

Oath or admonishment?

By **Kate Pillay** Regional Court Magistrate, Durban

'It makes me sick to the stomach to have to do what I have to do now, and that is to acquit a rapist of having committed rape because the Magistrate ... failed to comply with elementary laws of procedure. The law is as clear as daylight.'

The above extract taken from an unreported High Court judgement illustrates how cases are set aside because the provisions of sections 162 and 164 of the Criminal Procedure Act have not been correctly applied by some magistrates.

Section 162(1) of the Criminal Procedure Act of 1977, provides:

'subject to the provisions of Section 163 and 164, no person shall be examined as a witness in criminal proceedings *unless he is under oath*' (my emphasis).

Section 164 of the Criminal Procedure Act states:

'Any person who, from ignorance arising from youth, defective education, or other cause is found not to understand the nature and import of the oath or affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation: Provided that such person shall, in lieu of the oath or affirmation, be admonished by the presiding judge or judicial officer to speak the truth, the whole truth and nothing but the truth'.

An enquiry to establish whether the child is a competent witness is necessary before the oath is administered, or prior to being admonished in terms of section 164. The purpose of this enquiry is to establish whether the child can distinguish truth from lies and whether he/she appreciates the duty to speak only the truth. Presiding officers are perplexed by this procedure as there is no format for it.

Karen Muller¹ proposes a concrete competency test and suggests that the

concept of colour be used to discriminate truth from lies. This may be appropriate if the child is older, since very young children do not have a clear concept of colour. A more concrete example would be to ask if a door or window is opened or closed and she suggests that questions should be phrased in a 'developmentally appropriate manner'.

If it is found that the child does not understand the difference between truth and a lie, then his or her testimony has to be excluded. Very often the child is the sole witness to an incident and if he/she fails the competency test, the offender is acquitted.

The problems which arise are due to assumptions made by some magistrates regarding the child's ability or inability to take the oath. Once a mental impression is formed, not preceded by an enquiry or finding, the child is simply admonished in terms of s164. Others

are of the opinion that very young witnesses do not have the capacity to appreciate the religious sanction of the oath.²

There are differing views on whether a formal finding on the child's ability or inability to take the oath should be made before he/she is admonished in terms of s164.

In *State v Malinga*, it was held that 'before applying its provisions, a finding must be made that the witness does not understand the nature and impact of an oath. A preliminary enquiry is necessary in order to reach such a finding.'³

However, in *State v V*⁴ the court held where the child is so youthful that it is obvious that he/she will not be able to understand the nature of the oath, such enquiry may not be necessary.

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Conceptualisation by Francois Botha

The Promotion of Equality and Prevention of Unfair Discrimination Act was passed in February 2000. The Act provides protection against unfair discrimination and creates Equality Courts in the Magistrates Courts and the High Court, each to be presided over by an 'Equality Court Presiding Officer'. Nearly three years later, the Act has still to be implemented.

One of the reasons for the delay has been the objection of judges and magistrates to a provision that authorises the Minister to appoint Equality Court Presiding Officers. The nub of this complaint was that it interfered with the idea of separation of powers and the independence of the judiciary. Representatives of judges and magistrates have discussed this with the Minister. As a result, an amendment to the Act was placed before Parliament in the second half of 2002. In terms of this amendment, presiding officers of Equality Courts will be designated in the ordinary way by a Judge President (in the case of a judge) or the head of an administrative region (in the case of a magistrate). This amendment was passed by Parliament in November 2002.

A second reason for the delay in promulgation has been the requirement in the Act that a presiding officer should be designated 'by reason of his or her training, experience, expertise and suitability in the field of equality and human rights' (s 31(1)(a)). This has meant that country-wide seminars have been held to familiarise magistrates and judges with the Act, as well as the right to equality that the law seeks to protect.

Equality courts – where are we now?



