



Judicial independence: *quo vadis?*

Cagney Musi (Regional Magistrate, Somerset West) examines the implications of the 'Van Rooyen' case

While the country is struggling with the African renaissance (rebirth), the magistracy is grappling with a magisterial naissance (birth). The birth of a *de facto* and *de jure* independent magistracy was given impetus by Southwood J in the now infamous 'Van Rooyen' case. The ramifications of the judgment are so profound that the course of judicial history has been changed.

The Court found that courts should be independent and subject only to the Constitution and the law. The rule of law – which is a fundamental value of our democratic state – requires that the judiciary be independent. Because the Constitution does not define 'independent', the Court held that the meaning of the word must be derived from the basic tenets of a constitutional democratic state founded inter alia on the provisions of the Constitution and the rule of law. After an extensive review of local and international authorities, the Court held that an actual lack of independence need not be proved. The appropriate test is 'whether the tribunal, from the objective standpoint of a reasonable and informed person, will be perceived as enjoying the essential conditions of independence.'

Courts can and will only be respected if they are perceived to be independent. The late Chief Justice Mahomed eloquently dealt with perceptions when he stated a fundamental truth that 'the real and ultimate power of the judiciary must lie in its independence and integrity and in the esteem which generates within the minds and the hearts of the people affected by its judgments ... A judiciary which is independent and

which is perceived to be independent within the community protects both itself and the freedoms enshrined in the Constitution from invasion and corrosion. A judiciary which is not impairs both.' ((1998) 115 SAIJ (4) 658 at 661).

The essential conditions of independence were identified in the leading Canadian case *R v Valente* (1958) 24 DLR (4th) 161 (SCC) which was quoted with approval by Southwood J as:

1. Security of tenure, embodying as an essential element the requirement that the decision-maker be removable only for just cause, 'secure against interference by the executive or other appointing authority'.

Van Rooyen and Others
Case No: A932/98
Transvaal Provincial Division
June 2001

The applicants and some of the respondents approached the High Court for, inter alia, an order declaring certain sections of the Magistrates Act 90/1993, Magistrates Courts Act 32/1944, and regulations promulgated under Act 90/1993 inconsistent with the Constitution and invalid. The Acts and regulations were attacked because of their inconsistency with inter alia sections 34, 165 and 174(7) of the Constitution. The applicants argued that because of the institutional dependence of magistrates, regional courts and magistrates courts are not legally competent courts. The Minister of Justice and Constitutional Development argued that magistrates' courts are independent and that all courts are not required to be independent to the same degree.

2. Financial security free from arbitrary executive interference.
3. Institutional independence with respect to matters relating directly to the exercise of the tribunal's judicial function.

Continued on page 3



'Developing Skills for effective delivery – Social context training for Magistrates': Northern province workshop

Simplifying criminal pr

The Paper reflects the controversial issues and different views within the Project Committee on the constitutional implications of some of the recommendations. The Commission has therefore not taken a final position on the issues and proposes that alternative options be considered with the aim to stimulate debate.

The Commission's recommendations include the following:

(a) Police questioning and defence disclosure from the time that suspicion first falls on the accused until s/he is indicted.

Option 1:

Amend the Criminal Procedure Act ('CPA') to permit a court to draw an adverse inference from pre-trial silence of a suspect. The inference may be reasonable and justifiable from the: accused's failure to mention certain facts when questioned or charged; accused's silence at trial; accused's failure to account for objects, substances or marks found in her or his possession at the time of arrest, and to account for her or his presence at a particular place, that may implicate her or him in the commission of the offence.

Option 2:

At common law, suspects and accused persons may be questioned by the police but need not reply. No adverse inference is drawn from this silence. This common-law right is reinforced by sections 35(1)(a) and 35(3)(h) of the Constitution. This position should not be changed.

(b) Questioning of suspects

A police code of conduct for the treatment of persons in custody should be incorporated in regulations published in terms of the Police Act. The South African Police Service should take responsibility to develop such regulations.

