is paying attention without interrupting, giving affirmation to the speaker's knowledge and avoiding the temptation to leap in with your own versions or fall into the automatic reconceptualization mode. It is a far from easy task and requires diligent and persistent attention.

While listening on the part of the researcher is a very important skill, the quality of data to be gathered from structured and unstructured interviews largely depends on the discursive capacity of the respondent and his or her capacity to relate their experiences and knowledge to the issue being discussed. Thus the researcher has to

develop expertise in coaxing relevant data from the interviewee. What may seem mundane to the interviewee, «its just everyday practice» may be significant to the researcher. Thus although the researcher needs to let open conversation and unstructured interviews run fairly freely, she can influence their development and direction in various ways. The following adaptations from Dohrenwend and Richardson and Whyte indicate some of the techniques that can be used to prompt and direct an individual respondent's contributions or a discussion:

1 Listening

The interviewer is very restrained and does no more than signal, periodically to the respondent, that she is listening, to encourage her or him to continue talking. Occasional interjections such as «Aha», «that's interesting» and the like are made.

2 Reflection

The interviewer repeats with a rising inflection a word, phrase or sentence, which the respondent has just used, to encourage her or him to continue discussing the thought.

3 Probing the last point or remark made

Following on a remark by the respondent the interviewer makes a statement or poses a question. This is a form of the all important next question technique, where the interviewer gently pursues issues that are raised by the respondent. Failure to probe in this fashion can lead to superficial data gathering, skewed analysis and unwarranted assumptions.

4 Backtracking and probing points made earlier in the interview or discussion

By going back over certain aspects of the interview the interviewer can indirectly ask the interviewee to reconsider certain points or expand on information in a wider perspective.

5 Introducing a new topic

The interviewer raises a question on a topic that has not been referred to before in the interview, this can be used to steer an interviewee away from another topic that seems to have been exhausted for the purposes of the research.

Finch (1984) indicates that making the right kind of initial impression and just being someone to talk to may be sufficient in some circumstances to start the process rolling. Reviewing your own personal experiences in meeting others for the first time, in non interview situations, can help you to see how the exploration of common ground is often slow and tentative. Once common ground is found the flow of conversation is spontaneous. Thus the researcher may need to establish common territory before the interview really starts to flow. The benefits of knowing the interviewee or group members and establishing a rapport is evident when the researcher has follow up interviews.

Having discussed some of the skills necessary to conduct interviews and group discussions we now turn to some of the specific forms of oral interview in more detail.

11.7.3 Discussions and Conversations

Involving a targeted person in general broad based discussion or conversation is one way of collecting social and anthropological data. Such interchanges between the interviewer and the respondents seem like a normal conversation, however, to the proficient interviewer it can be a source of data for a research project. These are techniques which are more likely to be of use in broad based ethnographic or anthropological studies, however, they are useful sources of background data about general social attitudes and views on the topic of research, also they are gathered in a more informal atmosphere than the formal interview setting and may be less guarded.

To adequately conduct an open conversation or discussion the researcher has to be familiar with the respondent's culture, recognize the vernacular and colloquial terms and the cultural nuances so that the unspoken elements of social life are uncovered and the dialogue can move beyond trivial generalizations (Burgess 1984).

11.7.4 Unstructured Interview

A more refined version of the open conversation is the unstructured interview which has a broad general focus, such as problems experienced by women in the work force or marital difficulties. Once the topic has been introduced the interviewer leaves the respondent to determine what issues are relevant. These can also be described as

modified life histories focusing on one aspect of the respondent's lived experiences.

In conducting such interviews the interviewer may at times wonder where the interview is going. However, especially where people are being interviewed about significant events in their lives they may, long before the interview takes place, have synthesized their views on the matter and considered the various factors that, in their opinion, influenced the events.

The interviewing of widows and widowers in the WLSA Inheritance research illustrates this point very well:

ONCE THE research topic was introduced and the respondents were asked to describe the effects of the death of their spouse on their lives, the «flood gates» opened. Women would often commence with recollections of their courtship days and the material and social exchanges between the bride's and the groom's families prior to the marriage. Descriptions of the ongoing relationships and problems would then follow. Sometimes non family members involvement would be drawn into the descriptions. Just when it seemed that the respondent had lost track of the focus of the interview, she would link these preliminary stages and the relationships that developed, with how she was treated by friends and family after her spouse's death (WLSA Zimbabwe 1994).

There are times when the researcher has to exercise great patience and quietly follow the discussion based on the respondent's agenda. Being too hasty in curtailing an interview, or redirecting its focus could mean missing out on valuable data.

11.7.5 Structured Interviews

There are situations where a more structured interview may be appropriate e.g. as a supplement to a grounded study. For example where the incidence of phenomena needs to be established or administrators and politicians need to be convinced that a problems exist, a more structured method of data collection which accesses more people may be necessary. This is also a method to be used when, having conducted a series of generally exploratory interviews or discussions, there is a need to test whether the findings are generally true and a broad simple survey based on the previously collected data and its analysis is implemented.

Where numbers are assumed to be significant using a data collection process which relies on closed questions and pre-categorized answer codes may be appropriate.

Closed questions requiring a one word response, affirmation or denial may be devised, the answers are then recorded on prepared answer sheets. As the researcher may not be able to conduct all the interviews interviewers, research assistants, may have to be employed.

It is the view of the authors that where closed questions are extensively or exclusively used the data collected is largely determined and directed by the researcher's and the informant's own experiences are relegated to a secondary status and may never come to light, to the impoverishment of the research. A quantitative study should be preceded by a qualitative analysis of the kind and quality of the information to be collected by closed questions.

Selection of skilled interviewers is crucial in assuring the quality of the collected information and special training is usually required. The selected interviewers must be able to communicate effectively and understand the social and cultural environment in which they are working.

If this method is to be pursued then it must be realized that preparing questionnaires and structured interview schedules is not a matter of churning out a list of questions. The structure is important, as is the order of questions and the manner in which responses are to be recorded. Where computerization of the data is intended the questionnaire needs to be constructed so that it can be properly coded and expert advice must be sought from the beginning not after the data has been collected and cannot be deciphered. Where closed questions are to be used a pilot study that is analysed before the main study is commenced is essential.

11.8 Group Discussions

The skills required to conduct group discussions although similar to those of the one to one interview are slightly different. In particular the researcher needs to ensure that all participants have an opportunity to speak and that one person does not drown out the others or «hog» the floor.

There are also problems of gender or generational dominance and reticence of certain groups. However, this may not be as prob-

lematic as is generally supposed where mixed sex groups arrive for a group discussion. In all probability where a woman researcher is conducting the discussion there will be adequate responses from the women. If it seems that men are closing out the women's views or the older generation is dominating the younger participants, it might be advisable to have follow up discussions with these groups. Another solution is to ask specific questions of targeted groups that temporarily exclude the participation of those who have been dominating the discussion.

Many of the WLSA research groups were aware of the research lore that states that in rural areas in Africa it is impossible to get the views of women when men were present and that the women would be very reticent. Persistently this was disproved when there were group interviews, women were vociferous in the presence of men and did not seem to be inhibited. The source of the disproof was that group discussions were organized by persons other than the researchers so that the voices of women were not provoked by the researcher. Once the venue for the discussion was reached it was clearly inappropriate to divide the men and women up into separate groups, so the session had to be carried out with the mixed sex groups. As a result the old theory about group interviews was challenged. However the setting and the persons conducting the discussion may have an impact on this finding, if it is a very traditional setting such as a chief's «dare» (meeting/court) women may revert to what are perceived to be their stereotyped roles.

Group discussions may not be every researcher's forte, keeping the discussion flowing, keeping track of the data and directing the discussions is taxing. The researcher needs to be aware of her own skills in all these areas before embarking on group discussions. We discuss methods of recording data in the next chapter.

In group discussions there are often problems of dead patches, where the room is silent. Ways around this may be the use of buzz groups, experiential data recollection exercises, story telling exercises might help to prompt people to participate.

Getting a group discussion going is not always an easy task as people are often reticent to make comments. Sometimes the researcher fails to locate the topic of discussion in the experiences or culture of the group. The use of visual aids, theatre, impromptu role plays, films and tape recordings that can be played to the group are ways of starting a discussion.

Sensitive topics such as violence against women, birth control and the like may evoke resistance if introduced in a too direct and confrontational manner, however, a film or theatre presentation allows individuals to identify certain «actors» and they can then draw comparisons with their own experiences but express the issues through the characters.

11.9 Theatre, Role Playing, Event Focused Discussions

When data collection methods are considered there is a tendency to confine collection methods to what might be considered as tried and tested main stream methods, however, the very nature of women's law action oriented research presents ready made alternatives to the formal interview and discussion techniques.

Some of the methods used to deliver information to communities can be incorporated into the research process as a form of «feed back». For example getting people to express their problems and difficulties through the medium of popular local based theatre and role playing, is a potential source of data. Observing such performances gives insights into issues that concern the community and sometimes how they would resolve the problems in their own ways. It might also very graphically reveal how the law or the message previously delivered has been internalised and, perhaps, misunderstood.

If for example a local role playing exercise carried out by local people puts great emphasis on the problems that women have in dealing with local officials, this is an indication that the behaviour of official needs to be monitored. It might be that women are intimidated from exercising their rights, conversely this might be an exaggeration for the performance or only part of the problem.

Street theatre and improvisation can give the researcher access to groups and individuals that more formalised data collection arrangements miss. For example the Women's Law Diploma students at the University of Zimbabwe performed plays in the street near a bus terminus in a rural town. The plays dealt with domestic violence, the problems of «child» mothers and maintenance. The audience collected as the plays proceeded. After each play a discussion, in the vernacular, was held with the audience. These discussions evoked lively response and debate. Most importantly the

crowd was made up of commercial sex workers, men from the beerhall, market sellers and itinerants, people whom conventional methods of convening group discussions or seeking out respondents would not, usually, uncover.

These methods cannot of themselves without further investigation be used as any more than pointers to the kinds of problems and views that are manifest in the community, but they do give some background data which can be triangulated with more conventionally collected data.

AMY TSANGA in her research found that communities left to internalize the impact of the Zimbabwe Legal Age of Majority Act, and present them in the form of short dramas or role plays highlighted areas where the Act had a beneficial effect, while at the same time portraying problems that beset young girls in the community in the exercise of their majority status.

Provided that the possible shortcomings and pitfalls of different methods are clearly noted and the relative merits and reliability of the data collected are considered the use of innovative methods are not of themselves to be eschewed.

11.10 Approaching the Target Population

The researcher's preconceptions, sympathies and idiosyncrasies may influence, not only the selection of cases, the information abstracted from each case, but also the data observed and the information given by the respondent in the presence of the researcher. When the researcher and the respondent meet as in the interview situation their personal and professional environments will also influence the direction and outcome of the dialogue. Thus when the researcher contacts respondents and asks for information, she needs to be aware that the respondent is caught in a web of influences from his or her local environment similar to that which affects the researcher.

If the respondent feels she or he is on an equal footing with the researcher the exchange of information may be relatively easy, however, the respondent may not reveal information believing that the researcher already has such information through her daily life. On the other hand, if the respondent feels insecure in relation to the re-

searcher, this will also influence the sort of information given during the interview. For example the information given may be affected by what the respondent thinks will please or impress the researcher or will elicit assistance from the researcher. The Zambia WLSA research team reported that:

IN ONE VILLAGE in Mongu we had given one widow some mealie (maize) meal because she was so poor. We think the word got around, and other widows may have been emphasizing their problems to get mealie meal.

The research team also experienced the problem of being mistaken for government or social welfare officials largely because they were travelling about in a motor vehicle (WLSA Zambia 1994).

Thus it is pertinent to observe that the first impression made by the researcher and the first meeting with the respondent are important because they set the scene for future dialogue. This is not to imply that the researcher should abandon modern transport but he or she must be alert to the impression that it might create.

Even where there is to be only one meeting between researcher and respondent, it is important to appreciate the significance of first impressions. How you dress, speak, behave and the way in which you introduce the research topic are all important.

Thus when the researcher undertakes field work she needs to be sure that the image she presents is an appropriate one to solicit the required information. A researcher who arrives in the office of a senior government official in very casual dress with dirty and unkempt hair, is unlikely to be enthusiastically received and may get very off-hand treatment. Equally a researcher going to a remote rural area who is wearing high heels, elaborate jewellery and make up, may be dismissed as someone who will not understand the problems of the people and could not relate to the issues that affect them. Admittedly these are extremes but the researcher must realize that people respond to external impressions. It is very important that the researcher presents the correct image.

Ethnic and language differences may be a very considerable barrier to cross. Thus if you are in «foreign territory» it is useful in such situations to have an experienced person working with you, preferably a fellow researcher, who understands the research topic and the purpose of the research as well as having an entrée into the commu-

nity. A similar difficulty can affect a person who is regarded as not having sufficient social status or maturity in the community. Young researchers may find that older members of the community are not prepared to discuss certain issues with them. A practical solution is to enlist the help of an age or cultural peer of the target group who then accompanies the researcher on a number of visits to the area until a rapport is established. The greater the acceptance in the community of the accompanier the better the results.

Having a government official along is not always a good solution to this problem especially where it is believed that the official may be in conflict with the group to be interviewed, or is seen as someone who has to be impressed about a particular issue. Respondents may over dramatize their situation or try to submerge their problems in the presence of such a person.

Likewise it is of great importance how you gain access to the society or the «territory» in which the respondents live or work. Burgess (1984) discusses the importance of the gatekeepers and how they can hinder or assist the researcher. If there are hierarchical structures to be followed in accessing respondents then failure to do so would be most inadvisable. Likewise rituals and ceremonials should be followed. The Zambia WLSA research team graphically describe the processes required to interview one key respondent:

IN MONGU, we had to approach the Royal Establishment through a member of the royal family who took us there. This royal family member did the ceremonial part, lying on the ground and clapping, and the researchers followed behind. We had to wrap ourselves in chitenge material (a length of printed cloth) and wear a head scarf. The interview was interrupted many times by visitors, each of whom had to go through the traditional entry and for each of which we had to get up and clap (WLSA Zambia 1994).

Where information is to be elicited from the opposite sex it might be necessary to enlist the help of a member of that sex to get free and frank information about certain topics.

A very important point is to be scrupulously polite and respectful at all times with the people from whom you are eliciting information. It is their information and you are dependant on them, so refrain from critical comments or adverse reactions to their views or conduct of a particular issue.

