

The Social Context Training Cooperation between Sida and the Law, Race and Gender Unit, University of Cape Town

Suki Goodman

Department for Africa

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Sida Evaluation 07/19

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Executive Summary

Brief Description of Programme

The Law, Race and Gender (LRG) Unit's social context training programme for magistrates was designed with the primary purpose of improving the administration, and implementation, of free and fair justice in South Africa post 1994. The programme focuses on social context education which aims to increase awareness of social context issues by magistrates in their courts. The training attempts to develop the required knowledge and skills necessary for just decision-making in a transforming society. Similarly, it attempts to provide magistrates with a comprehensive understanding of the spirit of the South African Constitution (1996).

The programme falls under the ambit of judicial reform interventions. These are interventions designed to bring about change in judicial processes, structures and systems.

The LRG Unit was established in 1992 as a research and training unit. Its research focus in the early 1990s involved researching issues of race and gender discrimination in the lower court system. Subsequently training interventions were designed to help magistrates overcome discriminatory practices inherent in the apartheid court system

Sida began funding the LRG Unit's programme in 1995. The initial contribution was approximately SEK 14 million. In 2002 a new application for continued support for 2003–2005 was submitted to the Swedish Embassy and a further SEK 3 million was awarded for both administration and programme activities.

The main components of the LRG Unit's activities involve the design and delivery of social context training interventions for magistrates in South Africa. These interventions generally take the form of weekend workshops based on specialised topics. The workshops are usually repeated in main centres across South Africa.

Purpose and Focus of the Evaluation as Expressed in Terms of Reference

The purpose of the evaluation is twofold. Firstly it is a summative assessment of the LRG Unit's programme of social context training for magistrates. Secondly it is a prospective assessment of possible areas and opportunities for future training interventions.

According to the Terms of Reference Sida/LRG evaluation document the purpose of the evaluation is to assess the concept, relevance and significance of the LRG Unit's programme. This aspect of the evaluation focuses on assessing the implementation of the project in terms of its primary objectives.

It assesses how the structure and management of the unit has contributed to the overall success of the programme.

It also analyses the successes and challenges experienced over the last ten years.

The scope of the evaluation includes an assessment of the LRG Unit's institutional arrangements and governance structures.

The evaluation explores opportunities for future training in terms of content and operations.

Summary of Findings, Conclusions and Recommendations

General findings suggest that the LRG Unit's training programme made significant contributions to the continuing professional development of magistrates in South Africa post 1994. The LRG Unit's programme addressed fundamental and challenging areas in the work of lower court officials. The programme was regarded as being of a high standard and the LRG Unit itself was highly regarded by numerous sectors of the legal profession.

Some aspects of the LRG Unit's programme were more successful than others and both the challenges and constraints and successes are discussed in detail in the report.

The major recommendations of the report suggest that in the future the LRG Unit forge solid working relationships with key stakeholders like the Magistrate Commission, the lower court management structures and the various magistrate associations. Social context training is classified as continuous professional development and input from these stakeholders is essential in developing meaningful training that targets real learning needs.

Another key recommendation is that the LRG Unit for ground research as an integral part of their core business. The original mandate of the Unit included both training and research as dual functions yet very little research has emanated from the Unit over the last five to six years. Research that demonstrates how the training programme is adding value, to the administration of justice in South Africa, is critical especially as a way of demonstrating the worth (return-on-investment) of the Unit's work to potential donors.

Future programmes should concentrate on further building training capacity within the judiciary through a consolidated train-the-trainers programme.

There is evidence from other countries that suggest that judges prefer to be trained by other judges. The peer facilitation strategy employed by the LRG Unit enjoyed some success but the pool of skilled facilitators was limited and magistrates are not trained in workshop systems and processes.

Peer facilitators need to be drawn into the design of future training interventions as opposed to being invited to facilitate already developed products. Similarly, greater magistrate involvement is recommended for future programmes. Magistrate respondents and members of the professional association recommend the active involvement of magistrates in content and curriculum design of future training interventions.

A key recommendation from a programme design perspective is that a more comprehensive approach to establishing training needs is developed. While a thorough and robust needs assessment is often a lengthy process the benefits of generating in-depth information about the target population's skills development needs will help ensure the development of appropriate training content and curriculum.

A further recommendation of this report is that programme evaluation could be more integrated into the programme; as opposed to sit outside of it. Evaluation should not be something that is tacked on at the end of a programme but should offer ongoing support through constant monitoring and evaluation.

The LRG Unit was established at a particular moment in South Africa's history. The nature, form, scope and structure of the Unit were appropriate for the historical time in which it was conceived.

When thinking about the future of the LRG Unit it is important to recognise that the judicial education context in 2006/2007 differs vastly from early/mid 1990s. Suggestions and recommendations for changes in the social context training programme and the configuration of the Unit itself reflect multiple factors in both the external and internal organisational environment in which the LRG Unit currently operates.

The state of judicial education in South Africa is under review. A particularly important development in this regard is a proposal for the development of a national judicial education institute under the auspices of the Office of the Chief Justice. If the plans for this institute materialise the role of an organisation like the LRG Unit will shift dramatically. The evaluation report discusses possible future training opportunities and lessons learned over last eleven plus years.

1. Programme Context

1.1 Development Context of the Project

“The love of rationalistic simplification ... leads people to think that in the mere technicalities of law they possess the means and the power to effect unlimited changes ... [Such an illusion is] cherished by lawyers who imagine that, by drafting new constitutions and laws they can begin the work of history all over again, and know nothing of the force of traditions, habits, associations, and institutions.”
(de Ruggiero, 1927, p.20)

The Law, Race and Gender (LRG) Unit’s training programme is designed to contribute to the eradication of discrimination in the administration of justice by magistrates in South Africa. Up until 1992 there was very limited research into this area. The LRG Unit was established initially as a research institute to conduct formal investigations into matters of race and gender discrimination in the South African legal system. The research emanating from the LRG Unit and other quarters documented the problems with the lower court system which, at the time, was characterised by racial and gender discrimination (Budlender, 1992; Currin, 1992; Currin & McBride, 1993; Dissel & Kollapen, 2002; Koen, 1995; Mahomed, 1988; Murray, 1995; O’Sullivan, 1994; Sarkin & Wolpe, 1999).

The various apartheid laws created a formal legalised system of racial inequality. Similarly, the administration of justice through the courts and informal court practices involved discrimination based on race and gender (Dissel & Kollapen, 2002). These discriminatory practices emanated from National Party policies and resultant laws that produced criminal sanctions to support the apartheid system (Dissel & Kollapen). Criminal sanctions were employed to curb resistance to apartheid and were an integral part of the human rights abuses that took place under National Party rule. Judicial officers working in this system were historically almost exclusively white males (Govender, 1997). The South African judicial system has a legacy of differential and unequal access to justice.

The problem of racial discrimination in South African courts has been particularly apparent in the lower courts or magisterial courts, which were dependent and accountable to the executive branch of the apartheid government (Murray, 2003). In the apartheid era magistrates were public servants and were generally recruited from areas in the public service as opposed to the legal community (Kgalema & Gready, 2000). As public servants they were controlled by the Department of Justice and were essentially instruments of the state. Magistrates’ status as public servants only changed with the Assessment of the Magistrates’ Act (1993). These factors, amongst others, meant that the lower courts were ill equipped for their role in a post-apartheid, democratising society and were unprepared for the demands of the new constitution. While the higher courts are in charge of interpreting legislation and establishing the standard of justice, the lower courts are at the “frontline” of the judicial system in South Africa. Most people come into contact with the lower court when engaging with the judicial system (Kgalema & Gready, 2000). The imperative for increasing the independence and efficacy of the lower courts is illustrated in the following quotation

It is in the Magistrates' Courts that justice is tested in its most crucial, most pervasive, most voluminous, most pressurised, and logistically most demanding dimensions – in literally thousands of cases every day ... The continuous struggle of the legitimacy and the efficacy of the instruments of justice is substantially lost or won in the Magistrates' Courts. (Mohamed, 1998, p. 47–8).

Magistrates were also identified as the target for training as they make up the highest numbers of judicial officers in South Africa and are more available for, and amenable to, training compared with High Court judges.

In light of its history, the South African judiciary is grappling with the complex dilemma of needing to balance their independence on the one hand and being accountable on the other hand. For the South African population to embrace a transforming judiciary, it has to present itself as a separate entity from the state while at the same time being accountable to the state for its practices and decisions (Kgalema & Gready, 2000). If judicial officers are ill-informed about the conditions in which the people who appear in their courts live, there is a serious risk of unjust decision making. In the same way a judge presiding over a matter of corruption or fraud in a company would have some knowledge of how the company works and how it conducts its financial business, a judge presiding over a case of domestic violence should have some sense of the psychology of domestic violence and some knowledge of the well established cycle of violence which often underscores these situations. The latter is not, however, a taken for granted.

Post 1994 the South African Constitutional Court made explicit recommendations on the delivery of justice in the context of a transforming South African society. It has promoted the move away from legal positivism (rules are applicable in an all-or-nothing fashion) towards substantive justice which acknowledges the social context in which the South African judiciary is operating (Govender, 1997; Petty, 2001).

The court system also has to demonstrate that it is free of all forms of unfair discrimination. It was in response to this context and social need that the LRG Unit initiated a programme for social context training of the magistracy (Sarkin & Wolpe, 1999). The development of this intervention is an attempt at facilitating transformation of the judiciary. It responds to the provisions laid out by Bill of Rights (1996) and the Constitution (1996) which posits equality in its substantive form as the cornerstone of South Africa's legislative framework (Fedler & Olckers, 2001).

In summation the development context of the programme was the need to eradicate discrimination in the judiciary and judicial process. This applies to judicial decision-making and the administration of courts and court practices. The need emerged from:

(1) The recognition of discrimination in the law and discriminatory practices in the courts

Both race and gender discrimination had been explicit and embedded in South African law. While constitutional change brought about changes in many aspects of law tackling discriminatory practices was considered to be a more difficult problem to target.

(2) The implication of Constitutional change and changes in other aspects of the law

Wide scale changes in the South African Constitution (1996) necessitated the development of training opportunities for lower court officials. After 1994 heralded a process of major constitutional transformation, new laws were introduced and with them new ways of doing things. Increased rights across the South African society meant that courts would be dealing with different communities under different circumstances. There was serious doubt about the magistracy's capacity to adapt to these changes without some form of support and training.

(3) Magistrates' courts and magisterial practice

Researchers presented evidence that the magistrates' courts were beset with problematic practices in the way they were run and how justice was being administered. Magistrates were targeted for training as they play an influential role in how their courts run and the practices that take place in their courtroom.

1.2 Project History

Discussions about establishing a research and training unit (focusing on social context education for judicial officers in South Africa) began when the executive national director of Lawyers for Human Rights met a prominent Canadian professor and practitioner at a conference in Switzerland in the early nineties. The professor was closely involved with the Canadian judicial education programme in West Canada and persuaded the director that judicial education was an essential component in ensuring a free and fair judiciary. At the time the Canadian programme was being exported to places like Australia, Israel and Porto Rico and the Canadians were extremely enthusiastic to get South Africa on board.

On returning to South Africa, the director approached the architects of the programme with a proposal to get involved in judicial education on gender issues. Collectively they decided that gender was too narrow a focus in the South African context and that issues of racism would have to be included if a programme was to be established. The Canadians were working with judges but the South African group decided that they would concentrate on magistrates as they were at the “coal face” of justice delivery in the South African court system. They also felt that South African judges would not avail themselves of the training.

The architects of the programme were invited to attend a Legal Education and Action Fund (LEAF) conference in Canada in 1992 where they met many of the main players in the judicial education movement.

The LRG Unit was established after this trip and it was located at the University of Cape Town's Law faculty as a joint project between Lawyers for Human Rights, the Law Faculty of the University of Cape Town. The University of Calgary, Canada was also involved at the onset of the programme.

1.3 Description of the Project

The early conceptualisation of the social context training programme was primary concerned with issues of race and gender and the administration of justice (Murray, 1995). More recently, the training has targeted issues like HIV/AIDS and bail and sentencing; working with child witnesses; advancing equality; understanding the experience of survivors of sexual violence and judicial ethics.

The objective of the training is to create a legal system which is unbiased and fair. The training attempts to accomplish this objective by helping to create a system which is sensitive and receptive to the needs of the entire population. The training is premised on the idea that in order to administer justice in a fair and unbiased manner judicial officials need to be aware of the circumstances of all South Africans and cognisant of the economic, social and cultural diversity within the society. The explicit aim of the training is to *“empower magistrates, by means of social context training, to deliver substantive justice through judicial decision-making process.”* (Petty, 2001, p.3).

The implication of this Constitutional directive is that the judiciary, the legal community, students and teachers of law are obligated to engage in an understanding of how contextual matters influence legal outcomes (Fedler & Olckers, 2001).

The LRG Unit's programme has included a number of different training initiatives since 1995. Over the last eight years, Justice College in collaboration with the LRG Unit offered an intensive two

week social context training programme (this was discontinued due to lack of funds) and the LRG offered weekend workshops on a regular basis nationwide on a variety of social context issues.

The Unit's activities include the following:

- Regional weekend workshops
- Train-the-trainers and facilitators' workshops
- Judicial transformation workshops with the leadership of the magistracy and other key role-players
- Curriculum development programmes with South African law schools and Justice College lecturers to revise teaching material within a social context framework
- Intensive two-week social context training courses jointly certified by the University of Cape Town and Justice College
- A Fellowship programme for magistrates
- The development of training resources
- Collaboration with other training providers and the sharing of resources with Justice College

The LRG adopted a peer-training methodology in their training programmes. The utilisation of magistrates as peer facilitators is a cornerstone of the training philosophy. Peer facilitators work together with LRG staff trainers and subject specialists in developing and facilitating the training workshops.

The Swedish International Development Agency (Sida) has been one of the major donor organisations since 1995 and funded the initial set-up of the Unit.

The monetary inputs included an initial SEK 14 Million. The initial funding formed part of the 1999–2003 Country Support Strategy (CSS). A further SEK 3 Million was granted for 2003–2005 for administration and programme activities.

2. The Evaluation Method

2.1 Reasons for the Evaluation, Scope and Focus of the Evaluation as Outlined in the Terms of Reference

The reasons for the evaluation are to firstly assess the project concept, relevance and significance. This includes:

- evaluating the implementation of the project in relation to its core elements and objectives
- assessing the effectiveness of the LRG Unit by analysing how well its organisational structure and management contributed to achieving its project plans and objectives
- giving an overview of the outcomes in terms of what has and has not worked well.

The evaluation will provide information about concrete lessons learnt and recommendations based on these lessons.

Secondly, the project management, coordination and stakeholder dialogue are assessed. This assessment includes:

- evaluating the LRG Unit's institutional arrangements relating to project governance and capacity. It also provides recommendations on how the organisation can continue to effectively contribute to strengthening social context education
- ascertaining whether any change is required in direction or scope of the LRG Unit's core business
- giving guidance on the specific components of the programme as well as preliminary indications and opportunities that the LRG Unit should pursue in its future work
- assessing the strengths, weaknesses and gaps in the current programme that should be addressed

Please see *Terms of Reference for the Evaluation* document in appendix I

2.2 Approaches and Method used in Conducting the Evaluation

A multi-pronged strategy was employed in conducting this evaluation. The methods of data collection varied depending on the particular aspect being assessed. Data for the evaluation was collected in October and November 2006.

Semi-structured interviews and documentation analysis were conducted for the qualitative findings and documentation analysis and statistical procedures were conducted for the implementation assessment.

Two versions of the interview schedule were developed to gather data from the various stakeholders (Please see appendix II for a list of interview respondents). The interview schedules were piloted with two respondents before being refined for further data collection. Face-to-face and telephonic interviews were conducted with individuals throughout South Africa. One respondent living in London provided written responses to the interview schedule.

The interviews were analysed according to Miles and Huberman's (1994) technique of qualitative data analysis. This technique involves coding and categorising the data according to the patterns that emerged through the analysis. The research findings were inductively derived using this interpretive-descriptive approach. All the respondents gave verbal agreement to having their names included in this report with the commitment from the evaluator that no comment is attached to any one individual to preserve some form of confidentiality.

In addition to the interviews an extensive array of documents were consulted and analysed for the evaluation. A list of these documents can be found in appendix II.

2.3 Sources of Data for Implementation Assessment

Empirical data were collected from a representative sample of participant evaluations, external evaluator reports and attendance information for the years 1998 to 2004. The analysis is based on available data sourced from the Unit's archives.

2.3.1 Participant evaluations

Data was collected from 263 participant evaluation forms from twelve workshops.

An analysis of the participant evaluation forms revealed that there is little uniformity in style, structure or content amongst the forms. Only a small number of questions were repeated in the majority of forms.

For the most part, the forms contain questions that require quantitative responses (i.e. responses on five-point Likert scales) and qualitative questions. A minority of forms require qualitative responses exclusively.

In order to represent the patterns of quantitative responses from the participant evaluations forms, the evaluator has reduced the information according to a basic analytic scheme. The scheme allows a meta-analysis of the data (Lipsey & Wilson, 2001). The evaluator used meta-analysis techniques to condense the data and manage the inconsistencies in the evaluation forms' format.

The scheme is based on an overall summation of ratings in the participant evaluation forms. While the order of the ratings differs from one evaluation form to the next, the researcher recoded the ratings when capturing the data to ensure uniformity and consistency in the data.

The scales were all five point Likert scales and where necessary the researcher inverted the responses so that scale ranges from 1 to 5 with:

1 = Poor; 2 = Fair; 3 = Good; 4 = Very Good; 5 = Excellent

The general analytical scheme involved categorising the questions into three major classes:

Table 1 Illustration of meta-analysis categorisation scheme for participant evaluation forms

Positive Assessment	Middle-of-the-Road Assessment	Negative Assessment

2.3.2 External evaluator reports

The Unit employs an external evaluator for each workshop. The evaluator is tasked with monitoring the process, making process improvement suggestions during the workshop in facilitator discussions and writing a comprehensive evaluation report.