(c) Admissibility of confessions and admissions

Amend the CPA to provide common

The South African Law Commission has recently approved Discussion Paper 96,¹ which deals with a more inquisitorial approach as part of its investigation into simplification of criminal procedure.²

Prof. PJ Schwikkard (Senior Lecturer, Faculty of Law, UCT and member of the SALC Project Committee on Simplification of Criminal Procedure) provides a summary of the Discussion Paper.



requirements for the admissibility of all statements or conduct of the accused that might be self-incriminatory and that:

- Will not distinguish between police officers and others
- Will not require any statement to be reduced to writing
- Will expressly confer a discretion on a court to exclude any statement or conduct that is elicited in substantial breach of the regulations relating to the treatment of persons in custody.

(d) Defence disclosure from the time the accused is indicted until plea

Option 1:

Section 115 of the CPA facilitates defence disclosure if the defence chooses and no legislative intervention is necessary.

Option 2:

The defence should provide notice of its intention to raise certain defences, and may not, without leave of the court, raise the defence unless s/he has given notice to the prosecution. The defences include:

- Alibi
- Allegation that the accused is by reason of mental illness or mental defect not criminally responsible for the offence charged
- Statutory or any other ground of justification
- Defence which excludes *mens rea*.

An accused may not, without leave of the court, call an expert witness unless the accused, before or during plea proceedings, discloses the names and addresses of such expert witnesses, and produces copies of the expert reports that the defence proposes to rely on at the trial.

An alternative proposal entails reciprocal defence and prosecution disclosure and a continuing duty on each to disclose additional information. The accused may request, before evidence has been led, that the prosecution disclose any material to the accused, and the court may direct the prosecution to disclose such material. The accused may then be obliged to give a written defence statement to the court and the prosecutor, which sets out the nature of the defence and the matters that are disputed. The prosecution then has a duty to disclose additional material that has not previously been disclosed.

Failure by the defence to disclose or to disclose within the required timeframe, and disclosure of inconsistent defences, may be considered by the court when considering a discharge in terms of section 174 of the CPA, or when deciding whether the accused is guilty of the offence charged, or of an offence that constitutes a competent verdict. The court may draw inferences that may be reasonable and justifiable in the circumstances.

The 'Van Rooyen' case *continued from page 1*

cedure

(e) Greater judicial participation in the trial

Amend the CPA to allow for material that the defence has access to from the prosecution docket, to be placed before the presiding officer to enable her or him to exercise properly the powers provided for in s186. The information shall not constitute evidence until it becomes admissible in the normal course.

(f) Case and trial management

Amend s115 of the CPA to oblige the presiding officer to inform an accused of the right to silence; the consequences of remaining silent; that s/he is not obliged to make any confession or admission; and to ask the accused whether s/he wishes to make a statement indicating the basis of the defence. The presiding officer should be obliged to question the accused where s/he fails to disclose the basis of the defence.

Statutory provision should be made for pre-trial conferences. The presiding officer may, on application of the prosecutor or the accused or defence, direct either of them to appear before her or him to: consider the identification of issues not in dispute; consider the possibility of obtaining admissions of fact to avoid unnecessary evidence; ensure that sufficient details are disclosed where the defence intends to raise a defence of alibi; and consider the necessity of calling expert evidence that may assist the disposal of the trial in an expeditious and cost effective manner. The court must record in open court the agreements entered into and concessions made.

NOTES

1. South African Law Commission Discussion Paper 96, Project 73 *Simplification of Criminal Procedure (A more inquisitorial approach to criminal procedure - police questioning, defence disclosure, the rule of judicial officers and judicial management of trial)* 2001.
2. This summary is extracted from the SALC Bulletin June 2001.

Moreover, s174(7) of the Constitution expressly states that '[o]ther judicial officers must be appointed in terms of an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice.' The Court found that this constitutional imperative is not satisfied. Instead, the magistracy was made the personal fiefdom of the Minister of Justice, by way of regulations, which are not an Act of Parliament but made by the Minister of Justice.