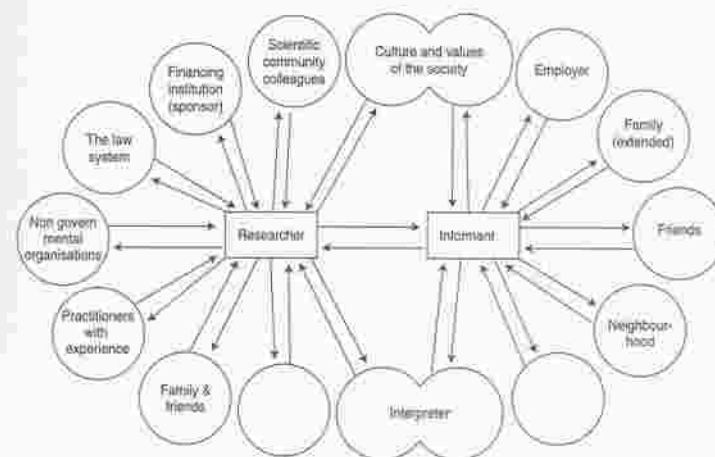
However, this has to be balanced against seeming disinterest and

over distancing (Oakley 1981). What we mean is: Do not get involved in heated arguments, nonetheless information and views can be exchanged.

11.11 The Researcher and the Reliability and Validity of the Collected Data

Just as the potential court witnesses' reliability and veracity have to be assessed before their testimony is called on the researcher must critically scrutinize the reliability and validity of the field data, this involves not only assessing the respondent's input but also an exercise in self analysis and introspection. There are many potential sources of bias, which the researcher has to consider in determining whether her report on the data collected is balanced. The researcher with her preconceptions, sympathies and idiosyncrasies may influence the selection of respondents, the information abstracted from them, the data observed and the information given by the respondent to the interviewer as well as the data collected.

Just as the researched person or persons is cast in a web of relationships, the researcher exists in a similar web which may affect her independence. The diagram below gives a simple illustration of the forces that can affect the researcher:



Choice of topic, choice of respondent, reactions to information selection of the pertinent data for analysis are all likely to be influenced

by these forces. For example if the researcher has been contracted to undertake a specific piece of research or is reacting to a particular political issue, the data collection and analysis exercise is already skewed. Not that this is a problem as long as it is clearly recognized what the source of the agenda is and the effect that it may have.

For the researcher it is important to analyse these influences and try to clarify what they mean for the carrying out of the research project. The researcher is likely to react to such a suggestion with the answer that her role is to collect data and analyse it. However in social science, women's law or critical legal research the researcher, no matter how great the effort, cannot be a neutral objective data collector. This is not to suggest that the researcher should not try to be objective, but it would be wrong to suggest that disinterest is a necessary attribute. For many such researchers the intended research may have been the result of deeply felt problems or difficulties, and to pretend disinterest would be deceptive.

Thus the researcher, from the outset, has to address his or her potential biases and interests as well as pressure from external forces so that both data collection and analysis is informed of these elements.

The researcher should also appreciate that her presence might influence the content of the observations and interviews. Some people behave differently from the daily routine when observed by a stranger, especially when they are aware that the stranger is observing or interviewing them for a purpose, this will be heightened where video or tape recordings are made. A judge or administrative official may be a little more thorough in asking questions or a little more careful in summing up when observed, especially so where it is believed that the researcher is concerned about the way in which women or certain groups are treated. As far as observation alone is concerned the general experience is that the observed, after a short time, forget the presence of the passive observer.

If there is genuine concern that a performance may be staged for the benefit of the observer, confirmation can be sought from those familiar with the event being observed about what usually happens.

11.12 Handling the Unexpected

As has been discussed previously the researcher plans and determines upon particular data capture methods and envisages how these will

be carried out, but in the field things do not always, actually usually do not, work out as planned. A problem that vexed some of the WLSA research teams was the phenomenon of the individual collective (group) interview. A particular respondent would be selected for interview in a rural area and an in depth interview commenced. Within a very brief space of time other members of the family or community, arrive to see what is going on, they then become interested in the discussion and often actively participate. Such a situation is in conflict with the ideal of confidential one to one interviews.

However, where people live their lives cheek by jowl with their neighbours, notions of privacy differ from those in other areas. The researcher needs to be alive to the constraints that this may impose on the respondent's information, but must also appreciate that the respondent may feel quite comfortable and might be embarrassed or wary of private discussions. The researcher might propose a follow up interview in a more private venue, if this seems desirable. The observed and the interviewed are providing the information and thus they should be made to feel comfortable and the researcher should adapt to their needs, not the other way around.

11.13 Language

In all the oral methods of data collection language is a major problem. Language is founded in and expresses among other things culture, class, social and economic status, profession and training, age and gender. Therefore key concepts and words used by the interviewee should be recorded in the vernacular and their meaning problematized and discussed in the study.

The task of the researcher is to ensure, as far as possible, that the words of the interviewee, participants or group are recorded in such a way that the meaning is not distorted or perverted. This is difficult even when the parties speak the same language. Even more difficult, even in one's native tongue, is the task of ensuring that the nuances of the language are captured and intonations given their due emphasis.

AN EXAMPLE of the problems that can be encountered occurred during the inheritance field research in Swaziland. Women were asked how they felt about the donning of «widows weeds» (black

mourning clothes) and the strictures on life and movement this imposed. Many women replied: «It is our custom». One researcher saw this as approval, others interpreted it as resignation and some as veiled disapproval (WLSA Swaziland 1994).

Which was the correct view to take of the words of the widows? One way to handle this problem is to ensure that the exact words in the vernacular and the preceding discussion are precisely recorded as well as whatever was noted of facial or body gestures. In such situations to record the impression rather than the words, robs the speaker of his or her meaning and depth and deprives future readers of the right to draw their own inferences.

Words do not have rigid and precisely defined meanings when used in everyday speech. The hearer interprets automatically what is heard, just as someone asked to speak about a particular issues interprets what is asked and then makes assumptions about what is expected and tailors the answer accordingly. The problem is multiplied when the language of the researcher is different from that of the interviewee. The researcher instinctively seeks a seemingly similar word or concept in their own native or academic language to capture the idea or concept. This process that at one level seems to create clarity and understanding is probably in reality obscuring the real import of the data.

11.14 Interpreter's Role

The ability to speak the language and understand the nuances of local behaviour is generally a plus in the research process, but there are times when interpreters have to be used and the impact that such person can have on the research process has to be understood. Wherever possible it is better to use a colleague or student who is fluent in the language and understands the research agenda rather than a person whose role is simply to interpret.

The use of interpreters complicates the handling of information from the respondent to the researcher and vice versa. First there is the language problem. Many words and concepts in the language of the researcher may not have a counterpart in the respondents language. The interpreter must therefore paraphrase the questions and the answers during the interview.

Secondly the local norms for a conversation may be different

from those of the researcher and this has to be handled through an interpreter, yet the interviewees know who is directing the discussion and may look to that person for the signs that the right progress is being made. Nigel Barley writes thus about his research among the Dowayos:

«To begin with I was distressed to find that I couldn't extract more than ten words from Dowayos at a stretch ... I would have to ask further questions to get more information. This was very unsatisfactory as I was directing their answers more than sound field method would have prescribed. On day after about two months of fairly fruitless endeavour, the reason struck me ... Whereas in the West we learn not to interrupt when somebody else is talking, this does not hold in much of Africa. One must talk to people physically present as if on the telephone, where frequent interjections and verbal response must be given, if only to assure the other party that one is still there and paying attention. As soon as I adopted this expedient, my interviews were quite transformed.» (Barley 1986:67)

Thirdly some of the interviewer's subjects and questions may offend the interpreter's sense of what can be properly asked and thereby hinder effective communication. In other cases the researcher's questions may offend the respondent, and without the knowledge of the researcher the interpreter might significantly reformulate them. Then the answer will not correspond to the question asked, or worse still might seem to do so but may be the answer to a different question.

There has been much criticism of the way in which data was collected during the colonial period some of which is directed at the reliance on interpreters with consequent skewing of data (Armstrong et al 1994, Rwezaura 1990) However, the interpreter may be able to render considerable assistance to the researcher and might help in explaining some of the data obtained. This is especially so where the interpreter and the respondent come from the same community. A locally based interpreter may avoid certain persons within the community or steer clear of contentious issues. Without some additional insights the researcher will not know whether the information sought was unavailable or concealed.

If an interpreter is being used, care needs to be exercised to ensure that even further dislocation of meaning does not take place through the process of interpreting. At such times it is useful to have tape recordings of the whole session which can later be transcribed and

translated and the actual nature of the dialogue between the researcher and the respondents reviewed by someone else familiar with the research and the language employed.

11.15 Conclusion

Data collection is the key to a broader understanding of the lives of women and the social and legal milieu in which they live. The appropriate method of data collection is very important to the collection of the necessary data. The researcher needs to spend time planning the data collection process and deciding on the questions to be asked and how to ask them.

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12

Recording and Organizing Data

Summary: Recording methods used in collecting observational data, interviews, group meetings are discussed. Obtaining accurate data from documents is also explored. Maintaining a field diary is considered as are methods for permanent recording and storage of data. Preliminary sorting, organisation and categorisation of data while in the field is covered.

12.1 Introduction

This chapter focuses on some practical suggestions which should help in effectively accomplishing the data collection phase of the research. After the initial planning and decisions about the data to be collected, the next stages in the research process that have to be addressed are:

- Collection and recording of different types of data.
- Permanent and interim recording and/or storage of data.
- Preliminary organization and classification of the data.

12.2 Preparing to Collect and Record Data

Once the decisions have been made about what data to collect and how to collect it the collection of data can begin. The researcher needs to be organized well in advance for each data capture method to ensure that the maximum use can be made of the opportunity and as complete a record as possible taken at the time of the observation, interview or reading of written materials. Only rarely can an interview or experience be repeated. Even where repetition is possible, as with written information, it is frustrating to have to go back and re-read the material or files because the exercise had not been adequately planned in advance.

Arriving at a distant destination only to discover that the carefully

devised forms, checklists or questionnaires have been left behind and have to be hastily reconstructed on bits of paper, is counter productive and very inefficient. Finding that the tape recorder has no batteries or that there are insufficient tapes is very frustrating, especially where the nearest source is a hundred or so kilometres away. All the necessary equipment, including spares, for the recording of the data needs to be at hand during the data capture session. This is especially so with oral or observational data. A disorganized researcher scratching around for paper, pens or tapes during an interview is unlikely to get the full attention of the informant or group and certainly cannot pay proper attention to the data recording exercise.

12.2.1 Keeping Control of the Data

Once the data collection has begun it is very important that the researcher does not fall into the trap of letting the data pile up on the assumption that it can be sorted out and categorized later. In grounded research the analysis of data starts as the first data are collected.

An important part of the research process that is discussed later in this chapter, is the preliminary categorization of the data. The categorization of the data should be an ongoing exercise while you are in the field. This does not have to be complex or even particularly profound but early preliminary attempts at organization and synthesis help to keep the collection exercise within the broadly predetermined bounds of the research question. It also serves to inform the further collection of data while in the field, this is an example of using grounded theory.

12.2.2 Field Diary

The researcher needs to keep track of the progress of the research, what has been collected, impressions on the significance of certain data, tentative hypotheses and general background data.

The use of a field diary in which such information is noted is a habit worth cultivating. Habit is used deliberately as this is what it should become.

The field diary is most effective as a record of background material it is not the appropriate place to record all the data.³⁰ This is be-

³⁰ A suggested format for the recording of the interview data was given in Chapter 9.

cause as a «quick access» document, where immediate impressions can be recorded it is not systematic, except chronologically. Later the bulk of the data has to be formally recorded and systematically organized under appropriate categories. Nonetheless as a record of impressions and reactions it is an invaluable tool in the development of theoretical perspective and methodologies.

The diary itself can take any convenient form such as a note or exercise book, cyclostyled pages divided into subject area or it might be computerized. The format and organization of the diary are dictated by the research and the field work to be undertaken. However, some suggested divisions are:

- Travel notes; covering access, transport, accommodation and general logistical problems.
- Observations and general impressions of the site, facilities, the people, socio-economic data, land use patterns, and general profile data.
- Lists of interviews conducted, materials consulted, observations etc.
- Impressions and notes on developing theories. Notes on new issues to explore, amendments to interview schedules This is the section that is critical to the development of grounded theories.
- Confessional remarks, being notes of flaws in methodology, perceived errors, possible biases, difficulties with interviewees or groups, all or any of which might affect the findings.

It is important that the identification of the various interviews and materials is exactly the same in the diary, on the heading to the written or typed record and, where applicable on the tape of the interview. If this is done there is a comprehensive record of where the data is stored, when it was obtained and how it can be retrieved when required.

In writing up the field diary be succinct, but avoid being too terse as, later, you may not recall the significance of a cryptic comment.

12.3 Complete Records

Whatever the method used to collect the data the record obtained should be as full and complete as the circumstances permit. How this is achieved is a matter of on the spot discretion and improvisation. Where a choice has to be made concentration on the interview

and an immediate post interview write up is preferable to a full record of an incomplete and lack lustre interview or discussion.

Recording of data should go beyond the mere content as it should also serve to revive impressions and reactions. There is a tendency to believe that key points will not fade from the memory but they do, especially when a series of interviews is carried out one after another or file after file is examined in one work session. The final analysis and thus the end product is impoverished if the record is incomplete. There is also the possibility of being accused of misrepresenting someone's views if these were not accurately recorded. Do not assume you can rely on your memory at a later date, record the data as comprehensively as possible at the time it is sourced.

Further, when the grounded theory approach is being used, what might in the early stages of the data collection have seemed a peripheral point may become a focal issue later. If at the time the information was first encountered it was too selectively recorded or dismissed as unimportant and it is subsequently recalled that the information might now be pertinent, it will either have to be collected again, if this is possible, or an imperfect reconstruction attempted. Neither of which is satisfactory.

12.3.1 Verification and Posterity

Data should be recorded in such a way that the findings can be verified or amplified at a future date by the researcher or others following in her footsteps. Equally other researchers may be able to use the data for a variety of purposes and data collected in one research project might be used in a series of subsequent projects.³¹

12.4 Data Recording Situations

In choosing the data recording method to be used several factors will influence the choice, such as whether the data is being collected by an individual or group, is derived from oral sources, visual observation, documents or a mixture of these.

³¹ Such a course of action can create ethical problems if the respondent was not aware of this probability when the data was originally collected.