By Cathi Albertyn

Director of the Centre for Applied Legal Studies, Wits;
Member of the Equality Legislation Training Task Team

At the time of writing, there have been at least two sets of seminars in each province (and often more). It is now likely that the majority of judges and magistrates have attended one of these seminars and that there is a large pool of qualified judicial officers available to act in Equality Courts.

There was some objection to the provision describing the criteria for suitability of presiding officers, especially in so far as an assessment of 'experience' and

'expertise' can be subjective and open to dispute. It was even felt that 'unhappy litigants' might challenge the designation of the officer and his or her level of 'experience' or 'expertise'. To avoid this, the Act has also been amended merely to require that a judge or magistrate undergo a 'training course'. If this has occurred, and the judicial officer's name appears on a list maintained by the Director-General of Justice, than s/he is qualified to be designated as an Equality Court Presiding Officer. The Chief Justice (in consultation with the Judicial Service and Magistrates Commissions) is now responsible for overseeing the development, improvement and implementation of training courses (s31(4) & (5) of the amended Act).

The amendments to the Act have dealt with the problems of separation of powers, and the perceived inappropriate role of the Minister in relation to training and designation of presiding officers.

However, another problem underlies the delay in implementation, namely, the problem of resources, especially in the Magistrates Courts. In an attempt to address this, the amendments make provision for the 'incremental implementation' of Equality Courts at magistrate's level. This means that, initially, only some Magistrates Courts will be designated Equality Courts. While this recognises the very real problem of resources in these courts, it also means that South Africans will enjoy unequal access to the right to equality. The ability to secure protection through the Magistrates Court will now depend on where one lives.

Continued from page 1

In *State v Stefaans*⁵ the court found that it is not necessary that any formal finding needs to be made to the effect that the witness is unable to take the oath or to affirm. Moreover, the presiding officers may rely on their own observations of the witness concerned in concluding that s164 should be used. However, it is at least desirable that the presiding officer should record the reason for not administering the oath and, in cases where there may be doubt, should give reasons for so doing. A similar decision was made in *State v Bezuidenhout*.⁶

It is clear from these decisions that although it is desirable to apply the provisions of s162, a failure to do so would not be fatal, providing the presiding offi-

cer is able to justify, briefly, on record, why s/he chose not to do so. I must caution however, that s164 should not be resorted to in circumstances where the witness is unable to take the oath. I would, however, make the following suggestions when dealing with child witnesses.

- (a) Make the child comfortable and allay any fears the child may have about the judicial system and its workings.
- (b) Determine whether the child is a competent witness. Avoid abstract questions such as 'Do you know the difference between truth and falsehood'. Instead simplify questions to the child's level of understanding.
- (c) By now some impression of the child would have been created. Exercise

your discretion properly on whether or not to administer the oath. If you choose not to administer the oath, briefly state your reasons. This will prevent convictions being set aside for failure to comply with s162 or matters being referred back to the court a quo for reasons.

- (d) Admonish the child to speak the truth, the whole truth and nothing but the truth.

Notes

1. *The Judicial Officer and the Child Witness*. pg 157.
2. *State v V* 1998 (2) SACR 651 C.
3. *State v Malinga* 2002 (1) SACR 615 and 617 (D).
4. *State v V* 1998 (2) SACR 651 (C) at 654 D – 1.
5. *State v Stefaans* 1991 (1) SACR 182I.
6. *State v Bezuidenhout* 2002 AD 452.

The protection of the rights of people infected and affected by HIV/AIDS

Abridged opening speech at Port Elizabeth LRG workshop
by Rose Mogwera, Magistrate,
Port Elizabeth



People living with HIV/AIDS appear in our courts daily. The Constitution requires judicial officers to observe fairness and equity, and to give effect to and uphold human rights, including the right to equality and the right not to be unfairly discriminated against. Are we living up to the standards set in the oath of office? Are we displaying simple courtesy and respect to people living with HIV/AIDS?

Two fundamental aspects of social context training are understanding self and understanding others. Linked to the concept of understanding others is the protection of vulnerable groups, especially those regarded as the 'outcasts of the society'. Understanding others means putting yourself in the shoes of persons whom you are seeking to understand.