The Court scrutinized all the sections in the challenged Acts and regulations dealing with the essential conditions of independence and found that they are totally out of sync with judicial independence. The Court stated that a magistrate's powers and duties must be derived from either the Constitution or the law of the RSA ie, they are not dependent on the executive. Southwood J found that the objective reasonable and informed person would perceive the appointment, salary determination, promotion, transfer, dismissal, and disciplinary steps against magistrates to be open to executive manipulation.

Southwood J embraced the concept of a single independent judiciary with different tiers and held that the 'Constitution does not distinguish between the courts on the question of their independence ... and section 165(2) expressly provides that courts are independent and subject only to the Constitution and the law which they must apply impartially and without fear, favour and prejudice.'

The Court looked at the overlap of judicial and executive function that exists in the magistracy and found that the criteria for permissible non-judicial functions is not met. The Court held that the Minister's powers of conferring or assigning to magistrates administrative functions, undermines the independence of magistrates' courts.

The restructured and transformed Magistrates' Commission also did not pass constitutional muster. The Commission currently consists of 27 members. Stripping the composition of the Commission from its semantic and linguistic protection, the Court found that the "party having majority of members in Parliament and constituting the Executive authority

Section 165

- (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
- (3) No person or organ of state may interfere with the functioning of the courts.
- (4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

Section 34

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

appoints or designates 20 members of the Commission'. The Court moved beyond perceptions and declared that the Commission 'is obviously no longer the autonomous body it was intended to be.'

It is tragic and inexcusable that it took all this time, money, and commitment of the parties concerned to establish through litigation a universal axiomatic principle. The words of the late Mahomed CJ will always ring true that 'every component of civil society has a vested interest in the protection of the independence of the judiciary. Subvert that independence and you subvert the very foundations of a constitutional democracy. Attack the independence of judges (sic) and you attack the very foundations of the freedoms articulated by the Constitution to protect humankind from injustice, tyranny and brutality.'

The judgment is awaiting confirmation by the Constitutional Court, and pending that we will have to wait nine months for the independent magistracy to be born!

Section 174(7)

Other judicial officers must be appointed in terms of an Act of Parliament which must ensure that the appointment, promotion, transfer or dismissal of, or disciplinary steps against, these judicial officers take place without favour or prejudice.

How social context training made me a better interpreter

Before attending the two-week Social Context Training course on Interpreter and Quasi-judicial decision-making in Cape Town from 6 to 17 December 1999, hosted by LRG and Justice College and funded by the Canada-South Africa Justice Linkage Project, I used to consider myself a comfortable and efficient member of my profession. Everything was going well, I thought.

I emerged from this course with a lot of questions: does this word always mean that in the target language? Have I been listening to my clients and conveying their messages to their audiences or have I been commenting on their characters by leaving out certain portions of their utterances or by getting impatient with them? If these people were allowed a choice of an interpreter would I be their choice? Have I been showing their cultures enough respect, if any at all? If I were to be liberated from myself for a while would I consider myself an honest, reliable, considerate interpreter, friend, lover, son, brother or member of my community? Is my clients' trust in me justified? When I give a word, any word, a general meaning, am I not being biased against the speakers of regional dialects, pidgin, creole etc? When people do not fit into my little box of how people should dress / speak and I regard them as being typical criminals, is this not a sign of prejudice? How does my bias, prejudice manifest itself in my interpretation?

All these questions were triggered mostly by a quote in one of the study materials provided during the course:

Interpreting an English speech into French does not mean saying in French what the Frenchman would have said if he had been a speaker, but it does mean having the French-speaking listener understand what the English-speaking listener understood.

Now, is this not where social context and the act of interpreting come together? Does this not remind me as an interpreter that words do not mean the same thing every time and everywhere?