12.4.1 Passive Observation

Where the researcher does nothing other than watch and listen, it is usually much easier to record the data than in interviews or discussions where the researcher is actively involved. However, it may not be possible to take either a written or taped record while court or administrative proceedings are taking place, this may also be the case at ceremonies and official occasions. If permission is sought through the correct channels, recording the proceedings may be permitted. But tape recording is not normally allowed in courts or parliament and it is very foolish to try to flout such a ban.

Even where it is not possible to take notes the transcript, if one was made, may be accessible afterwards and this can be combined with the visual impressions after the event. Transcripts may be available for speeches, court and parliamentary proceedings.

If it is not possible to take notes as the observation is carried out, then immediately after the exercise has finished write down your impressions as rapidly and completely as possible.

12.4.2 The Lone Researcher versus a Group of Researchers

If the researcher is working alone the dynamics will be different to those used where a number of researchers or research assistants are available to carry out the recording exercise. Where oral data collection is being carried out by two or more researchers working together, it is easier to obtain full notes and still control the proceedings. The researchers can share the tasks of interviewing or leading the discussion, observing the group dynamics or responses of the informants and taking notes. Each member can also periodically participate in the other aspects of data collection.

In the WLSA Zimbabwe Mashonaland Inheritance Research it was fortunate that a team was available as they were unexpectedly faced with a group discussion with some 350 people, the assumption had been that around 50 – 70 people would appear. It needed one person to focus solely on conducting the discussion, one to record the discussion and a third to collect details of the people and their reactions, ensure that all participants were given an opportunity to speak and most importantly that the issues to be canvassed were adequately covered. In writing up the discussion each researcher wrote up her assigned task and the resultant data was greatly enriched by the various perspectives.

The lone researcher would have had to take a very different approach, probably relying on taping the session and/or an immediate write up from memory. The alternative would be to abandon the session but that would be impolitic. The best advice, when faced with such a dilemma, is do not panic, make the most you can of the opportunity.

12.4.3 Participant Observation

Where the researcher is a participant observer who is involved, as a member of the community, organization or family, in the events taking place, such as funerals, rituals, meetings, demonstrations, field days and the like she may by the very nature of the events be unable to take notes. The researcher who is observing a family funeral or that of an acquaintance cannot really take notes and must recall and record conversations and events as soon as possible thereafter.

It should also be appreciated that where the researcher is actively engaged in the ceremonies there is often a limited picture of the whole. At some ceremonies there is gender segregation and gendered perspectives are imposed depending on the sex of the observer. Thus it may be necessary to interview other participants to obtain a more complete picture of what took place.

12.4.4 Research Assistants

If research assistants are being used to collect data special attention needs to be paid to ensure that not only is the information collected, but that the various kinds of pertinent information discussed above are recorded.

12.5 Recording Observational and Oral Data

There are various technical ways of recording oral and observational data. Note taking, tape recordings, videos and photographs can all be used, they are not mutually exclusive and can be combined.

12.5.1 Note Taking

This is the most widespread method of recording data for research.

Where the interview is structured and the interviewee is confined to answers to specific questions and the answers recorded on prepared sheets. Unstructured interviews should be recorded on numbered and carefully organized sheets of paper or in a note book. However, the interviewer should not fall into the trap of burying her head in the paper work and merely recording the verbal responses and ignoring the reaction of the interviewee. Written notes speed up the subsequent data processing but they are difficult to take where the researcher is interviewer, technician and note taker at the same time. Also it is difficult to be responsive and stimulate discussion while writing copious notes thus supplementing note taking with a tape recorder is helpful.

12.5.2 Tape Recordings

Tape recorders are very useful in recording oral information, but they should never be used as the only instrument or method for collecting oral data. Although an invaluable technique there is a risk of technical failure, over taping and/or wiping out previous material and a meticulous check has to be kept on used and unused tapes. Also a tape recorder does not record facial expressions and gestures nor can it filter out the irrelevant comments and background noises that sometimes overwhelm the speakers' voices.

It takes approximately four times longer to transcribe a tape than to listen to it. What seems time saving may not be so in the long run. Once transcribed further refinement of the data into the relevant and irrelevant will be necessary. Verbatim transcriptions carried out by persons other than the researcher can be very laborious to work with and have to be carefully edited. In the event that taping alone has to be used, the whole recording *must* be listened to immediately after the session so that in the event of technical problems a written record or supplement can be made while the researcher's memory is still fresh.

12.5.3 Filming and Videoing

Filming and videoing seem attractive collection methods but it could mean that one person has to be fully committed to that task. Also, although providing a useful record, particularly of events these methods need to be supplemented with other recording methods.

12.5.4 Combination of Methods

The most effective method, although often difficult to achieve, would be a combination of note taking, taping, photographs and, or videoing. The general gist of the information and the responses including gestures, body language and other pertinent observations are briefly noted. When the transcription is being carried out the tape can be used to fill in the gaps and add detail and verbatim quotes where necessary. The photographs and video record then serve to recall the atmosphere, the geographical location and other «mood» data.

12.5.5 Bias and Researcher Influence

The problem of researcher influence in courts and other fora, sometimes created merely by her presence, can be a problem in obtaining an accurate record of practices within the area of research. If there is suspicion that bias is influencing either the behaviour of the respondents or those who are being observed, this should be noted. Likewise if the researcher has a suspicion that she is overreacting to a particular phenomenon or respondent she should note, for future reference, how she felt at the time.

Where the researcher plays an active and influential role as a participant observer this fact must be noted, as must the situation where the observer has expert knowledge drawn. The researcher who advises on rights or options has probably affected the outcome of events and this should be recorded for further consideration during the analysis phase. A note might be made in the field diary that this is an issue that should be pursued to see whether under different circumstances, which should eliminate the possibility of researcher influence, the phenomenon re-occurs.

Other factors that might influence the way in which data is analysed need to be detailed such as the composition of discussion groups; gender and ethnic data, ages, social and other relevant factors. For example in rural areas in Africa men and women usually sit in separate parts of the meeting area while in more formal meetings in urban areas such segregation does not necessarily take place. Such detail may become very important when comparisons are made between responses in various gatherings and situations and in trying to determine whether the views elicited were fully and freely given.

12.6 Recording from Written Data

Recording from written sources is assumed to be a relatively easy and straight forward process but this is not always the case. Records are often incomplete, illegible and disorganized so the researcher has to be candid as to the limitations found in the field, if there is no data or the records are silent, this is not a matter to be concealed but rather the possible reasons for its absence considered.

12.6.1 Citations and Sources

Just as the date and place of interviews are recorded so scrupulous records must be kept of the location and source of written data. By remembering that the material may be cited or may need to be verified one can decide how much bibliographical detail needs to be recorded. Similarly determining how much to record depends on the circumstances and projected future use. The researcher may be creating new insights for others and they need to be able to follow the same intellectual trail to their own point of departure.

Each time new material is accessed note all the relevant details such as author, title, publisher, place and date of publication, and for your own reference where it is physically located. Every note or quotation taken down should be prefaced with the page reference or the page from which it was drawn.

A common failing is to assume that the passage that leapt out from the page the first time you browsed through the book will be readily found again, even finding the book again may be difficult. Librarians are rarely enamoured of the researcher who asks: «Do you know where the blue book I was using yesterday is?»

The use of small cards, which are kept in an alphabetically organized box by author or citation is a good way to keep track of the contents of the bibliography and the case reference list. These should be computerized wherever possible but the use of such a box ought not to be abandoned.

12.6.2 Context

Material to be quoted should always be considered within its full written context, a seemingly apposite quotation selected without noting the writer's fundamental hypothesis or the background may

be misleading. Picking a quotation from a case, administrative report or statute without reading the entire text can lead to skewed impressions. This is especially so with legislation where seemingly permissive sections may be qualified by subsequent restrictive provisions.

12.6.3 Relevance

While carrying out library or records searches there is a need to keep a careful watch on relevance, to constantly consider where does this material fit into the research data and how does it add to the development of theory. Readings that are informative and background in nature need to be categorized and stored as such and distinguished from the materials that are regarded as fundamental to the development of hypotheses. Constant reference to the thesis sentence helps in ensuring relevance.

12.6.4 Photocopying

The researcher can be overwhelmed with paper if she pursues the common practice of photocopying vast numbers of pages, from library or borrowed books, without considering their relevance to the study. The worst form this takes is where the copying is carried out without recording the relevant identifying information about the source on the photocopies. At best it means a revisit to the library, at worst it means that the data cannot be used as it cannot be verified. Sometimes when the researcher starts working on the copies at a later stage, in a different location, it may be difficult to source other materials that the photocopied information indicates would have been useful.

However, if the process of theory building and the researcher's constant interaction with the data is maintained throughout the entire research process, the risk of the data getting out of control can be largely eliminated.

12.7 Using Court and Administrative Records

When court or administrative records are accessed in the field the researcher needs to make strategic decisions about how much of the data that is available to record at the time of initial access. If it is dif-

difficult to access the record, either geographically or administratively, then the fuller the record taken at the initial stage the better.

However, where the case is reported in official published law reports or easily accessible as an unreported judgement noting salient points in the initial instance may be sufficient as the case can be more fully considered at a later date.

12.7.1 Full Citation

When recording data from court decisions it is vital that the full citation, page reference for the passage, the name and rank of the presiding judge or judges, the court, whether on appeal or at first instance, whether the decision was that of a judge sitting alone, with assessors, or by several judges are all recorded. Whether the decision was unanimous or there were dissentients should be noted when judgements are being read.

In addition to the reported judgements it may be possible to obtain access to the full record of the proceedings, which contain the pleadings, documents and other data pertinent to the litigation, a transcript of oral arguments, the examination of witnesses and the decision of the lower court where the matter went on appeal. Using the appeal record saves time and the whole case, including the decisions of lower courts, can be followed from issue of summons to final determination.

12.7.2 Administrative Records

Court administrative records as opposed to reported judgements need to be treated slightly differently. Decisions have to be made about which records to examine. The answer to this depends on why the researcher is examining the records and whether the ultimate use of the data is to be quantitative or qualitative. How much can or ought to be recorded is an open-ended question. Vast tracts of information from court records are obviously unnecessary where the primary data collection focus is on collecting qualitative data through interviews and case studies. However, in some case studies where research findings can be triangulated with official records, a more detailed account should be taken from the records.

12.7.3 Absence of Information

The absence of information is as significant as its presence. An example is the WLSA regional inheritance research where the almost total absence of registered estates for women was seen as a very significant finding, which led ultimately to theorizing on property distribution and acquisition within marital relationships. Significant absences or gaps must be noted for further consideration.

12.8 Storing Data

Computerization of data is an obvious advantage, interviews and other data once typed in can be selectively drawn from or edited for the final document. Creating directories and sub directories in which associated files can be saved enhances accessibility. *Always*, as a first priority, make a backup disc of the data and print hard copies of each file as you progress and at the very least before you quit the computer each day. The need for such protective measures for your data cannot be over emphasised. *Never* trust to luck where your data, analysis or write ups are concerned.

Data once captured needs to be carefully stored both in the short and the long term. Make sure that notes, record cards, tapes, and film are carefully packed away not just flung into the back seat of a vehicle or thrown randomly into boxes in an office.

ONE WLSA RESEARCH team was involved in an accident while returning from the field, the vehicle had to be abandoned. As they discovered; scrabbling around in the dark trying to make sure that all the day's work is removed and secured is difficult enough if the data is organized and carefully stowed. It would have been almost impossible if it had been just somewhere in the vehicle especially if there is no light by which to carry out the task.

There are «horror» stories of zealous housekeepers, spouses or parents throwing out «scrap» and «useless» papers. Computer crashes, children playing with their parent's notes, even winds and breezes cause havoc, however by and large these problems can be avoided. Some forms of data loss may be unavoidable, but if proper storage and recording habits are cultivated and become an ingrained habit the risks can be minimized.

Data or manuscript loss sometimes occurs when materials are put

into luggage and sent in an aircraft hold or sent as unaccompanied baggage. If you are travelling with data, however recorded, or manuscripts carry them as hand luggage. If this cannot be done at least ensure there are additional copies lodged in a safe place.

To re-iterate, as a matter of practice always ensure that there are two copies of all manuscripts and data files and that computer files are backed up on disks which are safely stored against accident or overwrite.

Once the data has been collected and preliminary categorization and analysis carried out, the researcher or researchers are now free to move to the pivotal phase of the research, data analysis.

12.8.1 Organizing and Classifying Data Prior to Analysis

There is a very real risk that research data from whatever source is just piled up to be dealt with at a later date, by which stage panic may be the method of organisation. What is more effective is, from the beginning, to consider ways in which data can be sorted and categorized. These initial categories are not immutable and can be reorganized or cross referenced. As the grounded theory is being developed categorization of the data should be developed as a parallel process.

How the data is organized and classified will have a profound effect on the subsequent analysis and thus on the theories and conclusions that are derived from the research.

The first stage of data organization is to group together data with similar content, or from predetermined geographical, economic, cultural or other dimensions. What these categorizations will be is largely determined by the study. The data collection exercise will often suggest categorizations which in time reflect more complex classifications based on the preliminary analysis of the data. Such new perceptions of how classifications might be carried out, do not necessarily mean that the data has to be resorted but rather that there is a need for fairly detailed cross referencing. Most data collected will fit into a number of different classifications and the cross referencing throws up the multiple connections that can be drawn and creates understanding of the complexities that are involved.

FOR EXAMPLE in the WLSA Zimbabwe research the initial sorting of data was by geographical areas, Mashonaland and Matabeleland. Within these two areas further categories were maintained

that reflected the urban and rural research areas. These were further broken down into economic groupings in urban areas and into land use patterns in rural areas. Thus there was, at any one cut through of the data, small and manageable data sets to be handled. However, these were not as a general rule adequate classifications *per se* in which to present the data, other linkages such as whether custom predominated, whether there were semi-autonomous social fields that affected the options or behaviour of parties were later invoked. Housing schemes, resettlement schemes and communal land use illustrated similar approaches to the rights of widows. Thus although the areas in which these were located might have been disparate geographically, there were administrative and attitudinal similarities.

The data was not re-organized but was heavily cross referenced. Likewise a category was generated which grouped, by cross referencing, all cases in which wills made either under customary or general law, valid or invalid were identified. This was ultimately to be reflected in a section in the final report that discussed the notion and concepts of wills from a number of perspectives. See also Burgess (1984) on this vital process.