In confronting my ignorance of issues pertaining to HIV/AIDS, I began my journey by asking my family members to express their understanding of HIV/AIDS, and their responses were as follows:

'HIV/AIDS is a killer disease, it is like leprosy. It is incurable', my husband replied. Katlego, my first daughter responded: 'HIV/AIDS is a disease that attacks the immune system in human beings, especially the white blood cells which protect the body against infections and diseases.'

Boitumelo had this to say: 'HIV/AIDS is a disease which is spread when the blood of a person who is infected comes into contact with that of an uninfected person.' Dineo my 11-year-old daughter commented as follows: 'HIV/AIDS is acquired when two people have unprotected sex. A person cannot get it by hugging, eating, playing, and sharing utensils with another person who is infected. After some time the person infected would become very ill, and eventually s/he will die.'

There are very important lessons to be learnt from these remarks. Dineo's response was particularly interesting for the following reasons:

1. She was the only person who mentioned the role, which unprotected sex plays in the spread of Aids.
2. Her explanation highlighted the issue of discrimination or stigmatisation that goes with HIV/AIDS. In a way it discredited her father's shocking notion of equating HIV/AIDS to leprosy, especially when one considers the treatment that lepers were subjected to. Her understanding also reflected the "humanity" element, which is crucial in the fight against HIV/AIDS.
3. It is clear from her response that she appreciated that there are different stages of HIV/AIDS, and that to be infected does not necessarily mean that one is condemned to die immediately.

There is certainly much else to do, but I think that it is important for us to share experiences of this nature, as I believe that the fight against this pandemic has to start with some introspection by each of us.

From: <http://www.hsrc.ac.za>

11.4% of the country's population of two years and older are living with HIV/AIDS. Some 12.8% of women and 9.5% of men test HIV-positive.

From: <http://www.tac.org.za>

How do we know that HIV causes AIDS?

The evidence is overwhelming. Over a period of time, usually between 2 and 10 years, the Human Immunodeficiency Virus (HIV) destroys an infected person's immune system. Once the immune system becomes sufficiently weak, the infected person is prone to being attacked by opportunistic diseases. There are many opportunistic diseases, including, but not limited to, TB, cryptococcal meningitis, PCP and Kaposi Sarcoma. The immune systems of healthy people can fight off many of the diseases which attack people with HIV, but if left untreated, they can often be fatal or de-habilitating for people with HIV. When the immune system has deteriorated very badly and the infected person regularly falls ill with opportunistic diseases, the person is said to have Acquired Immune Deficiency Syndrome (AIDS). Someone who claims that HIV does not cause AIDS is referred to as an AIDS denialist or dissident. The arguments of the denialists have been discredited.

From: <http://www.tac.org.za>

How serious is the HIV epidemic in South Africa?

It is the biggest health-care crisis to face this country, or this part of the continent, in modern times. In 1999, a survey conducted by the Department of Health showed that 22.4% of pregnant women who attended public antenatal clinics tested positive for HIV. Using mathematical models, the government has estimated that over 4 million South Africans are infected with HIV. The insurance industry has reached similar conclusions.

From: <http://www.tac.org.za>

Is HIV a death sentence?

Treatment Action Campaign campaigns against the view that HIV is a death sentence. If left untreated, HIV almost always leads to AIDS. Poor nutrition and health usually exacerbate the situation. Eventually the opportunistic infections associated with AIDS lead to death. There is no cure for HIV, but there are treatments available which cure the opportunistic diseases associated with HIV and there are treatments called anti-retrovirals which either slow or stop the virus from reproducing. People who have access to these treatments can live much longer, healthier lives. In the United States and Europe, where anti-retroviral treatments are widely available, fewer HIV-positive people are dying of AIDS every year. HIV has become a manageable disease like diabetes.

From: <http://www.tac.org.za>

HIV/AIDS is one of the biggest killers in South Africa. Recent statistics have revealed that the number of HIV/AIDS deaths have doubled in the period between 1997 to 2001, from 4.6 to 8.7%.

