FACTORS RESPONSIBLE FOR DISPARITY IN THE RATIO OF MEN TO WOMEN IN THE KENYAN JUDICIARY: A STUDY OF NAIROBI PROVINCE

BY

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D53/OL /1566/02

A RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF THE AWARD OF MASTER OF BUSINESS ADMINISTRATION (HUMAN RESOURCE MANAGEMENT)

SCHOOL OF BUSINESS STUDIES
KENYATTA UNIVERSITY

AUGUST 2005
DECLARATION

This is my original work and has not been presented in any other University for a degree.

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This project paper has been presented for examination with my approval as the University supervisor.

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Signature ________________________ DATE ________________________

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CHAIRMAN, BUSINESS ADMINISTRATION DEPARTMENT
SCHOOL OF BUSINESS STUDIES
KENYATTA UNIVERSITY
DEDICATION

This work is dedicated to my parents Paul Owala and Lorna Odera, who inspired me to work, gave me moral support and prayed for me.
ACKNOWLEDGEMENT

My imminent appreciation goes to my beloved father Paul Owala, who made sure I got a good educational foundation in my early life from which I could change my dreams into reality, and to my mother Lorna Odera, for the deep concern, moral support and encouragement she provided during my pursuit for education. She always encouraged me to aim higher in whatever I am doing.

Special thanks go to my supervisor Dr. W. P. Otengah for his invaluable contribution and insight guidance that has enriched the results of this study. His continued interest, inspiration and encouragement gave me the morale to polish the work. Without his constructive criticism and support the end product would be incomplete given the limited time.

Profound thanks goes to my sister Christine Owala for her support, patience and sacrifice as she assisted me in typing my work. She gave unqualifying contribution both socially and materially, giving constant advice and motivation.

I am also personally indebted to all the respondents who contributed immensely to make my research possible by giving me information as well as responding to the research questionnaire.

Honor and glory to the Almighty for giving me the ability, physical and mental health, patience, peace and wisdom throughout my studies without which I would not have completed this work.
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<tbody>
<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
</tr>
<tr>
<td>DO</td>
<td>District Officer</td>
</tr>
<tr>
<td>FIDA</td>
<td>International Federation of Women Lawyers</td>
</tr>
<tr>
<td>GAD</td>
<td>Gender and Development</td>
</tr>
<tr>
<td>GOK</td>
<td>Government of Kenya</td>
</tr>
<tr>
<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Commission of Jurists</td>
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<tr>
<td>JSC</td>
<td>Judicial Service Commission</td>
</tr>
<tr>
<td>MOEST</td>
<td>Ministry of Education and Technology</td>
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<tr>
<td>RCLS</td>
<td>Royal Commission on Legal Services</td>
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<tr>
<td>SPSS</td>
<td>Statistical Package for Social Sciences</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>UNESCO</td>
<td>United Nations Educational and Scientific Cultural Organization</td>
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<tr>
<td>WAD</td>
<td>Women and Development</td>
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<tr>
<td>WID</td>
<td>Women in Development</td>
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</table>
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ABSTRACT

Most governments are now concerned with improving women employment. Generally the Kenya Government is determined to increase it by the year 2015. (United Nations, 2000) In order to achieve this objective, research was necessary to determine the factors behind gender disparity in areas such as the judiciary in Kenya, with a view to suggesting some steps that could be taken to ameliorate the situation. This study was specifically set out to achieve several objectives; the main one being to assess the factors that contribute to higher ratio of men to women in the judiciary. To achieve this, data was collected using the following instruments; questionnaires and interview schedules from sampled members of judiciary staff. Observation schedules and secondary data were used in getting required information from the judicial staff. Although subtle means of discrimination cannot be ruled out, no overt gender discrimination was detected by the study. Instead the study revealed that promotion policies, education, culture, mass media, seemed to contribute to a greater extent to the under-representation of women in the judiciary in senior professional ranks and in administration. Other important factors contributing to female under-representation were lack of professional commitment and ambitiousness on the part of the female judicial staff, the attraction to the corporate sector and private firms and political considerations in appointments. The findings also showed that promotion and appointment criteria is well documented but was not properly followed and was frequently changed. Other factors that very much influenced the promotions or appointments of judiciary staff included ethnicity, nepotism, political affiliation and personal relationships. These factors however are not gender sensitive. Several measures were advanced by the respondents to help improve female representation. In the light of these findings the researcher records that there is a need to have gender parity in the judiciary so as to optimally utilize women resources.
CHAPTER 1

INTRODUCTION

1.1 Background of The Study

Women have taken up work as industrial workers, nurses, teachers, caterers, typists, with smaller but still significant numbers entering the professions of medicine, law, management and various aspects of civil and public service. Over the years there have been increases in gender differences both in educational levels and in formal employment, and these have proved remarkably persistent, with men far outnumbering women in all but a few select areas. (Mama, 1996).

The situation of gender inequality in the judiciary is a worldwide problem. According to the English judiciary the RCLS (1979) found that over 90 sets contained no women and some sets of chambers were prepared to admit to a “no woman” policy. The proportion of women as practicing barristers has nevertheless been increasing (Penny, 2001). In the Judicial Sector of Latin America and the Caribbean, it was proposed that women should actively be incorporated into the justice system as judges and lawyers in increasing numbers (Dakolias, 1996). Elaine Martin in “The Representative Role of Women Judges”, 22 Judicature 166 (1993) analyses whether women judges have changed the content of judicial decisions. In Venezuela, which had a much higher percentage of women among its judicial ranks than other Latin American countries, 29 per cent of appeal court judges were women; 50 per cent were first instant judges; and 71 per cent were public defenders. The participation of women in Venezuela judiciary is increasing although it is still minimal.
In Argentina in 1983, women constituted 11.20 per cent of the judiciary, in 1985, 20.10 per cent and in 1992, 25.64 per cent. By 1993, Peru had only one woman on its supreme court (Martin, 1993).

In the German judiciary there have hardly been changes over in the last fifty years. The admission of women into the German judiciary can be described as one of the most important innovations in the composition of the German courts (Feests, 1964). There were very few women judges in the higher provincial courts. After the symbolic appointment of a few women in the first years after the foundation of the Supreme Court, the traditional masculine structure reasserted itself once the women had fulfilled their function. By 1961 there were 4% of women judges in Germany.

In Africa, beginning with the colonial state, when the African males were required to provide the labour needed by the settler economies, the exclusion of women from modern sector employment established a legacy that has yet to be overcome. As a result, in 1987, Kenyan women comprised only 22% of the wage labour force (Republic of Kenya, 1988). The women’s efforts to move from what is perceived to be their traditional role as home-makers or traditional women careers into competitive sector are loaded with many obstacles ranging from legal, social and cultural (Abida and Kiragu, 1998). Women in Africa have been relegated to lower status employment in the agricultural and informal sectors of the economy. By the late 80’s, women filled only 14.35% of all positions outside agriculture and only 6% of administrative, judicial and managerial workers were women in five sub-Saharan countries (United Nations, 2001).

The Bench in Kenya is very male. In Kenyan judiciary, the gender composition of the Kenyan Judiciary Service establishment observed, there were less women than men in the
service. (refer to table 1.1 and 1.2). Women constituted less than 35% of the total establishment in the service as per July 2002 (refer table 1.1 and 1.2).