However, organizing and classifying data in a particular way can obscure other analytical approaches. Organizing data in accordance with the way in which jurisdiction and legal entitlements are classified, produces a very legal centralist approach. Which might then lead to a right, obligations analysis which misses the significance of the underlying social fabric in which people negotiate solutions or impose remedies.

As the categories develop they form the framework for the analysis, based on the theoretical implications, possible typologies and influencing factors. These categories are not cast in stone and can be constantly adjusted and revisited. Not to attempt the categorization until after the data is collected is a retrograde step. It is inevitable that perspectives will be adopted and theories generated that a different organizational structure might have rejected, but research is a process and at a later date revisiting the data might produce different results.

12.8.2 Organizing and Classifying Data from an Extended Case Study

When dealing with a case study, where there are a number of interconnected interviews, it is useful to start with writing up a prelimi-

nary narrative (overview) of the case(s). The narrative and the sorting and reordering of the data from an extended case study can be organized in accordance with the chain of events that took place. Using the sequence of interviews and events, connected to the case study, as they arose in the field, is another basis on which to organise data in extended case studies. All data oral or written that relate to a case study, should be cross referenced to it and wherever possible filed with the rest of the data related to the case study.

AN ILLUSTRATION is the recording of the extended case study about Mrs N's struggle for custody of her son. The case is a part of Thandi Soko's diploma dissertation *Looking at the Best Interest of the Child* (Soko 1995), a study of the malfunctions and conflicts within the law and legal system when addressing custody issues.

The case initially came to the researcher's knowledge in her capacity as an employee in the social welfare office. Mrs N sought assistance to get her children back from her husband who had thrown her out of the matrimonial home and taken her son.

Information on the case was obtained from various sources, an interview with Mrs. N, the researcher's own memory data on the case, interviews with police and other officials connected with the case. Court records were also accessed.

At the commencement of the research phase a narrative of all the information that the researcher had at that stage was prepared. This material formed the core of the case study, thereafter following up on the leads that were presented from the various interviews and from the records more data was collected, and this was added to the growing store on the case.

Organization of data within this framework could then be undertaken in chronological order or by reference to the various parties who affected the outcome of the events.

By organizing the data in this way the researcher while still in the field begins to build up impressions of the webs of relationships and pressures that interlink the parties, such that perhaps an actors and structures framework for analysis of the data begins to evolve. A further plus is that if the narrative has been carefully compiled, it can probably be used in a revised form in the final report or as part of the findings or perhaps in an appendix.

If a researcher is challenging existing theories or questioning the form or content of the law, especially those related to customs and practices, a useful analytical framework is that of building up models

of customs and practices. These can then be compared and contrasted with existing theoretical models or norms recognized by the formal legal system or recorded in textbooks and monographies. We have discussed, in Chapter 3, the problems with the so called rules that purport to regulate who is appointed heir under custom, which were constructed through the application of precedent in the general law. If this norm as applied by the superior courts is to be effectively deconstructed and new approaches revealed, patterns of appointment and processes of appointment within the family councils would need to be built up. Also comparing and contrasting the different norms as they are uncovered and revealed needs to be undertaken.

Combing the data for the various versions of customs and practices and whence they are derived is a way of identifying different forms and content of custom. As each source is investigated a variety of patterns of behaviour or internal norms may begin to emerge. To facilitate this a data analysis matrix might be constructed: The example below shows how the different forms and incidence of the appointment of the heir to a deceased African male might be recorded and analysed to give various versions of customs and practices. The categories and variations within the categories could be far more extensive than suggested here.

Appointment of Heir – Who, By Whom, Where and How

Issue:	Superior Courts Customary Law	Inferior Courts Customary Law	Textbook Customary Law	Urban Customs and Practices	Rural Customs and Practices
Appointment and selection of heir to deceased male					
Rule = Eldest son	III	II	I	I	I
Rule = Eldest son of senior wife				III	
Care of dependants, focal issue					III
Wife preferred		III, II			
Selection made by family council				III	III, III

Each form of the determination is recorded in the appropriate column using tally marks, then the marks for each intersection totalled. Based on the totals a summary of the versions can be carried out and the patterns that develop theorized about.

12.9 Conclusion

Data recording and categorization are vital parts of the research process. If done properly they greatly enhance the research process and the quality of the end product. If done carelessly or haphazardly the research will be impoverished.

Bibliography and Further Reading

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13

Analysing and Interpreting Data

Summary: Data analysis is a key task in the research process. In previous chapters we discussed how data analysis is commenced in the field. This chapter extends the discussion into the post field work phase and offers some suggestions on tackling the analysis of qualitative data.

13.1 Introduction

There is no standard format for analysing qualitative data. The researcher has, by and large, to develop her own methods of analysis based on the objectives of the research, the nature of the data and insights gained in the field. The suggestions on data analysis, in this chapter, are based on the assumption that the researcher has been following the steps outlined in this textbook and using grounded theory methods. Data collection and data analysis are, as already pointed out, parallel processes. By the time this stage of the research is reached, the writing up of interviews and observations should have been completed and the initial assumptions adjusted, as an ongoing exercise, based on the findings in the field. Also, as recommended in Chapter 12, preliminary categorization of the data should have been carried out. Thus there should not be piles of disorganized and unsorted data still to be processed. If there is still preliminary sorting to be done, it is imperative that these tasks are carried out before the deeper interpretation and analysis is commenced. Sorting and categorizing the data is a way of becoming intellectually intimate with the research data and is an important stage in the research process that should not be skipped.

Each form of the determination is recorded in the appropriate column using tally marks, then the marks for each intersection totalled. Based on the totals a summary of the versions can be carried out and the patterns that develop theorized about.

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13.2 In Search of Red Threads: Narratives

One way to make the research data more accessible for deeper analysis, is to write up simple linked narratives of what was uncovered at the research sites or within the demarcated fields of the study. For example data collected in a particular geographical area, in various levels of the courts or at different periods of time might be written up as separate coherent, but interrelated narratives.³² Available statistical data should also be compiled. Then the researcher can look for common themes and «red threads» across different kinds of data and sources.

In her study of changing delivery and response patterns to popular legal education in Zimbabwe Amy Tsanga wrote up a chronological account of the various stages of the project (Tsanga 1997). Thereafter she was able, metaphorically, to layer the stages one on top of the other and compare the reactions to the information dissemination methods that were used. In this way Tsanga was able to test the different methods and theories for popular legal education against the empirical findings. As the education methods were constantly adjusted based on the responses of the recipients by comparing the responses across the time phases in the legal education programmes, new theories about the acceptance or non acceptance of legal education methods and materials were formulated. As her analysis progressed, the preliminary narrative framework that broke the project down into time frames was overtaken by other themes and approaches. The order that the chronological narrative created ensured that the presentation of the data under these new analytical frameworks was orderly and coherent.

13.3 Different Objectives, Different Analysis Processes

As would be expected by the very nature of the grounded theory research process there is no standardized approach to the analysis of qualitative data. However, there are various ways in which the re-

32. It is vital that the researcher can appreciate that all that the narrative does is to describe what was found. It does not of itself answer the research questions. Unfortunately it is quite common to see research reports and first drafts of these which do no more than describe what was found in the field and offer little, if any analysis of that data.

searcher can commence the process of analysis. One of these is to review the original research objectives, noting how these have changed through the research process. This will help determine the selection of data from the body of data collected and direct the interpretation and presentation of the data to meet the objectives.

If, for example, a researcher wants to investigate the customs and practices surrounding the appointment of an heir under certain customary regimes, this will involve a different data selection and analysis exercise to that undertaken by a researcher who wishes to uncover the way in which women participate in and influence the selection of an heir under customary regimes. Yet the data collected may be very similar and could even be drawn from the same research project. What differs is the formulation of the research problem, which in turn affects the selection and interpretation of the data that has been collected.

We now turn to an exploration of analysis techniques that can be used to meet different research objectives. Three research objectives which seem similar but require different analysis techniques, are description and concept building, analysis of legal processes, and theory building. All of these objectives can be combined in one research project.

13.4 Description and Concept Building

Building up new concepts or critiquing existing concepts based on empirical data is an important component of women's law research, especially where the researcher wants to challenge existing precepts of women's legal or social position by challenging them with empirical data on women's actual lived experiences. The following different but interconnected examples illustrate some possible approaches to concept building.

13.4.1 Describing the Position of Women under Customary Regimes

Obtaining an accurate profile of the position of women under changing customary law regimes has become an important research objective in Southern African women's law research. Research of this nature can be presented at a largely descriptive level by giving an ac-

count of the observed customary concepts and practices as they affect women. Taking the analysis of such data further would, probably, involve teasing out the underlying principles and concepts that underpin the way in which women are dealt with in local communities and affected by local practices. Such analysis should facilitate an approach that focuses on current and emerging customary practices on the ground and how they merge with social, economic and legal influences to produce new norms. The ultimate object of the analysis exercise being to compare the researcher's empirical data on local practices, with earlier versions of the recorded customs and practices and with written sources of customary law, such as judicial precedents and textbooks.

The WLSA inheritance studies that were carried out in six countries in Southern Africa had this as one of their objectives. In the analysis of data the concepts of law as process and rule-generating and rule-upholding semi-autonomous social fields were employed, and the results of this juxtaposed with legal centralist criteria for identifying emerging customary norms. Thus the divergence between the customs and practices that were evolving and the higher courts versions based on precedent was identified. In this way the fallacy of treating customary law as if it functioned in the same way as the imported common law with standardized universal rules applicable across all ethnic groups, could be demonstrated.

The Supreme Court of Zimbabwe had held in a series of cases, that there was a general customary law that the eldest son was appointed the heir to his deceased father. In developing a critique of the superior court's version of customary law the decision making processes in the fora, formal and informal, in which decisions about the appointments of heirs were made, had to be analysed. Thus it was possible to identify and examine what influenced those decisions, who took part in them, how the final decision was made and on what basis. This data was collected and analysed in all the research areas. Then a cross-cut comparison was undertaken between the superior and inferior courts, as well as urban and rural inferior courts, family councils and administrative bodies.

The data on the various aspects of the distribution process were collected together, the cases and case studies carefully scrutinized. Thereafter comparisons were made between the recorded distributions and the final form of the distribution within the family. Through this process it was revealed that the Supreme Court's ver-

sion of custom was far removed from the actual customs and practices of the people.

The underlying objective in such an exercise is to compile evidence so that an effective case can be made to convince the court to take a new approach to the ascertaining and application of custom or to encourage policy makers and legislators to consider reform of the law. A further step would be to critique these concepts and draw together other legal elements to build up a more situation sensitive and dynamic conceptual framework. The significance of the formal frameworks that determine the applicability of customs and practices in legal disputes and the evidentiary rules that govern the admissibility of evidence of such change in the superior courts, are discussed in Chapter 2.

What emerges from such analysis is that change is a very uneven process and that local responses to new laws are, very much, a product of the immediate social and economic context.

13.4.2 Measuring Uneven Compliance with International Law

Once the complexities of the local or national scene have been grasped it is then possible to address international approaches to the creation of global rights regimes. Paradigms for considering human rights ought to recognize that adoption of their precepts is a long term process and that communities and countries respond at different rates and in different ways. For example State Parties to the UN Women's Convention (CEDAW) are under an obligation to submit reports on their progress in implementing the paradigm for equality of the sexes which the convention reflects, that of non-discrimination. Article 2 of the Convention provides, inter alia, that State Parties should adopt legislative measures to end discrimination, refrain from discriminatory practices and take steps to eliminate discrimination across the board. It refers not only to the need modify or abolish existing laws and regulations that discriminate against women, but also to the need to modify or abolish customs and practices that are discriminatory. Thus a nation's compliance with the CEDAW has to be assessed not only by measuring its performance in reforming the general and customary laws that are applied by the state courts but also by examining living customs, practices and people's normal patterns of behaviour as they affect women.

As shown by Anne Hellum's study of the management of procre-

ative problems among the Shona speaking population in Zimbabwe, a comparison of de jure equality and de facto discrimination is not sufficient with regards to assess compliance with the Women's Convention because of the complex social processes through which the equality principle is filtered before it is adopted, adapted or resisted in different social contexts and settings. The study is a very good example of the conceptual problems that the complex and uneven process of change in social and «legal» behaviour gives rise to. Hellum realized while in the field how women, in coping with their procreative problems, were relying on a mixture of measures, some based on individualistic values and others in family based mediation and solutions (Hellum 1998).³³ To explore these socio-legal developments that were taking place on the ground, she tried to develop a conceptual framework that broke the dichotomous analytical mould of individual versus communal, folk law versus state law, the law on the books versus practice and de jure equality versus de facto discrimination. Thus she began to develop a conceptual framework that recognized the uneven and complex process in which egalitarian, fertility-neutral and individualistic marriage and family norms were combined with patrilineal considerations through the medium of local court practice, traditional healing and problem solving in the family. The normative outcome she termed «local law». This term allowed her to describe an evolving concept while she slowly built up its meaning and content. In building this concept she also noted that there were multiple social fields in which these new family norms were adopted or the old patrilineal norms were perpetuated and these she demarcated in terms of time, social, institutional, gendered and classed space.

The term «local law» was also in a constant process of evolution throughout her research. Initially it was only used to describe the plurality of norms at play in the local state-courts in post colonial society (LeRoy 1985). However, it was gradually expanded to provide a way of measuring the uneven and complex processes that take

33. Empirical women's law research in different areas of life and law shows that the nuances of human life and interactions do not lend themselves to simple exercises of comparing and contrasting individual rights and community based entitlements as a way of assessing whether there is compliance or not with the convention. The notion that group rights suppress women's interests whereas group interests somehow suppress them, is one assumption that needs to be very carefully addressed in the assessment of current paradigms for delivery of equality between the sexes (Bentzon 1992, Stewart and Ncube 1997a).

place in the adoption of the equality ideal in procreative practice. Ultimately the concept was extended to cover the outcome of the normative interplay that took place in different rule-generating and rule-upholding fora. She describes how she gradually built up the concept, thus:

«The term «local law» was first used to come to grips with the interplay that occurred between spiritually sanctioned norms and legislated law in cases of dissolution of childless marriages in the community court. The substantive law practised in the community court did not always fit into the established concepts of the customary or general law of marriage and divorce. In line with Le Roy's definition, I used the term «local law» to characterise the blending of statutory law, state court customary law and local norms and considerations on which the outcome of the court proceedings was based. By comparing the similarities and disparities between the process of interplay between different norms and expectations that took place in different contexts and settings, the term «local law» was gradually built up to encompass a broader range of rule-generating and rule-upholding fields than that of the post-colonial courts. The outcome of the problem-solving that took place in the family and through traditional healing was also informed by a wide range of norms and values, ranging from patrilineal continuity to gender equality whose strength was situational. As in the cases which were dealt with by the community court, the mixed outcome was a reflection of the mixed identities and affinities of the parties and of the third parties who were involved in the resolving the problems and disputes. Furthermore, in-depth analysis of case material from the Native Appeal Court of Southern Rhodesia showed that the Court's decisions were based on a mixture of legislation, Western considerations of what was reasonable, and knowledge about local customs and practices. As such, the legal norms created by the Native Appeal Court were neither customary nor Western, but a form of «local law.» (Hellum 1998)

Eventually this new concept became a way of measuring compliance with international human rights standards that took the complex and uneven process through which the equality principle is adopted or resisted in different contexts and settings.