Court in flagrante delicto

By Bruce Langa
Magistrate, Bushbuckridge

The Magistrates' Court, Bushbuckridge was 'court by surprise' in the December 1999 issue of *News and Views*. Since then, a valiant attempt has been made to upgrade and improve office and court built in 1930. It is not clear whether the previous article prompted these renovations, or perhaps just sheer coincidence, nonetheless, it is most welcome.

While we initially entertained the idea that this ancient structure should be donated, promptly and voetstoots as a heritage site - this was not to be. Instead, its wrinkles were ironed and bulges tucked away and any plastic surgeon would be envious! The resulting transformation has the potential to con the palaeontologists and elude heritage officials in search for arte facts and antiques, for another 99 years or so!

Magistrates, prosecutors and staff are literally behind bars, since much focus has been placed on the security within the building. Gridiron gates protect



almost every door, and the building resembles its sister correctional, or should I say, corruption facility! However, these safety measures are necessary considering the increase in violent acts against magistrates.

I proudly report that the renovations have included accessibility for physically challenged persons, as the court can be accessed by wheelchair from the main gate into the courtrooms. The rest rooms still need to be renovated for such access. We also expect the renovations to include user-friendly waiting rooms with possible baby rooms.

In addition, the upgrading includes the establishment of an Equality Court, which will play an important role in safeguarding the protection of the rights of marginalized rural women.

The gender representativity of the court's staff is good, consisting of 8 females and 10 males, regrettably all black. Sadly, the only female magistrate since the court's inception has been transferred to another office. We hope that female magistrates will soon be appointed to bring an end to the male monotony. The recent appointment of two female prosecutors at this court, brings a welcome change and empowerment of women.

What would you do?

By Anashri Pillay, Law Faculty, University of Cape Town

The accused pleaded guilty to culpable homicide in a magistrate's court. In his written statement, made in terms of s 112(2) of the Criminal Procedure Act, he admitted to driving a car into an intersection, despite the fact that the robot was red. He collided with another vehicle and two of the passengers in his car were fatally injured. The accused was found guilty. The magistrate concluded that there had been gross negligence and sentenced the accused to 18 months imprisonment with no option of a fine.

The sentence was appealed on the basis that the sentence was 'so severe as to induce a sense of shock and startlingly inappropriate having regard to the particular facts of the matter'. It was argued that the magistrate's finding of gross negligence, the basis for the sentence, was without foundation. The magistrate indicated in his reasons for the judgment that the conclusion of gross negligence was reached because the accused had admitted to entering the intersection while the robot was red and neither he nor his attorney gave any further details regarding the surrounding circumstances. Counsel appearing for the accused argued that the magistrate should have enquired into the surrounding circumstances. Furthermore, as he was considering direct imprisonment, the Magistrate should also have informed the accused and his attorney of this, obtained a pre-sentencing report and considered the possibility of correctional supervision.

What do you think? Should the sentence have been set aside? Answer on page 7.

Victory for women: Maintenance orders

By
Lulama Nongogo-Ngalwana
*Commission on Gender Equality,
Legal Department*



The *Bannatyne*¹ decision handed down on 20 December 2002 provides some relief for the vast majority of women seeking maintenance from the courts. The Constitutional Court considered the following issues:

Does the case concern a constitutional matter within the Constitutional Court's jurisdiction?

The Court decided that the case raised constitutional issues, because it asked whether the Supreme Court of Appeal gave due weight to the best interests of children, the state of the maintenance system, and its effect on gender equality.

This decision draws attention to the ineffective maintenance system and how systematic failures impact on the rights of children under s28 of the Constitution and the rights of women to gender equality.

Is it competent for a High Court to make an order for contempt of court for failure to comply with a magistrates court order?

The decision confirms the jurisdiction of the High Court to grant the remedy of process-in-aid, and highlighted that courts are empowered to ensure that constitutional rights are enforced.