Furthermore the women occupied the lower cadres of the judiciary as opposed to the higher echelons (Judiciary Watch report, 1998-2003). Although the female composition improved slightly from 30.6% in 1998 to 31.2% in the year 2002 showing improvement in women’s empowerment in the judiciary during the four-year period, majority of women in the judiciary were Senior Resident Magistrates, Resident Magistrates and District Magistrates. The number of women High Court Judges has increased from 5 in 1998 to 6 in July 2002. The number of all commissioners of assize dropped from 10 in 1998 to 8 in 2002. No woman had been appointed to the position of Judges of Appeal in 1996; only 1 out of 10 was appointed by 1998. Even by 2002, no additional woman had been appointed to this rank (Judicial Commission, 2002). Therefore, this study is to investigate factors that are responsible for higher ratio of men to women in the Judiciary.
<table>
<thead>
<tr>
<th>Type of Service</th>
<th>Women</th>
<th>%</th>
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<th>Total</th>
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<td>6</td>
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<td>High Court Judge</td>
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<td>44.4</td>
<td>5</td>
<td>55.6</td>
<td>9</td>
<td>4</td>
<td>40</td>
<td>66</td>
<td>6070</td>
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<td>4</td>
<td>40</td>
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<td>Chief Magistrate</td>
<td>3</td>
<td>37.5</td>
<td>5</td>
<td>62.5</td>
<td>8</td>
<td>3</td>
<td>30</td>
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<td>Senior Principal</td>
<td>13</td>
<td>32.5</td>
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<td>67.5</td>
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<td>14</td>
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<td>Magistrate</td>
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<td>77</td>
<td>66.4</td>
<td>116</td>
<td>40</td>
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<td>Chief Khadhi</td>
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<tr>
<td>Total</td>
<td>87</td>
<td>26.9</td>
<td>237</td>
<td>73.1</td>
<td>324</td>
<td>99</td>
<td>30.6</td>
<td>225</td>
<td>324</td>
<td>107</td>
<td>31.2</td>
<td>236</td>
<td>34.3</td>
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SOURCE: Judicial Commission Personnel Data Office - High Court 1996 – 2002/03
DPM Compliment Statistical Unit 2002
Women Serving in the Judiciary by grade as a Percentage 1994-2002/3

Number of Women

- Chief Justice
- Judges of Appeal
- High Court Judges
- Commissioner of Assize
- Chief Magistrates
- Senior Principal Magistrates
- Senior Magistrates
- Magistrates
- District Magistrates

Legend:
- 1994
- 1998
- 2002/3
The low numbers of women in the judiciary coincide with enrolment figures for law degrees at the University of Nairobi and Moi University. Table 1.3 below shows that fewer women than men are enrolled for the law degree from 1999-2003 at Nairobi University. It is important to note that the number of women who enrolled for the degree decreased from 1999-2003 (Kenya County Gender Profile, 2004). A good number of women today are lawyers, yet very few of them are appointed to the judiciary service (Bwonwong’a, 1994). Many of them have thus gone into private business, where they either own or operate private law firms. Others have opted to join corporate organizations (ICJ, 2003).

<table>
<thead>
<tr>
<th>YEAR</th>
<th>MALE</th>
<th>FEMALE</th>
<th>TOTAL</th>
<th>% FEMALE</th>
</tr>
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<tr>
<td>1999 - 2000</td>
<td>1475</td>
<td>1075</td>
<td>2550</td>
<td>42.16</td>
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<tr>
<td>2000 - 2001</td>
<td>1840</td>
<td>1165</td>
<td>3005</td>
<td>38.77</td>
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<tr>
<td>2001 - 2002</td>
<td>2145</td>
<td>1015</td>
<td>3160</td>
<td>32.12</td>
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<tr>
<td>2002 - 2003</td>
<td>2745</td>
<td>1020</td>
<td>3765</td>
<td>27.24</td>
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Disparities in the ratios of males to females exist in all other employment sectors but it is especially important to study the factors causing it in the judiciary since this will act as a way of improving that parity in all other sectors of employment. The judiciary is often called by the state to perform various duties such as heading commissions of inquiry. It is often consulted on important matters affecting the state. Women still occupy few positions in this prestigious service (Kenya County Gender Profile, 2004).
There are advantages of having more women in the judiciary. Women in the judiciary are likely to understand and sympathize with the experiences of other women. Women will therefore have more confidence to approach the judiciary since they will feel that their plight will be understood (Judiciary Watch Report 1998 – 2003). This implies that there will be improvement of the services in the judiciary. As a result of this, the objectives of the sector will be realized.

1.2 Statement of The Problem

The study on the judiciary is increasingly becoming crucially important at this stage of our country’s economic, political and social transformation (ICJ, 1992). Although the Kenyan government has expressed concern about the equal opportunities for women in all spheres of life, the practice has not been that. Generally, the representation of women among the judiciary staff with senior grades and those with administrative responsibilities has not changed much. From observation, the few women who are successful in obtaining posts in the judiciary face discrimination in the form of fewer chances of promotion to various administrative responsibilities than their male colleagues (UNESCO 1987).

The majority of them have thus tended to remain in lower and less prestigious ranks/grades among their well-ranked colleagues. There is therefore a growing concern about female representation in the judiciary.

Kenyan census statistics reveal that female and male population is almost similar (Central Bureau of Statistics, 2002). However, employment statistics reveal that male population is higher than female (Republic of Kenya, 2002). Equity should be prevalent when it comes to job opportunity, more so in the judiciary since women are now out to contribute
economically not only for their families and communities as was the case in previous years, but also for the country and also internationally. The ratio of women to men needs to be improved so as to create confidence in women clients as they approach the judiciary.

Several efforts have been made by the Kenya government to improve on female representation in the judiciary like in the Affirmative Action Bill of 2000, but the problem of the disparity in the number of women judicial officers still exists (Johnstone, 2003). A study was necessary to determine factors that are responsible for greater number of men in the judiciary so as to address the declining number of women in the judiciary in particular and other disciplines in general. Studies have only been done to reveal the fact that there are fewer women to men but none to determine the factors that could be the cause of the difference. Women, as a human resource, should be efficiently allocated in the judiciary, especially in cases where they have the qualifications and suitability. This will enhance the improvement of the quality of service in that sector.

1.3 Objectives of The Study

The main objective of the study is to establish the factors that contribute to higher male to female ratio in the judiciary.

Specific Objectives

1. To establish the extent to which education is a cause of gender disparity
2. To investigate how culture as a factor has caused the disparity.
3. To determine if appropriate promotion policies are used in the judiciary.
4. To assess how the nature of job causes gender disparities.
5. To investigate if mass media is a factor causing the disparity.
6. To assess how judicial women attitudes has caused the disparity.

1.4 Research Questions

1. How has education been a contributing factor to gender disparities in the judiciary?
2. In which way have the Africans been socialized concerning judicial work?
3. How are promotional policies effected at the judiciary?
4. In what ways has the nature of judicial work been a contributing factor to gender disparities in the judiciary?
5. How has mass media contributed to the disparities in the ratio of male to female in the Judiciary?
6. Have female attitudes been a contributing factor to the disparities in the ratio of the male to female in the judiciary?

1.5 Significance and Justification of The Study

Available studies go as far as getting only ratio of men to women in the Judicial Service Commission but have not analyzed the factors that cause the disparities. This is the gap that the researcher intended to bridge. The outcome of this study will be useful to various groups, like those dealing with appointment of judiciary personnel and those coming up with policies. It investigated if women have been a disadvantaged group in the judiciary. This study will also help the government of Kenya in finding out reasons that cause the disparities in gender ratios and give recommendations on how to address the situation.
The knowledge gained from this study hopefully will serve two purposes: it will be used as a basis for planning and improving the judicial sector. In addition, effective and efficient allocation of human resources will help increase the quality of the service.

1.6 Scope and Limitation of The Study

In order to achieve this objective, data was collected from the judiciary employees, employed by the Judicial Service Commission. The study only covered male to female ratio in the judiciary. The study cannot be used in making generalizations about other professions. The target populations were the magistrates, khadhis, registrars, judges and paralegal staffs. The research sampled 120 staffs from the total population in the selected courts. During the actual field study, the researcher anticipates problems such as lack of respondents. This was mainly due to the fact that most of the judicial staffs have private business and only visited the law courts at specific times when they were to appear at the bench. There was also uncooperative attitude of some staffs who were not willing to provide relevant information.