This told me perhaps more than any-



John Manyange

Interpreter: Gijane Magistrate's Office

thing else that as an interpreter, one should guard against giving general meanings to all

words but to aim at communicating a message. This means stepping into the world of your clients and interpreting as an insider. My earlier training had emphasized the indispensability of language dictionaries in the life of a court interpreter. This orientation created a problem for me after the 'short course', because as a court interpreter my job is to bridge the gap between the culture of language and the law with its specialized terminology. Do I have to look up "intention" as an element of a crime in my Oxford language dictionary? This should tell you that until the 'short course', I also did not understand the language of people with whom I spend about seven hours each working day. This was mainly because I did not respect its peculiarities. I treated it objectively. This is still the case with many interpreters. This also meant that I used to treat all people equally. I now know that only people in the same category should be treated equally. To elaborate on this, the terminology I choose should suit the client and his culture, ie, whether it's a child, an adult, a rape victim, traumatized child/adult, etc. Social context training taught me as an interpreter to appreciate the peculiarities of individuals and their languages and to act accordingly.

Put differently, I believe I was taught to search deeper than what my eyes and

ears allow me to perceive. I am not saying that I am now better than the next person, but I am certainly better than I was before Cape Town.

I was invited by Justice College to the Rolling Needs Assessment meeting in Pretoria on 18 - 19 April 2000 where the training needs of interpreters were to be identified. It was decided then that the training curriculum had to be reconsidered and that training on social context be part of it. This inevitably means that court interpreters need to be retrained, or should one say redirected?

A month or so later I was identified as a potential trainer and sent for a three day intensive train - the - trainer course in Johannesburg and intensive facilitation workshop by LRG later on in the year. In September 2000 and March 2001 I got invited to Justice College for two weeks respectively to assist in the training of Advanced Interpreters and I must say I am happy with the direction that the training has taken. Now interpreters are exposed to experts from different but relevant fields and I know that we are moving in the right direction. Most of the trainers are impressed with the training and say they never thought until now that there was anything else anyone would teach them about interpreting. This makes me feel good about being a court interpreter, and I am happy for my present and future clients.

On a lighter note, I think it is worth mentioning that in the not so distant past court interpreters or most of them were notorious for literally sticking to the same jackets, but now the situation is changing, albeit slowly.

Intersections – gender and race

At the Masimanyane Conference in East London (18-20 June 2001), participants took

MASIMANYANE



Women's Support Centre

the 'lived realities' of women in South Africa to develop the analysis of 'intersection' of different forms of oppression, including gender, race, class,

Monitoring the implementation of the Domestic Violence Act

By Penny Parenzee

Senior Researcher: Gender, Law and Development Project, Institute of Criminology (UCT)

In May 2000, the Consortium on Violence Against Women started a research project monitoring the implementation of the Domestic Violence Act (116 of 1998) in three magisterial districts: Cape Town, Mitchell's Plain and George. It conducted interviews with court and police personnel, analysed the content of court dockets for January - November 2000, and observed and tracked cases.

Numerous obstacles hamper the effective implementation of the Act, such as interpretation of the legislation. Certain concepts such as imminent harm and emotional abuse create difficulties for magistrates and influence the way they deal with domestic violence cases.

One magistrate defined 'imminent harm' as: "If harm is present, he is going to hurt her right now, if there is a history of severe abuse". Another referred to it as: "[Something you consider when] she perceives that she is in danger." These examples show the difference between whether the magistrate believes there is a reasonable possibility of harm and whether the complainant perceives the possibility of harm.

When looking at 'emotional abuse', magistrates said that there is no guidance. According to one magistrate: "This is a difficult issue, not because emotional abuse is not serious, but ... we are uncertain how to deal with [it]. We are not given guidance on how to deal with this kind of abuse". Another said: "Of all the abuses ... emotional abuse is one with which I have the most difficulty. Especially in a breach, how do you prove it in a criminal court?"