The High Court will have a discretion to hear claims for maintenance and the test to determine whether or not to enforce the judgment of another court is whether 'there are good and sufficient circumstances' warranting it. What constitutes 'good and compelling circumstances' warranting a contempt application to the High Court will depend upon whether or not in the circumstances of a particular case the legislative remedies available are effective in protecting the

rights of the complainant and the best interests of children (para 23).

This decision has widened the options available to those seeking maintenance orders, but they would still have to go through the dysfunctional maintenance system, prior to being able to proceed to the High Court. A further hurdle is to pass the test laid down, which would allow the High Court to afford them the remedy they seek. This decision, can in the foreseeable future, result in the High Courts being flooded with maintenance cases, if the maintenance system and courts remain in disarray.

Despite the above, maintenance courts will be used by the majority of women claiming maintenance because:

- firstly, only those who are able to afford the services of attorneys and/or an advocate, will be able to take a maintenance case to the High Court, and
- secondly, there is a comprehensive legal framework with innovative provisions provided at no cost by the state. All that is needed is for the state to put in place systems that will enable this framework to operate effectively.

The *Bannatyne* judgment has only scratched the surface in providing relief to the problems in the maintenance system. The Commission for Gender Equality hopes that this judgment will pave the way to correct problems as a matter of urgency. These are lack of training; repeated postponements that cause delays; files being lost; shortage of court personnel and attitudes.

Note

1. CCT 18/02.

Impartiality and integrity in the magistracy

A review of an LRG workshop held on Robben Island 4 - 6 October 2002, by

Andre Dippenaar
Magistrate, Vredenburg

From a distance (à la Bette Midler) and looking back on what could have been just another LRG workshop, I succumbed to an uncontrollable urge to revisit my evaluation sheet.

On my way to the workshop, I asked myself what I would gain by participating. The title of the workshop seemed vague, and I was unable to answer my question.

I quickly scanned the workbook at the start of the workshop and realised that this time LRG had planned to hit it 'big time'. After dinner, el presidente Musi's exceptional and inspiring speech raised the curtains and prepared us for the activities LRG had planned.

The next day I found myself caught up in the most self searching, attitude changing and empowering workshop. The exercises were structured to lure participants into an 'honesty trap', which made me acutely aware of the fact that, because of our diverse backgrounds, we have such different views and opinions on matters such as recusal, impartiality as opposed to indifference, behaviour inside and outside court, media and public opinion pressure and even threats of violence and intimidation. It was quite scary to think that with these divergent views, we are all committed to administer fair and equal justice 'to all persons alike, without fear, favour or prejudice'!

The workshop also highlighted tangential views on the need for a single set of guidelines on ethics and principles for judges and magistrates, resources and special skills training.

All the activities were equally valuable and interesting. The visit to the Island and guided tour of the prison was, however, awesome, and indeed an emotionally enriching experience. I silently took the Magistrate's Oath again.

Would I recommend colleagues to a repeat of this programme? Unequivocally: yes! (even if only not to miss the highly acclaimed drama 'The court jester', studded with award winning stars such as Ian Yull, Judy van Schalkwyk, Judy Naidoo, Sabrina Sonnenberg, Cagney Musi and Caron Lehman).

I am of the opinion that social context training should be compulsory for all judges and magistrates.

'Inside outside'

– Why kids commit crimes and what we can do about it

By Cathy Park



There are over 51 000 male juveniles (13 to 17 years old) awaiting trial in South Africa today. Some of them are housed at Bosasa-Dyambu, a youth development centre in Gauteng. This centre aims to teach them the skills they need to change their lives and make a legal living. The centre offers the boys eighteen practical workshops (e.g. carpentry, motor mechanics, computer skills).

I was responsible for teaching life skills and business skills. In the time I spent at the youth centre, over 1000 boys passed through my classroom. Part of the life skills program involved helping the boys understand why they had committed crime. During discussions, most boys gave economic reasons for their actions. I began to realise that 'I was suffering. I needed money' was a glib answer. It is the answer accepted by society as the cause for crime. Although it is an accurate answer, in my experience, it does not describe the core reason for crime.