The Judicial Service Commission has strictly confidential data, which was not easily available to the researcher. Getting enrollment data from the universities also was not very easy. The researcher was treated with suspicion since the two institutions thought the information could be used for other purposes other than the stated one.
1.7 DEFINITION OF TERMS

**Affirmative Action**: A temporary remedial measure intended to redress marginalization and discrimination of the less privileged groups and individuals in the society.

**Bench**: all officers, who hear and determine the outcome of a case; like judges, magistrates, lawyers and khadhis.

**Disparity**: This refers to a situation where there is a big difference.

**Employment**: Work that is done for payment by the government.

**Gender**: Describes all the socially given attributes, roles and activities connected to one’s sex – male or female – in a given society. It is about how we are perceived and expected to think and act as men and women because of the way the society defines concepts of masculinity or femininity. Gender roles are dynamic and change over time.

**Gender equality**: The result of the absence of discrimination on the basis of a person’s sex in opportunities and the equal allocation of resources or benefits or in access to services. Gender equality does not mean that women and men become the same, but they being born male or female do not dictate their rights, responsibilities and opportunities.

**Gender disparity**: A situation where there is no level playing ground for all genders to excel. Usually based on discrimination directed towards a given gender.

**Judiciary**: The branch of the government responsible for interpreting the laws and administering justice, or a system of courts, or a body of judges who preside over the courts.
Judicial staff: All officers charged with responsibility of deciding cases in a law court like magistrates, judges and khadhis. State Counsel and paralegal staff are also taken into account.

Opportunities: Circumstances, events or situations that offer the chance to access employment in the judiciary.

Paralegal staff: All employees who support judicial officers in their work. They include Accounts controller, Chief Personnel Officer, Executive Officers, Secretarial staff, Court clerks and process servers.

Puisne Judges: All other judges other than the Chief Justice.

State counsel: The branch of the judiciary that advises and supports people who do not have lawyers to represent them in court.
CHAPTER 2

LITERATURE REVIEW

2.0 Introduction

This segment of the study concerns literature that is relevant to the study. This is subdivided into the following: the historical development of judiciary in Kenya, women in Kenyan judiciary and the theoretical framework of gender inequalities in the judiciary.

2.1 Historical Development of the Kenyan Judiciary

The main role of the judiciary is to settle disputes between the state and individuals and among individuals themselves (Bwonwonga, 1994). It helps to keep under review all aspects of the Rule of Law and to take such action as will be of assistance in promoting or ensuring the enjoyment of the law (ICJ, 1992).

The first system of courts in the East African Protectorate began after 1895 and grew out of the agreements made between the British government and the sultan of Zanzibar. A full judicial system was not established until 1897 under the East African Order in council (ICJ, 1992). The Courts were divided into three categories. There were native courts, muslim courts and colonial courts, at the subordinate level. At the superior level, the courts were divided into two. One was styled Her Majesty’s court for East Africa from which appeals lay to her Brittanic Majesty’s court in Zanzibar and eventually to the Privy council in the U.K. The other was the Chief Native Court from which lay an appeal to the High court. There was thus a dual court system, one to administer the law established by the new colonial state and the other to settle disputes among the Africans, by applying their own laws (ICJ, 1992).
The judges of the colonial Kenya were appointed under the East African Order in council of 1897 upon the advice of the colonial office. The tenure of the judge was similar to that enjoyed by ordinary civil servants. The judges held office at the pleasure of the crown and could be dismissed by the governor on the direction of the secretary of state without any need for investigation. The bench was inevitably filled with Europeans, who were not the cream of the profession in their countries, so long as they had been members of the bar for not less than three years standing (ICJ, 1992).

The kind of judicial philosophy that the courts espoused characterized the colonial judiciary. First under the dual court system, administrative officers and especially District Officers performed magisterial duties (Morris and Read, 1972). There was no independence of the judiciary from the executive at the lower levels. The District Officer was both the executive and the judicial arm simultaneously.

At independence the constitution provided for separation of powers and for a very central role for the judiciary. The Chief Justice was appointed by the Governor-General, acting in accordance with the advice of the prime minister. The puisne judges were to be appointed by the Governor-General acting in accordance with the advice of the JSC. Judicial tenure was guaranteed (ICJ, 1992).

After independence, there were three distinct approaches to the problem of constitutional adjudication. The first tradition illustrates the inflexibility of the conservative judicial culture inherited from colonial judiciary. The second is a broadly liberal interpretation of the constitution, and the third, involves the judiciary’s abdication from adjudicating on what are perceived as “political” constitutional claims (ICJ, 1992).
The 1993 Commission of Inquiry into the administration of justice in criminal matters in Kenya, Uganda and Tanzania territory identified the conferring of excessive jurisdiction on Magistrates Court as one of the principle reasons why the machinery of justice did not and could not work well. In 1995, the judiciary was formally de-linked from the Civil Service. In Kenya today, as in most of the Commonwealth today, a strong and ancient British tradition of an independent judiciary still informs the essential validity of the separation of powers doctrine. This remains the case as our constitution is reviewed, reformed and made a new (ICJ, 2002).

2.2 Women in Kenyan Judiciary

Women’s basic problem is that the society has not changed its thinking and expectations of women despite the fact that times have changed. Women are poorly represented in jobs of influence and responsibility. This is because of the burden of family responsibilities, which society, and nature, imposes on women. The virtual exclusion, in practice of women from positions of responsibility and authority in politics, business, the law, education and other areas of influence and control, is undesirable for society as well as for the individual woman who would wish to take up such posts. A society makes inadequate use of its human resources if those in positions of leadership are derived from the male half of the population (Clark, 1990).

There have been disparities existing in education. This is observed from the number of female gaining entry to the universities to study law as a discipline, compared to the men. There is therefore great concern about the drop in enrolment rates of girls as they go up the educational ladder, and for that reason it is evident that in the judiciary, there are
fewer women due to the fact that fewer girls will proceed and pursue courses of that nature (World Bank, 1994). For one to work in the judiciary he/she must be holding a prescribed degree in law, granted after examination in a prescribed university and must also have legal education at Kenya School of Law leading to the examinations of the Kenya Council of Legal Education (Tudor, 1970).

There have been a lot of favoritism on men in the judiciary whereas the appointment procedure is set out clearly. The President acts in accordance with the advice of the JSC to appoint judges of the High court. The fact that the JSC does not follow this procedure, or that the president does not bother to make appointments in accordance with the advice of the JSC means that the appointment of judges has been inadequate and unsuitable. As a result women have been left out as men are given more priority (Judiciary Watch Report, 2003).

"Women should comprise a third of the total composition in the judiciary" (Odiloh, 2003). The researcher strongly disagrees with this view due to the fact that if the population ratio of women to men is 52:48, then there should be a ratio of about 1:1, therefore women should comprise about half the total composition in the judiciary. There is need to research on the topic of disparities in the ratio of men to women so as to know the actual picture of today's situation and get causes of the disparities if any. The researcher agrees with Women and Democracy (1997), which suggested on putting pressure on the government to take deliberate action to include more women in the judiciary.
In restructuring of the JSC, there was an inclusion of a woman representative in four out of the thirteen branches (Judiciary Watch Report 1998 - 2003). This was a deliberation to increase women representation. This is still inadequate due to the fact that nine of the branches are still fully male. This will still contribute to the big disparity that exists in the judiciary. There has not been a deliberate intention by the society to place women at a disadvantage. No one has gone out of their way to discriminate against women, but both traditional beliefs and modern concepts need to be changed to ensure that equality is not only a formal legal statement but also a social reality. "In order for women to be more effective within the judicial process, they must also be involved directly or indirectly as police officers, magistrates, judges... and lawyers" (Ang’awa, 1989). The number of women who have passed through the Kenya School of Law is a sign that the once almost insignificant participation by women is now increasing.