Data was collected from sixteen external evaluator reports. Fourteen reports were compiled by six different evaluators and in two of the reports the evaluator is anonymous.

The reports vary in length, content, style and level of detail. They range from three to fifteen pages. The Unit gives loose instructions of what is expected of external evaluators when compiling the report which might contribute to the lack of standardisation.

In general the content of the reports follow these broad areas:

- Broad commentary on the success of the overall process
- Summary table of demographics of participants
- Analysis of participant evaluation forms
- Comments and feedback on facilitation skills
- Comments and feedback on logistical arrangements
- General and specific criticism of process-related issues
- Recommendations for future workshops

The reports were analysed using documentation analysis techniques of sorting through the information and identifying patterns and themes in the content of the reports (Jonassen, Tessmer, & Hannum, 1999). Data in sixteen reports were used in the analysis.

2.3.3 Attendance records

Data from attendance records were statistically analysed using STATA 9.1. The sample of attendees consisted of 526 magistrates. Please see appendix II for the demographic characteristics of the sample of magistrates analysed for this implementation evaluation.

2.3.4 Other

Other sources of data consulted for this part of the evaluation include the Unit's website and consultations with the ex-officer manager and ex-programme staff. For the most part these sources were used to check and verify information sources and data.

2.4 Limitations of the Study

The status of the LRG Unit is currently in flux and this is reflected in how the findings and recommendations are reported in this evaluation report. The findings and recommendations attempt to meet the dual expectations of a summative and prospective assessment of the LRG Unit's programme of social context training for magistrates. The future configuration of the LRG Unit is unclear at this time therefore some findings and recommendations address the LRG Unit in its historical form while others address future social context training programmes more generally.

Great effort was expended in attempting to interview as many diverse and representative respondents as possible. The curator/director of the LRG Unit contacted board members and other parties informing them of the evaluation and encouraging them to participate in the process. Unfortunately certain potential respondents refused to be interviewed or failed to respond to numerous email and telephonic messages inviting them to participate. The evaluator is confident that sufficient interviews were conducted and saturation point reached for many of the issues being probed.

3. Findings

The findings of this evaluation are structured according to the scope of the assignment laid out in the Terms of Reference document (15 August 2006, p. 2.) Findings are grouped under the major headings contained in this document. Subheadings indicate minor themes that emerged during the data analysis process.

3.1 The Contribution of the Social Context Training within the Boarder Justice System to Promoting Sustainable Delivery of Equitable Justice for all

The LRG Unit's training programme has made a significant contribution to the continuous professional development of many magistrates in the South African judicial system. The LRG Unit's programme has been the dominant social context training intervention for judicial officers in South Africa to-date.

The major difficulties in ensuring that the training contributed to the sustainable delivery of equitable justice centre around two issues (1) participation in the programme was voluntary and (2) only magistrates (as opposed to all judicial officers) were targeted for training.

In terms of the first issue the LRG Unit had no jurisdiction over magistrates hence could only encourage them to participate in training.

There were strategic and practical reasons why magistrates as opposed to judges were targeted for the training. The targeting of magistrates was deemed appropriate given the role they play in the justice system in South Africa.

3.2 The Extent to which the Approach has been Institutionalised and/or Integrated in the Decision-making of Magistrates

3.2.1 Impact on judicial decision-making

There was unanimous agreement amongst all the respondents that the work of the LRG Unit has had significant and positive impact, on the court conduct and decision-making processes of magistrates. This holds true for those individuals who have attended training which is approximately 800 members of the magistracy.

An example of this impact is how magistrates in the Eastern Cape began to understand the dynamics of the Xhosa initiation process and modify their legal instructions to accommodate these dynamics. In the past magistrates would issue warrants of arrest for boys who were attending Xhosa initiation school. Police people, with little regard for the cultural importance of this event in Xhosa culture, would interrupt the initiation process to arrest the suspect. With social context training magistrates have learned about the importance of the schools and have begun to appreciate the years of planning and expense involved. This knowledge was slowly accepted and has changed magistrates' practices. Magistrates suspend warrants until the suspect is back home and only then is he issued with a warrant or summons to appear in court.

Respondents reported that the majority of magistrates who attended the training developed new intrapersonal and interpersonal understandings and this stimulated many of them to reassess their work practices. For example, magistrates had to reflect on how they addressed witnesses and many were made aware of their inadvertent use of racist or sexist language.

Impact in terms of judicial decision making is extremely difficult to assess. Some respondents felt that the legal parameters in which magistrates work is rigidly defined and their decision-making is prescribed to, and confined by, the law. These respondents argued that the training could not influence decision making as their duties are entrenched in acts like the Magistrates Act (Act 90 of 1993). This sentiment is illustrated by the following statement made by one of the magistrate respondents, *"Our conduct is dictated as we are creatures of statute, we are bound by the ambit of law; we take on a particular role and can't get involved like social workers when we are on the bench."*

While other respondents suggested that being aware of where an accused "is coming from" and being more sensitive to the different life and contextual circumstances of people in the courts did in fact facilitate more equitable decision-making.

3.2.2 Were programme objectives well defined and clearly articulated

There was clear consensus amongst the respondents that the objectives of the programme were clearly articulated and involved introducing and sensitising magistrates to social context issues; diversity and difference; developing an understanding of the society in which they work and how unconscious bias and stereotyping can negatively impinge on the administration of free and fair justice for all.

The goals of the workshops were seen as developing ways of counter-acting any form of bias; prejudice and discrimination.

An analysis of the LRG Unit's documentation, however, suggests that the objectives and goals were broadly defined. The development of measurable outcomes is considered a challenge by judicial education institutions throughout the world. Good programme design and development requires clearly articulated goals that are linked to actual (and measurable) learning or behavioural outcomes.

Are programme goals and objectives well defined?

There is an important difference between programme goals and objectives (Rossi et al, 2004). Programme goals refer to the programme as a whole and are often articulated in broad terms.

Programme objectives are more narrowly defined and indicate specific desired outcomes of the programme (Rossi et al.).

Programme Goals

The following goals of the programme are outlined on the LRG Unit's website

The purpose of social context training is to:

- make participants more aware of the different views and experiences of the world that people have,
- explore ways in which participants might understand different attitudes and different social realities of people, and
- enable participants to recognise and to deal more sensitively and fairly with the problems they face (<http://www.lrg.uct.ac.za/>, 2006, 2)

The following goals are described in a covering letter that appears at the beginning of most workshop workbooks from 2003–2005;

Social context training is education that aims to give judicial officers and other court officials the necessary knowledge and understanding to appreciate the perspective of others and their differing circumstances so that their decisions are just and appropriate to the society in which we live.

LRG is concerned generally with issues relating to law, race and gender in the administration of justice. However, its specific focus is on magistrates' courts ... in transforming the legal system into one that is fair and free of bias. To achieve a system which is sensitive and responsive to the needs and circumstances of all South Africans requires judicial officers ... who are conscious of the economic, social and cultural diversity of our society and who are able to respond appropriately and with insight into the complex demands placed on them by South African society. ("Overview," 2004, p. 6)

As seen from this direct quotation the goals of the programme as a whole are broad and relatively abstract and ambiguous. They do not describe situations that can be "directly and reliably observed" or measured (Rossi et al., 2004, p. 89). This has implications for assessing whether the objectives of the programme have been met which could have consequences for funding proposals in the future.

Goals in comparison with global trends

Research indicates that the central goal of social context education for judicial officers world-wide is to aid judges in their role of administering justice and to ensure that judges are deemed just in their decision-making (Armytage, 2004; Smith, 2004). An analysis of practice throughout the world indicates that social context education is aimed at assisting judges:

- reach legally correct decisions on issues of discrimination or equality
- recognize areas where existing legal rules have the effect of creating or perpetuating inequality
- conduct proceedings in a manner that leaves both successful and unsuccessful litigants feeling that they have been respected and treated fairly
- avoid falling into error through operating on the basis of mistaken assumptions about human behaviour, motivation, expectations and needs;
- avoid making statements or acting in a way that is inadvertently insulting or hurtful to litigants, witnesses or spectators;
- avoid creating unnecessary controversy or attracting criticism of the judiciary (Smith, 2004, p.1)

Analysing the goals cited the above quotations against the goals collated by Smith (2004) it appears that the LRG Unit's programme goals are in line with global trends. Importance is placed on ensuring equity in judicial officers' court conduct. Similarly there is a shared emphasis on preparing judicial officers for just decision-making. The concept of fairness underscores the goals in both scenarios.

Programme Objectives

There is no uniform set of stated objectives for the programme as the content of the workshops differ across and between years. The objectives of each specific workshop are generally stated in the introductions to the various facilitators' guides and participants' workshop workbooks. There is lack of consistency across the workshops where some manuals have more detailed stated objectives whilst others have very vague objectives. Some manuals refer to programme goals and do not state specific objectives. Table 2 presents evidence of this from a sample of facilitator's guides and Table 3 presents evidence from participant's workbooks.

Table 2 Examples of workshop objectives from facilitator workbooks

Facilitators' Guide	
Workshop Title	Stated Goals and Objectives
Social Context Training Workshop, Kwa-Zulu Natal, "Contextualising sexual offences" (Feb, 2005)	<p>Participants will be able:</p> <ul style="list-style-type: none"> • To reflect on the role of a judicial officer in the context of South African society • To understand the impact of the Constitution on them as judicial officers and in decision-making • To integrate an awareness of social context issues in decision-making in sexual offences • To understand the effect of the proposed legislation on decision-making in sexual offences • To discuss the circumstances in which evidence of previous sexual history can or cannot be permitted • To discuss the new proposed Criminal Law (Sexual Offences) Bill • To discuss procedural aspects pertinent to sexual offences • To understand how to deal with occupational fatigue • To discuss ways of how to deal with sexual offences courts and roles (Sardien, 2005)
Social Context Training Workshop, Bain's Game Lodge, Bloemfontein (Nov, 2004)	<ul style="list-style-type: none"> • To contribute to the transformation of the judiciary through the development of magistrates able to integrate social context awareness in the judicial decision-making process • To promote the development of structure and processes for sustained peer learning (Sardien & Ndita, 2004, p.7)
Social Context Training Workshop, Wintershoek, Northern Province (May 2003)	<p>Participants will be able:</p> <ul style="list-style-type: none"> • To identify the sources and forms of inequality between men and women in South Africa • To reflect on the formation of their own and their colleagues' identities in the context of South African society • To critically discuss social concepts such as stereotyping, identifying with the familiar, cultural and linguistic inequivalence (sic) and the implications of ignorance and socio-economic factors (Sardien, 2003)
Empowering the Judiciary through Social Context Awareness, Western Cape (March, 2001)	<p>Overall goals of the workshop</p> <ul style="list-style-type: none"> • To introduce social context awareness training, and its relevance for judicial decision-making • To expose the magistrates to specific instances where diversity issues impact on judicial decision-making for example, gender-based violence (Amien, 2001. p. 3)

Table 3 Examples of workshop objectives from participators' workbooks

Participants' Workbook	
Workshop Title	Stated Objectives
Social Context Training Workshop for Magistrates Zuurberg Mountain Inn, Eastern Cape Province, (March, 2004)	Participants will: <ul style="list-style-type: none"> • Examine their understandings of the impact of gender inequality on their personal lives and professional practices • Discuss the practical and legal challenges in the adjudication maintenance cases, the administration of estates and the awarding of civil damages • Clarify and apply selected gender concepts to illuminate the situations and practices of magistrates in South Africa (Sardien, 2004, p.8)
Social Context Training for Magistrates, Bergville, (August, 2001)	Overall Goals of the workshop: <ul style="list-style-type: none"> • To contribute to the transformation of the judiciary through the development of magistrates able to integrate social context awareness in the judicial decision-making process • To promote the development of structures and processes for sustained peer learning Objectives: <ul style="list-style-type: none"> • Introducing the key components of the social context approach • Reflecting on the role of the Constitution in the work of magistrates • Discussion and reflection on selected diversity issues as these impact upon the work of magistrates • Building networks for resources and support (Sardien, 2001)
Denial and Discovery: Empowering magistrates through social context awareness, Calendon (March, 1998)	No stated objectives in the workbook
Justice Today: The Final Chapter or A New Beginning? Eastern Cape, (November, 1998)	No stated objectives in the workbook

Similar to the programme goals, the objectives are broad and it is difficult to discern specific measurable outcomes. The objectives, for the most part, involve knowledge and information sharing. This is evidenced in the language of the stated objectives. According to the manuals the objectives of the programme include *introducing* magistrates to variety of topics; *exposing* magistrates to specific instances where social context issues impact on judicial decision-making; *examining* their understanding of a variety of topics; *discussing* issues etc. The emphasis appears to be on discussing and reflecting on various topics as opposed to developing skills and competencies to perform differently in court or to manage cases in a fair and equitable manner.

Recommendations

This evaluation dilemma is not unique to this programme; this kind of training poses challenges for evaluators in countries across the world (Windeler, 2003). Assessing impact and outcomes is often dependent on the nature of the programme objectives. Quantifiable programme objectives lend themselves to impact assessments far easier than the kinds of qualitative outcomes outlined in the LRG Unit's training programme.

Information contained in appendix IV (theory evaluation) will assess the programme's capacity to bring about the desired goals in relation to these specific workshop objectives.

3.2.3 Assessing the causal logic of the programme

As part of the Terms of Reference for this evaluation the evaluator was required to assess whether the approach to social context education has brought about changes in judicial decision-making and court conduct. A theory evaluation was conducted in an attempt to highlight some of the challenges associ-

ated with bringing about change in individuals work behaviour through this kind of training intervention. The theory evaluation is included in appendix IV of this report. The document outlines the purpose and process of conducting a theory evaluation and presents the findings of the evaluation of the causal logic (or programme theory) which appears to underscore the LRG Unit's social context training programme.

3.3 Suitability of Location in the Faculty of Law of University of Cape Town

The Faculty of Law (UCT) appears to have been an appropriate place for the LRG Unit to be housed. The LRG Unit, however, did not take full advantage of the benefits of being associated with the law faculty.

3.3.1 Benefits

3.3.1.1 Funding and financial oversight

Locating the LRG Unit within the law faculty gave it a certain level of prestige and credibility and this had positive implications for funding. One of the key benefits is that the institution provides a financial oversight role. Research unit's that receive accreditation by the institution are subject to internal quality checks. The LRG Unit had accreditation up until 2005 and therefore enjoyed a rigid financial review process on an annual basis.

3.3.1.2 Autonomy and neutrality

Locating the LRG Unit within the law faculty gave it a certain amount of autonomy and flexibility which it would not have had if it was formally aligned or associated with a governmental department. The programme staff had freedom in the design and development of curriculum. The University of Cape Town provided a neutral home for the training unit and the neutrality was regarded as important for attracting magistrates to participate in the training programme.

Numerous respondents commented on the value of having an independent neutral training unit that was not affiliated or associated with the Department of Justice. The faculty is not regarded as aligned to any one political party. The respondents compared the LRG Unit with Justice College in this regard and commented that they experienced the LRG Unit as impartial and distant from the state in comparison with the College.

The University of Cape Town's Faculty of Law also appears to have a solid reputation with magistrates. Numerous respondents commented on their positive perceptions of the faculty and praised its members for being authority figures in many aspects of South African law.

3.3.1.3 Integration with faculty staff

One of the key positive spin offs of locating the LRG Unit in UCT's law faculty was the involvement of legal professionals in designing the training interventions. Some UCT law academics were involved, both formally and informally, in many aspects of the training. Their roles included consultants, subject experts or specialists, resource advisors and resource developers.

Some staff members also co-facilitated training interventions and magistrate respondents reported enjoying the interaction with academics and legal scholars.

3.3.2 Criticisms

3.3.2.1 Lack of integration

Some respondents felt that there was not enough integration between the LRG Unit and faculty staff. The lack of integration compromised the LRG Unit's ability to maximise the resources available within the faculty at large. The criticism is not levelled exclusively at the LRG Unit as some respondents

commented that faculty members lacked motivation to get involved with the LRG Unit and provide input for the training curriculum.

The institutional links were further weakened as many law lecturers did not take up the social context debate in their regular classes. Some respondents argued that law lecturers across the board fail to engage sufficiently with social context issues and prefer to teach law from the traditional a-contextual approach.

3.3.2.2 The lack of empirical research emanating from the LRG Unit

From the institution's perspective the LRG Unit could have functioned better as a research unit. While it did produce seminal work in the early days of its existence (e.g. Budlender, 1992; Currin, 1992; Koen, 1995; Murray, 1995; O'Sullivan, 1994) it did not maintain a strong research focus. From the mid to late 1990s onwards very little empirical research was conducted by LRG Unit staff members. While the LRG Unit maintained steady development, and publication, of in-house training manuals staff members did not produce academic research for accredited publications.

The University of Cape Town is an ideal location for a research unit because of the availability of resources; technical know-how and the infrastructure to manage and reward research output. The university is promoting research output as part of its strategic thrust hence would have potentially offered support to the LRG Unit if it had been actively engaging in research and publishing.

Some respondents commented on the need for research into issues particular to specific local contexts. For example, understanding the challenges of rural courts and magistrates; comparing the functioning of the magistrates courts in various provinces; identifying social context related dilemmas in rural versus urban settings. These respondents argued that the LRG Unit could have played a primary role in researching these issues and designing training interventions based on the results.

3.3.2.3 Judges as preferred trainers

While many of the respondents felt that the Faculty of Law was an appropriate home for the LRG Unit, international research and practice suggests that

judges prefer to be trained by other judges. This issue emerged in some of the interviews were certain respondents discussed the complex nature of judicial education. Evidence from best practice examples (Canada; UK and the USA) indicate that judges respond best to training that is delivered by other judges; this appear to be a peculiarity of this occupational cohort. This issue is discussed in latter sections of this report.