It is also a disempowered answer. It leaves the person a victim of his circumstances, of the economy and of the government. Seeing ourselves as victims leaves us outside events and experiences. If we are victims to our context, then our chances of changing are limited to whether the system will change or not. In class I worked to help each discover the deeper reasons for his actions so that he could claim his power to change himself.

One boy, Xolani, explained his entry and advancement in the crime world:

I went to a concert. My gran gave me R20 to spend that night. I saw some friends of mine who had every-

thing they wanted. I asked them where they found the money for all this. They said it was through crime and that they would show me. That is how I started. First it was grabbing someone's cell phone, then a 'car bomb' (smash-and-grab through a car window) then housebreaking. I started wearing gold jewellery and stylish clothes.'

His account reflected a common need. Many of the boys' stories were about doing crime so they could have style, get girlfriends and be respected in their neighbourhoods. The reason that many of the boys committed crime was more than money. It was about inner emptiness and a hunger for love and affirmation from the world.

Xolani showed me how we all use money and possessions to build up our self worth and to fill our emptiness. These 'criminals' that so many of us fear and feel anger towards want the same things that you and I do. We want to feel happy. We want to be loved and give love. We want to feel that whether we get out of bed today or not is important to the people around us. To find fulfilment and satisfaction, we are all faced with the same choice.

It took a hard lesson – being arrested and possibly sentenced – to show Xolani

that he needed to direct his attention inwards. Xolani's arrest shocked him into re-evaluating his life.

One cold July morning Xolani and I sat on a bench talking. He fiddled with the sleeves of his jersey as he explained, 'When I was first arrested, I thought I would trial quickly and go outside. I planned to go back to my old life but this time I would be more clever. But then as time went on, and at court the magistrate gave me remand after remand (he awaited trial for 15 months), I began to think more.'

'Then while I was at Sun City (he spent 5 months there) with my 'achooos' (co-accused) the man we had robbed and who my friend had shot came to see us.' Xolani's long-fingered hands moved expressively. 'Miss Cat, he spoke so softly to us. He showed us the bullet wound on his stomach. He made me see that what we had done was not right.' Xolani stared down at his dusty, scuffed shoes.

'Now I have changed my mind. I see that crime is not a good life. It's a life for stupid people who think they are clever.'

Xolani's description of his victim's visit moved me. This man had not written off his attackers as criminals to be put away for as long as possible by the judicial system. Instead, he went to talk to them and shared his pain at their actions. He spoke to these two youngsters as people with potential and the ability to learn from their mistakes. It was this encounter that helped this young boy with an earnest face and expressive hands to move towards change.

Xolani also took part actively in life at the youth centre. I started a monthly youth centre newspaper written by the boys and Xolani was one of the first on



Women on the rise at Durban Magistrate's Court

Soma Naidoo and Ntsiki Gwala (left) were appointed Senior Magistrates in November 2002 and they now manage the Civil Courts and Family Courts respectively. Our warmest congratulations and best wishes go to them in their endeavours.

the newspaper committee. This group worked hard to put together the first issue. The finished product brought pride and smiles to their faces. It gave them a chance to make a contribution to others. Later that afternoon, Xolani handed the newspaper over to his visiting grandmother with a flourish. When she handed it back, her eyes were shining with pride.

In the time that Xolani spent at Bosasa-Dyambu Youth Centre, I witnessed a change for the better in him. It was a change reflected in the faces and actions of many of the young men awaiting trial there. I believe that this change was due to three gifts that the boys were given at the youth centre:

- Skills to live from the inside out
- Love and understanding
- A chance to make a contribution and to feel significant

As fathers, mothers, magistrates, police officers, neighbours, we all have young people in our lives on whom we have a strong influence, whether this is over many years or during a single meaningful encounter. We can give these children - whether they are our own or children we encounter in our work - love and understanding. We can show them, by example, ways to live their lives from the inside out. We can give them a sense that they are important to us and to the world. We can tell them that they have unique gifts and talents to offer to the world.