Studies have been done to analyze data showing the gap that exists between male and female judiciary staff, but none to check on the factors causing the disparity. Being that no particular attention has been given to increasing the number of women in the judiciary, the researcher will try to fill the gap by getting the factors responsible for the disparities in the ratio of men to women. The research will also provide a current study so as to get the true picture of today’s situation in the judiciary and the reasons behind the disparity, as a way of trying to improve the situation.

2.3 Theoretical Framework

The study is based on the orientation of three theories namely: the socialist feminist theory of GAD, implicit gender dimension theory and the legal-rational theory.
In many societies, women face a sex segmented and hierarchical labour market, they are concentrated in the lower paid occupations and at the bottom end of the hierarchies (Ginsbetg and Watsons, 1992).

The GAD theory offers a holistic perspective, looking at all aspects of women’s lives. It questions the basis of assigning specific gender roles to different sexes. It does not exclusively emphasize female solidarity – but welcomes the contributions of men (Visvahanathan, Dugga, Nissonoff, Wiegersua, 1997). According to Kate Young (1992), GAD focuses not just on women, but also on the social relations between men and women, in the workplace as well as other settings. GAD uses gender relations rather than ‘women’ as the category of analysis and views men as supporters of women. Women are seen as agents of change rather than passive recipients of development assistance (Ratngeben, 1990). Social feminists seek to understand and strategically neutralize, if not abolish completely, the sexual division of labour as an organizing principle, both inside the family/household and in the work place, as socialization has put it in the African setting. This does not imply eliminating the differences between men and women but rather eliminating sex/gender as a basis for assigning work and for valuing different kinds of work (Adamson et al, 1988). This study considers the impact of development on both men and women and their impact in turn on the development process, is also taken into consideration. The GAD theory will partly guide the study to evaluate the situation in the judiciary.

The implicit gender dimension is also another theory which is based on the fact that women need to participate equally in the identification of developmental priorities.
It tries to ensure that issues of gender discrimination and women marginalization are addressed and that international commitments of African governments on gender equality are included in developmental priorities. (Muthoni, Longwe, Nzomo, Wandia, Kaara, Okumu, Nghanga, 2003).

The study has also used a section of Weber's legal—rational theory. No one is above the law. The law itself is purposive and rational, the product of human deliberation, as seen in the judiciary. In the judiciary, there should be neutrality and impartiality ensured through an independent method of recruitment and promotion (ICJ, 1997). The appearance of the neutrality and autonomy of the law is possible because the primary form of subordination or unequal relations is not the law but social and economic forces, which rely upon equal and neutral legal concepts, and rules to achieve that effect (ICJ, 1997).
CHAPTER 3
METHODOLOGY

3.0 Introduction

In this chapter the researcher identified the study area, the research design, the study population and the sampling design, the data collection instruments and producers, data processing and data analysis techniques and the expected outcome.

3.1 Study Area

The study was undertaken in Nairobi Province at the Nairobi’s Law Courts, Kibera Court and Makadara Court. Information from JSC was collected from personnel records. These courts were studied since they gave a true picture from three different categories of courts. Members of the bench and paralegal staff in these courts were interviewed and given questionnaires so as to establish the disparity and get the contributing factors.

3.2 Research Design

The research design was mainly descriptive and exploratory. The researcher used both document analysis and case study method. In document analysis, secondary data for the period ranging from 1996–2005, was collected from existing records to establish the disparity in ratio of men to women in the judiciary. Structured questionnaire was used as the main instrument. It was administered to selected respondents (both male and female). This established the causes of gender disparity in the judiciary. This method brought about personal opinions and attitudes that document analysis could not facilitate. The questionnaire dwelt on questions regarding work related information and was used on the judicial staff. Most questions were closed-ended.
This saved on time and reduced vagueness. Before the actual survey, a pre-test survey was carried out to determine clarity of questions in the questionnaire and to eliminate questions that were sensitive and whose answers appeared ambiguous. Key informant interviews were also used alongside with focused group discussion on the para-legal staff.

3.3 Study Population

The population of study was all the judiciary staff in Nairobi Province. From this population, the researcher sampled thirty per cent of the judicial staff. Nairobi being the capital city was purposively selected to provide a true representation of the judiciary in Kenya, since it is the town with the biggest number of judicial staff. The research was conducted at the Nairobi Law Courts, Kibera Law Court and Makadara Law Courts so as to have the four different types of courts represented, that is, the Magistrates court, Khadhis courts, the High court and the Court of appeal (Hussain, A. 1997).

3.4 Sampling Design

The researcher employed stratified random sampling procedures to ensure fair representation of the study population. When employing this technique, the researcher divided the population into strata by some characteristics, and from each of these smallest homogeneous groups were drawn at random a pre-determined number of units (Nsubuga, 2000). Sub-groups (strata) were formed for both males and females of various ranks in each of the selected courts. From the sub-groups a higher number of female staff were employed by randomly sampling procedures to get the required number. However for the strata with men, the researcher selected them purposively. A total of one hundred respondents participated in the questionnaire, thirty for the focused group discussion and
five for the key format interviews. This sampled thirty per cent of the total population of
the staff from the existing four broad categories of courts, which were selected for the
study. The total number of judicial staff in the four courts is four hundred and fifty
members. \(\frac{30}{100} \times 450 = 135\).

Table 3.1 Sample Populations of Judicial Staff in Nairobi

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>HIGH COURT</th>
<th>COURT OF APPEAL</th>
<th>MAGISTRATES COURT</th>
<th>KIADHIS COURT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
</tr>
<tr>
<td>Judges</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Magistrates</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Khadhis</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>State counsel</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Para-Legals</td>
<td>2</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>10</td>
<td>20</td>
<td>15</td>
<td>20</td>
<td>15</td>
</tr>
</tbody>
</table>

3.5 Data Collection Instruments and Procedures

The researcher collected the primary data from self-administered questionnaires, which
were given to one hundred and thirty judiciary staff through face-to-face interaction (refer
to appendix II). Any information, which was not clear, was explained to them. Structured
interviews were also conducted (refer to appendix III). The interview was an important
data-gathering device for this study because interview situation permits much great depth
than other methods of data collection. It also attempted to provide a true picture for
opinions and feelings. The researcher used open – ended questions to elicit verbal
responses from the respondents. Bearing in mind the sensitive nature of information
which the researcher required, particularly of open–ended questions helped the researcher
to establish clearly the present situation in the judiciary with regard to gender disparities. Another source of data was from the researcher's observation of the employee as they do day-to-day work. Document analysis was used to provide quantitative data by checking the personnel records.

The judiciary personnel records data gave quantitative data and the qualitative data was derived from the interview schedules and questionnaire. The researcher found it necessary to blend both qualitative and quantitative analysis. For purpose of document analysis, the researcher visited judicial offices, courts and several libraries in order to obtain first hand information that provided more details for the study.

3.6 Data Processing

Before analysis, the information was checked to ensure completeness and find out whether or not they possessed the desired interviewing qualities, edited to ensure maximum accuracy and coded. From the quantitative data, the researcher came up with sub-themes and drew conclusions on these based on the research objectives. That data was displayed as totals and percentages.

Results of interviews were used as informative evidence in explaining some findings. Observations results assisted in verifying some data collected by questionnaire. The qualitative data was used to explain the quantitative data. It is on the basis of this approach that findings were reached and conclusions drawn.
3.7 Data Analysis Techniques

The data collected was subjected and analyzed both qualitatively and quantitatively using Statistical Package for Social Science (SPSS). The data was presented using tables where averages and percentages were used. Graphs and pie charts were also used to present data.