These uncertainties have direct implications for others involved in implementation. For example, magistrates reported that facts set out in the affidavit are important to establish 'imminent harm' or 'emotional abuse'. However, when someone has not been trained to take affidavits, detailed information relating

to the history of abuse is absent. This may influence the ability to make informed decisions. The research has brought to the fore the importance of working with all roleplayers.

A number of related issues are discussed in the report, which is available from the Institute of Criminology (UCT). Contact Penny Parenzee 021-6505626 email: parenzee@law.uct.ac.za or Lily Artz 021-6502736 email: lartz@law.uct.ac.za.

FELLOWSHIP PROGRAMME

By
Tandazwa
Ndita

(Senior Magistrate:
Mount Frere,
Eastern Cape)

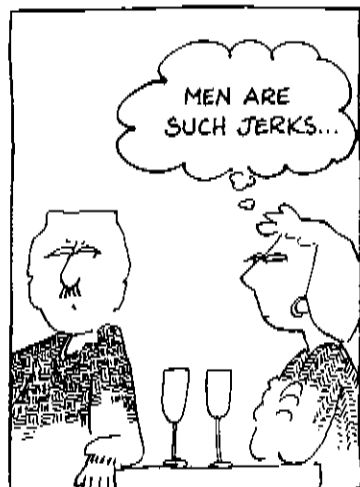
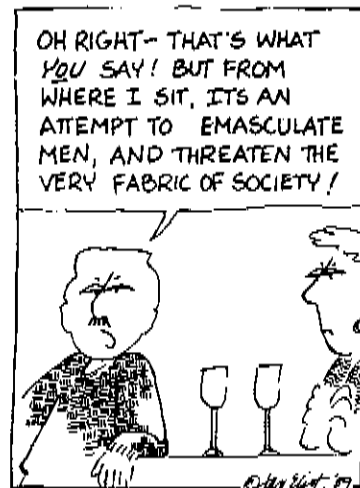


With great pleasure I am able to report that I am the first magistrate to have participated in the six-week residential fellowship programme for magistrates organised by LRG from 18 June - 26 July 2001. The first leg involved participation in the Masimanyane Conference in East London. The Conference objectives coincided with my fellowship research, namely Women's Human Rights - with Violence Against Women in rural areas as the main focus. The remaining weeks included a visit with the Deputy Minister of Justice, computer literacy training, a course in designing educational programmes, lecturing in the criminal procedure, civil procedure, evidence and succession classes (UCT) and the Legal Process class (University of the Western Cape), and assisting in the development of training material for magistrates on ethics and judicial independence. This period has been exciting and inspiring especially because of the support offered by LRG, academics and the Western Cape magistracy, as well as JOASA. It provided immense impetus for my intellectual development. It would be ideal if every judicial officer has the opportunity to participate in this programme as the experience gained is invaluable - it deepened my understanding of my role as a decision-maker.

By Tony Sardien, LRG

cultural oppressions, and their impact on the position and condition of women. Participants committed themselves to taking forward the view that women experience racism in particular ways after discussing areas relating to the condition and status of women including:

- Xenophobia
- Sexism in the media
- Discrimination against women who are gay and disabled
- Impact of globalisation
- The state and role of the women's movement.



'Court by Surprise'

By Thato Serato, Law Faculty, UCT

In the 'city of roses', Bloemfontein, one finds one of South Africa's successful Sexual Offences Court. The Court was established on 1 February 1999 as a permanent structure. It is the brainchild of the National Director of Public Prosecutions and forms part of a new programme by government to create specialist courts that will deal with the scourge of sexual offences faced by this country. Another aim of these courts is to facilitate a change in the manner that sexual offence proceedings are conducted, especially since there have been calls from various sectors of the public that such proceedings are debilitating to women in general.

At the time that the Court started operating, it had a backlog of cases as far back as 1993. However, it now only has a backlog of five to seven months. On an average day, the Court deals with two new cases and about two partly heard matters. The prosecutors' boast a conviction rate of 68%.

The Court deals with various sexual offences including rape, indecent assault, attempted rape, and all cases involving juvenile victims ranging from assault to crimes such as neglect.