Cathy Park is co-founder of BEntrepreneurING, a people development consultancy. See back page for book review.

News from Joasa

Joasa will host the International Association of Judges Conference from 13 - 16 June 2003, in Boksburg, Gauteng. This conference will focus on solutions to judicial backlogs and gender equality, highlighting genital mutilation in Africa.

Joasa will propose that gender equality, with specific focus on genital mutilation, be addressed at the conference. The agenda will be decided at a conference to be held in Spain-Allicante, to which Joasa has been invited.

Mr Joe Raulinga, the vice president of CMJA (Southern African countries) has invited JOASA to two conferences, one in Malawi and another to be held in Pretoria in April 2003. Joasa members interested in attending these conferences should contact their provincial representative, or alternatively Ms C. Molwantwa at 012 3347717, in respect of the IAJ conference and Ms B. Molamu at 012 3347731 in respect of the CMJA conferences.

The Gender Equality Committee invites provinces to submit suggestions and proposals for 2003 action plan. Please forward your proposals to the provincial sub-committees.

— BC Molwantwa, National Secretary: JOASA

What would you do? (from page 4)

The answer!

The High Court found that presiding officers should 'debate the difficult question of sentence with both the defence and the State, especially where the possibility exists of a sentence being imposed which takes an accused by surprise'. The sentencing discretion must be exercised in the context of all the relevant factors. The s 112 written statement in this case was not sufficiently clear or detailed. In particular, there was no indication of why the accused drove through the red light and there were no details of the manner in which he was driving at the time. The High Court considered sentencing to be a unique judicial function and stated that the 'public interest requires the Court to play a more active inquisitorial role' in sentencing. This applies irrespective of whether the accused is represented or not and irrespective of the competence of his representative. It was clear that the magistrate in this case had based his decision entirely on the 'bare outline of facts' in the s 112 statement. Although the accused could have exercised his right to silence, he should have been granted the opportunity to explain what had happened leading up to the offence. If he chose not to speak, there were witnesses who could have been called to provide for a full investigation. In lieu of such an investigation, the magistrate was not entitled to make any assumptions. The sentence was, therefore, set aside. The matter was sent back to the magistrate's court for a full enquiry and for the accused to be sentenced afresh. From *S v Sani* 2002 (1) SACR 625 (W).

EDITORIAL

Molweni bomantyi ninjani? Ndiphila kakuhle. Ndifunda isiXhosa. (*Hello there, how are you? I'm fine and learning Xhosa!*)

Nelson Mandela said that the best way to contribute to nation building and reconciliation is to learn each others' languages. I recently learnt that an interesting aspect of the language and culture was not only the importance of greeting but asking the person whom you are greeting how he/she is. In the past, when taking a call, the initial greeting followed by an immediate enquiry 'how are you', often astounded me. Now I understand the significance of this gesture and am able to communicate more effectively. I've only just started these lessons, and am already reaping the benefits.

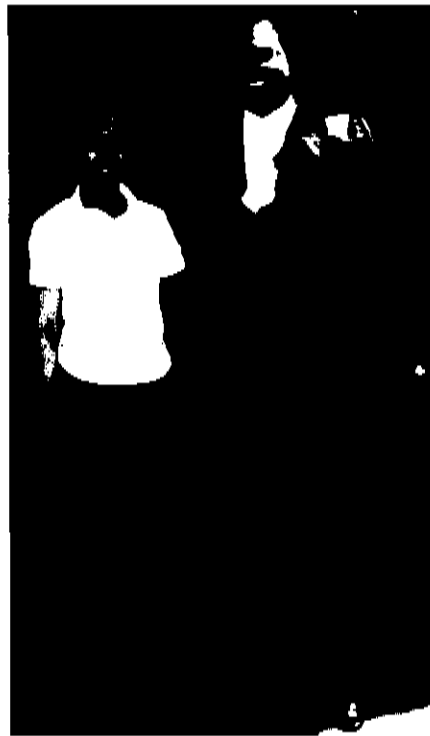
Aye, I'm back from Scotland! The experience was awesome and enormously rewarding. Aberdeen has a large student population and I was one of approximately 80 postgraduate students reading for an LL.M., the majority of which were foreign. I valued the cultural diversity, which contributed to some memorable social gatherings. I was fortunate to travel around Scotland and discovered the beauty of the highlands - its rolling hills, beautiful rivers, colourful towns and villages, long and unending lochs and picturesque harbours.