3.8 Expected Outcome

If factors contributing to gender disparity are overcome, there will be likelihood of having increased number of women representation in the judiciary. This will in effect increase the quality of service since both sexes will listen to cases which appear in the courts like family disputes, rape cases, corruption cases and land issues just to mention a few.
CHAPTER 4

RESULTS

4.0 Introduction

Figure 4.1 below shows the Nairobi Law Courts from which data was collected by questionnaires and interviews. All the personnel records were obtained in this court. The study was conducted in two other courts namely Kibera and Makadara courts.

Figure 4.1: Nairobi Law Courts

This chapter gives a systematic and comprehensive analysis of data collected during the study on selected variables viz education, culture, promotion policies, nature of job, mass media and women attitudes. Analysis is descriptive using statistics and percentages shown in tabular form, charts and graphs for easy readability. The data is then interpreted in relation to the research questions earlier stated in Chapter 1. The findings are organized according to the variables as they appeared in the questionnaires.
4.1 Response To Questionnaires and Interviews

Questionnaires were given to 130 respondents so as to cater for those who would not respond. A total of 100 were required. A total of 120 people responded. This includes 85 questionnaires, 30 focused group discussion members and 5 key informants. This represents 88.8% of the sample.

45 of the questionnaires had no responses. They either kept making future dates of collection, were not available at agreed date or time, or said they would post them later but did not do so. All the 30 focused group discussion members were met and interviewed, and all the 5 key informants were also interviewed.

This response was considered enough to provide the general information on the factors causing disparity in the ratio of men to women in the judiciary and hence provide a basis for valid and reliable conclusions.

Table 4.1: Response to Questionnaires and Interviews

<table>
<thead>
<tr>
<th>Feedback</th>
<th>Number of Staff</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual response</td>
<td>120</td>
<td>88.8%</td>
</tr>
<tr>
<td>No response</td>
<td>15</td>
<td>11.2%</td>
</tr>
<tr>
<td>Total</td>
<td>135</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

4.2 Social Demographic Background

Some background relating to age, gender, job title and job group, education and utilization of human resources, and administrative posts by gender was collected. The purpose was to establish the effect of these on the variables that cause the disparity in the ratio of male to female judicial staff.
4.2.1 Age

It was realized from the study that there were no judges under the age of 35. Most of the judges lie in the upper bracket of years between 46 – 55 years of age. The rest of the ranks, that is; magistrates, khadhis, state counsels and the para-legal staff had varied ages ranging between 25 to 55 years of age. It is noted from the analysis that to be appointed as a judge, age considerations have to be taken into account. The JSC targeted the older people hence there were no members of staff below 35 years of age. All other categories comprised of both older and younger people.

**Table 4.2: Distribution of Age**

<table>
<thead>
<tr>
<th>Age</th>
<th>Profile</th>
<th>Judges</th>
<th>Magistrates</th>
<th>Khadhis</th>
<th>State Counsel</th>
<th>Paralegal</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 – 35</td>
<td>Male</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>3</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>0</td>
<td>7</td>
<td>4</td>
<td>9</td>
<td>7</td>
<td>27</td>
<td>22.5</td>
</tr>
<tr>
<td>36 – 45</td>
<td>Male</td>
<td>2</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>13</td>
<td>10.8</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>3</td>
<td>6</td>
<td>10</td>
<td>2</td>
<td>5</td>
<td>26</td>
<td>21.6</td>
</tr>
<tr>
<td>46 – 55</td>
<td>Male</td>
<td>6</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>4</td>
<td>15</td>
<td>12.5</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>13</td>
<td>3</td>
<td>2</td>
<td>5</td>
<td>4</td>
<td>27</td>
<td>22.5</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>120</td>
<td>100</td>
</tr>
</tbody>
</table>

4.2.2 Gender

The study targeted more women so as to get more of their views and opinions. The females who responded represent 66.7% of the total population while the rest (33.3%) respondents were males as shown in Table 4.3 below. Men’s opinions were very vital since they are judicial staff and can provide a true picture of the causes of the disparities.

**Table 4.3: Gender**

<table>
<thead>
<tr>
<th>SEX</th>
<th>JUDGES</th>
<th>MAGISTRATES</th>
<th>KHADHIS</th>
<th>STATE COUNSEL</th>
<th>PARALEGALS</th>
<th>TOTAL</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>40</td>
<td>33.3</td>
</tr>
<tr>
<td>Female</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>16</td>
<td>80</td>
<td>66.7</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>120</td>
<td>100</td>
</tr>
</tbody>
</table>
4.2.3 Job Title and job group

From Table 4.4 below, the majority of judicial staffs fall between job group L – P. The judges, who are of the highest ranks range from job group N – R. The paralegals who are of the lowest ranks range from below job group K – N. This infers that one is employed below job group K and can rise steadily in rank up to job group R.

Table 4.4: Job Title and Job Group

<table>
<thead>
<tr>
<th>Profession/Job Group</th>
<th>K and below</th>
<th>L</th>
<th>M</th>
<th>N</th>
<th>O</th>
<th>P</th>
<th>Q</th>
<th>R</th>
<th>Not Stated</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges</td>
<td></td>
<td>7</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td></td>
<td></td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>Magistrates</td>
<td>1</td>
<td>7</td>
<td>2</td>
<td>5</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>Khadhis</td>
<td>1</td>
<td>7</td>
<td>2</td>
<td>7</td>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>State</td>
<td></td>
<td>8</td>
<td>5</td>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>Counsel</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>Paralegals</td>
<td>7</td>
<td>12</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>7</td>
<td>14</td>
<td>27</td>
<td>16</td>
<td>24</td>
<td>27</td>
<td>2</td>
<td>3</td>
<td></td>
<td>120</td>
<td>100</td>
</tr>
</tbody>
</table>

4.2.4 Utilization of human resources

The current cadre of employment comprises 27% in the administrative posts while others are 73%. Table 4.5 below clearly shows that many people have attained high academic qualifications but are not in the high ranks, that is, administrative posts (73%). These are the general judicial staff. The inference here shows that there are fewer avenues for professional advancements. This therefore creates job insecurity as most of the respondents feel they are not satisfied. In view of the above it is inferred that there is poor utilization of human resources in the JSC.
Table 4.5: Utilization of Human Resource

<table>
<thead>
<tr>
<th>ITEM</th>
<th>JUDGES</th>
<th>MAGISTRATES</th>
<th>KHADHIS</th>
<th>STATE COUNSEL</th>
<th>PARA-LEGAL</th>
<th>TOTAL</th>
<th>PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualification achieved</td>
<td>High</td>
<td>Low</td>
<td>High</td>
<td>Low</td>
<td>High</td>
<td>Low</td>
<td>High</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>14</td>
<td>18</td>
<td>6</td>
<td>21</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>Current Cadre Of Employment</td>
<td>14</td>
<td>10</td>
<td>6</td>
<td>18</td>
<td>3</td>
<td>21</td>
<td>6</td>
</tr>
<tr>
<td>Total</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>24</td>
</tr>
</tbody>
</table>

4.2.5 Administrative posts by gender

From the analysis it shows that about two thirds of the sample (63%), who are males, hold the administrative posts as compared to about one third who are females (37%). This shows that the disparity in ratio between males and females holding administrative posts is still very big, with males dominating most of these posts. Females hold a smaller fraction.