3.3.3 Recommendations

3.3.3.1 Collaborative partnerships with academic researchers

The LRG Unit could take greater advantage of being located in a university setting. The Unit could form symbiotic relationships with academic departments, postgraduate programmes and experienced researchers in order to increase research output. The academic researchers would benefit from funding opportunities linked to doing work with the Unit and the Unit could benefit from the skills and resources of active researchers.

One way of maximising research output would be to offer opportunities to Masters students looking for research projects. The Unit could manage on-going large scale research projects which could accommodate masters students from year-to-year.

3.3.3.2 Research informing practice

All training should be based on comprehensive needs assessments. Conducting regular needs assessments amongst the magistracy could benefit the unit in two ways (1) form the basis of empirical publish-

able research papers and (2) ensure that training interventions are developed according to empirically sound needs analyses.

3.4 Assessing Internal Management

Most respondents concurred that the LRG Unit appeared to be managed well. Concerns were raised, however, about the high staff turnover. This concern centred on fact that relationships between magistrates and LRG Unit staff were formed during the training interventions but due to the high turnover they could not be sustained. This situation prevented the development of ongoing mutually beneficial relationships and resulted in inconsistency in programme design and delivery. The quality of the training depended on who was staffing the Unit at any given time.

A few respondents commented that the lack of strong leadership was responsible for the funding crisis that led to minimal workshops being offered in 2004–2005.

One respondent said that there appeared to be personality clashes in the Unit which were not managed effectively. The situation was disconcerting as this individual perceived the Unit as a “lifeline” and a resource beyond the workshops.

Another respondent commented that they believed that the Unit was run in an autocratic fashion and lacked an effective structure. They also criticised the board for not taking an active role in the management of the Unit.

3.5 The Role of Justice College and other Relevant Structures in Ensuring Continuity and Sustainability within the System

3.5.1 The relationship with Justice College

Despite Sida’s expectation that there would be clear linkages and information sharing between the Unit and Justice College, this relationship never materialised in the way it was envisioned.

Sida’s expectations were linked to their concern for sustainability of the programme. The strategy for sustainability involved direct collaboration with Justice College and the diversification of funding sources. These two areas were never managed successfully by the Unit. The relationship with Justice College was complex. While certain individuals in the Unit and at the college established good working relationships, institutionally the organisations were very different as were their respective training approaches and methodologies. There appeared to be inter-organisational problems with communication, trust and cultural-fit.

Protocols were designed to improve information sharing between the organisations. These protocols involved a hand over of the resources that were developed by the Unit and used in their training, to Justice College. This process enjoyed limited success and was perceived by some to undermine the reciprocal and equal standing of the two organisations. The nature of the training materials was also specific to the Unit’s training methodology and was not easily translatable into the instructional design of College courses.

The perspective gleaned from the interviews is that the problem lay with both institutions. Justice College did not appear to prioritise social context education; some interviewees reported that in the College’s induction curriculum only one day was dedicated to this kind of training and the magistrates were told that it was optional to attend. This underscores the perception of many of the attitude at Justice College towards social context training and the methodologies used in the LRG Unit’s workshops. The divide in training approaches was clear when Justice College staff co-facilitated training sessions at the workshops. These sessions often took the form of traditional pedagogic type lectures as opposed to the more andragogic, experiential adult-learner type sessions which were a key feature of the Unit’s training methodology.

The LRG Unit's management must take some responsibility for failing to build a strong relationship with the College. The imperative for the Unit in this regard revolved around their own sustainability and the sustainability of the training programme. More work and mediation needed to take place to overcome some of the barriers between the institutions.

When it was clear that the protocols were not sufficient in bringing about a more integrated working relationship alternative opportunities for greater collaboration should have been sought. This is the responsibility of management or leadership and should not have been left to the staff of the Unit.

This relationship was identified by Sida as part of a strategy for sustainability and managing the strategic direction of any institution is the leadership's responsibility.

3.6 Who should be Responsibility for Judicial Education?

The issue of who should shoulder responsibility for judicial education in South Africa generated the following responses:

3.6.1 Judicial officers themselves

Most respondents felt that judicial officers themselves must play a major role in their training. There was recognition of the fact that magistrates are a particularly difficult group to work with as they do not easily accept instruction from people outside their profession. Programme designers and facilitators must have credibility in order to work effectively with magistrates. They need to understand the context of the courts and the judicial system from the inside and they need to understand the constraints under which judicial officers operate.

Having judicial officers integrally involved in the training appears to be a necessary condition for training success.

3.6.2 Shared Responsibility

Respondents concurred that there should be more than one body taking responsibility for judicial education in South Africa. Currently Justice College, the LRG Unit and the Association of Regional Magistrates of South Africa (ARMSA) run training programmes for judicial officers. There is an argument for multiple training institutions concentrating on different focus areas and skills development.

3.6.2.1 Office of the Chief Justice

The system of judicial education in South Africa is currently in the process of changing. It is envisioned that in the next three years a centralised judicial education institute will be formed under the Office of the Chief Justice. This institute will be responsible for the induction and continuing professional development of all judicial officers in South Africa. Currently only magistrates are required to undergo training while judges are exposed to a limited induction programme when they are appointed to the bench. This innovation will substantially change the landscape of judicial education and reform in South Africa.

3.6.2.2 Association of Regional Magistrates of South Africa (ARMSA)

ARMSA has started seeking donor funding for training interventions for their members (regional magistrates). They require specific training on issues pertinent to regional magistrates which might differ from district court magistrates. They are attempting to engage in peer facilitation which makes use of their members' skills and knowledge. ARMSA is propagating the use of experienced magistrates in the development of training curricula and the delivery of workshops on special interest issues. They are promoting the need to tap into collegial networks and develop peer support and training capabilities.

3.6.2.3 *Ministry or department*

While the issue of the separation of powers and judicial independence makes an outside service provider more attractive some respondents argued that the Ministry and/or the Department of Justice and Constitutional Development needs to sanction and endorse training interventions for judicial officers. These bodies should take an active role in (and support) judicial education interventions.

3.6.3 **Recommendations**

3.6.3.1 *Best practice model for judicial education*

There has been some work done in international contexts on best practice examples of judicial education programmes. For example, Armytage (1995, 2004) presents a model of judicial training and education based on an analysis of judicial development practices from a variety of different countries (for example, Australia; Britain; Canada; Pakistan; Mongolia). He argues that judicial education is aimed at improving judicial competence. It is also aimed at improving the functioning of the courts.

Research into judicial officers as learners indicates that the professional cohort in general are, “characterised as being rigorously autonomous, having an intensely short-term problem-orientation, and being exceptionally motivated to pursue competence for its own sake rather than for promotion or material gain; those appointed within a merit system, may also generally represent a professional elite possessing extraordinary levels of pre-existing professional competence.” (Armytage, 2004, p. 2). These characteristics should inform the curriculum design and method of delivery of judicial education initiatives (Claxton, 1992).

3.6.3.2 *Why judges participate in education programmes*

Judicial education attempts to meet the dual demands of (1) ensuring professionalism amongst judicial officers and (2) meeting the institutional demands for the judiciary to retain its independence by taking responsibility, and being accountable, for continuous performance improvement.

They are generally developed in response to the following three things: (1) the appointment of new judges to the bench and need to ensure a speedy transition from legal professional to judicial officer; (2) continuing professional education and (3) ongoing personal development.

The reasons judges choose to engage in professional continuing education are complicated and multifaceted. Three major themes have been identified which underscore judges’ reasons for participation in educational programmes, these include developing judicial competence; collegial interaction and professional perspective (Caitlin, 1982). Caitlin (1982) found significant relationships between these participation factors and judges’ demographic characteristics including length of tenure on the bench.

It appears from research in this area that the willingness to participate in professional development education stems more from the above three themes than the content of the actual training programmes and curriculum (Caitlin, 1982).

3.6.3.3 *The best practice model*

The nature, structure, focus and authority for judicial education differs according to context and judicial system. A model for judicial education needs to be flexible to accommodate the vagrancies of each nation’s specific socioeconomic and historical context, its constitution and legal/judicial system. Some of the factors included in this model are already integrated into the LRG Unit’s approach to judicial education and others could be assessed for their appropriateness when designing future interventions.

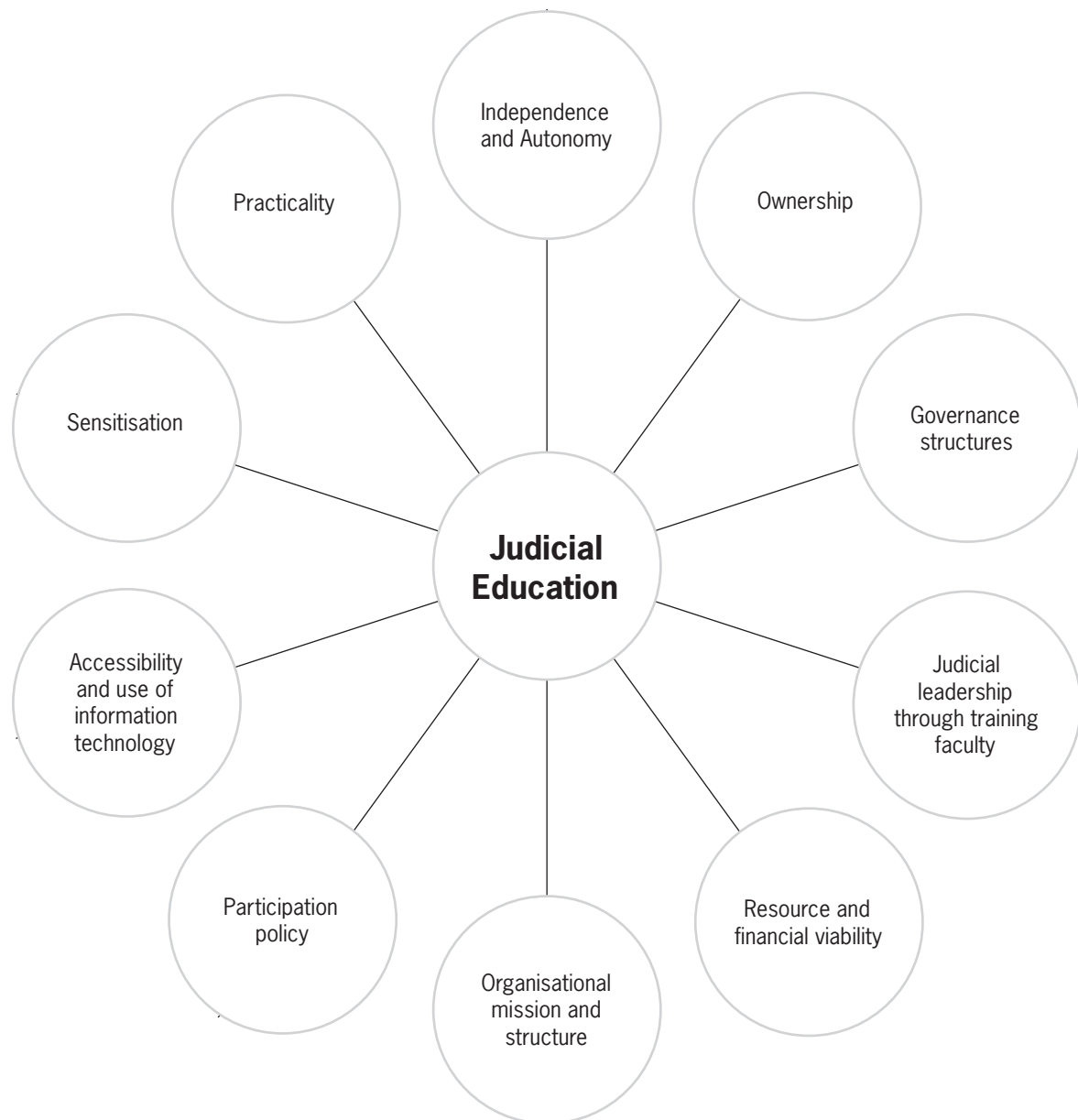
The following best practice model is premised on two key criteria; judicial education must be judge-led and court-owned (Armytage, 1996; 2004; Houle, 1980). These programmes must be judge-led to ensure the preservation of the independence of the judiciary. The programmes cannot be prescribed by

the executive arm of the government as this would conflict with the fundamental principles surrounding the separation of powers and the independence of the judiciary in democratic political systems. Judges also prefer being instructed by other judges (Armytage, 1996; 2004).

A model of judicial education should also include a developmental component where provision is made for the training of judges to act as trainers and facilitators/judicial educators.

The model is made up of principles for practice that are assumed to contribute to the development of a meaningful judicial educational intervention. The model is based directly on the themes that emerged from Armytage's (1996; 2004) analysis of judicial education programmes across a variety of settings.

Figure 1 Model for Judicial Education based on Armytage's (2004) findings



The following table presents brief explanations of each component of the model:

Table 4 Brief explanations of the components of the best practice model

Component	Explanation
Independence and Autonomy	The institution responsible for training needs to be independent from the executive branch of government. It must be financially autonomous in order to ensure this independence.
Ownership	The leadership of the training institution must be made up of judicial officers and the judiciary must be responsible for administration and implementation of the training
Governance structures	Governance structures must reflect the autonomy of the training institution and should include representation from the broader community and subject area specialists
Judicial leadership through training faculty	Judges favour being trained by other judges therefore potential judge trainers need to be developed with the necessary skills to deliver educational courses to their peers
Resource and financial viability	Ongoing funding is required to sustain the training institutions and to allow training to take place in disparate locations.
Organisational mission and structure	The training institution must have a clearly defined mission and the programmes must have explicitly articulated outcomes
Participation policy	Approaches to participation are dependent on context; but best practices examples suggest mandatory participation.
Accessibility and use of information technology	Training must be accessible to judges working in both rural and urban settings and experimentation with information technology to increase access to training is recommended
Sensitisation	Minimising resistance to judicial education and attaining the buy-in of judicial officers for the programme is critical to its success and sustainability.
Practicality	Competency-based training is considered the most appropriate approach to training judicial officers. This includes training on law and legal process; but also includes practical skills and social context training. The aim of the training should be to enhance both individual and institutional performance

This model may be useful for future social context interventions as it outlines some of the key characteristics that define successful judicial education programmes. Appendix III summarises best practice principles in social context training for judicial officers by describing the Canadian approach.

3.7 How and to What Extent the Mainstreaming of Gender and HIV/AIDS has been Covered in the Programme

Both the issues of gender and HIV have been extensively covered in the programme.

The issue of gender and gender discrimination has been integrated into the workshop materials from the inception of the programme. This is evidenced in workshops dealing with sexism or gender discrimination specifically and workshops that have focused on gender related subjects like domestic violence and sexual assault.

Respondents suggest that one of the greatest successes of the programme has been training magistrates on understanding the economic, psychological and social dimensions of gender violence and the cycles of violence.

Magistrates interviewed for the evaluation discussed how the training interventions increased their understanding of how gender violence manifests in the South African society. They explained that this understanding has helped shift the way they deal with victims of gender related crimes.

The Unit designed workshops and workshop materials specifically dealing with HIV/AIDS. The workshops covered issues like HIV, bail and sentencing; HIV and the Law; protecting the rights of those infected and affected by HIV; HIV and equality. This area continues to be a central feature in the LRG Units current training programme.

3.8 Methodology of Workshops, Course Materials and Course Design

A process evaluation or implementation assessment was conducted to ascertain how well the programme was run. Process evaluations are designed to assess how well the programme is being implemented. They attempt to address questions of delivery, organisational efficiency and service utilisation (Rossi, Lipsey & Freeman, 2004).

3.8.1 Evaluation of programme delivery

A process evaluation attempts to assess how well the programme is being delivered and attempts to answer questions about the standard of organisational efficiency and the delivery of the training intervention (Rossi et al., 2004). This evaluation attempts to answer a variety of quality related questions and in so doing attempts to draw conclusions about the quality of the service being delivered.

Questions guiding process evaluation of organisational efficiency and programme delivery:

1. What is the overall assessment of workshop delivery?
2. Are facilitators appropriately skilled to deliver social context training?
3. Are logistical arrangements well organised?
4. Are the various stages of the programme well planned, prepared and designed
5. Is the quality of the workshops the same across sites?

3.8.1.1 What is the overall assessment of workshop delivery?

Analysis of participant evaluations

All the forms analysed asked participants to rate their overall impression of the workshops.

The following table represents the scheme used by the researcher to analyse this question in the participant evaluation forms:

Table 5 Categorisation Scheme for Overall Assessment of Workshop

Positive Assessment of Workshop	Middle-of-the-Road Assessment of Workshop	Negative Assessment of Workshop
65%–100% of ratings on form = 5 and 4	Less than 65% of ratings are fives and fours and the rest of the ratings are 3 and 2 with occasional 1	65%–100% of ratings on the form = 1

Table 6 Overall Assessment of Workshops

	Positive	Middle-of-the-Road	Negative	Incomplete Assessments	Total
Count	225	27	3	8	263
Percentage of total number of respondents	86	10	1	3	100

Despite the varied format and differences in the forms, they all contained a question asking participants whether they would recommend the workshop to colleagues. An affirmative answer was interpreted as further evidence of a positive overall impression of the workshop and is therefore included in this analysis.

Table 7 Would you recommend the workshop to a colleague?

Yes	No
96%	4%

Note: 47 individuals responded to this question

From the above percentages it is clear that an overwhelming majority of participants rated the workshops highly and had a positive experience of the training weekend.

Analysis of external evaluators' reports

There is consensus in the external evaluators' reports that the workshops were conducted successfully and overall workshop goals met.