13.5 Analysing Law as Process: Actors and Structures

A useful way of approaching analysis, perhaps as a complement to other aspects of the research, is that of trying to understand how human actors through their activities can change the legal norms and structures. As suggested in Chapter 6, an actor and structure perspective may be useful in understanding the complex process of gender and legal change in societies where state law interplays with other normative orders in different socio-economic contexts. This analytical framework assumes that social and legal change takes place between human beings as individuals and groups.

A key demarcation mechanism used in the studies of changing law and gender relations described so far is the semi-autonomous social field. The concept of the semi-autonomous social field is an important tool in analysis as it is used to group and categorize data so that the volume of data to be considered at any one time remains within manageable bounds. Semi-autonomous social fields are also characterized by their ability to generate rules and enforce rules and can be understood as an interaction within or between a recognizable group of people – the actors.

MARY MABOREKE'S research on homicide brides in Zimbabwe is illustrative of the fruitfulness of using the concept of the semi-autonomous social field as a boundary around different legal discourses. The research topic was the custom of demanding a young girl as compensation for homicide. According to custom the family of the deceased may claim this type of compensation from the killers family. The girl is supposed to give birth to a son who will replace the deceased. Maboreke took the situation of a homicide bride who was embedded in a chain of social and legal relationships as the starting point for data collection and data analysis. Two obvious social entities or fields to be explored were the families of the homicide bride and the killer. Other social groups were gradually added to the study. The actions and discourses of the various governmental and non-governmental bodies that were involved in this type of cases, such as the police, the child-care and protection society and women activist groups were mapped. They could all be analysed in terms of actors that got involved on the basis of different customs and norms and with different interests and means of power. Their impact on the situation of the young girl who found herself in the junction between these seemingly

conflicting norms, perceptions and power structures was explored. The preliminary findings indicated that the formal legal power in terms of the penal code which made the custom a criminal offence and the law enforcing institutions was weak. A powerful group of actors was the traditional healers. The chairman of Zimbabwe Traditional Healers Association (ZINATHA) has for example emphasised the negotiability and the flexibility of this custom. In an interview he has suggested that the members of the two families in their negotiation with the ancestral spirits who normally claims this type of compensation, should make use of traditional healers. In their dealing with the ancestral spirits they can negotiate arrangements whereby payments are made in cash or cattle instead of relinquishment of a girl as compensation. In this way the traditional healers ensure continuity and change in terms of new forms of integration between customary law and national law. At the same time they position themselves as the guardians of customs and practices and reinforces their own power (Maboreke 1996).

It is important to remember that semi-autonomous social fields are demarcation tools, and do no more than indicate loose boundaries around the interactions which the researcher, when she commences her data collection, assumes takes place between actors in various socio-cultural contexts. They are, as pointed out in Anne Hellum's study of people's management of procreative problems in Zimbabwe, research assumptions, that constantly have to be adjusted in the light of the researcher's observations in the field (Hellum 1998). To ascertain the effect of the decision-making process in the family, the consultations with the healers, and the decisions reached by the local courts, she paid attention to the wider social affiliations of the family actors, the traditional healers as well as the «actors» in the court. This approach transcended the boundaries of the healer, the community court and the family in an attempt to uncover the interplay between these fora and other rule generating and rule-upholding entities. As the multiple social affiliations of the members in the different social entities were revealed they, in their turn, gave rise to new assumptions as to who these interacting rule-generating and rule-upholding entities were. During Hellum's fieldwork church communities emerged as a significant and important rule generating and rule upholding entity, that merited careful study in the way that they reglemented people's lives.

Thus as various semi-autonomous social fields are mapped their interactions and intersections can be investigated and hypotheses as to the way in which they influence each other can be generated. If

the researcher wants to comprehend this uneven process the various actors have to be identified and preliminarily categorized according to their interest in the matter and their strategies and relationships to each other mapped. If, for example, the researcher is exploring inheritance patterns and problems in families she will need to understand the relationships between the deceased and the various actors who are interested in the estate. She will need to ascertain the interests that these actors lay claim to in the estate and how they strategize to try to obtain satisfaction of those interests, because these are among the factors that will influence how the estate is handled. At the same time the researcher might be trying to identify when and where these interactions and alliances occur and how they influence the process of estate distribution.

As a concomitant of this form of analysis the women's law researcher should be able to give an account of the various forms of law, customs or practices that are used by the actors in the multiplicity of relationships that are used to mediate and determine the issues that are being examined. This kind of broad but directed analysis provides an account of behaviour around strategic issues in human interactions and how plural systems of law are used by the various actors in an attempt to achieve personally desirable resolutions to problems and conflicts.

Janet Kabeberi-Macharia's study of the control of teenage girls' sexuality in Kenya illustrates how the concept of the semi-autonomous social field and the actors and structures approach can be used to good effect:

KABEBERI WAS able to demarcate various reglementary bodies that exercised control over teenage girls' sexuality and investigate how this influence was generated and exercised and the extent of this effect. She collected data on teenage girls and their relationships to actors who interacted with them and exercised overt or subtle methods of control over their sexuality in different socio-cultural settings; such as parents, aunts, schoolteachers and medical personnel. The study was diachronic and sought to map how the changing interests and concerns of the various actors involved in the control of the sexuality of teenage girls contributed to changing norms and perceptions. The lives and experiences of three generations of women within the same family in relation to their sexuality and its control were mapped. Their experiences and perceptions of the issues and methods of control were com-

pared with earlier recorded versions of the legal, social, cultural and religious modes of controlling the sexuality of teenage girls. These earlier accounts were sourced from historical accounts, contemporary social science monographs, court decisions and the legislation current in the different time periods (Macharia-Kabeberi 1995).

This analytical framework revealed the changing nature and form of the legal regulation of women's sexual and procreative capacity and how the interests of various groups constitute a driving force in the context of these socio-legal processes.³⁴

13.6 Theory Building: Law's Influence on the Position of Women

A central research theme in women's law is, as pointed out in Chapter 5, how law affects male and female behaviour. A significant question in women's law research is why do so many women fail to use legislation specifically designed to improve their social and economic conditions? The Women and Law in Southern Africa Research Trust had this question in mind when it undertook a study of maintenance in six countries in Southern Africa (Armstrong 1992).

As discussed in Chapter 5 the law and modernization approach assumes that the enactment of legislation will empower women provided they are aware of their rights. The actor perspective on gender and legal pluralism, which was introduced in Chapter 6, assumes that women's use of the law will depend on a wide variety of factors like the socio-economic context, the race, class and religious orientation of the men and women involved.

Theories regarding women's use of the law can also be built up in a grounded fashion through quasi-experimental comparative studies. In a comparative quasi-experimental research design for women's law we could include the following elements as ways of defining the parameters of the analysis. One would start with a grounded perception of the problems that women face, then articulate the underlying concepts that are generally used to delineate the problem. The next step would be to set out the theories and describe the existing no-

34. The example is drawn from a seminar discussion at the School of Law at the University of Warwick March 1994.

tions of the factors that influence the existence or resolution of the problem. The next stage is to try and measure the effects of the influencing factors on individuals or groups and how this affects their response to the problem. WLSA's maintenance study illustrates the use of an iterative data collection and on-going research process in a comparative quasi-experimental study.

13.6.1 Problems, Concepts and Theories

A main objective of the maintenance study which was conducted by the Women and Law in Southern Africa Research Project was to discover what influenced married and unmarried women's choice of statutory and customary solutions to their maintenance problems.

Initially the research project took a legalistic definition of maintenance as departure point. Maintenance was defined in statutes throughout the region as «periodic payments, usually payments in cash or in kind from a legally responsible person to a dependant or someone who cares for that dependant» (Armstrong 1992:34). However, this narrow definition of law and the attendant remedies obscured the complexities of the decision making process for women when faced with maintenance problems. Unfortunately it was only at the analysis stage that the problems inherent in a narrow definition of law became apparent. In their critical review of the research, which also was a part of the data analysis process, the researchers concluded that such a narrow statutory definitions should have been avoided in the initial stages of the research and that they should have adopted a research design which allowed them to explore all those influencing factors which in practice affected the way women dealt with maintenance problems.

What this example also illustrates is that behind the formulation of the research problem there are underlying ideas or theories. In the WLSA maintenance research design there were initial theories which assumed that legal knowledge and the machinery of law were crucial factors as far as women's use of the right to claim maintenance for their children from the father were concerned.

13.6.2 Influencing Factors and Measured Effects

Another aim of data analysis is to enable the researcher to compare the initial theories with the empirical data collected in the field.

Through interviews and observations the researcher has probably identified factors which she assumes have influenced individual women's choices of action.

Not all influencing factors have the same significance in the analysis of the data and compiling the research findings. We need to distinguish between influential factors that can be changed, so called *action parameters* and influential factors that cannot be changed, so called *background factors*. Examples of background factors are rural/urban, old/young and matrilineal/patrilineal divides. There may, for example, be significant differences between unmarried rural and urban mothers from matrilineal and patrilineal ethnic groups in their use of maintenance legislation. In applied women's law research we are interested in finding influencing factors that can be changed like legislation and education, that is so called *action parameters*.

It is important in conducting the analysis to realize that there are likely to be many influencing factors and that these often pull or push the actors in different, conflicting, directions. A legal adviser may advise an unmarried mother to take court action against the father of her child. Her neighbour may, on the other hand, have warned her about threats to bewitch the child if she takes the child's father to court. Thus the researcher should try to provide as complete an overall picture of the wide variety of these influencing factors and also how different contexts and settings pulling the actors in different directions.

In the social sciences, unlike in the natural sciences, causality can hardly ever be described as a pure cause-effect relation. Some useful concepts to apply in analysis to help generate such explanations are what Sayer (1992:103) has termed *causal power* (influx) and *causal liability* (susceptibility) factors. Human actors may react differently to the same kind of *influx*, or similarly to different kinds of *influx*.

Factors that have causal power are factors that interplay with other factors to influence human behaviour. An important point to keep in mind is that whereas the factor under consideration may have influenced the choice of action, there are probably other factors (pressures) that interact to produce the actual course of action. Legislation is a factor that is generally assumed to have causal power. Whether in a given situation it actually has causal power will depend on all the relevant and interactive factors and the circumstances of the problem. If an actor apparently behaving in accordance with a legislated norm is ignorant of its existence then in that

situation: the legislation does not have causal power. By comparing her initial assumptions concerning factors that have causal power with the collected data, the researcher can build up a picture of the complex interplay between different influencing factors in different contexts and settings. Because of the wide variety of factors that different actors in different situations are exposed to the social science researcher can hardly ever identify and describe a pure cause-effect relation.

The concept of causal liability helps the researcher to identify and describe the actor's susceptibility to influencing factors. Put differently this means that factors that have causal power have different effects depending on the susceptibility of the actor. In the maintenance study, discussed above, the existence of maintenance legislation combined with legal knowledge could be said to have causal power; explaining why some women chose to sue for maintenance. To explain why other women in similar situations who indicated that they needed maintenance for children, made different choices regarding legal action, it would have been necessary to look for relationships or conditions which capture individual woman's susceptibility to such advice. The fragmented data that was collected nonetheless gave rise to the assumption that some women may fear the social consequences of taking legal action or have had prior experiences that dissuade them from suing the father in court. Based on this fragmented data it could also be assumed that some women would seek less socially disruptive courses of action to secure resources to care for the child. In this way the maintenance study gave rise to new assumptions that modified and refined the initial assumptions concerning the causal power of legislation and legal knowledge. Even though in the maintenance research these assumptions were not actually tested.

13.7 Combining Qualitative and Quantitative Data

Although the grounded theory approach due to its innovative character is closely linked to qualitative methods, qualitative and quantitative data can be usefully combined in some studies. For example Jennifer Okumu Wengi before starting her work on the resistance courts collected data about the number and composition of the

courts. Using this data she presented a useful background to the study of women's roles in the courts (Okumo Wengi 1995).

Amy Tsanga distributed a short questionnaire to a number of the advice volunteers at the Legal Resources Foundation and analysed their answers on questions related to legal knowledge. This analysis provided a background for her qualitative analysis of factors influencing the effects of using different modes of disseminating legal knowledge (Tsanga 1997).

In both these studies the quantitative material provides a background for the qualitative studies. But sometimes problems arise because the quantitative data has been collected with an objective different from that which informed the qualitative study. Also the units of study may differ in the quantitative and the qualitative elements of the study. Thus concepts that are labelled with the same term cannot always be meaningfully compared between the qualitative and quantitative parts of the study. For example problems often arise over the use of terms such as family in census data where it may indicate a household, whereas in qualitative analysis it may be used to designate a group of persons, defined by their own terms (Mason 1994:90).

13.8 Dealing with Inconsistencies

Researchers are often faced, especially in case studies involving a number of different respondents, with problems of inconsistency and contradictions. It may even transpire that within a single interview the respondent is inconsistent in his or her answers leading the researcher to question the veracity of the information.

Inconsistencies do not have to be eliminated but should be explained. Unlike the judge, the researcher is not seeking the «truth» nor the most authentic version of a custom or practice, nor the version of events, which on the balance of probability, is the most credible. The more pertinent investigation is to try to uncover and document the different versions of the story or custom that are available. Then to seek to explain why there are variations and inconsistencies. What are the forces that underlie the different versions of the story or the different forms it is stated that customs may take?

If the aim of the researcher is to describe and understand law as process careful description and analysis of the inconsistencies in the content of a custom, may provide fruitful insights into the process of

evolution of a custom. In such a study it is very important that the researcher gives a thorough account of the inconsistencies that were discovered in the custom during the research. The researcher is not a judge or a jury but an enquirer. Thus an honest admission by the researcher that there are irreconcilable versions of the custom or practice, is far more useful than an artificially imposed harmonization (Moore 1994).