Figure 4.2 Administrative Posts by Gender
4.3 Education as Cause of Disparity in the Judiciary

Figure 4.3 below shows the total number of judicial staffs sworn in as judges and magistrates in their professional regalia in March 2005. At the centre is the Chief Justice (in red), who is a man. The front line is made up of puisne judges except the one on extreme left who is a Provincial Personal Relations Officer. The rest are other judicial staffs consisting of magistrates and advocates. As can be noted from the figure, the ratio of males to females sworn in on this date was 22:19. A fraction of this might not apply to join the JSC

Figure 4.3: Swearing in of Judicial Staff (March 2005)

The sample population was composed of judicial staff sampled from the JSC. Those were classified in four main categories; the diploma holders, degree, masters and PhD holders.

Table 4.6 below presents distribution of respondents by academic qualification and job group. 29.3% of the respondents had masters qualifications while 21.7% were graduate holders. 30.2% of the respondents were diploma holders and 16.8% were PhD holders. From table 4.6, it can be inferred that the diploma holders range between job group K – N while the graduates and masters were from M – P. The PhD holders range between N – S. This indicates that respondents had educational qualifications matching with the job group they held in the judiciary. Most of the women had lower academic qualifications (masters degree) compared to their male counterparts. For example, for the PhD holders 4.2% were females compared to 12.6% males. For masters, 11.7% women (slightly more) compared to males 10.9% and for diploma holders female are less (13.4%) compared to males 16.8%. This is attributed to the fact that they fall in the lower ranks in the judiciary.
### Table 4.6: Academic Qualifications and Job Group

<table>
<thead>
<tr>
<th>JOB GROUP</th>
<th>PHD</th>
<th>MASTERS</th>
<th>GRADUATES</th>
<th>DIPLOMA</th>
<th>NUMBER</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
<td>Female</td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>K and below</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>5.8</td>
<td></td>
</tr>
<tr>
<td>L</td>
<td>2</td>
<td>5</td>
<td>2</td>
<td>5</td>
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<td></td>
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<tr>
<td>M</td>
<td>6</td>
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<td>N</td>
<td>1</td>
<td>0</td>
<td>5</td>
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<td>5</td>
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<td>4</td>
<td>2</td>
<td>5</td>
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<tr>
<td>R - S</td>
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<td>3</td>
<td>0</td>
<td>1.5</td>
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<td></td>
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<tr>
<td>TOTAL</td>
<td>15</td>
<td>5</td>
<td>21</td>
<td>14</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>PERCENTAGE</td>
<td>12.6</td>
<td>4.2</td>
<td>17.6</td>
<td>11.7</td>
<td>10.9</td>
<td>16.8</td>
</tr>
</tbody>
</table>

### 4.4 Culture as a Cause of Disparities in the Judiciary

Figure 4.4 infers that culture does not have a very big effect on women and judicial work. 20% of the respondents felt that it contributes while 80% of the respondents expressed the fact that times have changed and the effect is not felt as much as it was in earlier years.
4.5 Promotion Policies as a Cause of Gender Disparity

Figure 4.5 below shows members of the Nairobi Law Courts. The front row consists of magistrates. The second row consists of state counsels. As can be noted from the figure, the females are less than the males.

Figure 4.5: Magistrates and State Counsels (August 2005)
The observation that can be made from the graph below (fig.4.6) is that promotions in the JSC are done on a 2-year basis (65% of the cases). Those who have got it yearly are just 18%. Three years on the line was only 7% and irregular promotions were noted in 10% of the cases.

On effectiveness of the promotions, 65% of the respondents regarded the existing promotion system as fairly effective and therefore requiring review. 20% felt that it was not effective at all and therefore a better promotion policy need to be effected. Those who felt the promotion system was effective were merely 15% (refer figure 4.7)

Figure 4.6: Frequency of promotions

![Graph showing frequency of promotions](image-url)
4.6 Nature of Job as a Cause of Disparity in the Judiciary

Both the senior judicial staff and junior judicial staffs had similar problems caused by the nature of their work. The study however noted that the junior judicial staffs had different ratings of their problems/frustrations regarding the nature of their work from the senior judicial staffs.

Table 4.7: Work related problems for senior Judicial Staff

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>MALE</th>
<th>FEMALE</th>
<th>TOTAL</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Too much work</td>
<td>10</td>
<td>18</td>
<td>28</td>
<td>23.0</td>
</tr>
<tr>
<td>Inadequate remuneration</td>
<td>26</td>
<td>30</td>
<td>56</td>
<td>47.5</td>
</tr>
<tr>
<td>Lack of career progression path</td>
<td>11</td>
<td>19</td>
<td>28</td>
<td>23.0</td>
</tr>
<tr>
<td>Poor working conditions</td>
<td>-</td>
<td>6</td>
<td>6</td>
<td>6.5</td>
</tr>
<tr>
<td>TOTAL</td>
<td>47</td>
<td>73</td>
<td>120</td>
<td>100</td>
</tr>
</tbody>
</table>
The above table 4.7 shows that inadequate remuneration took the leading cause (47.5%) while lack of career progression (23%) followed. Poor working conditions took the bottom line (6.5%).

Table 4.8: Work Related Problems for Junior Judicial Staff

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>MALE</th>
<th>FEMALE</th>
<th>TOTAL</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Too much work</td>
<td>14</td>
<td>30</td>
<td>44</td>
<td>36.7</td>
</tr>
<tr>
<td>Inadequate remuneration</td>
<td>9</td>
<td>23</td>
<td>32</td>
<td>26.6</td>
</tr>
<tr>
<td>Lack of career progression path</td>
<td>15</td>
<td>16</td>
<td>31</td>
<td>26.3</td>
</tr>
<tr>
<td>Poor working conditions</td>
<td>5</td>
<td>8</td>
<td>13</td>
<td>11.2</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>43</strong></td>
<td><strong>77</strong></td>
<td><strong>120</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

For the lower cadre employees the most prominent factor affecting job performance is too much work (38.6%). This is followed by inadequate remuneration (36.7%) and lack of career progression path (36.5%) and poor working conditions (28.6%) took the bottom line (refer to table 4.8).

4.7 Mass Media as a Cause of Gender Disparity in the Judiciary

From Figure 4.8 below it can be noted that 35% of the respondents felt that mass media contributed to less females than males in the judiciary whereas 65% of the respondents felt that mass media does not contribute to less females in the judiciary. This infers that mass media does not contribute to a great extent to the disparities in the ratios between males and females in the judiciary.
4.8 Female Attitudes as a Cause of Disparities in the Judiciary

From the study, it is noted that 102 respondents out of the 120 sampled, expressed that women had a negative attitude towards their work. This attributes to 85% of the sample (figure 4.9). They complained of frequent transfers, poor pay, over-work, denial of family time and men being able to do the work better. The respondents expressed that the work was not fulfilling, as it was too much yet they were not adequately compensated in terms of salaries. 15% of the total female respondents (18 people) were of the opinion that there was need of improving female representation in the judiciary and it was better to have more females than males in the judiciary since it would help improve the quality of the service. The male respondents also expressed the fact that female judicial staff have a negative attitude about their work, have a low self-concept and are not ambitious. This is a cause of their under-representation in the judiciary.

Figure 4.9: Women Response on Attitude
Figure 4.9: Women Response on Attitude

- 85% negative attitude
- 15% positive attitude
CHAPTER 5

DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

The study was to determine the factors responsible for the disparity in the ratio of men to women in the judiciary. Throughout this study, it has been considered important whatever the women have said and how they have expressed their observations on various issues that affect their jobs as judicial staff. Men’s ideas have also been taken into consideration. This chapter therefore concentrates on what different people (both males and females) conclude about the six variables that have been the subject of the whole study. There is need to encourage exchange of ideas. Being a descriptive exploratory study, content analysis technique was used when dealing with subject responses. The data analysis and interpretation tried to answer all the research questions.