The majority of reports commend the Unit, the workshop developers and the facilitators for identifying pertinent social context issues and understanding the needs of the magistracy and by so doing demonstrating commitment to the transformation of the judiciary.

Evaluators recorded the fact that participants consistently praise the workshops and express their appreciation for the valued input they receive.

The reports indicate that the workshop theme is always apparent in the workshop process and the exercises are in line with, and reinforce, the theme.

A minority of external evaluators offered the following process suggestions:

- Need for a deeper and more meaningful level of learning
- Mandatory follow-up workshops to maximise learning outcomes

The overall assessment of the workshops by the participants and external evaluators was positive. Participants' reactions tended to be highly favourable. External evaluators' reports are, overall, favourable but contain a more mixed assessment of the delivery of the programme.

3.8.1.2 Are facilitators appropriately skilled?

Analysis of participant evaluations

Most of the forms contain only one question asking participants to rate the facilitators' presentation skills. In circumstances where this question was asked of individual facilitators, an average score has been calculated and categorised according to the scheme outlined in Table 8

Table 8 Categorisation Scheme for Facilitators' Presentation Skills

Positive Assessment of Facilitators' Presentation Skills	Middle-of-the-Road Assessment	Negative Assessment of Facilitators' Presentation Skills
5 or 4 for this question	3 and 2 for this question	1 for this question

Table 9 Assessment of Facilitators' Presentation Skills

	Positive	Middle-of-the-Road	Negative	Total
Count	174	23	1	198
Percentage of total number of respondents	88	11	1	100

Table 6 indicates that almost 90% of participants were satisfied with the facilitators' presentation skills and consider them "good" or "excellent".

Analysis of external evaluators' reports

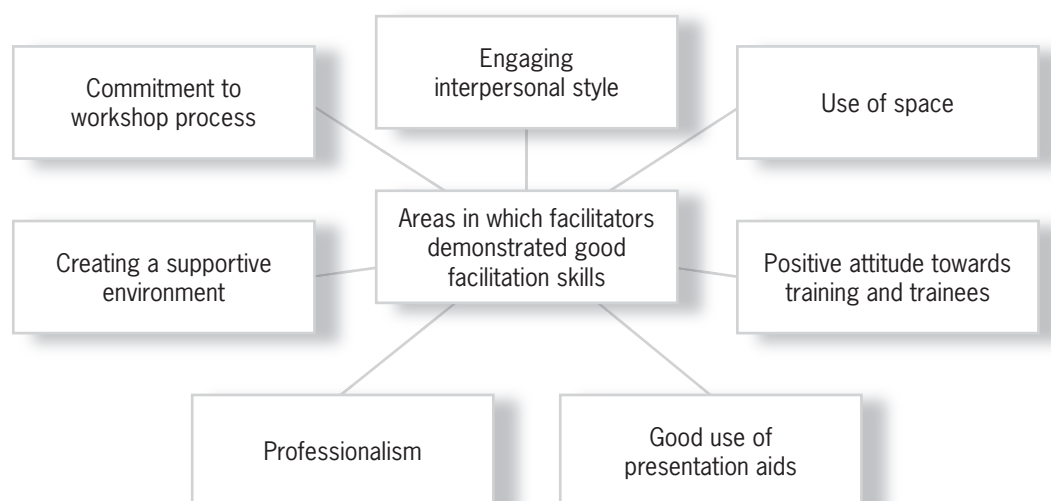
Unlike the participant evaluation forms the evaluators' reports contain more details about workshop facilitation. The data in these reports were analysed according to more focused questions related to facilitation. All the reports consist of positive and negative comments and feedback. None are exclusively positive or negative. The analysis indicates that certain facilitators were more skilled than others and that facilitation skills vary across years and workshops.

Are facilitators skilled in general facilitation skills and training methodologies?

Unlike the participant evaluations, the external evaluators' forms present a mixed response to the above question. Without exception, all the reports commented on positive aspects of facilitation, yet the overwhelming majority of reports contained some criticism of general facilitation skills and methods.

Most of the reports also include individualised feedback to facilitators in relation to specific sessions and their overall presentation technique, styles and suggestions of areas for improvement. The reports indicate that facilitators were, overall, skilled in a variety of areas related to facilitation. These areas are presented in Figure 2.

Figure 2 Areas in which facilitators demonstrated good facilitation skills



The criticisms of the general facilitation skills are summarised into the following areas:

- Not sticking to planned process
- Lack of preparation by some facilitators
- Not explaining exercises clearly
- Rushing through sessions due to lack of time (this is a poor planning issue)
- Allowing certain participants to dominate debates
- Inexpert use of technology and presentation aids
- Lack of coordination by co-facilitators
- Not reading the groups' energy levels correctly
- Not engaging with participants during meals and breaks

The participants regarded the workshop facilitation more favourably than the external evaluators. The evaluators' reports offer critical feedback to individual facilitators and comment on general improvement areas. The reports document variations in facilitators' skills and competency.

The qualifications/professional experience and turnover of staff in the Unit could account for the variability in general facilitation skills. The Unit has been staffed by people from a variety of different occupational backgrounds ranging from ex-magistrates, ex-lawyers, advocacy workers and educationalists. Very few staff members through the years have been experienced adult educators or trainers. The following table shows a breakdown of the occupational backgrounds of the Unit's staff from 1998–2004.

Table 10 Occupational background of fulltime staff and associates responsible for workshop training

	Fulltime staff: Lawyer	Fulltime staff: Magistrate	Fulltime staff: Adult educator	Associate: Lawyer	Associate: Magistrate	Associate: Adult educator	Total
1998	1	1		2			4
1999	2	1		1			3
2000	3	1					4
2001	2		1	1			4
2002	3		1	1		1	6
2003	1		1	1	1	1	5
2004	1	1	1	1		1	5
Total	13	4	4	7	1	3	32
% of total	40	13	13	22	3	9	100

The content of the criticisms in the reports relate directly to basic facilitation and training competencies. The fact that only 13% of fulltime staff has been professional adult educators or trainers might explain the criticisms in some of the external evaluators' reports.

Are facilitators appropriately skilled to deliver social context training?

Most of the reports indicate that the facilitators demonstrated appropriate skill in delivering social context training. The reports differentiate between facilitators (which are LRG staff) and magistrate facilitators.

The facilitators were commended for their ability to use, and integrate, appropriate legal examples when discussing social context issues and for relating theory back to recognisable examples. The reports indicate that facilitators possess in-depth understanding of the subject matter.

In a minority of reports evaluators caution the facilitators to be conscious of not imposing their views or knowledge when fulfilling a training or guiding role in an activity or session.

The reports indicate that magistrate facilitators are an asset to social context training and their knowledge and expertise enhance the training process.

How well did the facilitators work as a group?

The reports show that the facilitators generally worked in cohesive teams, which operated very well together.

The evaluators attribute participant cooperation, and respect for the process, as evidence of how well the facilitators worked together as a group.

The evaluators comment positively on the motivation levels of the trainer teams. There were minimal criticisms levelled at the teamwork of the trainers.

Are there sufficient numbers of facilitators at each workshop?

The number of facilitators differed from workshop to workshop. It ranged from two facilitators to eight facilitators. There is no discernable reason for this variation. In all cases there was at least one LRG Unit staff member facilitating or acting as lead facilitator. The number of magistrate facilitators varied from nought to five and again there is no discernable reason for this variation.

The external evaluators' reports do not offer much commentary on the number of facilitators present at each workshop. In a few cases, the evaluators remark that at the outset of the workshop there appeared to be too many facilitators in relation to participants. In all these cases, the evaluators retract this comment when reflecting on the workshop in its entirety and the value added by all the facilitators.

3.3.3.3 Are logistical arrangements well organised

Logistical arrangements include choosing and organising the venue, hotel, travel bookings and arrangements, accommodation, meals and the general infrastructure surrounding the workshop.

Analysis of participant evaluations

Most of the evaluation forms have questions relating to the participants' experience of the logistical arrangements regarding the workshops. Table 11 indicates the categorising scheme used for these questions. The researcher calculated an average for the questions relating to logistical arrangements for each form.

Table 11 Categorisation scheme for questions pertaining to logistical arrangements

Positive Assessment of logistical arrangements	Middle-of-the-Road Assessment	Negative Assessment of logistical arrangements
5 or 4 for this question	3 and 2 for this question	1 for this question

Table 12 Assessment of logistical arrangements

	Positive	Middle-of-the-Road	Negative	Total
Count	125	13	2	140
Percentage of total number of respondents	89	9	2	100

Analysis of external evaluators' reports

The external evaluators' reports indicate that the logistical arrangements were well organised.

Venues

The analysis of the reports show that the majority of venues were well suited for the accommodation needs of the participants. They offer comfortable, spacious, clean and well-equipped accommodation. They vary, however, in their suitability for workshop purposes. The analysis suggests that for the most part the venues are well suited but in a few cases, the venues are lacking in one or more of the following aspects:

- Insufficient areas for break-away group discussions
- Isolation from noisy areas in the venue like open dining rooms with loud music
- Poor ventilation or labouring noisy air conditioners
- Poor acoustics

- Distance from town along a bad road with poor visibility at night.

While the analysis confirms that the workshops functioned well one theme that emerged in the analysis of the reports is that lead facilitators, (LRG Unit workshop coordinators) should not be responsible for the administration and the logistical organisation surrounding the workshop. The lead facilitator carries responsibility for the workshop in its entirety and some evaluators felt that they were distracted from their core business, that of training, due to the administrative tasks of managing logistical arrangements.

3.8.1.4 Are the various stages of the programme well planned, prepared and designed?

The majority of reports are positive about the planning and preparation that went into the workshops and their resource material. Many of evaluators commend the Unit for the workshop programmes, which are considered stimulating and relevant to magistrates' work. According to the external evaluators' reports, in most cases, excellent preparation and planning is evident in terms of the content and processes of the workshops.

The analysis of the reports suggests that, in general, all the required preliminary work regarding the facilitator and participant manuals, visual aids, workshop tools and exercises were well organised.

A common (somewhat contradictory in light of the above positive assessments) criticism, however, is that the workshops contain too many activities and attempt to cover too much in the time available. Numerous evaluators make recommendations related to this aspect of the workshop design.

Despite general positive evaluations of workshop design, some evaluators propose that the workshop is too short to achieve its objectives and the Unit needs to consider lengthening them or developing follow-ups, which are less introductory and more in-depth.

In a few reports, there are strong recommendations for workshop design improvement. These improvements are related to designing the workshops so that they are more 'learner-driven' as opposed to 'content/facilitator driven'

Resource material

The evaluators consider the resource material (participants' workbooks) professionally presented. Evaluators praise some aspects of the participants' workbooks. The workbooks are considered:

- User-friendly with space for making notes
- Clear
- Accessible for second or third language English speakers
- Attention-grabbing and appropriate

The criticisms of the workbook include:

- The lack of clearly articulated workshop aims and objectives
- The need for more information about the various topics
- The need for clearer instructions for the various exercises and activities

The participant evaluation forms did not probe reactions to specific materials but most contained the following question:

Table 13 Did you find the information presented helpful?

Yes	No
100%	0%

Note: 143 participants responded to this question

Every participant who responded to this question answered in the affirmative. The participants clearly regarded the resource material as beneficial and relevant.

5.5.5.5 Is the quality of the workshops the same across sites?

The parity in the participant evaluation data would suggest that the quality of the workshops is the same across sites. The analysis of the external evaluators' reports suggests that the quality varies. This discrepancy is apparent across the various components of the evaluations. Participants' ratings were higher than the external evaluators on all aspects of the training.

In the course of the process evaluation the following factors were identified as potential reasons for the variations in quality of the workshops across the various sites:

- High turnover and changing staff profile of the Unit
- Occupational backgrounds of facilitators
- The absence of subject experts' input in workshop design
- The absence of subject experts' input in resource material design

An analysis of participant evaluation forms and external evaluators' reports indicate that the programme is being well delivered.

The reactions of the participants appear to be more favourable than the assessment by the evaluators. However, overall the external evaluators also offer favourable evaluations of workshop facilitation, logistical arrangements and general programme organisation.

3.9 Challenges, Constraints and Achievements

3.9.1 Major challenges and constraints

3.9.1.1 Funding

Ensuring continuous funding from diversified sources was identified as the biggest obstacle for the training programme and the future of the LRG Unit.

The LRG Unit never achieved diversification of funding sources and this ultimately led to a funding crisis in late 2004 and 2005.

Recommendations

It must be noted that since the start of the LRG Unit's relationship with Sida there have been numerous verbal discussions and formal written communications about the need for the diversification of funding sources.

The challenges in attaining donor funding is not unique to the LRG Unit and is partly indicative of the current donor funding scenario in South Africa.

The following *long term* recommendation is based on international best practice examples and attempts to tap into the current skills development environment in South Africa. This environment has seen the generation of a national skills development framework which involves the establishment of sector education and training authorities (SETAs). SETAs devise, implement and manage skills development plans for specific industries. They are responsible for accrediting training service providers in these industries. The training and education of judicial officers may, in the future, be brought into this national skills development strategy. The recommendation is that the LRG Unit does not rely on donor funding but tenders for training programmes or projects commissioned by the State or through the office of the Chief Justice.

The recommendation is entirely dependent on how the proposed national judicial education institute evolves. If this institute evolves as a coordinating body that specialises in needs assessments, curriculum design and the training of judicial educators, it might follow a model where training programmes and training are outsourced to accredited service providers like the LRG Unit.

There might be opportunities in the future for the LRG Unit to be accredited as a judicial education and training service provider and tender for training programmes emanating from the proposed institute. This arrangement would allow the LRG Unit to generate internal revenue streams and take pressure off the need for external donor sources. This is a long term recommendation as respondents involved with planning this institute explained that they expect it to be established within the next three years.

In summary the recommendations surrounding funding include both short-to-medium term and long term suggestions. In the short-to-medium term the LRG Unit should continue to seek donor assistance. Efforts to ensure the diversification of funding (and not the reliance on one key donor) should be integrated into the funding strategy. Whilst at the same time the LRG Unit could explore and pursue other income generating initiatives and prepare for the possibility of the development of a national judicial training institution.

3.9.1.2 Access

One of the weaknesses identified with the programme was that it did not have the capacity to roll out sufficient training opportunities to the most vulnerable and isolated groups of magistrates; those in rural areas. The lack of infrastructure within rural courts inhibits access to facilities in the cities and accessing magistrates from disparate and geographically dispersed areas proved difficult.

The magistrates working in urban and semi-urban courts were reportedly better equipped to work with the training content and in a far stronger position to effect change in their courts. Magistrates working in areas where there were active NICRO branches, for example, could attempt to issue diversion type sentences where appropriate. This form of creative sentencing was not available to magistrates working in remote under-resourced parts of the country.

Recommendations

One way of overcoming this problem of access is investing resources in developing distance learning material through self-study guides or on-line resources/electronic training resources like CD Roms.

The LRG Unit does not have the capacity to do develop these kinds of materials. Perhaps future judicial training programmes could take issues of access into account. Trainers could potentially devise strategies to overcome this kind of logistical problem using information technology in creative ways.

3.9.1.3 Participation

Some respondents argued that the voluntary nature of participation is a constraint; as the individuals who most require training do not volunteer for the programme. The LRG Unit had no jurisdiction over magistrates and the only viable form of participation was voluntary.

Some respondents felt that participation on the programme should have been made mandatory. Official reports emanating from the LRG Unit contend that over 800 magistrates attended LRG Unit training programmes since its inception; some attended more than one programme. There are currently just over 2000 magistrates in the South African lower court system. Even though this number has fluctuated over the years and the profile of magistrates has changed to-date approximately 40% of the magistracy has undergone some form of social context training.

Invitation process

The criteria for invitations to the training programmes were neither clear nor transparent. Respondents suggested that a more systematic process should have been followed in order to ensure that every member of the organisation received at least one invitation to attend a training event.

The process followed by the LRG Unit was considered flawed as regular people started attending workshops and so-called difficult people were ostensibly “blacklisted”. This perpetuated a scenario where participants were chosen based on how susceptible they were to the training material.

One could argue that the real work needed to happen with people who did not see the value of training and the importance of a social context consciousness.

3.9.1.4 Resistance to change (individual)

One of the major obstacles in rolling out the training programme was resistance to change. At the onset of the programme it was challenging to get magistrates to attend the workshops. Magistrates and cluster heads were suspicious of the training.

Respondents report that in the mid 1990s there was great insecurity amongst the magistracy due to the large-scale political changes taking place in the country.

Magistrates in general were not consulting about the development of the training programme. This exacerbated their suspicions and they tended to display a “laager mentality” in the face of the proposed intervention. They were defensive around being criticised for the practices and felt threatened by all the changes taking place.

A small group of magistrates participated in the initial training programme and enthusiasm for the programme developed slowly.

One of the weaknesses of the programme lay in the fact that the people who volunteered for training were predisposed to developing the required knowledge and skills for judging in a transforming society. Those magistrates that were resistant to the training probably required it most urgently.

3.9.1.5 Resistance to change (organisational)

Some respondents explained that it was not just individual resistance but organisational resistance that slowed participation in the training in the 1990s. Some cluster heads did not regard the LRG Unit’s programme as a real training intervention and set up barriers to prohibit their staff from attending training workshops. For example they would not allow magistrates a Friday afternoon off to travel to workshops.

In the mid 1990s the management and profile of the magistracy was 50% plus white and male. The training was perceived as undermining their authority in the system.

There was very little management buy-in to the training programme and this appears to be a real barrier to ensuring wide scale enthusiasm for intervention.

Recommendations

One of the most effective ways of minimising resistance to change is by involving the target population in the conceptualisation, design and development of the intervention. The LRG Unit’s programme was conceived with minimal input from members of the magistracy.