13.9 Validation of the Research Findings

A critical analysis of the collected data and the extent to which it can constitute a basis for generalization and theory building, has to be undertaken as a part of the final analysis. As pointed out in Chapter 11 concerns over the quality of the collected data commences with the research design and continues throughout the process of data collection. In the last stage of the analysis the validity of the data needs to be carefully considered in relation to the general conclusions.

Validation of research findings raises particular problems in interdisciplinary studies like women's law. This is because social scientists and legal scientists have developed different criteria to evaluate their research findings. Whether the criteria of social science or legal science should apply, will depend on the purpose of the research, the research questions and the data which has been collected to answer these questions. However, the increasing recognition of legal pluralism and the need to broaden the research techniques in legal and socio-legal studies, blurs the boundaries between legal studies, social science studies and other studies, for example historical studies. Such blurring means that a variety of validity criteria may need to be applied to different aspects of a particular study.

13.9.1 Social Scientists' Validity

Four concepts of validity concern the social scientist (Yin 1984, Strauss and Corbin 1990):

Construct validity: This is the evaluation of the research processes used to obtain the data.

External validity: This is determining how far the results of the study can be generalized.

Internal validity: This involves an evaluation of the explanations or interpretations of the suggested linkages between various events and results. Tracking assumed causal linkages and their validity.

Reliability: This refers to the capacity to replicate the study and obtain similar data in similar circumstances and location and to produce similar results in the analysis.

The first concept, *construct validity* raises the question: Does the data provide relevant and pertinent information about the chosen subject of study? For example does the data from court records on maintenance mirror the existing types and numbers of maintenance conflicts among spouses in the society at large? At this point there is obvious lack of synchronization between the concerns of social scientists and lawyers. While social scientists are concerned with how widespread certain types of problems are, the legal scientists will want to focus on the legal problems that are revealed, regardless of how widespread they are in society.

The concept of *external validity* has been criticized by qualitative researchers because this form of validity criteria was developed for quantitative studies (statistical sampling theory). Such criteria are not really relevant for qualitative studies aimed at theoretical sampling and analytical generalizations. In some qualitative studies theoretical conclusions are based on the study of one extended case. However, the underlying principle of external validity criteria is useful for the qualitative researcher. As, if the conclusions are supported by other case studies the research will be more credible. For this reason a research design and analysis framework that accommodates multiple case studies has obvious merits.

Likewise, new research which deals with related issues and problems may benefit from revisiting the same fieldwork site. By revisiting the same field it is possible to add a historical dimension to the previous research. In this way insight into the process of changing law and gender relations can be built up. Thus a careful description of the research methodology and methods helps subsequent researchers to pursue the same general research process and either confirm or critique the earlier research findings. External validity is of particular importance in applied research, where e. g. government bodies or NGO's want to use the results in administrative decisions or preparation of legislative reform.

The concept of *internal validity* is especially relevant for causal or

explanatory studies. (Descriptive studies are not judged by these criteria.) Women's law studies which set out to investigate whether the gender of the judge or the prosecutor influences their decisions or performance, will have to consider the internal validity of their study. An example is the American legal realist tradition that rejects explanations of the outcome of the court case that are based solely on the text of the judgement. Such explanations will rarely have internal validity because many other factors are likely to have influenced the way in which the decision was reached. For example the so called school of «breakfast jurisprudence» asserts that the behaviour and the reasoning of the judge is influenced by whether he had a good breakfast before he went to work. This is a metaphor for exploring the judges social and cultural background in seeking to understand the nature and form of his or her judgements. The impact of such factors are not easy to study thus although the influence of the personal factor cannot be fully rejected, it is not a fruitful exercise in a study aimed at generalizations. The internal validity of a study will thus depend on the relevance of the chosen factors, their causal power and their causal liability as described earlier in this chapter.

The *reliability* of the research findings can only be monitored if the research report contains detailed descriptions of the procedures followed during data collection and analysis. The reliability is satisfactory if another researcher in an absolutely similar situation using the same procedures arrive at the same conclusions. This is very difficult to carry out in practice and a «good guideline for doing case studies is therefore to conduct the research so that an auditor could repeat the procedures and arrive at the same results» (Yin 1984:40).

13.9.2 Validity in Legal Science

As pointed out in Chapter 3 there are many different schools of jurisprudence. A strict legal positivist would draw a narrow boundary around the definition of law in order to distinguish it from the social sciences. Although legal realism, like legal positivism, is centralist in its orientation, a scholar from that school would draw a wider boundary around the definition of law to take account of empirical sources. For both these schools of jurisprudence law is seen as a social fact which can be observed and studied as with other social facts.

However, the schools differ on the factors that are relevant in analysing the development and operation of the law. The legal positivist bases his or her accounts on the study of the authoritative sources of law, primarily legislation and recorded decisions from the supreme court (see Chapter 3). The criteria of validity used here is whether the interpretation of the authoritative sources of law is reasonable and meaningful.

In the realist tradition a statement as to what constitutes the applicable law at that point in time is treated as an indication of the decisions likely to be reached by the superior courts in similar cases. By extending this analysis to take account of empirical findings on how a judicial officer reasons, a wider range of sources than that of the positivist school of jurisprudence is included in the analysis of legal decisions. Thus it is argued that decisions which are reached by the courts cannot be fully understood within the narrow framework of legislation and precedents (Holmes 1897:457, Ross 1953, Eckhoff 1993, Bernt and Doublet 1993). Legal realism, and particularly the «consequence oriented» school of thought at the Faculty of Law at the University of Oslo, has promoted the significance of legal research based on empirical data in the development and functioning of law and legal policy.

Thus a challenge for polycentric jurisprudence, which seeks to identify law created in other fora rather than treating law in the courts as its focus, is to establish alternative validity criteria. Ketscher has as pointed out in Chapter 4, argued that the practices and considerations which are made in fora outside the scope of legislation and supreme court jurisdiction, must depend on the quality of the argumentation and whether it is in accordance with the argumentative patterns of legal science (Ketscher 1990:80).

In the Southern and Eastern African context this is reflected in the problems of shaping the analysis that arises from data on new customs and practices and determinations in alternative fora into acceptable forms that could pass the gateways of formal legal argument.

13.9.3 Validity Criteria in Women's Law

To work out validity criteria for studies that set out to describe the position of women under customary law in the context of rapid and uneven social and legal change, is a major challenge in contemporary

African women's law research.³⁵ Data from fieldwork only provides an «instant» picture of current customs and practices. Thus, the researcher who wishes to describe and understand the position of women in law and society with the eventual aim of feeding this knowledge back into the legal system, must be able to build her conclusions on data which add dimensions of time and space to the observations made in the different fieldwork sites.

A recurrent question for the women's law researcher is that of the status of fragments of customary law that are referred to in disputes, court decisions or out of court settlements. The identification from these various sources of cases that deviate from the existing assumptions about the content of customary law, poses the question as to whether customary law is changing even though there may be insufficient evidence based on the limited case material to conclude that the underlying norm has changed.

How can the researcher further her grounded suppositions about change? Perhaps it might be possible to demarcate fields where the new normative pattern is considered as binding. Perhaps changes in the recognition and applications of norms can be captured, by determining whether there has been a decrease in instances of the old norm being used as the basis for decision making. The question might be asked whether it is possible to trace changes in the approach of different law enforcing institutions to the problem?

Assessment of validity will depend on carefully considering the respective weighting of supporting and conflicting data that constitute the evidence put forward to support the conclusions that are drawn in the research.

13.10 Conclusion

The interpretation and analysis of the fieldwork data is the most complicated part of the research process. The objectives of the research will in many respects determine the process of analysis. It is easier to give a purely descriptive account of what was found than to try to explain causal linkages and their consequences. The researcher has to determine what needs to be done and how to do it, however,

35. For validity criteria related to empirical studies, see e.g. WLSA Zimbabwe 1994 and Hellum 1997.

we offered some thoughts and suggestions on the tools that might be used in the analysis of the data.

It cannot be over emphasized that data analysis and data collection are parallel processes that go hand in hand throughout the research process. In women's law, as in other forms of qualitative research, the research process is iterative, the researcher has to go back and forwards within the research process drawing threads together and determining the directions to be taken at all stages.

To help in grounding and directing the analysis it is important that the researcher keeps a careful record of the research and analysis processes. Thus a key recommendation in the next chapter, which discusses the writing of the research report, is that the researcher starts shaping and writing the report at an early stage in the research process.

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14 Writing the Thesis or Research Report

Summary: This chapter discusses ways of presenting research reports based on qualitative empirical research. The first section outlines the major components of a research report. This is carried out by focusing on the audience or target groups to which research reports and other academic writings might be directed. The second part focuses on the task of report writing: Namely different forms of data presentation. Logistical considerations such as starting your writing as the research proceeds, preserving the anonymity of informants whilst ensuing data verification, methods of data presentation, presenting the analysis of the data. Finally this chapter discusses ways in which the writer can review her own work.

14.1 Introduction

The researcher who has been following the suggestions in this book that she should start the analysis at an early stage in the field work and commence preliminary writing up of data and findings whilst still in the field, should find when she reaches the stage of actually writing up the report that the format is fairly clear and that there is already a wealth of partially organized material to be incorporated into the text.

However, many researchers find that the stage of the final writing up of the study or project is the most difficult part of the research task. It is at this point that the researcher is committed to make decisions about modes and styles of presentation, whether to present in a highly stylised academic format or a more simple and accessible form. The researcher might decide that the data needs to be presented to different audiences in different ways and in different forms.

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However, many researchers find that the stage of the final writing up of the study or project is the most difficult part of the research task. It is at this point that the researcher is committed to make decisions about modes and styles of presentation, whether to present in a highly stylised academic format or a more simple and accessible form. The researcher might decide that the data needs to be presented to different audiences in different ways and in different forms.

14.2 Getting Started

Whichever form of presentation is finally determined upon, a precise formulation of the problem serves as a useful guide to both the author and the reader and, often, facilitates the formulation of chapters and headings through out the report. At this point the researcher has to review the objectives of the study, the methodologies used and the major research questions asked.

Once the objectives are clarified the researcher then needs to consider the format the final work should follow. To a large extent this will depend on the target audience for the final product. The initial version of the report should be directed towards the most sophisticated of the possible audiences, simpler or more refined versions can then be produced as «spin offs». The rationale behind this is that only when all the data are subjected to the rigorous processes that take place during the writing phase, can a holistic picture of the research be built up.

14.3 Audiences and the Objectives of the Research

The target audiences can be identified in a number of ways, firstly by going back to the objectives of the study and determining what it is that was to be achieved and who would facilitate this such as politicians or lawyers, women's activist groups or perhaps development agencies. Secondly a mental review of the actual research process will help the researcher to decide whether there are events or issues that need to be expressly addressed in the report with the idea of achieving specific results. Again this will lead to the identification of target audiences.

Thirdly, the audience is predetermined where the research has been formally commissioned or a thesis is being written. These situations will dictate much of the direction and format of the report.

It may not be possible to aim at two audiences as different as a thesis review committee and a non governmental organization assisting women in the same work. Thus it may be necessary to write the more formal thesis and thereafter produce a more suitable version for the NGO.

Commencing the writing process without identifying the target

groups or audiences and considering their requirements and needs as well as the objectives of the researcher, is a fundamental error, failure to do so can mean a great deal of unnecessary recasting and editing of the work.

14.3.1 Different Audiences, Different Needs

Once the primary target audience has been identified, the researcher needs to consider the appropriate style and format to engage the attention of the audience and achieve the intended results.

For academic works such as theses there are usually loosely prescribed requirements and conventions as to the forms of presentation, but these are rarely written in stone and the creative and innovative author can turn a thesis into a well written, profound and compelling piece of reading. Commissioned research reports sometimes have to follow a predetermined format and even the style of presentation may be fixed.

Where non specialist audiences are being targeted, such as politicians or the public at large the style usually needs to be direct and immediate as such persons are rarely prepared to read through vast volumes of text. For politicians, policy makers and development agencies etc., there is usually a need to succinctly put the case, undertake a brief discussion of the main issues and then present a carefully worded conclusion and recommendations section. The recommendations need to be simply expressed, logical, practical and implementable.

For the lay public the method of presentation is similar but a more graphic style may be needed, perhaps with extracts from case studies and ideas about how they can lobby for change or can carry out reforms within their own immediate circles. Later in this chapter various styles that can be used are discussed.

In discussing the writing process our first focus will be on the production of a thesis or dissertation. Most other forms that reports might take are adaptations and modifications of this style.

14.4 Theses, Main Components

The target audience are the thesis examiners or the thesis committee. Obviously you are aiming at ensuring that they treat your efforts fa-

avourably. A carefully crafted, well argued and documented account of your research and your findings is an obvious pre-requisite to success.

Compliance with the formal requirements and adherence to the prescribed format for the thesis is very important as is striking the correct tone and level in your writing.

In Chapter 7 the need for the researcher to show how the research topic was derived, the background to the study, the context of the research and the research objectives was discussed. Exactly the same basic content needs to be addressed in the introduction to the thesis. The researcher should also critically evaluate the choice of topic, the assumptions and the topic formulation.

In a thesis it is essential that the researcher displays a sound knowledge of and a critical examination of the relevant literature in the field of study as well as a critical evaluation of previous research in the field. She must also explain the anticipated contribution of the study to the existing knowledge in the discipline. In essence this means effectively communicating the academic context of the work.

The researcher needs to carefully consider the most appropriate and effective ways to present the data and the findings so that they clearly answer the research questions or, if this is the case, why the research questions cannot be answered as expected. The presentation of the findings and the data needs to be tight, logical and highly analytical. What must be displayed is that there is clarity and direction in the analysis, that the data is appropriate and sufficient to answer the research questions. It must also be demonstrated that the concepts employed and developed in the work are apposite. Above all the work must have academic credibility in that the findings and the conclusions are valid and sustainable.

To this end it is important that the methodology section has a clear account of the data collection procedures that were used and why they were used. The reader should be able to, metaphorically, look over the shoulder of the researcher, understand her assumptions, axioms and aims, the process of the research and the data on which the conclusions are based. It is also important for the researcher in her writing to be self-critical and to make a frank evaluation of the work which includes her known biases, her theoretical perspectives and orientation. A major failing of many theses is that they are written in impenetrable sociological or legal jargon. Simple direct well constructed language is what is required.