The court building is unfortunately not accessible to disabled persons - there is a heavy staircase to contend with before one can reach the courtroom. The Court itself consists of two separate courtrooms, both situated on the third floor. Each courtroom has its own magistrate, two prosecutors, an interpreter, and an orderly. The benefit of having two prosecutors is that while one consults with victims and witnesses, the other is in court for the whole day on an alternating basis. According to one of the prosecutors, Ms Amanda Maree, the process of consultation is crucial because it builds a relationship of trust between the prosecutor and victims and witnesses, and helps to prevent secondary victimisation. It further helps in preparing a witness for the rigorous examination they will face during the proceedings.

The Court's jurisdiction is that of a



Bloemfontein Sexual Offences Court staff

regional court, and its geographic jurisdiction covers areas in and around Bloemfontein. Every second month, the Court sits as a circuit court for Thaba Nchu to deal with cases arising in that region. However, victims of sexual offences in Botshabelo and in nearby rural areas still have to travel great distances to Bloemfontein to have their matters heard. The one court caters for juvenile victims and the other for adult victims of rape and other sexual offences. Both are furnished with modern technology that ensures that juvenile victims testify in a separate room connected by video apparatus to the whole court. In the case of adult victims, every effort is made to have the proceedings in camera.

The Court follows a multi-disciplinary approach towards sexual offence cases by including teachers, police, doctors, community organisations and social workers in most matters it deals with. This is because it is normally these

people to whom victims feel comfortable disclosing their experiences. The Court has a Victim Support Co-ordinator, who is a qualified social worker from the Department of Welfare. The purpose of this office is to give emotional support to adult victims of sexual offences and to the relatives of victims. However, child victims are not given any psychological treatment until they have testified, to protect the authenticity of their testimony.

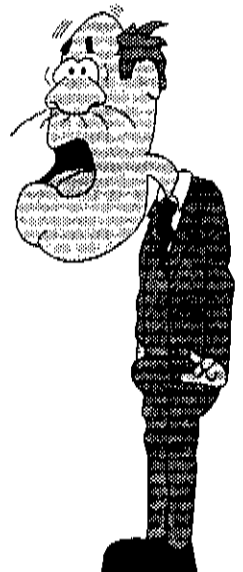
After a successful conviction, most cases are transferred to the High Court for sentencing. The prosecutors at the court have indicated that this may amount to a waste of state resources since the High Court normally gives periods of imprisonment of up to 15 years, which the Regional Courts also have jurisdiction to impose.

Finally, to all the members of the Court: Keep it up, job well done, you have really made Bloemfontein proud.

No brainer

(Said to be a true extract from a court transcript!)

- Attorney:** Doctor, before you performed the autopsy, did you check for a pulse?
Witness: No.
Attorney: Did you check for blood pressure?
Witness: No.
Attorney: Did you check for breathing?
Witness: No.
Attorney: So, then is it possible that the patient was alive when you began the autopsy?
Witness: No.
Attorney: How can you be so sure, Doctor?
Witness: Because his brain was sitting on my desk in a jar.
Attorney: But could the patient have still been alive, nevertheless?
Witness: Yes, it is possible that he could have been alive and practising law somewhere.



**RECOGNITION OF CUSTOMARY
MARRIAGES ACT**

Customary wives no longer perpetual minors!

**Lulama
Nongogo**

Attorney: Women's
Legal Centre
(Cape Town)



munity'. Thus, a spouse cannot share in the other's estate, property or money, unless during the divorce the court is asked to make an equitable order regarding maintenance and division of assets in terms of the Divorce Act 70 of 1979.

Polygyny

If the husband enters into further customary unions, the Act provides for the subsequent wife's rights to be protected. The husband must make application to court to approve a written contract to regulate the future matrimonial system of all marriages and ensure that the first and subsequent wife or wives benefit or share in the matrimonial property. All persons with an interest in the application must join the proceedings.