5.1 Discussions

On education, the study revealed that during earlier years, the females were not favoured, especially at the lower levels due to school dropouts brought by several factors. This is consistent with Johnson’s study in 2003. This has been the main reason as to why the enrollment of females into the Faculty of Law was low compared to the males as was obtained from MOEST (2003). The school today does not promote inequality, instead it emphasizes for any job for women, as has been detected by the study. This is different from what it was in the earlier years. With the emphasis on girl-child education by the Kenyan government and the up coming of the “parallel” and “Module II” studies at the public universities, more opportunities have been opened and therefore more of the women who are interested in pursuing law courses have now got their chance to do so.
This coincides with the study of Judiciary Watch report (2005). This is evidently reflected in the greater numbers of the females enrolled in the law faculties in the recent years compared to what it was in earlier years. It has however been noted from the study that most of the trained females opt to go to the corporate sector or venture in private firms as opposed to being employed by the JSC. This coincides with the ICJ study (2003). They do not apply to join the JSC. The study revealed that more of the men are more educated than women and therefore hold higher ranks in the judiciary (ratio 57.9 male 42.1 females – refer to Table 4.6). It is noted therefore that education as a factor is a very major cause of disparities in the ratio of males to females in the judiciary.

The African culture had always emphasized on the females playing very important home roles in the family. They were engaged in taking care of children and their husbands at home (World Bank, 1994). This in earlier years contributed to the disparities in ratios of males to females in the judiciary. This culture is slowly fading off with the improvement of educational sector in the country. Women have now ventured into many salaried jobs, judicial work being one of them. The researcher noted from the respondents that culture did not have a big share in contributing to the lower number of women in the judicial sector (only 20% of the respondents felt that it contributes — refer to Figure 4.3). It was however noted that today the numbers of females in the judiciary is increasing steadily, although to some extent the African societal values of males being at the top still contributes significantly to some of the female judicial staff shying away from administrative duties.
The women themselves lack interest in obtaining higher ranks in the judiciary, or furthering their education for that matter. It is noted that some of the women have a negative perception of themselves. They feel inferior and would prefer the men to hold the responsibilities. Women also have a negative attitude towards litigation. Also, they are not persistent and give up easily. They are satisfied where they are and are not as ambitious as the men.

The findings of this study are consistent with Judiciary Watch report of 2003 that promotion policies are clearly stated by the JSC yet not adequately followed. Most respondents expressed that they are not followed strictly as stipulated. There is a lot of favouritism, tribalism, corruption and request for sexual favours when it comes to promotions. The upgrading policies were not adequately followed. According to the respondents, the Personnel Department frequently gave incorrect facts to the Chairman of the JSC and thus promotions were not given to the right people who deserved. The study revealed that 20% respondents felt it was effective, 80% respondents felt it was fairly effective and 15% respondents felt it was not effective (refer to Figure 4.5). Respondents were not sure of when the promotions were done. 18% expressed that it was done yearly, 65% on a two-year basis, 7% on three-year basis and 10% felt that it was irregularly done.

The study also revealed that the women’s smaller numbers in the judiciary is also affected by the nature of judicial work. Both the male and female respondents expressed the fact that there was too much work in that sector; the responsibilities were too much involving and also transfers were very frequent. All these made the work inappropriate for women. Women also felt there was a need for salary improvement.
From the study findings, the researcher realized that mass media also had some effect, to a small extent, to the smaller number of women in the judiciary. 35% respondents felt it has an effect whereas 65% expressed that it does not affect the ratios of males to female in the judiciary (refer fig. 4.6). Most respondents noted that our radios, televisions and newspapers sold the ideas that judicial work is for men and this does not help to encourage young girls to venture into the profession.

The study concurs with ICJ (2003) report, which reported that the female judicial female staffs have a negative attitude about their work. The female respondents expressed that they do not get the much they expect from it due to the fact that it is too demanding, involves too much traveling, work conditions are very poor and the remuneration is too low (table 4.7 and 4.8). The respondents expressed that the females do not have as much cancer progression paths as compared to their male counterparts.

5.2 CONCLUSION

From the data analyzed, a few issues have emerged;

- There are more male judicial staff than females (table 1.1 and figure 1.1).
- The males in the judiciary hold more of the administrative posts than women (63% male and 37% female – refer figure 4.1).
- Culture has played a minimal part in contributing to the differences in ratio between males to females in the judiciary. 20% respondents cited that it had an effect whereas 80% cited it had not contributed (refer to figure 4.6).
• A great number of female judicial staffs have a negative attitude towards their job. 85% of the respondents expressed negative attitudes while 15% had positive attitudes (refer to figure 4.6).

• Promotions are done at least annually. 18% expressed that they are done annually, 65% on two-year basis and 10% of the cases cited promotions in the judiciary as irregular whereas 7% expresses that promotions are done on a 3-year basis (refer to figure 4.4). There is however, a need to review the promotion policies.

• Mass media contributes minimally to the disparities in the ratio of males to females in the judiciary. 35% respondents felt it contributed while 65% felt it does not contribute to disparities in male and female ratio in the judiciary (refer to table 4.5).

• Most women are less educated than men therefore they hold the lower ranks in the judiciary (57.9% males to 42.1% females – refer to Table 4.6)

5.3 RECOMMENDATIONS

• Some respondents called for intensive guidance and counseling campaign to be conducted, beginning of lower levels of education, through to university, showing girls they can do as well as boys.

• Providing scholarships and bursaries to girls so as to avoid drop outs due to lack of fees.

• Supportive laws, like those dealing with early marriage and circumcision of women to be passed.
• Female judges should act as good role models to young girls and encourage them to aim higher.

• Women should be more assertive and press for their rights, like pursuing higher education, conduct researches and publish so as to compete favourably with men. They should be sensitized to go for further training so as to have higher qualifications. This will see more of them in senior professional ranks and administration.

• Improve working conditions for judicial staff.

• Promotions and appointment criteria for all posts at the judiciary should be made open and available to all judicial staff so that one knows when he/she is eligible for what post. The criteria should be followed consistently. Staff should be promoted on merit as stated by the JSC Act, that is on qualification, experience and performance. JSC should be transparent in giving equal opportunities. The head of personnel should be monitored so as to give the best advice to JSC and avoid favouritism and tribalism.

• The post of judge must be advertised against properly skilled qualities of an individual and should be open to all who qualify. Terms of service for such recruitment should be conducive to attract nationally qualified judicial staff who have recorded excellence for this type of job.

• Proper delegation of duties so that staff can have manageable workload.

• Provision of incentives to workers and better remuneration.

• Mass media should have a more proactive approach towards female undertakings in the judiciary.
Transfers should be effected so as to add value and not as a form of punishment as was noted in a few cases.

It is important that to effect change a holistic approach is required. Individually, women must discover themselves and then together with others, working hand in hand with men, and the government system, can effect a change. None of these can succeed separately as all are intertwined in one way or another.

5.4 Limitations of the Study

- There was unwillingness to divulge information from some of the respondents. This can lead to inadequate data collection.
- The researcher was treated with a lot of suspicion since some respondents feared that the information they were disclosing could be used for other sinister motives.
- Getting any information from personnel records of the High Court was almost impossible. The researchers had therefore to use the most current data from books.
- Some respondents did not avail themselves as they had suggested to.
- Some judicial staff claimed to be too busy to spare time. Others kept postponing dates.
- There was arrogance from some of the respondents.
- Most male respondents seemed to understand gender as women and therefore did not want to respond.
5.5 Suggestions for Further Study

- The research covered only the judicial staff in the public law courts but did not include private firms and corporate organizations. A similar research can be conducted in other sectors of the judiciary so as to identify factors, which can be dealt with at national level. This will definitely provide more reliable generalizations.

- A study can be done to establish whether the factors causing disparities in the male to female ratios in judiciary are interrelated.