The women's law researcher in writing up a thesis or report has to put particular emphasis on some aspects of the writing process that are sometimes inadequately addressed. We discuss these below.

14.4.1 Research Methodology and Methods

Qualitative research and especially the grounded theory approach is often innovative, this is especially the case in women's law. Where research is likely to be innovative and even unconventional it is very important that a full description is given of the research methodologies relied on and the methods employed. Obviously this is appropriate to theses and formal research reports. More directly targeted reports do not need to have elaborate methodology sections but it should be clear to the reader how and why the data was collected.

All too often the methodology section is a brief and somewhat dreary section of the report. Contrary to this it should be regarded and written as a very important part of the report. This is especially so for the researcher in a new discipline like women's law as it gives guidance to future researchers as to routes to follow. It also allows the reader to evaluate for themselves the likely validity and comprehensiveness of the data and the findings. A style of writing that is appropriate for the methodology section is the confessional tale.³⁶ In this way the researcher can lead the reader through the methods that lead to the uncovering of the data and how the data was analysed. Stages in the grounded research process can be explained and problems encountered in the field or changes in plans and methodologies can be discussed.

It is normal to include in such a section tables of persons interviewed, records perused, the geographical and socio-economic areas that were researched. As with all other aspects of report writing, the author has to balance a full and informative account with one that is just a long list of places and names. One approach is to ask: What would someone following in my footsteps and doing similar research need to know? This would obviously include the pitfalls as well as positive guidelines, but these should be kept to the main signs posts and major issues, there is no need to cover every little detail.

36. Some ideas for different presentations are given later in this chapter.

14.4.2 Literature and Law Review

This is a somewhat problematic area of report writing as the literature review should not overwhelm the document. On the other hand in many legal studies the bulk if not the whole of the report is taken up with what in other disciplines would be a literature review, that is an analysis of the current position as described in books, articles and an analysis of the case law and statutes. The empirical researcher in women's law needs to balance a thorough understanding of the current legal position and the commentaries there on, as well as material from a number of other disciplines while leaving room to deal with the empirical data and their implications.

Whether the literature and law are to be presented as separate chapters so as to establish a point of departure for the study or woven into a critical evaluation framework in constant juxtaposition with the findings, needs to be determined.

Which ever method is selected it is very important to ensure that there is a review of both the literature and the law so that the report and its contents are located in the appropriate legal and social perspectives. As we have suggested the format is flexible, in fact it is easier to say what the reviews of the literature and law should not be. They should not be merely a précis listing of the available literature in the field, nor should they contain a long and boring history of the legal system and the development of the law in the area under consideration. The questions to be asked by the researcher are: Does this section of the work set the scene? Does it explain the current position? Is it interesting and dynamic to read? Most importantly, is it relevant, does it stay within the bounds of the thesis sentence and the key words that were used as the boundary markers during the research?

14.4.3 Presentation of the Data, the Analysis and the Findings

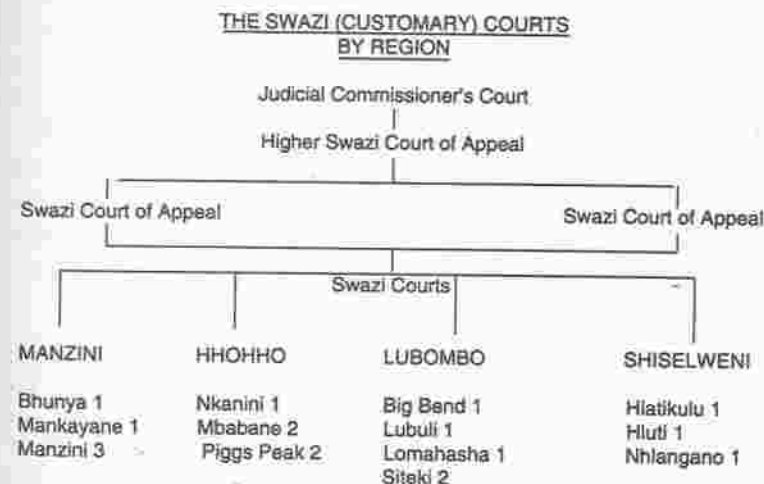
If the advice about the formulation of the research problem has been followed, the presentation of data and the analysis of the data and the findings should not be too complicated. The issues to be discussed and the evidence to support the conclusions to be drawn should be readily to hand and largely formulated as the write up stage is commenced.

The documentation of the research results, that is whether to present the data in a quantitative or qualitative way, may raise prob-

lems. Some scholars and many politicians believe in and are only likely to be convinced by tables and figures. On the other hand many readers find figures and tables boring, especially where their academic training has not prepared them to understand such forms of data presentation. Which form of presentation is chosen, or which form predominates will depend on the target audience.

If tables and figures are to be used, they must be clear and effectively presented with an adequate explanation of their content and relevance to the study.

A good example of this is the following extract from R.T. Nhlapo's book *Marriage and Divorce in Swazi Law and Custom* (1992):



1. Swazi Courts of first instance may not all be in operation at the same time, due to delays in filling vacancies occurring within the Court Presidents' cadre, and other staffing constraints.
2. The two Swazi Courts of Appeal sit at Loziltha in the Manzini region and Nkanini in the Hhohho region respectively.
3. The Higher Swazi Court of Appeal sits at Loziltha.

An example of a simple table is one extracted from the WLSA Zambia 1994 Inheritance Report:

Table 4: Lusaka Subordinate Court Records –Chikwa Road

Year	Total Number of Civil Cases	Inheritance Related
1987	84	3
1988	104	0
1989	85	2
1990	91	3
1991	37	2
1992	124	8

All the inheritance-related cases were identified by the Clerk of Court.

c) The High Court

Inheritance-related cases may either be commenced at the High Court or go there on appeal. In the High Court we had to use research assistants because there were large numbers of files to peruse. The table below gives the picture for Lusaka High Court.

Table 5: Lusaka High Court Records

Year	Total Number of Civil Cases	Inheritance Related Cases
1987	6001	15
1988	2456	12
1989	1967	11
1990	2095	11
1991	3083	15
1992	2858	31

The number of cases might not reflect the exact number of inheritance-related cases which were filed in the High Court because some of the files were with the judges or magistrates handling them.

14.4.4 Discussion

After the presentation of the findings the researcher can move directly to the stage of drawing the conclusions. However there is an interim stage that it might be useful to pursue in some studies, and that is a discussion section or chapter which draws together the threads of the work and considers the broader implications of the findings.

This format is also useful where in depth case studies are presented and analysed. A discussion chapter gives the author the opportunity to compare and contrast the studies which have been analysed case by case in the findings chapters. A discussion chapter also

facilitates an analysis of cut through factors such as gender, socio-economic factors, coping strategies or other pertinent issues that are difficult to address holistically in the findings chapter.

14.4.5 Conclusion and Recommendations

The conclusion of the research report with, where appropriate, the eventual recommendations is all decisive. It is the most read part of the report, and the researcher must ensure that the conclusions flow from and through the body of the report. The conclusions must address the research questions, verify or disprove the assumptions that informed the research process. The conclusions must be carefully drawn and meticulously described. One way of testing whether the conclusions are adequately drawn and stated is to ask whether or not the «So What?» query still persists. What we mean by this is whether or not the researcher has at the end of the day tied up the loose ends and answered the pertinent questions posed.

For example in research into women and land rights if all that has been presented, is a catalogue of the rights of women without any effective discussion of what these mean for individual women and how problem issues might be dealt with, then one can say of the research, «So What?».

14.5 Some Possible Structures for Presentation

So far we have discussed target audiences and the main components of the thesis or research report. We now move onto a consideration of various structures and composition styles that might be employed by the researcher.

Although theses and some research reports have to adhere to fairly specific guidelines, these are more directed towards broad issues of content. The researcher has, within those guidelines, a varying degree of discretion as to just how to organize and present the data.

The content of a report can be organized in different ways. We now turn to a discussion of a number of typical structures and how these are used to present different types of data and to suit the various parts of the report (Yin 1984). Providing that the components fit and flow together the same report may reflect different structures and data presentation styles.

14.5.1 Linear-analytic Structures

This is one of the most common structures used in thesis writing and it was discussed earlier in this chapter. The researcher has flexibility as to the order of the disposition of the chapters, but the major components must be present. Namely the topic, the formulation of the problem, the literature review and justification for the research, the methodologies and methods used, the findings and the conclusions.

However, the researcher has, as we have already mentioned, discretion to use a multiplicity of different ways, within that structure to present her findings and conclusions.

14.5.2 Comparative Structures

This is a structure that can be used as an entity on its own or it could be employed in specific chapters under another overarching structure.

Comparative structures in this context are not designed to compare data but, rather use a process of comparing the data to theories and hypotheses that are either pre-existing or generated by the research. Alternatively the effect of different theories on the analysis of the same data might be compared. The comparative approach is linked to the discussion in the previous chapter of different theoretical perspectives and how they might be applied to the data.

The WLSA Zimbabwe 1994 report uses the comparative approach when presenting the findings from the field on the customs and practices of the people as uncovered in the field and moving onto an analytical discussion of those vis a vis the decisions of the courts. Equally, comparative structures may be applicable in studies where the researcher is concerned with folk views on norms and traditions. This structure is also appropriate were the data collected is to be compared with common sense explanations of social phenomena or contrasted with various scientific explanations.

This is a presentation mode that also lends itself to the portrayal of the different perceptions and experiences of different people in relation to the same event or phenomena. An example of this is the Otieno Wambui case from Kenya:

THE CASE involved conflict between the widow and kin of a deceased man over his burial. Many books and articles have been written about the case, and various theories have been advanced

about the eventual outcome of the case. In court, each side presented a different version of the facts underlying the conflict. The judges had to reach a decision as to which of the different accounts should be taken as the «truth». The courts decision relied on the account of events presented by the kin. But these facts can be described as but one version of the events and, undoubtedly, coloured by the legal arguments that underlay them. However, as a researcher you are not confined to one single version that has to be adopted. If the format of a social science case study is used, one would probably choose to present the facts in these two very different versions, the widow's and the kin's. The two contrasting stories and their respective influence in the courts and in the society, are crucial elements in the analysis and explanations of the events. They could probably best be reported in a comparative structure. Thus analysis of the competing interests and the social pressures and forces in the case can also be undertaken using a comparative structure. Using such a format the case could also be used as illustration of different theories about the role and position of women such as one that deals with the continued suppression of women in contravention of reformatory legislation. Likewise it might be used to illustrate a discourse on how customary norms represent an obstacle to the shaping of a nation state (Bentzon 1990, Agimba 1987).

14.5.3 Chronological Structures

These are useful structures where studies are diachronic and cover events over a lengthy period or defined series of time frames. Here the sequence of the findings chapters or sections might be arranged in chronological order according to the different phases of the studied phenomenon or the different phases of the study.

This approach might also be appropriate in explanatory case studies or quasi-experimental studies where the time sequence of the «experiments» constitutes the chronology. Research within a quasi-experimental set up is used in a study by Amy Tsanga's doctoral thesis *Taking the Law to the People: The Cases of Legal Education in Zimbabwe*:

THE OBJECTIVE of Tsanga's study is an evaluation of a legal literacy program initiated by Harare Legal Resources Foundation and directed towards the rural population. As part of the study the significance of the teaching methods is tested. Accordingly the use of

pamphlets written by lawyers and read aloud by advice volunteers is compared with the use of drama, song and posters. The first mentioned method was as the only one used from the start of the education project and before the beginning of the study. The reception of the pamphlets by the groups of local population was mixed. The researcher assumed that the negative reactions and the indifference towards some of the pamphlets might be caused by the language used by the experts and the form of presentation dictated the advice volunteers. The alternative methods were introduced in the scheme and the functioning of the use studied by the researcher and the different methods compared (Tsanga 1997).

In this kind of study the presentation of data in a chronological structure followed by cross analysis in a comparative framework would be appropriate.

A chronological structure is clearly indicated where the researcher is studying court usage over a period of time or at different points in historical time. It is also appropriate where there has been legislative reform and intervention, and mapping of the effects of the change is a critical part of the presentation of the findings.

Similarly if the researcher is interested in portraying the differences between generations in their understanding of and attitude to selected phenomena, a chronological structure is indicated. A study like Janet Kabeberi-Macharia's study of control of teenage sexuality across various generations, discussed in earlier chapters, might be finally presented in this kind of format.

A chronological structure can be used with a linear structure and alongside other parts of the work that follow a comparative structure. For example the findings might be presented in a chronological structure and the discussions and conclusions might utilize a comparative structure.

14.5.4 Theory-building Structures

This is a mode of presentation that is appropriate to the presentation of grounded theory research. Although it utilizes the general direction of the linear structure the text shows how the interactive and iterative process took place. It facilitates an ongoing discussion of the development and or refinement of theories as the data is collected. This structure may also fit well with a choice of the composition style named confessional tale (see below).

The text follows the research process in the interplay between the collection of data and the analysis and the development of the researcher's understanding of the field of interest. This structure can be used in explanatory as well as exploratory studies and can be used to give readers an opportunity to assess the validity (logic of analysis) of the study.

The researcher might, especially in grounded and exploratory studies, prefer to lead the reader through the stages that she as a researcher pursued in her work. Thus the initial problem formulation may have been general or vague or even different from the final version. As the issues are clarified and refined as the data is collected and through this interactive process the problem becomes more specific and detailed. In such research the increasing understanding and insights into the problem which leads to its expansion and/or clarification should be described, not appear merely as the end result.

A GOOD example of such a report that explains how the research problems were developed and refined by the research process, is the WLSA Zimbabwe 1994 Inheritance Report. The authors are frank about the way in which the research process developed and how the investigation of customs and practices was responsive to the findings in the field. In fact it might be argued that this uncovering of the true dimension of customs and the methods used to carry it out, lay at the heart of the research process. Thus a major finding was the technique of deconstruction and reconstruction of customary law and practices.

14.5.5 Suspense Structures

This structure involves the making of a provocative, challenging or startling statement very early in the work. In this way the researcher indicates that she is going to reveal, as the work continues, new and interesting results or substantive challenges to existing wisdom. When this structure is applied, challenging answers to questions about a certain phenomenon are presented early in the work or a particular chapter. In this way traditional wisdom can be confronted with scientific discoveries or research results. The remaining parts of the work develop and discuss the ways in which the researcher arrived at these theories and explanations.

AN EXAMPLE of this structure is the WLSA Zimbabwe Inheritance Report which presents, very early on in the study, the conclusion that the customary law of the superior courts is severely dislocated from the customs and practices of the people. Thereafter the data that prove this point and the implications of the findings are explored from various perspectives.