A recommendation for future programmes would be to (a) conduct a thorough needs analysis and in so doing generate interest in the programme; (b) consult widely with professional associations and senior members of the organisation; and (c) link the aims and objectives of the programme directly with

opportunities for performance improvement. These steps may help increase the target population's engagement with the training programme.

3.9.1.6 Institutional dynamics

Respondents report insufficient communication between the LRG Unit's staff and various cluster heads. Not enough relationship building took place to ensure a mutual trusting rapport between lower court management and the LRG Unit.

Respondents also report that the LRG Unit was not particularly successful in creating a community of practitioners or resource networks and there was very limited inter-dependence between itself and other research and training organisations. The opportunity to develop strong alliances and partnerships was not maximised.

Recommendations

Better communication and consultation is required in order to minimise suspicion and increase buy-in. The programme staff must build relationships with senior members of the magistracy and work with them to attract magistrates into the training programme. If the programme is regarded as adding value to an individual's work and work life, and has the support of senior staff members or management, a higher number of magistrates would apply to participate.

3.9.1.7 Follow-ups and integrated system

A number of respondents pointed to the lack of opportunities for follow up sessions as constraining the effectiveness of the training. Magistrates were introduced to important and emotionally weighty material during the workshops. Many of them reported having very strong affective experiences during and after the training workshops. Some respondents explained that it was only once they returned to their courts that they began to properly engage with the training materials.

The lack of follow up sessions inhibited the effective implementation and transfer of skills and knowledge developed in the training.

Recommendations

Transfer of learning is the ultimate objective of training and needs to be monitored in order to track whether or not the training intervention is having any impact or producing the desired outcomes.

Follow up sessions or monitoring systems are important for both programme staff and the target population. In the case of the latter during the training many magistrates began a process of assessing very difficult historical and personal perspectives of their work and of their selves.

Many individuals started rethinking and reformulating taken-for-granted positions or attitudes; this involves heavy emotional labour and for some it meant unlocking painful experiences. The LRG Unit needed to institute a formalised mechanism for managing or monitoring these transformative experiences in order to provide continuing support for magistrates outside of the training event. Some follow up sessions/workshops were offered but they were not consistently delivered. The LRG Unit did try facilitate the development of social networks amongst workshop participants. A minority of such groups worked actively on social context issues in their communities and courts outside of the actual training intervention.

A more aggressive needs analysis process should have been developed which questioned workshop participants on how the training helped them in their courts and what problems were being experienced in implementing new knowledge and skills on the job. Developing a double learning feedback loop could generate important information on how the training programme could be refined in the future to ensure greater transfer of learning.

Social context training cannot be a once-off event. This issue is discussed in the theory evaluation in appendix IV of this report.

3.9.1.8 Facilitator skills shortage

A complex set of knowledge and skills is required to do effective social context training; such as legal and social context know-how and resources. This is not a comfortable skills match as most legal practitioners are not social context experts and visa versa.

Recommendations

One way of ensuring the development of appropriate skills amongst programme staff could be the implementation of performance management systems. Using a performance management system would allow management to identify performance gaps amongst staff members and create institutionalised opportunities for the development (and implementation) of performance improvement plans. These are not punitive measures but systems which encourage constant reflection on current skills levels and the identification of opportunities for skills enhancement. This is particularly relevant in an organisation like the LRG Unit where the combination of skills required is scarce. A budget for staff development activities could be included in funding proposals.

3.9.1.9 Timeframe

The workshops generally took place over weekends starting on Friday evening and ending Sunday lunchtime. This is a very limited timeframe to engage with social context issues in relation to court conduct and judicial decision making.

Recommendations

There is no clear solution to this constraint. If the workshops were longer they would cut into the work week and magistrates would require special permission to be absent from work.

This would need to be negotiated with management. The reality is, however, that more in-depth training requires a longer timeframe.

A consideration here is that the longer the training the greater the cost. One possible solution would be to have less workshops but workshops that span a longer time period. While this would decrease the number of training opportunities and the number of magistrates attending training it could increase the level of engagement with training material.

3.9.1.10 Management at board level

An issue that was highlighted by a number of respondents was the lack of appropriate management at board level. The management board is reported to have only met once or twice in the last eight to ten years.

Without an active management board full responsibility and authority resides with one individual, the director of the LRG Unit. Boards can play important advocacy and support functions for organisations like the LRG Unit.

Recommendation

A more active board could have played a role in developing strategies for the sustainability of the LRG Unit, the diversification of donor funding and improving the relationship with Justice College.

A key recommendation would be that any future management board include individuals with specific organisational skills that could be of direct benefit to the Unit. In particular, individuals with fundraising experience and skills are needed. These individuals could help coach and mentor the Unit's staff on how to proceed with effective fundraising strategies.

3.9.1.11 Threat of Judicial Review

One of the problems with transferring learning from the workshops back to their workplaces is the threat of judicial review. Respondents reported feeling anxious about exercising their prerogative in cases where social context concerns were weighed up against legal precedent. They feared being chastised through the judicial review process as this then becomes a performance issue.

3.9.1.12 Decline over last few years

The quality of the work of the LRG Unit differed depending on who staffed the programme at various times. Respondents reported that the Unit was personality driven; the presence of stronger personalities produced stronger programmes. There was a general consensus that the offerings of the LRG Unit slowed down after 2003.

3.9.2 Successes

3.9.2.1 Raising consciousness and awareness of social context issues

Assessing and measuring impact in judicial education programmes and social context training interventions is extremely difficult (see Hammergren, 2002; Langhorne, 2004).

Anecdotal evidence, however, suggests that the LRG Unit achieved success in its programme.

The LRG Unit achieved great success in raising the consciousness of social context issues amongst members of the magistracy. Social context material is regarded as extremely delicate and can be difficult to train.

The LRG Unit succeeded in developing training interventions that raised awareness; and provided opportunities for joint problem-solving in how to act fairly while being responsive to contextual needs.

The degree to which magistrates implemented training principles in their courts varied from individual to individual. For many magistrates merely acknowledging social context concerns in the administration of justice was an important start to developing transformative practices. While it is not always possible to be creative in sentencing a greater awareness of context issues lays the foundation for more equitable judging.

The training programme encouraged magistrates to reflect on their own practices and helped them reflect on their biases and prejudices that might prohibit fairness in judicial decision-making.

Some magistrates interviewed for this evaluation described their experience with the LRG Unit's programme as a "Damascus experience". This indicates the extent to which the programme helped change some individuals' understanding of the importance of social context in their work.

3.9.2.2 Short courses

The two week short (or intensive) course was identified as a particularly valuable intervention. These courses were limited due to practical considerations such as the enormous cost involved.

3.9.2.3 Reference source

Some of the LRG Unit's staff developed a reputation as providing a sounding board for magistrates when confronted with difficult dilemmas related to social context. Magistrates consulted with the LRG Unit outside of the training interventions. The staff provided ongoing support to members of the magistracy on how to engage with and manage social context related problems.

3.9.2.4 Reaching large target

The LRG Unit was successful in meeting its objectives of training a large number of magistrates. According to numerous reports over 800 magistrates participated in the programme.

3.9.2.5 Peer-education and informal networks

One of the strengths of the programme was the training and development of peer educators or magistrate facilitators.

The LRG Unit committed to peer education from the onset of the programme and succeeded in attracting a core group of magistrates who were trained to co-facilitate the workshops. Prior research into judicial education has shown that judges prefer to be trained by other judicial officers. By including peer facilitators the LRG Unit increased its credibility amongst magistrates.

One of the spin-offs from the training workshops was the establishment of informal networks of magistrates who developed community based interventions or community projects associated with their courts.

3.9.2.6 Cycle of domestic violence

Magistrates interviewed for this evaluation cited the workshops dedicated to domestic violence as particularly successful interventions. These respondents highlighted the need for education amongst magistrates on the dynamics of domestic violence. This information is new for many magistrates who share a legal educational and professional background. This education is relatively narrow. An understanding of the nature of violent relationships and issues of psychological and economic dependence has been critically important in developing a socially responsive approach to cases of this kind.

4. Conclusions and Recommendations

4.1 Link Participation to Performance Management System

A key recommendation which relies on a stable relationship with the Magistrates Commission and lower court management structures is to try link participation in the social context training programme with an internal performance management system. Social context training is ostensibly continuous professional development and must be “sold” as such to the leadership of the organisation. If the leadership of the organisation see value in the programme and recognise the positive contribution it could have on their employees work performance they may be inclined to encourage participation.

If the LRG Unit continues with their programme the Unit needs to conduct an internal problem-solving workshop on how to manage the issue of participation and resistance to training. A service utilisation plan must be developed alongside a participation strategy which articulates who the target population is and how they are going to be attracted to the training interventions. Similarly a strategy for building relationships and collaborative partnerships with the Magistrates Commission or lower court management structures is necessary to ensure top leadership buy-in to the programme.

Participation in the programme could be used as a performance improvement indicator of commitment to continuing professional development. Magistrates who participate in the programme are demonstrating a commitment to enhancing their performance through training designed to increase their effectiveness on the job.

The LRG Unit could manage a training attendance data base which captures information about each individual magistrate in the lower court system; what training they have been exposed to and identify who has not attended any form of social context training. This information could be used in performance appraisal interviews between magistrates and their line managers.

4.2 Research

The area of research needs to be for grounded. Empirical studies demonstrating how the programme is adding value to the administration of justice in South Africa is critical. While there is a long tradition of this kind of research in countries like the USA, Canada, UK, France, Australia and others there is very limited research on judicial education in general and social context training specifically in South Africa.

Research can be based on evaluations of the training programme or questions raised about method of delivery. Research should inform training practice in this area.

4.3 Capacity Building

Any future programme must concentrate on further building training capacity within the judiciary through a consolidated train-the-trainers programme.

There is evidence from other countries that suggest that judges prefer to be trained by other judges, this might apply in our local context. The peer facilitation strategy employed by the LRG Unit enjoyed some success but the pool of skilled facilitators was limited and magistrates are not trained in workshop systems and processes. Peer facilitators need to be drawn into the design of the intervention as opposed to being invited to facilitate an already developed product.

4.3.1 Greater involvement of magistrates

Greater magistrate involvement is recommended for future programmes. Magistrate respondents and members of the professional association recommend the active involvement of magistrates in content and curriculum design.

4.4 Needs Analysis

A key recommendation from a programme design perspective is that a more comprehensive approach to establishing training needs is developed.

The process through which the need for social context training was identified did not follow a traditional needs assessment process (Soriano, 1995). The need was identified by prominent individuals working in the area of human rights law and was supported by the Minister of Justice in the mid 1990s.

One could argue that in certain circumstances where the need is explicit one does not require a robust empirical needs assessment. One could further argue that given the climate of transformation, the transitional government structures and interim constitution, the need for judicial education in social context matters was indisputable.

While this might be the case in this context there are still strong arguments for generating empirical data to substantiate and justify the development of any social programme or training intervention (Soriano, 1995; Witkin & Altschuld, 1995).

While the broad need was relatively explicit and uncontroversial the LRG Unit's programme staff could have conducted formal needs assessments in order to identify the specific gaps in judicial officers' knowledge and performance. Magistrates should have been consulted in the needs identification process and their input could have been used in the development of the specific training interventions. Involving magistrates in the initial needs assessment process might have decreased resistance and increased buy-in to the programme by magistrates and their managers.

Wheeler (2004) suggests that the best approach to establishing what judges need to learn is by (a) getting their input via course evaluations; accessing judicial networks; and including judges in curriculum

planning committees; (b) obtaining non judicial input from adult education experts and subject specialists; and community advisory committees.

A thorough robust needs assessment can be a lengthy process but the benefits of generating in-depth information about the target populations skills development needs ensures the development of an appropriate curriculum.

4.5 Monitoring and Evaluation

Programme evaluation could be more integrated into the programme; as opposed to sit outside of it. Evaluation should not be something that is tacked on at the end of a programme but should offer ongoing support through constant monitoring and evaluation. This allows information to be continuously fed back to the organisation as it works through the various stages of programme implementation. These should include internal monitoring systems where the quality of the intervention is managed from the inside.

Developing a monitoring system which involves input from various stakeholders at critical points in the programme can generate valuable information and establish a constant improvement cycle.

4.6 Workshop Form

Most of the respondents suggested longer workshops running over four days instead of weekend interventions. The results of the implementation assessment also highlight the fact that the workshop programmes covered too many activities.

A further suggestion involved using magistrates' experiences in building training activities and interventions. There was a strong sentiment that participants' experiences needed to form a more central feature of the training intervention.

One way of extending the workshop is to dispense homework or practical assignments in advance of the workshop. This would focus magistrates' attention to some of the key social context issues prior to the workshop. These assignments could be referred to or integrated into training activities to help directly link their experiences with the training.

One respondent suggested that the workshops could be more challenging (intellectually and emotionally). She argued that what was needed was a more confrontational stance which forced magistrates to look at their practice in critical ways.

4.7 Organisational Form

Considering the current competitive, unstable and insecure funding environment and the proposed development of the national education institute there may be an argument to change the form and structure of the LRG Unit in the near to medium term. The current funding environment and training requirements may not be conducive to the historical configuration of the LRG Unit. Perhaps a more loosely structured organisation with a curator/director who contracts with consultants or experts on specific projects may be more viable than a formal organisational structure with permanent staff members.

The focus of the organisation could be project-based interventions and appropriate skills and expertise could be bought in on a project by project basis. The logistical and administrative arrangements of this kind of organisational form would need to be carefully considered and designed.

4.8 Focus of Future Training Interventions

Many of the respondents who are, or have been, magistrates commented on the fact that they were marginalised in the bigger judicial system, one respondent described them as “poor cousins” of higher court judges. They report that they are overworked and that their work is not valued despite the often unpleasant and demanding nature of their jobs. One magistrate stated that they are considered the “lowest entity” in the organisation. The state of many magistrate courts reflects this. One respondent explained that it is difficult to ask people to think about, and incorporate, social context when their own work context is compromised. Future training interventions must be designed according to what magistrates perceive their needs to be. These needs may include training around more effective work processes, performance management systems, organisational structures and climate as well as substantive legal issues and social context concerns.

A number of respondents suggested training interventions designed to help magistrates cope with the experience of bearing witness to crime and violence day in and day out. Debriefing or trauma counselling interventions were also suggested.

The above suggestions were made by some of the interviewees and are not recommendations of this report. The LRG Unit is a specialist social context training institution and these suggestions are not necessarily appropriate in light of the LRG Unit’s realm of expertise and core focus areas. This evaluation report, however, points to the importance of conducting a thorough training needs analysis before embarking on additional training interventions. Training interventions must be developed in response to well researched and documented social or educational needs.

4.9 National and International Linkages

There are obvious reasons why judicial education in South Africa differs from other countries. These reasons relate to issues such as South Africa’s political history, the peculiarities of the judicial system and resource scarcity. There is also a long tradition of research and practice into judicial education in other countries. While the content of these training programmes would not be appropriate for the South African environment the educational methods and training practices could provide useful benchmarks for best practice.

5. Lessons Learned

The report has documented numerous lessons learned from reflecting on and assessing the LRG Unit’s social context training programme. In conclusion the following are reiterated.

The LRG Unit’s training programme has been in operation since the early 1990s. It was initiated in response to the enormous challenges associated with reforming the South African lower court system from an apartheid instrument of oppression to an institution that today is perceived as generally free and fair. While there is still much work to be done the LRG Unit’s programme to-date played an integral role in this transformation process.

The successes enjoyed by the LRG Unit are, to a large extent, a result of the work of skilled, committed, passionate and enlightened staff members. The LRG Unit’s staff comprised of diverse individuals who, for varying degrees of time, added value, momentum and expertise to the programme.

As reflected in this evaluation report the LRG Unit enjoyed great successes and experienced significant challenges.

The issue of funding stands out as a key challenge. The LRG Unit never managed to successfully diversify its funding sources which ultimately led to a funding crisis in late 2004/2005. A critical lesson learned from this is not to rely entirely on outside donors. Effort must be expended on developing strategic responses to issues like fundraising.

The sustainability of the programme should be a fundamental focus area of management from the onset. An active, involved, connected and resourced management board could play a role in devising organisational strategies that increase the likelihood of sustainability into the future.

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Appendix 1 Terms of Reference

Evaluation of the Social Context Training

Cooperation between the Swedish Development Cooperation Agency (Sida) and Law, Race and Gender (LRG)

1. Introduction

The Embassy has supported LRG since 1995 to execute the ‘Social Context’ training programme. The programme objectives were:

1. to contribute to the strengthening of good governance and democracy in South Africa, through promoting the sustainable delivery of fair and equal justice, and
2. to ensure ordinary South Africans experience the rights and responsibilities through promoting a greater understanding of the role of social context issues in judicial decision-making amongst magistrates. This was to be achieved through addressing specific prioritised areas such as –
 - exposing magistrates to the social context approach;
 - training and sensitising magistrates about the social context approach;
 - empowering magistrates to integrate and apply the social context approach into their decision-making;
 - supporting magistrates to start and sustain social context related projects in the courts; and
 - assessing the effectiveness of the training regarding the extent to which magistrates understand and apply the social context approach in their decision-making.

The initial Swedish contribution to the programme amounted to approximately SEK 14 million. The support was part of the 1999–2003 Country Support Strategy (CSS), which emphasised a focus on areas that support the reform process, strengthen the democratic development and respect for human rights. The support to LRG was therefore seen as relevant to the CSS with the overall goal being to contribute towards the consolidation of democratic transformation process and poverty reduction in South Africa.

A new application for continued support by a further three-year period during 2003–05 was submitted to the Embassy in 2002 with the total budget of ZAR 11.5 million. In the meantime, both the Embassy and LRG were also engaged in a dialogue whereby the need for LRG to diversify its funding sources was emphasised. Subject to parliamentary appropriation of funds, the Embassy decided to extend the agreement with LRG only for two years with the total contribution of SEK 3 million during 2003–04. The validity period of the agreement effectively ended in December 2005. However, due to the delay with this review, the agreement has been prolonged (with no extra funding) to run until the end of December 2006. The evaluation will probe into the achievements, challenges and constraints in project implementation. It will also draw lessons learnt and make concrete recommendations on the future strategic directions of LRG’s work.