- A study can be done focusing on streamlining of the disparities in the number of male and female judicial staff.
REFERENCES


Feest J, Die Bundersrichter – Herkunft (1964) - *The Origins, Careers and Selection of the Elite of Legal Profession.*


Judicial Commission (2002) DPM Compliment Statistical Unit Nairobi, Kenya


Kate, Young (1992) *Gender and Development Readings* Ottawa; Canadian Council for International Cooperation.


UNDP(2003) *Introductory Gender Analysis and Gender Planning Training Module*


APPENDICES

APPENDIX I - SPECIMEN LETTER TO RESPONDENTS

My name is Salome Luanga from Kenyatta University. I am conducting a research in the field of gender disparity in the Judiciary. I would be very grateful if you could spare your time to provide information relating to the questions that follow. Your response will be treated confidentially and used for this research only. Your co-operation is highly appreciated.

Thank you in advance.

SALOME LUANGA
**APPENDIX II - GENDER DISPARITY QUESTIONNAIRE**

**SECTION A - PERSONAL INFORMATION**

1. **Age (Tick One)**
   - a] 30-40 Years
   - b] 41-50 Years
   - c] 51-60 Years
   - d] 61-70 Years
   - e] 71-80 Years

2. **Sex (Tick one)**
   - a] Male
   - b] Female

3. **Marital Status (tick one)**
   - h] Married
   - c] Spinster
   - d] Separated
   - e] Divorced
   - a] Widowed

4. **When did you get married? (Tick one)**
   - a] Before getting employment
   - b] After getting employment

5. **Religion (Tick one)**
   - a] Catholic
   - b] Protestants
   - c] Muslims
   - d] Hindu
   - e] None of the above
6. What is your spouse’s level of education (tick one)
   a) Primary
   b) Secondary
   c) College/University
   d) Others (specify)

7. Occupation of Spouse

8. Number of children (tick one)
   a) 0-2
   b) 3-4
   c) 5-6
   d) 7 and above

SECTION B WORK – RELATED INFORMATION

1. Level of education
   a) Diploma
   b) Degree
   c) Masters
   d) PhD
   e) Other (Specify)

2. Job group/grade

3. Position/function of responsibility

4. Leadership/job description including confirmed appointment or acting capacity

5. Work load (Tick One)
a) Very heavy
b) Heavy
c) Moderate
d) Light
e) Very light

6. Persons in Administrative posts by gender
a) 

b) 

c) 

7. Why are there fewer female judicial staff in this court than men?
a) 

b) 

c) 

d) 

e) 

8. What impact would there be on improvement quality of the service if more women would be employed in the judiciary? (Tick one)

a) Improvement
b) Remain the same
c) Worsen the situation

9. Is education received equally by different sexes at all levels? (Tick one
a). Yes
b). No
10. In the schooling system, which careers are girls advised to take? (Tick as appropriate)
   a) Secretaries (Yes/No)
   b) Teachers (Yes/No)
   c) Judges (Yes/No)
   d) Managers (Yes/No)
   e) Tailors (Yes/No)

11. The following factors have caused individuals to think that women should not work as Judges (Tick as appropriate)
   a) School (Yes/No)
   b) Culture (Yes/No)
   c) Mass Media (Yes/No)
   d) Nature of Job (Yes/No)

12. How does the Kenyan mass media communicate to the community about Judicial work for different sexes? (Tick as appropriate)
   a) Judicial work is meant for men (Yes/No)
   b) Judicial work is meant for women (Yes/No)
   c) Judicial work is meant for any sex (Yes/No)

13. What factors affect promotions of judicial staff (Tick as appropriate)
   a) Qualification and suitability (Yes/No)
   b) Favoritism (Yes/No)
   c) Gender (Yes/No)
14. How often does the Judicial Service Commission use the laid down promotion procedures? (Tick one)
   a) Always
   b) Sometimes
   c) Never

15. What are your chances for advancement / opportunities for promotion? (Tick one)
   a) Nil
   b) Have hopes
   c) Very high chances

16. After what duration are promotions effected in this court?
   a) 1 year
   b) 2 years
   c) 3 years
   d) Irregularly

17. How effective is the promotion system in this court?
   a) Effective
   b) Fairly effective
   c) Not effective

18. What work problems / frustrations are experienced by women in the Judiciary? (Tick as appropriate)
   a) Frequent transfer (Yes/No)
   b) Job too demanding (Yes/No)
   c) Political appointments (Yes/No)
d) Family demands (Yes/No)

e) Lack of promotions (Yes/No)

19. Approximately what duration of time does it take to work in this station (Tick one)

a) Between 1 to 3 years

b) Between 3 to 6 years

c) Between 6 to 10 years

d) Over 10 years

20. Is there any relationship between marital status and performance of women in the Judiciary? (Tick one)

a) Yes

b) No

Give reasons for your answer

a) -----------------------------------------------------------------------------------------------------------------------------------

b) -----------------------------------------------------------------------------------------------------------------------------------

c) -----------------------------------------------------------------------------------------------------------------------------------

22. Suggest some recommendations to improve female representation in the Judiciary

a) -----------------------------------------------------------------------------------------------------------------------------------

b) -----------------------------------------------------------------------------------------------------------------------------------

c) -----------------------------------------------------------------------------------------------------------------------------------

d) -----------------------------------------------------------------------------------------------------------------------------------

e) -----------------------------------------------------------------------------------------------------------------------------------

After completion of the questionnaire I will come and collect it after one week. Thank you for the time and effort to complete the questionnaire.
APPENDIX III: INTERVIEW SCHEDULE

1. Why do you think it is necessary to specifically focus on women in the judiciary?

2. Approximately what duration of time does it take to work in this station as a judicial staff?

3. In your opinion, what do you think need to be done to make women get more representation in the Judiciary?

4 a) How has the system of promotion been effected in this court? Is it effective?

4 b) After how many years are promotions effected in this court? Is it regular?
5. Is the nature of judicial work a hindrance to effective performance of female judicial staff?

6. Has mass media been a contributory factor to fewer female judicial staff than males? How?

7. Has culture been a contributory factor to fewer female judicial staff than males? How?

8. Is education one of the contributing factors to fewer female judicial staff than males? How?
9. What work problem/frustrations are experienced by women in the judiciary.
APPENDIX IV: ESTIMATED RESEARCH PROPOSAL BUDGET

a) Materials

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<th>Item</th>
<th>Rate</th>
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<td><strong>Sub-total</strong></td>
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<td><strong>3,510.00</strong></td>
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b) Services

<table>
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<th>Service</th>
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<td>Computer services</td>
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<td>Binding services</td>
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<td>Photocopying services</td>
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</tr>
<tr>
<td><strong>Sub-total</strong></td>
<td><strong>22,000.00</strong></td>
</tr>
</tbody>
</table>

c) Transport by public means    | 30,000.00|

| **Sub-total**                   | **30,000.00**|

d) Accommodation                | 10,000.00|

e) Subsistence                   | 10,000.00|

f) Two research assistants       | 30,000.00|

g) Miscellaneous                 | 2,000.00|

| **Sub-total**                   | 52,000.00|

GRAND TOTAL                     | 137,510.00|
## APPENDIX V: TIME SCHEDULE

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<thead>
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<td>Proposal Writing, Departmental defence and improvements</td>
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<tr>
<td>Faculty defence and improvements</td>
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<tr>
<td>Fieldwork</td>
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<tr>
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<tr>
<td>Project Submission</td>
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</tr>
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</table>
14th March 2005

TO WHOM IT MAY CONCERN

RE: SALOME LUANGA
REG NO. D53/OL/1566/02

The above named is a student pursuing an MBA programme in Human Resource Management at Kenyatta University.

She is required to do research and has identified your institution for the same.

Any assistance accorded her will be highly appreciated.

Yours faithfully,

[Signature]

DAVID O. AJUOGA
REGIONAL CO-ORDINATOR