This is a structure that, when combined with a theory building structure, provides a sound framework for deeply analytical and critical studies where new theories are generated and old theories challenged.

14.6 Composition Styles: Presentation of Data and Analysis

Once a structure or structures have been roughly settled on, the more detailed process of deciding how within that structure the data and findings are to be presented can be determined. The researcher needs to decide how best to present the various different kinds of data collected from the multiplicity of sources in the field. Van Maanen in his provocative and highly entertaining book *Tales of the Field* suggests various ways of presenting the field data, and to a certain extent which data to present to the chosen target group (Van Maanen 1988).

Van Maanen distinguishes between three main forms to be found in publications on fieldwork made by social scientists: realist tales, confessional tales and impressionist tales. We suggest that the women's law researcher seriously considers such styles but there is also merit in presenting some of the data from the field in a more legalistic framework. In a legalistic framework the case is presented as an adversarial process with the stages of the litigation and dispute recounted and the findings carefully analysed and presented.

14.6.1 Realist Tales

This style of writing is the most common used in academic writings. The writer appears as a dispassionate third-person voice, confident that the world recounted is the real one. Only that which the participants in the studied activities say, do or think are visible in the text.

The focus of the tale is a restricted one, tied to a particular problem posed in the opening paragraph of the text and more or less resolved by the conclusion. Material is organized according to topics, and problems relevant to the fieldworker's conceptual and disciplinary interests. The activities of the researcher/author is presented separated from the account itself, in a chapter on methods. The researcher usually employs this style within a standard linear structure. A brief examination of a number of theses in the social sciences usually reveals that this is the predominant format for such works.

14.6.2 Confessional Tales

While realist writers take what the author knows as their subject matter and more or less ignore how they arrived at their findings, the confessional writer takes the author as the subject matter and explores the research processes and what was found, describing these processes in detail. The confessional tale springs from concern about the critical evaluation of the data and the research methods employed. It also contains an implicit critique of the assumption that a researcher in the social sciences can go out and find definitive data or explanations about events. It is a style that can be used in studies where there has been disciplined fieldwork and close attention paid to the epistemological problems in social science. Such as unpacking and analysing the different perceptions of the world held by observers and the observed. Confessional writing is concerned with, for example, «how the fieldworker's life was lived upriver among the natives». The research work itself is often presented separately from the description of the field of study, which might be located in another part of the report or in another publication. As a style it is a good way of raising the issue of the validity of the collected information.

Such a style can be employed to good effect in the introduction and methodology chapters of a thesis which follows a linear structure.

14.6.3 Impressionist Tales

In contrast to the two mentioned forms of tales the impressionist tales attempt to bring the «knower» and the «known» together. It is often best employed as an oral presentation, that is as the anecdotal behind the scenes talk of fieldwork. Reconstruction in dramatic

form of those episodes the author regards as especially notable are a hallmark of this style. The participants are presented as personalities, not types. The tales try, as do impressionist painters, to capture a worldly scene in a special instant of time. The impressionist tale may be enclosed in realist or confessional tale. There could be parts which describe the location and scene set of interviews and observations. You can also describe your role and position in the research scenario. This is not likely to be a dominant style in scholarly work. But it provides a refreshing diversion for the reader in what may be mainly documentary material.

14.6.4 Voices of the Informants

A fundamental point in deciding on the method to present the qualitative data is that if the researcher is investigating women's lives, these cannot be reduced to mere numbers and statistics. It is the lived reality that is the most important part of the data. Every story will be different and it is these differences and the responses of women and other people to their problems that are, often, the critical elements in the study.

When considering how to present the data the researcher can be guided by the purpose and direction of the study as there is a very close connection between the overall aim of the study as reflected in the research topic, the methodology used and the final presentation of the study. A method that can be used in this context is that of illustrating the findings by the use of the voices of the men and the women who were interviewed or observed.

An example of this technique is to be found in the Zimbabwe WLSA Inheritance Report:

THE SUBJECT of ukungenwa³⁷ caused heated debate at the Nkayi³⁸ group interviews. When the subject of ukungenwa of the widow came up for discussion, all the women present, except for MaTshabala (the chief's wife) and MaDube condemned the institution of ukungenwa. In answer to the women's condemnation of the institution, Mr Nyathi insisted:

- At traditional Ndebele law, a woman must choose another husband from her deceased husband's relatives (Endulo umama

37. Literally to have a relative of the husband enter her home as a new husband.

38. Rural area in Northern Matebeleland.

wayengenwa). Even today she must choose another husband. If she refuses she must go back to her natal home.

Amid thunderous applause from some of the men present, Mr Nyathi insisted:

- She must choose another husband!
- An elderly woman retorted by asking the poignant question:
- What if she is an old woman?
- To which Mr Nyathi firmly responded:
- Even if she is old, kangenwe kuphela (she must choose another husband from among the deceased's brothers)
- A chorus of women retorted:
- No ways!
- MaNkomo spoke on the subject and rejected the concept of ukungenwa as outmoded and unrealistic in modern day society. Mr Mangena fully supported her and argued the institution is now so perverted as to be a disgrace. His view was:
- Practice has shown that men refuse ukungenwa if the widow has no property. They want ukungenwa only where there is property. Clearly all they are interested in is the property.
- Woman after woman stood up to condemn the institution.

It is clear that the great majority of the women interviewed and several of our male respondents in Nkayi did not support the of the custom and practice of ukungenwa (WLSA Zimbabwe 1994:107).

This could have been recorded much more succinctly by way of a summary of the male and female views plus a comment about the diverse views. The research team was of the view that such a presentation would not reveal the depth of feeling or the views as vividly. According to the research team the power of the words of the informants plus their numbers made the case without any quantification of the data.

14.6.5 Language

The above passage also raises another issue that is very important when writing reports of such a nature, especially where different ethnic groups are being dealt with and where the deconstruction of custom is a key element in the research. That is the need to ensure that the words of the informants or the groups are accurately presented. The passage above uses the Sindebele words with approximate translations and establishes that language itself is a problem. Such a mode of presentation gives the reader the chance to consider the meaning

in the language and to realize that the meaning itself is a major research problem. This applies whether one is reporting conversations in the language of the report or a vernacular language.

If for example the researcher was conducting research into street gangs, the language to report interviews and interchanges with and between gangs would be the argot of the streets not a nearly refined «translation».

14.6.6 Different Tales Attract Different Readers

The final choice depends both on the data and the targeted audience as well as the objectives to be achieved through the writing.

Realist tales are understood and appreciated by colleagues, and by other special groups of users if they are especially formulated with them in mind. Confessional tales attract colleagues and students interested in following or understanding the methods used. Impressionist tales attract the general reader and also the academic if they are well written. If you aim at a mixed audience you could try combining the various forms. Van Maanen has the following advice for those wishing to pursue a career as a writer reporting on fieldwork:

«Start with realist tale: A presentation that is persuasive, methodic, empathetic and aimed at some general insight based on the particular is the real rite of passage into fieldwork circles. By producing realist tales one earns perhaps the right to confess how the representation came into being. Publish an impressionist tale or two. Not more than that or you are no longer taken seriously as a social scientist.» (Van Maanen 1988)

14.6.7 Tales for Theses

Van Maanen's classification of writing conventions lists the important elements of a reliable and readable report. If we return to the standard linear structure of a thesis an example can be generated of how the various forms and styles could be combined.

PREFACE: THIS might contain a realist description and a short relevant impressionist story from the field.

Introduction: this should contain a precise demarcation of the field of interest and a realist description of the project's background and relevance.

Background to the Study: earlier studies within the field of interest are described and a critical analysis undertaken.

Presentation of the *research problem* and the chosen *research design* could be through a realist and self critical tale.

The *research process* and the *methods of data collection*, as we have discussed above, need to be fully discussed. First of all this section contains an account of the research process. That means the development of ideas and understanding of actions, events and structures following the field observations and dialogues with parties in the course of events has to be charted. This account may take a chronological form and could also fit a confessional tale. Especially if this part contains the author's reflections upon the interplay between problem formulation, the choice of methods, the seeking of knowledge, the effectiveness of observations and your perceptions of the influence, you may have exerted by your presence and activity. Confessional tales are useful if participant observation has been part of the methods used in the study. Such methods of presentation are only feasible if throughout the research process copious notes and memos have been taken on the field experiences and impressions.

The Main text: that is the findings section or chapters could be presented in two or three chapters, broken down by either geographical, chronological or other appropriate structural form. Within this the researcher might employ a realist tale to present concept building, through which the findings and the authors interpretations and explanations are supported by quotations and data from the field.

The discussion and or conclusion chapters then flow as a direct result from the foregoing sections or chapters. A theory building structure is one method of presentation and again the confessional tale might be adopted.

The researcher must «play» around with the possible structures and styles that might be used, but it is the data, the objectives and the audience that really determine what is the best method of presentation.

14.7 When and How to Start Composing?

As we have pointed out throughout this book the researcher needs to keep a constant control of the data, reducing it to written form, precisising it, analysing it and moving towards new insights and goals. If this is done consistently, much of the basic writing will have been ac-

complished, almost effortlessly, before the main writing phase begins.

Thus starting on the writing process early in the research process has many advantages. As you write, new ideas develop and gradually infiltrate and synthesize with your existing fund of ideas and knowledge, thereby contributing to the development of grounded theory.

Some authors feel they must begin at the beginning and go methodically through the report or thesis chapter by chapter. This is not necessary as long as the general framework and disposition of the chapters and their content has been worked out. In fact it is perfectly possible to work on one or more chapters at the same time. One very effective way to start writing is to start with the findings chapter and then work outwards in both directions from there. Experienced authors will almost invariably affirm that the last chapters to be written are the methodology, followed by the conclusion with the introduction being the very last chapter to be finalized.

Writing is a very personal process and the researcher needs to understand her own style of work and getting to grips with issues. Some are elaborate planners, who once a framework is filled out can go back and fill it out with examples and analysis. Others need only to have a broad outline to be able to start writing. These are authors who can write fluently and copiously, however the draw back is the hours spent thereafter in editing and pruning the text.

Others need to walk and talk to themselves, or have a colleague on whom they test out new ideas and directions. Whichever it is just start somewhere, the order can always be rearranged and gaps can be filled in as and where necessary. It may also transpire that as you write gaps in the data emerge and these can be plugged, where this is feasible, by a return to the field.

The novice writer also needs to understand that a major piece of work usually requires four or five drafts before completion.

If you intend to liven up your report with impressionist or confessional tales, write them initially in a form as closely recounting the events as possible. Correction of the language and the text can be undertaken much later in the writing process, when it is clear where and how they fit into the text.

To motivate yourself it is a good idea to break up the plan for the total writing process into parts to be completed at scheduled intervals. This way you can fulfil some personal goals, and experience small victories before the final sentence is written. Whatever you do,

do not fall into the trap of putting off the moment of writing until it is too late and an imperfect job is rushed out. Remember that no one else needs to see your early drafts. It might be that a supervisor sees only a third or fourth draft, which is seemingly a first draft of a chapter.

If you are more confident in making oral presentations than writing you might try dictating into a tape-recorder and then writing up from this. Another way to get started is to commence every chapter with a short statement or question raising or indicating what the chapter contains. Sometimes it is useful to end a chapter with a concluding remark to show where you have reached in your presentation of the data and what has been accomplished.

If you use a word processing programme headings and sub headings can be generated, then the material filled in later. Sections usually need to be moved around, this is easy enough if you are word processing. If a hand written or typed draft is being produced, be sure to double space and write on only one side of the paper. This facilitates correction and cutting and pasting exercises.

Always keep a note book or paper handy, wherever you are, on which to jot down thoughts and connections that arise. Once you start writing the thoughts start to flow rapidly and fluently.

14.8 Problems of Anonymity

Especially in reports built on qualitative data and qualitative analysis there may be a need to protect the anonymity of the respondents. Anonymity may be required because trade secrets or family «skeltons» are revealed. Some of the activities described might be illegal or likely to cause embarrassment to the informants if revealed in a research report. Anonymity can compromise the way in which background data is described as this might reveal, albeit inadvertently, who the informants are. The lack of ability to reveal one's sources might also raise doubts as to the validity and reliability of the research. Therefore we would suggest that you do not promise anonymity as a routine matter when gathering qualitative data. Use your discretion in such matters, it is better to have to guarantee anonymity than not to get the data.

14.9 Reviews of a Midway Draft of the Study

A useful procedure which improves the overall quality of the study is to have the draft report reviewed by the participants and informants in the study. Review by respondents might be considered part of a test by action in so far as it is an occasion for further dialogue on the themes and problematics of the study. It can also serve as a check. But it might also be used to check that the description of cases, incidents and dialogues is in accordance with the memories of the respondents.

Where a thesis is being written the researcher should maintain constant contact with her supervisor or supervisors and ensure that they read the drafts of the work as they are produced. Ultimately the responsibility for the final product lies with the researcher, however, critical review by the supervisor can greatly help in the writing process.

Effective supervisors do not confuse the researcher's work with the researcher as a person. A rigorous critique of a draft should not be regarded as a «disciplinary issue» the researcher is not in trouble, rather the learning process is being enhanced. If «trouble» does arise it will usually be where either a massive, rambling and unpruned heap of data is handed in or where a thin under worked piece is presented to the supervisor to «rescue» just before the submission deadline.

14.10 Conclusion

Writing up the research is a critical phase in the research process. The value of the researcher's work can be greatly enhanced or grossly under represented by the final form of the written report or thesis. We have discussed various structures that might be employed and various styles for presentation of the data in this chapter. The researcher has, however, to make the decisions as to how best to present the data and press home her analysis, conclusions and recommendations.

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Pursuing Grounded Theory in Law is written by five experts from Southern Africa and Scandinavia who have a vast expertise in teaching and research that integrate empirical data about women's lived experiences into law. The research methodologies presented in the book should be of use to both lawyers and social scientists seeking an understanding of changing law and gender relations in plural systems of law in Southern and Eastern Africa.

Skills in data collection, fieldwork methods, interpretation of fieldwork data and integration of the findings into a framework of legal analysis are provided. University lecturers conducting courses in women's law, gender studies, law and development studies, research methodologies and those dealing with customary law and "living law" should find the book particularly useful.

The issues that are raised in this book are not unique to African countries or to women's law studies. The methodologies can be adapted by researchers to other types of investigations directed at the intersection of law and reality, which exists literally everywhere.

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