Equal status and capacity

The Act gives the wife equal status to decide what to do with property owned by the spouses jointly or by herself. The wife has an equal right and capacity to enter into contracts and to litigate, to acquire assets and dispose of them. Wives at customary law are therefore no longer perpetual minors.

Civil marriage and customary marriage

Spouses married by customary law can get married under civil law provided the husband has no other wives. If the parties marry each other under civil law they may not enter into a customary marriage with anyone else while they remain married under civil law.

Divorce

The Act states that parties who wish to

dissolve a customary law marriage must go to court for a divorce. The High Court or Family Court can be approached for a divorce. The advantage for women, especially those married 'out of community of property', is that claims for maintenance for them under section 7 of the Divorce Act and claims for a portion of the husband's estate can be entertained by the court. The Act provides a role for mediation by traditional leaders in accordance with customary law for any matter arising from the dissolution of marriage.

Other potential implications

Wives married under customary law should now be able to bring a claim for maintenance under the Maintenance of Surviving Spouse Act 27 of 1990. Non-recognition of customary law previously meant that this was not possible.

Also, the Intestate Succession Act 81 of 1987 excludes estates that devolve according to customary law. The rationale was the non-recognition of customary marriages. The Act may assist with challenging the unconstitutionality of this exclusion to ensure that customary wives also enjoy the benefits of the Intestate Succession Act.

JUSTICE FOR WOMEN CAMPAIGN

The Justice for Women Campaign, initiated by the Centre for the Study of Violence and Reconciliation, supported by the National Network on Violence Against Women, was launched on 23 April 2001. The Campaign argues that reduced sentences for women who kill their abusive partners is one step towards addressing gendered imbalances of the law. The Campaign aims to achieve:

- The early release of women imprisoned for killing their abusive partners
- A national review of sentences of women imprisoned for killing abusive partners
- Greater awareness among service providers of the need to intervene earlier and more effectively in domestic violence cases to prevent situations escalating to the point where one partner dies
- A commitment from civil society and government to increase and improve services to women experiencing domestic violence
- An increased public understanding of the impact on children of their mothers' imprisonment.

The Recognition of Customary Marriages Act 120 of 1998 came into operation on 15 November 2000. It is significant for all persons married in terms of customary law because it gives legal recognition to all customary marriages, including polygamous marriages, whether entered into before or after 15 November 2000.

Registration

Spouses in a customary marriage must register their marriage. The marriage certificate is prima facie proof of the existence of marriage. However, even if parties do not register the marriage it is still valid under this law.

The Act provides that either spouse may apply to a registering officer to register the marriage. This is advantageous where relations between spouses have broken down, and one spouse wishes to register the marriage to obtain a divorce. Despite this provision, the Home Affairs manual given to registering officers makes it a requirement that the husband must be party to the registration. The contents of the manual came to the knowledge of the Women's Legal Centre when it investigated why a client wanting to get a marriage certificate to divorce her abusive husband was refused one. The disadvantage that this requirement causes has been brought to the attention of Home Affairs.

Requirements for validity

The Act sets minimum standards for validity of customary marriages: Both spouses must be above 18 years; both must consent to be married to each other under customary law; the marriage must be negotiated and entered into in accordance with customary law. The Act does not specify what forms the customary celebration should take to ensure the validity of the marriage. This provides flexibility for different customary communities to enact marriages according to their own custom.

Property regime

The Act provides that a husband and wife who enter into a customary marriage on or after 15 November 2000 are married 'in community of property' unless such consequences are specifically excluded. The Act gives parties the choice to apply to court to change their matrimonial property regime from 'in community' to 'out of community' or 'out of community with accrual'.

If a person entered into a customary marriage before 15 November 2000 then that marriage will continue to be governed by customary law, ie, 'out of com-

EDITORIAL

Thanks to those of you who have kindly responded to our request for contributions. Remember, this is your newsletter so that you can keep abreast of what your colleagues are doing as well as any other interesting legal tidbits. We are still waiting with bated breath to hear about your 'ethical' experiences to assist us in the redevelopment of the Ethics course for Justice College.