2. Purpose and Scope of the Evaluation

To conduct an evaluation of the Law, Race and Gender ‘Social Context’ programme funded by Sida/Embassy of Sweden by:

Project concept, relevance and significance

1. describing and assessing the organisation’s implementation of the project seen in relation to the core elements of the project and the objectives set out in the project document;
2. assessing the capacity and effectiveness of LRG and the extent its organisational structure and institutional management has contributed to fulfilling the plans and achieving the objectives of the project; and
3. giving an overview of the outcomes in terms of what has worked well, what has not and providing concrete lessons learnt and recommendations.

Project management, coordination and stakeholder dialogue

1. assessing LRG institutional set-up in terms of project governance and capacity and make recommendations on how the organisation can effectively contribute to strengthening the social context;
2. ascertaining whether any change in direction or scope of the LRG’s core business is necessary;
3. giving guidance on the specific components of the programme as well as preliminary indications and opportunities that LRG should pursue in future in terms of its work; and
4. Assessing the strengths, weaknesses and gaps in the current programme that should be addressed or used as models in the future.

3. The Assignment (issues to be covered in the evaluation)

An analysis of the following should be undertaken:

1. The contribution of the social context training within the broader justice system to promoting sustainable delivery of equitable justice for all;
2. The extent to which the approach has been institutionalised and/or integrated in the decision-making of magistrates;
3. Existing support structures/systems to ensure sustainability of training, including linking it to other judicial education initiatives;
4. The role of the Justice College and other relevant structures in ensuring continuity and sustainability within the system i.e. plans that are in place within the Department of Justice and/or Justice College to sustain the training;
5. How and to what extent the mainstreaming of gender and HIV/AIDS has been covered in the programme;
6. Methodology of workshops, course material and course design, linked to accessibility and the level of application outside the programme;
7. LRG and other donors (funds diversification), including achievements, challenges and constraints.

4. Methodology, Evaluation Team and Time Schedule

The methodology, following the logical framework approach (LFA), should concentrate on the period from the inception to the end of the Agreement of the programme.

LRG shall recommend an evaluator (consultant) with requisite competencies to carry out the assignment. The consultant will sign the agreement with Sida and will consult regularly with both Sida and LRG in terms of the progress of the evaluation.

The methodology of work will include, but not limited to:

- project document review;
- interviews with present and past Board members
- interviews with LRG executive director (past and present);
- interviews with LRG present and former facilitators;
- interviews with past participants in the social context training;
- interviews with relevant officials at the Department of Justice and Constitutional Development, Justice College;
- interviews with relevant officials at the Embassy of Sweden, Pretoria, and
- interviews with other LRG partners.

LRG shall provide the consultant with the necessary support in terms of interviews and available documentation regarding the assignment.

The assignment shall be carried out during September through to November 2006 and should not be more than 25 (twenty five) consultancy days in total. This includes reading the documentation, interviews, field visits and report writing.

5. Reporting

The consultant shall prepare the report in English and the format and outline shall follow the guidelines in Sida Evaluation Report – a Standardised Format (see Annex 1). The final report must be presented in a way that enables publication without further editing. It shall be analytical and react to key issues raised in the terms of reference (see item 3, above), and clearly state conclusions and recommendations. Subject to decision by the Embassy, the report will be published in the series Sida Evaluations.

A final report should be submitted within one week of receiving comments from Sida. A hardcopy and an electronic version of the report shall be submitted to the Embassy of Sweden/Sida and LRG.

Attachment

1. Standardised Format: Sida Evaluation Report

Appendix 2 List of Persons Interviewed

Name	Institution	Position
Ms Helen Alman	Department of Justice & Constitutional Development	Senior Magistrate (Wynberg)
Ms Elizabeth Baartman	NPA	Senior Advocate: Asset Forfeiture
Mr Adriaan Bekker	ARMSA	President
Ms Jacqueline Boshoff	Department of Justice & Constitutional Development	Senior Magistrate (Nelspruit)
Mr Francois Botha	University of Cape Town: Discrimination Office	Director
Professor Hugh Corder	University of Cape Town: Faculty of Law	Dean
Ms Ingrid Freitag	Department of Justice & Constitutional Development	Magistrate (Cape Town)
Mr Dario Dosio	Department of Justice & Constitutional Development	Regional Court Magistrate (Soweto)
Mr. Ian Hewell	N/A	Independent Consultant/ex-magistrate
Mr Basil King	Justice College	Lecturer
Ms Anne Ljung	Swedish Embassy	Sida
Ms Melanie Lue-Dugmore	Law, Race & Gender Unit	Ex-acting director
Professor Christina Murray	University of Cape Town: Faculty of Law	Professor
Judge Cagney Musi	Department of Justice & Constitutional Development	High Court Judge
Mr Joe Ngelanga	Justice College	Lecturer
Ms Ilsa Olckers	N/A	Independent consultant and ex-member of staff (LRG Unit)
Ms Pritima Osman	Law, Race and Gender Unit	Ex-adult educator
Ms Anashri Pillay	University of Cape Town: Faculty of Law	Lecturer
Mr Tony Sardien	Law, Race and Gender Unit	Ex-Adult Educator
Prof P.J. Schwikkard	University of Cape Town: Faculty of Law	Professor
Ms Dee Smythe	University of Cape Town: Law, Race and Gender Unit	Curator/acting director
Judge Jeannette Traverso	Department of Justice & Constitutional Development	Deputy Judge President of the Cape High Court
Mr Corrie Volschenk	Department of Justice & Constitutional Development	Magistrate (Soweto)
Ms Jakkie Wessels	Department of Justice & Constitutional Development/ARMSA	Regional Magistrate/ARMSA education committee

Documentation Consulted for Evaluation

A wide variety of documentation was consulted for this evaluation. These include:

- Promotional and informational material about the LRG Unit (website based and archival material in the LRG Unit offices)
- Project proposals
- Project reports; narrative reports and the project completion report (Jan 2003–June 2005) prepared for Sida by the Law, Race and Gender Unit

- Sida documentation
- Various in-house reports (including annual reports dating back to 1995)
- Newsletters and in-house publications/communication
- Training manuals (facilitator workbooks and participant workbooks)
- Research documentation housed in LRG Unit's library
- External evaluator reports
- Participant evaluations
- Letters to facilitators and participants
- Academic research articles
- Conference papers
- Project information from a variety of international judicial education institutes
- Websites

Tables Summarising the Demographic Characteristics of the Sample used in the Implementation Assessment

Table 1 Racial breakdown of sample

Race	Black	Coloured	Indian	White	Race Unspecified	Total
Count	198	39	34	125	130	526

Table 2 Gender breakdown of sample

Gender	Male	Female	Gender Unspecified	Total
Count	335	189	2	526

Table 3 Language breakdown of sample

Language	English	Afrikaans	African	Unspecified	Total
Count	121	87	14	304	526

Table 4 Province breakdown of sample

Prov	WC	G	EC	NW	FS	KZN	NC	MPU	LIM	Unknown	Total
Count	94	108	88	25	37	88	12	11	47	16	526

Table 5 Rank breakdown of sample

Rank	Magistrates	Regional magistrates	Senior Magistrates	Regional Court Presidents	Chief Magistrates	Other/unspecified	Total
Count	288	124	27	3	8	76	526

Appendix 3 Best Practice – Underlying Principles of the Canadian System

The Canadian system contains the following elements which contribute to it being regarded as a best practice example in the field of social context education for judicial officers:

Legally Mandated

The need for social context education in Canada is supported by legal requirements that judges behave in a manner that assures equality before the law. Social context awareness is understood as more than just an essential component of an inclusive judiciary it is mandated by Canadian law.

Judicial Support for Contextual Inquiry

Senior members of the judiciary have publicly stated that social context issues play an integral role in judicial decision making. There has also been publicised support by senior members of the judiciary for the need for social context education for all judicial officers at all levels of the justice system.

Social Context Education is Viewed as a Long Term Process

Social context education is integrated into ongoing judicial education programmes along with other areas of judicial education like substantive law and criminal justice issues. The long term goal of the NJI is to make social context education, “automatically part of the landscape, in the same way that discussion of tax implications would automatically form part of any program on estate planning” (Smith, 1996, cited in Dawson, 2004, p. 4).

Community Involvement

The SCEP was enhanced by initiatives to involve diverse communities in the project. Dialogue between various community representatives and judges was encouraged in formal, structured and facilitated consultation sessions.

Leadership Support

The Canadian experience has highlighted the importance of the commitment and involvement of senior members of the judiciary for the success of social context education. The involvement of senior judges helps develop a climate in which social context issues are regarded as priority and where the training is promoted as credible and valuable.

Emanating from the SCEP the NJI identified the following ten principles of operation which they consider essential for the development of sustained and integrated social context education programmes. These principles can be regarded as best practice in this field. Table 2 indicates the principle and its associated action requirement.

Table 1 Principles informing best practice for social context education programmes

Principle	Action
Integration of social context and equality issues across the curriculum and planning process	Social context issues should be integrated into the curriculum in all aspects of judicial education. It should not be taught as an adjunct to the formal curriculum. The achievement of this integration requires attention to organisational structures and support; curriculum planning and topic selection; the identification of learning objectives; the process of programme development and the choice of faculty and resources in support of programme development and delivery
Judicial leadership and involvement	Involvement of judicial leadership in all aspects of the programme from conceptualisation to delivery
The three pillars of integrated social context judicial education: judicial, academic and community input	The programme must be judge-led but must include the involvement of academics and subject specialists and members of the community. Their inclusion will ensure the development of programmes based on appropriate and balanced information
Needs assessment and advice	Education programmes must be formulated on well established judicial learning needs and these must be reflected in programme content, design and delivery
Local development	The education programme must be tailored to the specific requirements of local contexts
Focus on judicial role and tasks	Programmes must be sensitive to the realities of the judicial role; issues of judicial independence and the intricacies of the cases judges face
Trained faculty and planning committees	Social context education programmes require dedicated skilled staff and planning committees that are constantly reviewing substantive social context concerns; developing facilitation and programme design skills and forging links with the broader community
Adult learning principles	Continuing judicial education must incorporate adult education principles in curriculum design and delivery
Effective programme design	Programme design expertise are required in the development of the social context education programme to ensure the articulation of clear learning objectives and the development of a delivery plan that supports the attainment of these objectives
Evaluation and Feedback	Continuous assessment is required in order to ensure programme success

Appendix 4 Theory Evaluation

Evaluation at this level of the evaluation hierarchy assesses if the causal logic implicit in the programme is practically realistic and theoretically sound (Donaldson, 2003). This level of evaluation analyses how well the programme theory is constructed in relation to social psychological knowledge about attitude and behaviour change. The programme theory is interrogated to assess the feasibility of the stated objectives of the intervention (Rossi, Lipsey & Freeman, 2004).

This theory evaluation will discuss some of the limitations of the underlying casual logic of the programme when compared with the complex causal logic of social psychological theory of prejudice, attitudes and their relationship with behaviour and change.

This theory evaluation will offer possible reasons why the intervention, as it is currently conceptualised, may not bring about the desired change in individuals' deep-seated and entrenched belief systems.

Evaluating the programme theory entails addressing a variety of evaluative questions such as:

1. Are programme goals and objectives well defined?
2. Is there alignment between the programme theory and a documented social need?
3. How well does the programme theory compare with research and practice
4. Is the programme logic feasible and plausible?

There are a number of steps in a theory evaluation. Firstly the evaluator has to extract a logic model of the training programme. The model that has been extracted is based on the combination of documentation analysis and in-depth interviews with programme staff (Donaldson, 2003; Rossi et al., 2004).

Secondly, once the model has been extracted the evaluator has to assess if it represents the key stakeholders' understanding of the underlying causal processes implied in training programme.

The evaluator contacted the acting director of the programme, the LRG Unit office manager (who was also involved with the design of the interventions) and two senior staff members to obtain feedback on the model. All parties concurred that the model was an adequate representation of the causal processes implicit in the training programme. Some suggestions were made and the model was amended according to these suggestions.

Thirdly, the evaluator is required to outline historical conflicts and problems in the conceptualising of the programme which might be reflected in the final product. This step was done through interviews with two of the architects of the programme at the onset of the evaluation as part of an evaluability assessment (Wholey, 1994).

Before presenting the theory evaluation the programme logic model is presented and discussed.

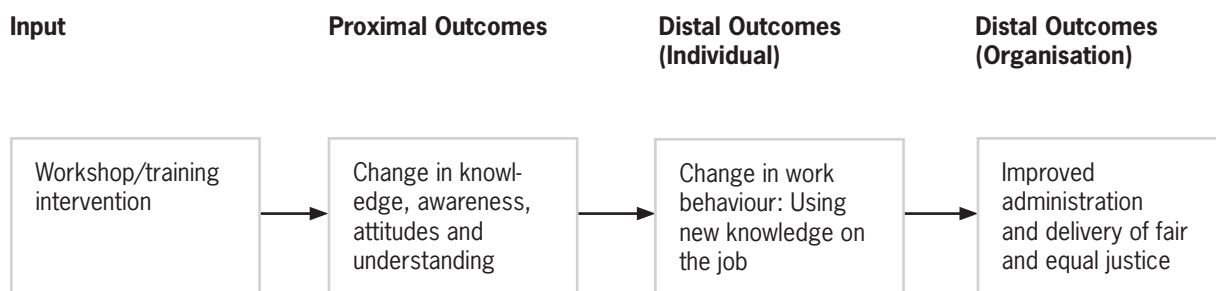
Programme Theory and Programme Logic Model

Programme theory is inherent in the design and implementation of the programme. The programme theory explains why the intervention is structured in a particular way. (Donaldson & Scriven, 2003; Rossi et al., 2004; Wholey, 1994).

In order to engage in an evaluation of the programme theory one needs to extract a visual representation of the programme theory in the form of a programme logic model. The model articulates the expected outcomes of the intervention and the evaluation then is an assessment of the theory as presented in the model.

Figure 1 illustrates the programme theory underlying the programme. The various components of the model are presented below the figure. The arrows in the model represent the causal links.

Figure 1 Programme Logic Model



Input:

- The input consists of a training workshop.

Proximal Outcomes:

- An increase in knowledge about racism and sexism in general
- An increase in self-awareness in relation to personal prejudices
- An increase in knowledge and self awareness around how discriminatory attitudes translate into discriminatory behaviours and how these impact on work relationships and practices
- An increase in magistrate's ability to engage and deal with work behaviours appropriately in relation to issues of racism and sexism
- An increase in knowledge and understanding of how unconscious racism and sexism impact on the application of judicial decision-making and the management of diversity in the courts
- An increase in understanding of how race and gender discrimination have been structurally embedded in societal institutions and results in differential treatment by the courts

Distal Outcomes (for individual magistrates):

- Decrease in racist and sexist language in judicial judgements
- Decrease in racist and sexist language and behaviour in court practice
- Decrease in racism and sexism in interpersonal relationships with staff
- Decrease in evidence of biased treatment of complainant, defendant and witnesses as reflected in the treatment of testimony and trends in sentencing
- Acting as a change agent for transformation of the magistracy
- Increased use of diversion type sentences
- Increased use of creative and thoughtful sentencing practices
- Decrease in complaints of bias and discrimination

Distal Outcomes (for the lower court system):

- Improved performance of lower court system in delivering justice appropriate to South Africa's diverse society

The training intervention is designed to bring about a variety of changes in individual magistrate's level of knowledge, understanding, attitudes and skills. The programme is designed to increase knowledge about social context issues and how these issues can impact on judicial conduct.

The intervention aims to increase awareness and understanding about how magistrate's attitudes and beliefs about race and gender differences can influence their behaviour in court.

The workshop activities and the programme as a whole aims at equipping magistrates with the skills to manage possible racist or sexist attitudes so that they do not influence the decisions they make and the sentences they hand down.

The programme logic will be evaluated by addressing the logic feasibility and plausibility. Some of the other questions cited in the introduction of this document have already been discussed in the main evaluation report.

How well Does the Programme Theory Compare with Research and Practice?

Rossi et al. (2004) suggest that one practical way of evaluating programme theory is to analyse it in relation to established research and current practice. This section compares the LRG Unit's programme with research on essential principles and best practice for judicial education.

Conventional methods of professional education are not appropriate for judicial officers (Claxton, 1992). Courts, courtroom processes and judicial systems are unique forms of work and work organisations (Malleon, 1997). Unlike almost every other profession, where the responsibility of taking important decisions can be shared or referred, in the justice system judicial officers take sole responsibility for the decisions they make. These decisions are also extremely intricate and involve issues of individual liberty and human rights.

Judicial officers' work is further complicated by (1) the fact that they cannot retain all the technical knowledge required for every case they preside over; (2) there is no fool-proof way of assessing which witnesses to believe and (3) an inherent characteristic of their job is their discretionary power, and responsibility, to hand down sentence based on their assessment of the merits of a case (Claxton, 1992; Twining, 1987).

The reality of a judicial officer's position in society and the gravitas of their decisions need to be reflected in judicial training programmes. "Programs that are unfocused and not based on thoughtful, long range planning won't do." (Claxton, 1992, p. 12).

Research suggests that the majority of judicial education programmes around the world are associated, initiated, implemented and staffed by members of the formal judicial system (Armitage, 2004).

Emanating from research of judicial education and training programmes in Australia; Britain; Pakistan; Philippines and Mongolia, Armitage's (2004) developed a model for successful judicial education. The model is premised on two central criteria, judicial education needs to be judge-led and court-owned. The reasons given for these criteria are that (1) the education programme retains its autonomy from the executive branch of government; (2) judge-led training ensures legitimacy and (3) sustainability is only possible if the training is run from (and championed) within the justice system.