Living abroad anaesthetizes the reality of some serious concerns facing South Africa, and on my return, I was shocked by the increase of violence and the prevalence of HIV/AIDS. What I found disconcerting was that many of us are fatigued by these issues, and acquiescent to its consequences.

LRG has exciting workshops and events planned for this year and we hope that you will be able to participate. In particular, another intensive course - a ten day training programme aimed at potential magistrate facilitators - will take place at the end of July. Application forms are enclosed with this newsletter, and we hope that those of you, who have not yet had the opportunity to participate, will submit applications.

Nisale kakuhle, go well.

— Veronica da Silva



Congratulations to Connie Molwantwa and Mervin Dorasamy, (above) who were admitted as Advocates of the High Court, Transvaal Provincial Division on 5 November 2002.

bits & PIECES

Merwyn Doralingo, formerly Head of Office at the Goodwood Court, has left and has taken the position of Executive Director of the Athlone Justice Centre. We trust that his expertise will contribute to the success of the centre and will miss his presence at the court.

Our best wishes to John Baloyi, formerly Head of Office at Krugersdorp Magistrates Court, who as been promoted to General Manager: Strategy, Research and Policy at the Masters Business Unit, Department of Justice. The Unit is involved with administering deceased estates, insolvent estates, liquidations, trusts and Guardian's fund.

We are pleased to report that Waheeda Amien, previously with LRG, has accepted a scholarship from the University of Gent, where she will be reading for her Ph.D. in Conflicts in Human Rights. Waheeda will be based in Gent, Belgium, for four years. We wish her everything of the best.

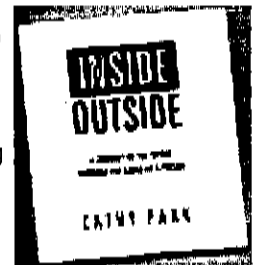
BOOK REVIEW

Inside Outside by Cathy Park

Cathy Park shares her experiences of the year she spent teaching life skills to juvenile offenders awaiting trial at Bosasa-Dyambu Youth Centre. She recounts her journey inside and outside, by keeping a diary about her classroom encounters with her students. She shares what her students have taught her, that choice is about where we look for fulfilment - inside or outside? Cathy's conclusion is that if we allow our happiness to depend on outside things, like cars, clothes or people, then our happiness is just as temporary as these external things. Cars break down, clothes go out of fashion and people leave.

She concludes that happiness is a choice made from within. Once we know that the answers we seek are within, we have the power to change ourselves. It was the young men awaiting trial at the youth centre who made this lesson real for her and she wrote the book *Inside Outside* about what they taught her.

Cathy is an entrepreneur, author, teacher and speaker, who describes what she does as being herself for a living. She is the co-founder of BEntrepreneurING, a people development consultancy. She helps people create work that allows them to live their truth, give service to the world and make a good living in the process. *Inside Outside* is available at bookshops nationwide for R125. Visit her website at www.bentrepreneur-ing.co.za or mail her at mail@bentrepreneur-ing.co.za



Published by: The Law, Race and Gender Research Unit, Faculty of Law, University of Cape Town, Private Bag, Rondebosch 7701.
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LRG gratefully acknowledges the financial support of SIDA (Swedish International Development Cooperation Agency)

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The views expressed in this magazine are not necessarily those of the editor or the Law, Race and Gender Research Unit.