Sadly, we bid farewell to Elizabeth Baartman, Presiding Officer of the Southern Divorce Court, who has resigned after two and a half years of dedication and commitment to increasing access to justice for our indigent parties and particularly women. We wish her everything of the best for the future.

We also congratulate Ms Rashida Manjoo, former staff member of LRG and currently a research associate to our Unit, on her appointment to the Commission on Gender Equality.

It is also with pride that we note that some of LRG's efforts were acknowledged by Minister Penuell Maduna in the Budget Vote 2001 entitled 'Moving Justice Forward!' where he said: "With the assistance of the Law, Race and Gender Unit of the University of Cape Town, Justice College succeeded in developing and presenting various social context training programmes for departmental officials and magistrates."

Finally, in commemoration and celebration of Women's Day (9 August 2001), we wish to acknowledge and salute all the women of South Africa who have made numerous sacrifices, in whichever form, to give us a better life.

— Waheeda Amien

Letter to LRG

*A newsletter is not a good idea
- it is a superb idea!*

The judicial process is a human process. No judicial officer is a super human. Our varied life experiences, backgrounds, perspectives and values are not erased once entering judicial office. We must take precautions to limit the damage imperfections might do to the interests of justice. Social context training is a pillar in the framework in which human rights driven justice and culture will take root and develop. I did not experience the training as a fault-finding exercise. I benefited from the short course for magistrates. It was a gift. I attended the course because I personally experienced the need to gain knowledge that will enhance

my abilities in executing my ongoing constitutional responsibility in pursuit of fair and equal justice. It is my wish that my colleagues grow with me in this process. We have discussed issues and I have provided them with notes I had received during the course. But there still exists a need for some formal external discussions. Magistrates feel neglected. All magistrates, and especially those appointed pre-1994 and in the age group 35 to 55 must be invited to attend a one day seminar (at a decentralised level, on consecutive days, for all to attend, with minimum impact on the court rolls) where social context training is contextualised. Expect some resistance, but also vigorous debate. Never underestimate the shared commitment of magistrates to justice.

Greetings

Chris Allers Magistrate: Vanderbijlpark



Female perversions

The movie should perhaps have been entitled *Feminist Perversions* as it is based on a book by Louise J. Goncalves commenting on

Emma Bovary. The movie contains provocative Freudian symbolism and addresses issues of women, law and religion.

Eve Stephens applies for a judgeship in California. She comes across as suave but is plagued by perverse visions of power and desire. Unhappy in her relationship with her attractive fiancée, she seduces René, a female psychiatrist who has just moved into their block of flats. Adding to Eve's anxiety is her replacement, the attractive Langley and her sister who is a kleptomaniac on the verge of finishing her Ph.D. in *Feminist Discourse*. Apart from suffering sibling rivalry Eve is tormented by childhood visions of her mother being killed by her father. As a result, Eve botches her interview for the judgeship with the governor because she does not support family values.

Overall, the video is pure fantasy with rich imagery of the Californian landscape, a dramatic soundtrack and great props.

— Cor-Iené Müller (Law Faculty, UCT)

Desert Flower

by Waris Dirie
(Virago, 1998)



This is an autobiographical account of the life of Waris Dirie, a Somali woman. Her story highlights the tragedy of female circumcision, capturing the torment and mutilation still endured by young girls today. Waris was born a nomad, circumcised at the tender age of five, fled an arranged marriage at 12 years and survived many adversities. After being spotted by a photographer, she became a successful model, and still continues to model today. It is perhaps the greatest tragedy of Waris' story that the anguish of female circumcision continues in this modern age. Her story is one of courage and triumph, a bittersweet tribute to the heart of the African woman.

— Veronica da Silva (LRG)

'Developing Skills for Effective Delivery – Social Context Training for Magistrates': KwaZulu-Natal workshop