The LRG Unit's programme differs from programmes in other countries in that the LRG Unit sits outside of the official justice system and is not staffed by judicial officers. In South Africa the Department of Justice's institutionalised education programme for judicial officers is located at Justice College. The LRG Unit is not affiliated with the Department of Justice and is an independent donor-funded body located at the University of Cape Town. While the LRG Unit has enjoyed the support of senior people in the justice system it does have official institutional endorsement.

Another difference between the LRG Unit's programme and practices around the world is that it only targets magistrates (lower court officials). The majority of similar initiatives in other countries focus on the education and training of judges at all levels of the judicial system (Smith, 2004).

One of the critical elements identified for designing judicial education programmes is having a clear and persuasive purpose (Claxton, 1992). As discussed in the main report the articulated and explicit purpose (the documented goals and objectives) of the programme is broad and at times vague. The purpose most frequently cited in the programme's documentation states, "To contribute to the transformation of the judiciary through the development of magistrates able to integrate social context awareness in the judicial decision-making process" (Sardien, 2001; 2002; 2003; 2004; 2005). It is difficult to discern a persuasive purpose in the above quotation. The quotation speaks of a purpose that covers a number of diverse (but related) issues, i.e. "transformation of the judiciary" is about organisational and institutional change; "the development of magistrates" is about individual skills development; "judicial decision-making process" involves work competencies and performance-related issues and "social context awareness" is a broad catch-all phrase that covers an infinite array of contextual factors. Perhaps the purpose of the training would be more persuasive if the training targeted a narrow set of aims or identified specific training needs based on one of the factors mentioned.

Research also indicates that best practices in judicial training should include learning materials and activities that encourage judicial officers to think in qualitatively richer ways; advance self-directed learning and critical self-reflection; teach knowledge required for the job and recent developments in law and create an integrated curriculum (Armytage, 2004; Claxton, 1992; Wangerin, 1988)

The LRG Unit's training materials vary in quality and scope. Many of the activities in the workshops consist of information sharing sessions and some of the activities involve cases analysis and problem-solving. These activities are aimed at challenging the way magistrates currently conduct themselves in their courts. They are also designed to encourage magistrates to take contextual issues into account and promote creative sentencing. In this way one could argue that the activities attempt to get magistrates to think in "qualitatively richer ways." One of the factors that may inhibit this is the design and structure of the workshops and the time allocated to each activity. The workshops run over a weekend but ostensibly activities begin on Saturday morning and end before lunch on Sunday. From personal observation of a workshop, and after an analysis of the external evaluators' reports, it seems time management is a consistent problem for the facilitators. A recurrent problem cited in numerous external evaluator reports is the compressing of activities due to limited time which reduces opportunities for in-depth engagement with the various topics. Similarly opportunities for critical self-reflection in this kind of workshop environment are limited.

The quality of the learning materials and activities varies from year to year and from workshop to workshop. In some cases there is an emphasis on active learning. Active learning is encouraged by tasking magistrates to do "homework" assignments. These assignments generally involve getting magistrates to reflect on the learning material from the workshop and find ways of applying the learning in their work. The LRG Unit's records reflect some degree of follow-up on these "homework" assignments. This aspect of the programme relied on the commitment and enthusiasm of one or two trainers and was not rolled out as an integral part of the programme. The LRG Unit has some records of a group (+20) of magistrates that attempted to develop interventions in their communities around social context issues. These records demonstrate attempts at active and continuous self-managed learning but compared with the amount of magistrates who went through the programme this number is extremely small.

The relatively high turnover rate of LRG Unit's staff might have impacted on the consistency of workshop design and delivery and potentially inhibited the development of an integrated curriculum. The problem of curriculum design was further exacerbated by the lack of trained professional educators as members of staff (see implementation evaluation in main report for details of staff qualifications). The Law Faculty, in which the LRG Unit is housed, has promoted the hiring of lawyers or ex-magistrates as trainers over educationalists. The lack of professional curriculum designers may have contributed to some of the limitation in the training materials.

Is the Programme Logic Feasible and Plausible?

The feasibility and plausibility of the sequence linking or causal logic implied in the programme will be analysed by (1) a critical discussion of how key concepts are operationalised in the training and (2) interrogating the causal relationships implied in the programme with social psychological knowledge about the attitude behaviour relationship.

The Operational Definitions of Key Concepts

The issue of how the programme staff defines prejudice is relevant for this theory evaluation. If the conceptualisation of this central concept is problematic it will be reflected in the training.

According to the programme documentation the training intervention is designed to encourage magistrates to interrogate their attitudes and evaluate their stereotypes. It is designed to raise their awareness of biased treatment or discriminatory practices in their court conduct and in the handling of complainants, defendants and witnesses. The training also aims at facilitating and supporting magistrates in shifting biased attitudes which will accordingly bring about changes in their behaviour. While these are some of the broad aims of the programme stated in their documentation, definitions of these key concepts are few and far between.

The programme's documentation gives scant attention to how racism or prejudice is defined or understood but a relatively crude explanation related to (1) redressing past inequality and prejudicial treatment and (2) discriminatory laws associated with the apartheid regime. For example, the targets of bias as defined in one workshop manual are as follows,

Judicial bias can operate in respect of any group but the more "different" the issue or the person is to the life experiences of the decision maker, the more likely it is that bias will be activated. The main 'differentiations' of power (and bias) are gender, race, age, sexual orientation, class – and, particularly, intersections of these categories, for example, a black gay woman living in a very poor area. (Fedler & Olckers, 2001, p. 27)

The underlying principle of how the training can aid in the eradication of the bias mentioned in the above definition is the "principle of rendering visible" (Fedler & Olckers, 2001, p. 27). "The principle of rendering visible is about undoing the processes of marginalisation, silencing, and fracturing that occur in a formalist engagement with the law." (Fedler & Olckers, 2001, p. 27). Rendering visible, in practical terms, means encouraging magistrates to interrogate their stereotypes to ensure that these do not impact on their decision-making. The assumption here is that magistrates can be made aware of their prejudices and these can be changed during the workshop or intervention. This presents a problem when thinking about the dynamics of modern-day forms of prejudice and racism.

What we know about modern-day racism is that it operates on two levels, the traditional blatant racism and the more subtle negative feelings of which the individual is unaware (Akrami, Ekehammar & Araya, 2000; Dovidio, 2001; McConahay, 1986; Meertens & Pettigrew, 2001; Sears, 1998). Research emanating from the USA suggests that in many quarters of American society it is not fashionable to be overtly racist (Krysan, 1998; McConahay and Hough, 1976). This does not mean, however, that racism does not exist. Similarly in South Africa over the last twelve years the dominant societal norms have changed. Legislation prohibits discrimination in a variety of settings which curtail overt expressions of racism or other forms of discrimination. This does not necessarily mean the eradication of racist attitudes, prejudice or discrimination.

Modern-day forms of prejudice and racism

In a study that aimed at determining if subtle prejudice is in fact prejudice, Meertens and Pettigrew (1997) assess the relationship between subtle prejudice, blatant prejudice and political conservatism. They suggest that while subtle prejudice is distinct from blatant prejudice it is a spin-off of the same entrenched societal norms. The major finding of the study is that subtle prejudice is a real and discrete form of prejudice and may explain its endurance despite reports of decrease in its more blatant forms. This supports the research of other theorists who advance theories of modern forms of racism like aversive racism (Dovidio & Gaertner, 1988; Frey & Gaertner, 1986; Gaertner & Dovidio, 1986, 1998), modern racism (McConahay, 1983; Pettigrew, 1989), impression management theory (Krysan, 1998) and symbolic racism (Sears, 1988, 1998).

There is a fair amount of replication in content across these theories and they have been shown to be positively correlated (Meertens & Pettigrew, 1997). The theories do, however, appear to identify racism at differentiated “levels of subtlety and severity.” (Meertens & Pettigrew, 1997, p.68). Assessed on a continuum of most to least subtle, modern and symbolic forms of racism seem to be the most unsubtle and aversive racism the most subtle (Kleinpenning and Hagendoorn, 1993).

All of these theories suggest that in societies where strong equalitarian norms are dominant there appears to be a decrease in overt expressions of racism. This does not necessarily imply that racism *per se* has decreased; rather how it is expressed has changed.

Impression management theory (Krysan, 1998), for example, postulates that the documented decline in racism is more closely related to issues of social desirability than a real decline in racist attitudes. According to this theory individuals mask their prejudices as a strategy for self-preservation in specific social contexts where the expression of prejudice is regarded as unacceptable. In different contexts these individuals will be less careful in disguising their prejudices (Krysan).

Using an experimental design to assess this private versus public expression of racism Krysan (1998) presents some evidence in support of the hypothesis that individuals are more likely to express more negative racial sentiments in more private contexts. This association was significantly pronounced amongst highly educated individuals (Krysan).

In the aversive racism theory this duality is encapsulated in the definition of an aversive racist, an individual who appears and behaves in a non-prejudiced and egalitarian manner but who harbours racial biases (as identified by response latency techniques) (Dovidio, 2001). Aversive racism will be discussed in more detail in the next section.

While there are criticisms of these theories the idea that there are differences between modern and traditional forms of racism are relatively stable features in modern social psychological research and theory (Meertens & Pettigrew, 1997; Nail, Harton & Decker, 2003; Sniderman & Tetlock, 1986; Weigel & Howes, 1985).

There is ongoing research and theory development on these modern forms of racism and prejudice (Brown, 1995; Dovidio, 2001; Dovidio & Gaertner, 1991; Durrheim & Dixon, 2005; Meertens & Pettigrew, 1997; McConahay & Hough, 1986; Weigel & Howes, 1985). The majority of this work has been conducted in the United States of America (USA) (Kinder, 1986; Dovidio & Gaertner, 2000; Sniderman & Tetlock, 1986). Some of the general concepts, however, may have bearing on the South African scenario (Durrheim & Dixon, 2005). Even if the research has limited reliability in our local context it raises questions about the inadequacies of traditional approaches to understanding these concepts and developing interventions to manage them in organisational settings. Before exploring these inadequacies the relationship between political orientation and forms of racism will be discussed.

Political Orientation

Research indicates that political orientation is associated with different forms of racism (Dovidio & Gaertner, 1986, 1998; Meertens & Pettigrew, 1997; Nail, Harton & Decker, 2003). In the integrated model of racism, Dovidio and Gaertner (1986, 1998) propose that political conservatism is associated with the expression of symbolic-modern racism while political liberalism is associated with aversive racism. This proposition has been supported in other studies (Nail, MacDonald & Levy, 2000; Williams, Jackson, Brown, Torres, Forman & Brown, 1999).

The theory underlying the integrated model of racism (Dovidio & Gaertner, 1986; 1998) postulates that in spite of shifting societal norms in favour of equality and fairness politically conservative individuals retain their private racist attitudes. These individuals have modified their behaviour in the public arena and generally desist from overt expressions of their private racist attitudes and beliefs (Nail, 1986; Nail et al., 2000).

The theory suggests that on the other end of the spectrum are individuals with a liberal political orientation. Liberal individuals espouse the values of equalitarianism and non-racism and have authentically internalised these values. Liberals generally consider themselves non-racist as they desire a society where equality, fairness and inclusively are the norms. Research, however, has shown that many liberal individuals harbour suppressed negative emotions towards political minorities (Dovidio & Gaertner, 2000; Meertens & Pettigrew, 1997). There is considerable evidence suggesting that while liberals consciously and intellectually distance themselves from racist attitudes on a “more nonconscious-emotional level, they still possess certain negative race-based feelings.” (Nail et al., 2003, p.755). Frey and Gaertner (1986) suggest that this contradiction is borne out of the need to maintain an acceptable non-racist self-image.

In the conceptualisation of aversive racism theory (Gaertner & Dovidio, 1986) racial bias is expressed in circuitous ways (often subtle and rationalised) that do not compromise the aversive racist’s equalitarian self-concept. Aversive racists, however, possess negative racial feelings even if they are not aware of them. These negative feelings result in discriminatory practices when the bias is not overt or when they can rationalise these feelings using factors other than race (Dovidio & Gaertner, 1998, 2000; Gaertner & Dovidio, 1986).

It is hypothesised that the effects of aversive racism may be strongly associated with inter-group biases emanating from processes of social categorisation. The manifestation of these biases is typically characterised by in-group partiality and out-group vilification (Dovidio & Gaertner, 2000). An example of this is how individuals tend to judge the undesirable actions of out-group members more harshly than when the same actions are perpetrated by in-group members (Hewstone, 1990).

The consequences of implicit subtle-modern, and aversive racism are also subtle but no less harmful (and perhaps even more so) than blatant (explicit) racism (Dovidio & Gaertner, 1998, 2000; Gaertner & Dovidio, 1986; Sears, 1988). Implicit and explicit attitudes impact differently on an individual’s behaviour (Dovidio & Fazio, 1992; Wilson et al., 2000). Explicit attitudes are associated with purposeful behaviours while implicit attitudes are associated with behaviours that are less obvious and more difficult to censor (for example, body language). The effects of implicit subtle-modern and aversive racism often result in Whites and Blacks having diametrically opposed experiences in inter-racial interactions. Aversive racists, for example, who genuinely maintain that they are not prejudice, will demonstrate this in the verbal content of their interactions with Blacks. Their conversations will portray their explicit equalitarian attitude and they will perceive themselves as making a sympathetic impression. This will reinforce their perceptions of themselves as non-racist (Dovidio, 2001).

Dovidio (2001) suggests that in these interactions Blacks may experience both the espoused positive attitude in the verbal content of the interaction and the implicit negative attitude in the non-verbal, tone or delivery of the verbal content. Being attuned to these different levels of communication may leave Blacks less content with the inter-racial interaction relative to Whites (Devine, Evett & Vasquez-Suson, 1996, Dovidio, 2000; Vorauer & Kumhyr, 2001).

Research suggests that explicit attitudes can shift relatively easily compared with implicit attitudes (Dovidio, 2001). The implicit nature of subtle racism makes it difficult to recognise and hence difficult to confront and manage. Historical trends in anti-bias training, that rely on demonstrating the wickedness of prejudice and unlawfulness of discrimination, assume that racist attitudes are explicit and hence identifiable, accessible, controllable and essentially malleable. Traditional anti-bias training programmes therefore are not equipped to tackle these more modern manifestations of racism (Meertens & Pettigrew, 2000).

It is aversive racism that presents a problem for the programme logic. There are laws and organisational rules that attempt to curtail the expression of overt racism in the justice system yet these rules do not preclude the expression of subtle racism.

While the training attempts to raise magistrates' levels of consciousness about their stereotypes, biases and discriminatory practices, it is not structured around, or designed to penetrate, seemingly intractable deep-seated implicit attitudes. The training would perhaps be more effective if it focused on work-related behaviours that are deemed unacceptable. Studies have shown that liberals display less overt racism in situations where there are strong cues to behave in non-prejudice manner, and are more likely to express racist feelings when these cues are absent (Gaerten, 1973; Frey & Gaertner, 1986).

Training that attempted to establish and entrench strong institutional norms within the magistracy, and was directly linked to work-related performance measures, might be more effective in bringing about fairness in judicial decision-making and court conduct. Working on this level may prove more fruitful as opposed to attempting to shift attitudes, that according to some of the modern racism theories, people are not even aware of.

The modern racism concept highlights the incongruence between what people say they believe and their subsequent behaviour and draws a distinction between explicit and implicit racism. This conceptualisation is based on the premise that prejudice cannot simply be understood as an attitude towards an attitude object (Eagly, 2004). This has serious implications for social context training. It begs the question, is the training intervention focused on the wrong target? Modern racism theories highlight the two levels at which prejudice operates. Developing a viable and effective training intervention would require working at these two levels. In the process of researching for this theory evaluation no research was found which discussed options or strategies for social context training at these levels. In a best case scenario where the training has some influence on magistrates' explicit attitudes it is unlikely that this will have a spill-over effect as statistical evidence shows a weak relationship between explicit and implicit attitudes (Dovidio, 2001).

The attitude-behaviour relationship

The causal logic of the theory suggests that the training will bring about change in magistrate's prejudicial attitudes which will in turn bring about changes in their behaviour. A further evaluation of this logic will focus on these assumptions about the attitude-behaviour relationship.

The relationship between attitude and behaviour is complex and nuanced (Ajzen, 1985, 1987, 1988, 1991; Ajzen & Fishbein, 1980; Albarracín & Wyer, 2000; Bagozzi, 1992; Bohnert & Wanke, 2002; Eagly & Chaiken, 1993; Eiser, 1994; Eiser & van der Pligt, 1988; Foster & Nel, 1991; Kraus, 1995). Historically there has been ongoing controversy about the causal links in this relationship. This section will explore some of the contemporary theoretical work in this area.

There are multiple definitions of the attitude concept reflecting a variety of perspectives on what constitutes an attitude, how it is structured, how it can and should be measured, how it relates to beliefs and impacts on behaviour. While there is widespread acceptance of the importance of the concept, there has always been disagreement around its definition (Foster & Nel, 1991). Eagly & Chaiken's (1993, p. 1) definition of attitude is used in this theory evaluation, "Attitude is a psychological tendency that is expressed by evaluating a particular entity with some degree of favour or disfavour."

Attitudes are generally defined as evaluative tendencies. This implies that an attitude is an evaluative condition that mediates between specific groups of stimuli and specific groups of responses (Bohner & Wanke, 2004, Eagly & Chaiken, 1993).

Since Allport's (1935) early assertions about the centrality of the attitude concept and its correlation with behaviour there have been significant debates in the field of social psychology about their causal relationship (Allport, 1935; Eisner, 1994; Bohner & Wanke, 2004).

The Causal Debate

A contemporary conceptualisation of the attitude-behaviour relationship posits that it can best be understood as a "substantive relationship of interest" (Kraus, 1995, p.71) which will vary in strength according to context and is influenced by a variety of variables. Modern theorists agree that there is no straightforward answer to the theoretically, and practically, complicated question, does attitude predict future behaviour? (Bohner & Wanke, 2004; Eagly, 2004).

Since the 1960s there has been resurgent interest in the attitude construct and its relationship with behaviour. This relationship was challenged and refuted by authors like Deutscher (1966) and Wicker (1969) whose research demonstrated very weak associations between the two variables. Recent meta-analytic studies seem to indicate that studies like the ones mentioned above did not disprove the attitude-behaviour relationship but rather used incorrect methods to attempt to test it (Kraus, 1995; Kim & Hunter, 1993). The weak associations have been attributed to a lack of compatibility between the attitude and behaviour measures used in a variety of studies (Bohner & Wanke, 2004). Evidence from these meta-analytic studies suggest that if attitude and behaviour are measured at corresponding levels of specificity correlations will be high (Kraus; Kim & Hunter).

Specificity

This issue of specificity has bearing on the design of the social context training intervention. If the action, target, context and time element impact on the predictive validity of the attitude-behaviour relationship, ideally they should be considered when designing an intervention that focuses on attitudes to bring about behaviour change. Attaining this level of specificity, however, may be extremely difficult in a training workshop setting where the modus operandi is presentations followed by discussions or case analysis. Acquiring a degree of specificity might also prove difficult in social context training due to the complex nature of the attitudes being scrutinised.

In social context training for magistrates perhaps specificity could translate into identifying acceptable, desirable specific work behaviours and developing interventions around these. This could prove somewhat more effective than working at the level of vague and generalised personal attitudes. The challenge would be to document what kinds of behavioural competencies are associated with being a magistrate in a transforming society and attempt to develop an intervention that trains magistrates in these competencies. One could argue that magistrates' personal attitudes are irrelevant to the job and it is their work performance that requires attention. If the organisation had a set of rules or standards against which work performance could be measured one could design a more focused intervention. Due to the nature of the work, however, it is very difficult to define a set of standards for magistrates that will ensure individuals' biases do not impact on the rule of law.

The absence of a theory of attitude-behaviour change underlying the programme's development and design may curtail the attainment of the programme's overall goals.

Circumstance under which attitudes impact behaviour

Meta-analytic studies suggest that the scepticism of the 1960s, which questioned the existence of the attitude-behaviour relationship, was based on an incorrect perspective of behaviour as a criterion variable, "...against which the validity of the attitude concept could be tested." (Kraus, 1995, p. 71). The scepticism was further fuelled by a number of studies which consistently failed to show significantly high correlations (Kraus, Kim & Hunter, 1993).

The results of a series of meta-analyses demonstrate that attitudes and behaviours are distinct concepts and that attitudes cannot be used as surrogate behaviour measures. Perhaps the most important finding of these studies is that attitude is not the sole determinant of behaviour (Kraus, 1995; Kim & Hunter, 1993).

There is general acceptance that a simple linear causal relationship between attitudes and behaviour does not exist (Eagly, 2004; Eagly & Chaiken, 1993). Contemporary theories, however, like the theory of reasoned action (TRA) (Ajzen & Fishbein, 1980; Fishbein & Ajzen, 1975), the theory of planned behaviour (TPB) (Ajzen & Madden, 1986), and the theory of trying (TT) (Bagozzi, 1992) have had some success in demonstrating how mediating and moderating variables influence the nature of the relationship. There is some supportive evidence for all three of the theories presented here, some more convincing than others (Bagozzi, 1992; Kim & Hunter, 1993). The theories are presented to highlight the complex relationships between multiple intervening variables and the lack of clear causal links between attitude and behaviour.

The theories are presented as critique of the programme logic model which articulates the implicit assumption that a change in attitude will result in a change in behaviour.

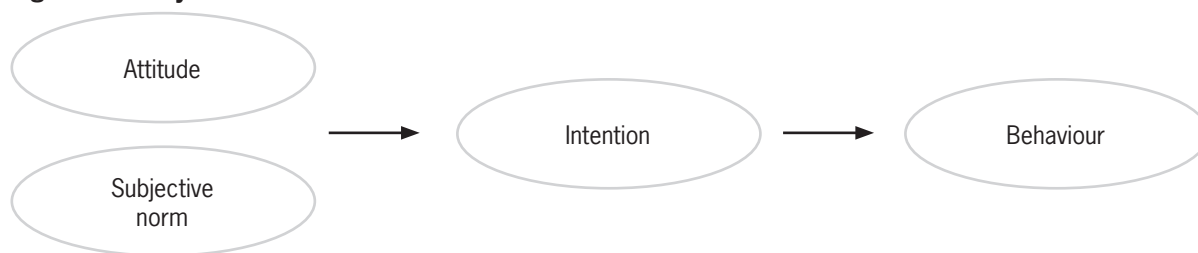
The Theory of Reasoned Action

The TRA (Ajzen & Fishbein, 1980; Ajzen & Fishbein, 1975) and the TRB (Ajzen & Madden, 1986) are based on expectancy value type models for explaining behaviour (attitude = sum of expectancy x value products) (Ajzen & Fishbein, 1980; Fishbein & Ajzen, 1975; Bagozzi, 1992, Bentler & Speckart, 1979). According to their conceptualisation a causal link between attitude and behaviour exists but is mediated via intervening variables.

The TRA deals with actions or behaviours that are under an individual's volitional control and the causal relationship implied in the TRA only applies to this set of behaviours (Ajzen, 1980). According to this theory an attitude must be understood in a particular context and behaviour is a consequence of rational will (Eisner, 1994).

In the TRA behaviour is directly influenced by intention (a mindful choice to act in a particular way). Intention is regarded as a motivational variable and represents the amount of effortful action an individual is willing to exert in order to carry out a particular action (Ajzen, 1988; Ajzen & Fishbein, 1980; Liska, 1984). Since the development of the TRA numerous studies have demonstrated support for the hypothesised causal link between intention as a dependent variable and attitude towards the behaviour and social norms as independent variables (Ajzen, Ajzen & Fishbein). These studies have generally used multi linear regression measures to estimate the concurrent predictive power of both independent variables (Ajzen, Eisner, 1994).

Figure 2 Theory of Reasoned Action



In this model intention is the most direct predictor of behaviour (Webb & Sheeran, 2006). Attitude (towards the behaviour) and social norms influence the development of a decision to act or intention.

The value of this theory, and its confirmatory research, is the assertion that the articulation of intention to act is a far more accurate predictor (predictive validity significantly greater) of actual behaviour than attitude towards behaviour.

The TRA is limited in that it only applies to attitudes and their relationship with behaviours under volitional control. The TPB was introduced in an attempt to make sense of the attitude-behaviour relationship in understanding actions which are not entirely under volitional control (Ajzen, 1985, 1987, 1988, 1991, Ajzen & Madden, 1986).

The Theory of Planned Behaviour

The TPB introduces the additional antecedent, perceived behavioural control (PBC) into the model. PBC is understood as a belief about how simple or hard enacting the behaviour is perceived to be. This concept has been compared in definition with the concept of self-efficacy (Bandura, 1977, 1982, Kraus). The comparison suggests that PBC is determined by *control beliefs* about an individual's ability to exercise control over the behaviour. These control beliefs impact on PBC in the same way that the subjective norms are determined by normative beliefs.

It is hypothesised that PBC predicts both behaviour and intention as illustrated in Figure 3.

Figure 3 Theory of Planned Behaviour (Version 1 without broken arrow, Version 2 with broken arrow)

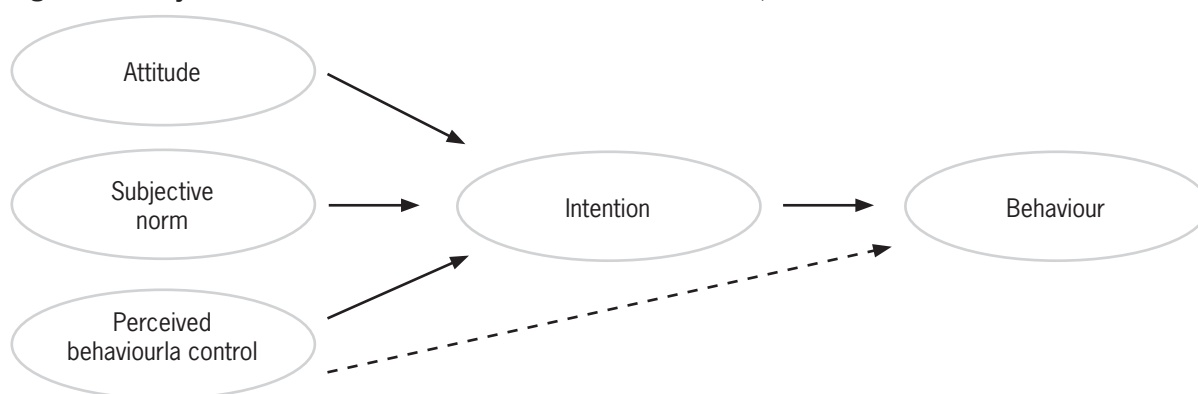


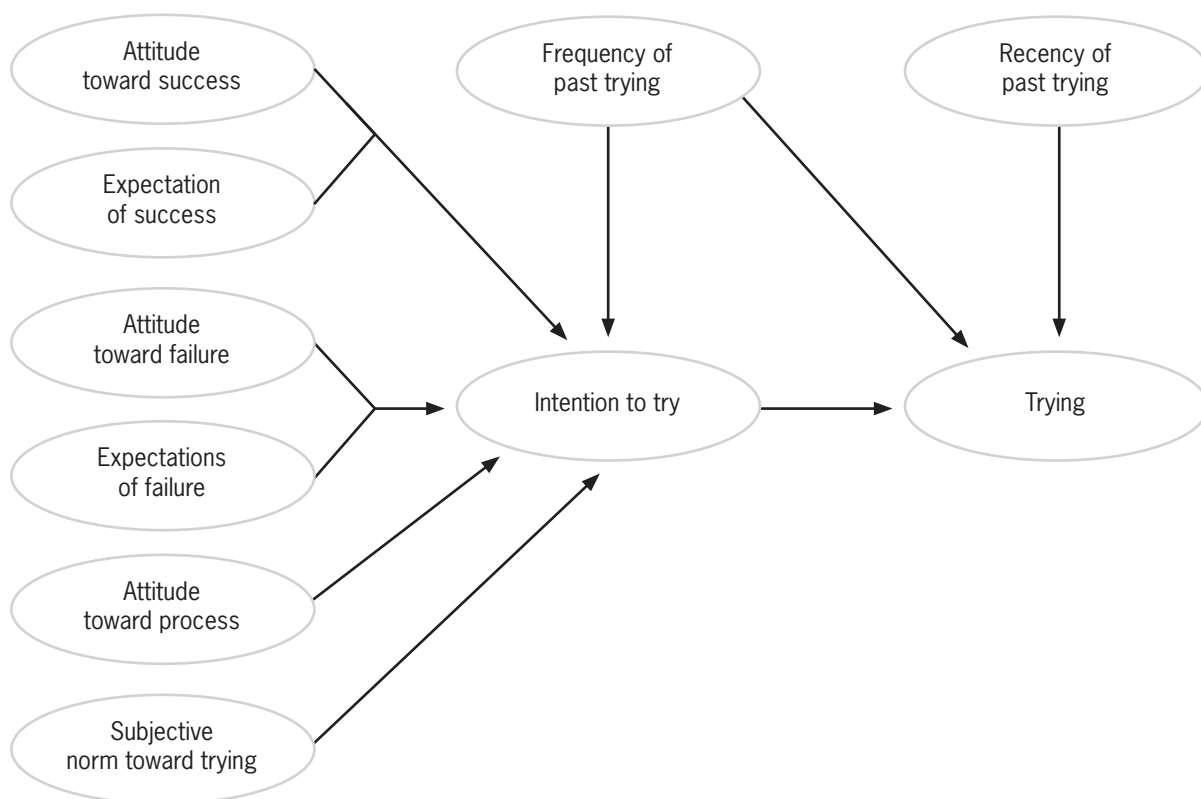
Figure 3 represents two versions of the same theory. In version 1 PBC is portrayed as a predictor of intention. An individual who does not believe he/she has the capacity (material or psychological) to act in a certain way is not likely to develop strong intentions to perform the given action. This holds true even if he/she holds a positive attitude towards the behaviour and recognises that it is socially desirable. PBC is shown to correlate with attitude and subjective norm and to have an independent effect on intention (Ajzen & Madden, 1986). In this version of the theory intention predicts behaviour and PBC is directly related to intention and not behaviour.

In the second version of the theory, the theorists suggest that there could be a direct relationship between PBC and behaviour as illustrated by the broken arrow in Figure 3. Performing certain behaviour is dependent on (a) the motivation to perform and (b) whether or not the individual exercises control over behaviour. PBC is directly associated with behaviour in situations where PBC accurately mirrors actual control (Ajzen & Madden, 1986). There has been empirical support for the utility of PBC in predicting both behaviours and intentions (Ajzen, 1991, Conner & Armitage, 1999; Conner & Sparks, 1996; Godin & Kok, 1996; Sparks, 1994; van den Putte, 1991).

The Theory of Trying

The Theory of Trying (Bagozzi, 1992) offers an additional lens through which one can view the attitude-behaviour relationship. It differs from the previous theories in its conceptualisation of behaviour and it is for this reason that it is included here. The TRA and TPB define behaviour as the performance of an action (i.e. the dependent variable) while the TT defines the dependent variable, trying, as more of a process than a discernable distinct action (Bagozzi). Figure 4 illustrates this:

Figure 4 Theory of Trying



Behaviour in this model is conceptualised as the process of trying. It moves away from a single behaviour or action to incorporate the process of achieving an action or engaging in behaviour. Trying implies attempts made at goal achievement but does not imply the successful execution of the behaviour (Bagozzi, 1992).

The TRA and TPB are structured on the assumption that behaviour is either under volitional control or not under volitional control and even the architects of these theories acknowledge the possible constraints in this conceptualisation of behaviour (Ajzen, 1987, 1991, Ajzen & Madden, 1986, Liska, 1984). Bagozzi (1992) suggests that rather than conceptualising behaviour in terms of falling on this either-or continuum, behaviour should be viewed as either intended or unintended. An individual's actions are intended when they have a rationale (clear reason) and where there is a belief that the

individual is capable of performing the action. An individual's actions are unintended when they are spontaneous and there is no discernable reason for the action. These actions are often the result of coercion, impulse or habit.

There has been limited research into the verification of the TT (Eagly & Chaiken, 1993). It is included in this discussion as it introduces variables that are absent in the other two theories and underscores the process component in the relationship between attitude and behaviour. In addition to this the TT highlights the processes of goal attainment as opposed to focusing on a specific behaviour outcome. It redefines the terms of the attitude-behaviour relationship by positing that the relationship is between the variables of attitude and attempts at action.

Applying the theories to the programme logic

All three theories have their critics and there is no end to the debate in the field of social psychology about the nature of the attitude and behaviour relationship (and relationship paths) (Eagly & Chaiken, 1998; Eisner & Pligt, 1988; Kippax & Crawford, 1993; Sutton, 1998; Trafimow & Duran, 1988; Webb & Sheeran, 2006). What is clear, however, is that a simple causal link between attitude and behaviour does not exist. The three theories illustrate some of the limitations of the causal relationship articulated in the programme logic model. They highlight the importance of the mediating variable of intention in the attitude-behaviour relationship. If the theories offer reliable explanations it would seem that the desired distal outcomes in the programme logic model are improbable. Even if the intervention is successful in increasing knowledge, and shifting attitudes, without attending to the issue of intent it is unlikely to result in the desired distal outcome of behaviour change.

While not reflected in the programme logic model the LRG Unit's training intervention advocates a strong social norm in favour of eradicating racial and gender bias in magistrates' courts. The training is endorsed by the Department of Justice and the various employee associations, Judicial Officers Association of South Africa (JOASA) and Association of Regional Magistrates of South Africa (ARMSA). Magistrates voluntarily attending the training are responding in some way to this social norm. Voluntarily attending training may demonstrate openness to social context education and be indicative of a relatively positive attitude towards the aims of the programme. This might suggest that if the programme logic incorporated some of the other central components of the above theories, like intention, there would be greater likelihood of success in bringing about the desired outcomes.

The mediating and moderating variables in the various models would perhaps need to be integrated into the programme design to increase the probability of programme effects.

If intention is the fulcrum on which the attitude-behaviour relationship rests, it might be more expedient to design an intervention that focuses on promoting the development of this need by aligning it directly to an organisational change initiative. The impetus for individual level change may need to be located in the context of a broader system's change. Developing training that focuses on organisational level processes, structures and procedures that support transformation and dictate a necessity for change in work-based practices may prove more effective in promoting behaviour change amongst individual magistrates than social context awareness training.

This document analysed the programme theory as articulated in the programme logic model by addressing four theory evaluation questions. The programme's goals and objectives were interrogated in order to assess their feasibility.

Based on an analysis of the lower court system post-1994, it is clear that the training was developed in response to a well documented social need. It will be argued later in this thesis that in order to achieve the desired changes in magistrates' court conduct the training need must be further refined. A training programme that focuses on narrowly defined and observable job characteristics and acceptable work behaviours could possibly have a more robust logic model.

The logic model was further evaluated by discussing contemporary theories of prejudice and racism. This analysis demonstrates the difficulties of traditional methods of anti-bias training in relation to modern forms of prejudice and racism. Similarly, the underlying theory implied in the programme was assessed using contemporary social psychological research and theory of the attitude-behaviour relationship. This assessment suggests that the causal sequencing implied in the logic model is flawed.

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