

# Gender, Legal Reform & Judicial Education

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This paper is part of the Study for Judicial Education for Family Law Professionals in Morocco (Eastern Region, Taza-Taounat, Azillal), generously funded by the International Development Research Centre (Canada) as a Small Grant Project towards research, knowledge-building, and knowledge-sharing. The project developed in discussions between Professors Lawrence & Dua (York University, Canada) and Professors Boukhtil and Touaf (University Mohammed I, Oujda, Morocco). The project is supported by the Centre for Feminist Research at York University and by the work of many other students and staff at both institutions.

## 1 Introduction

Judges occupy key roles in the law and culture of both Canada and Morocco. While law is developed from historical sources and legislative action, many systems are involved in the ways that laws actually affect the lives of citizens. Judges, as they interpret the law, exercise their legitimate discretion, and render judgment, whether in local courts or the highest appellate courts, act in ways which promote change or maintain the status quo.

As many legal scholars have noted, this power of judges is one of the reasons that legislative change, changes to legal codes and rules promulgated by democratic institutions, do not always translate into social change. They are also a mechanism by which changes in social understandings can enter the law – or be blocked. Especially in a world in which we are increasingly oriented towards a discourse of rights, it is important to avoid simplification of the complex relationship between social activism by civil society actors, legal change directed by legislators, and meaningful changes in the lives of individuals living under law. Without dismissing the significance of other parts of this web of interaction (in particular, the civil society activity which generates and supports social change), this project focuses on the question of how judges learn about and implement changed norms and rules.<sup>1</sup>

In our discussions, which focused on the major changes implemented in Moroccan family law in 2004 (the “moudawana”), the Research Team considered the similarity of issues which have arisen in Canada and Morocco, issues which centre on indications that judges often resist changes, either not implementing them, or implementing them in ways which are half hearted or otherwise not likely to produce the change they were designed to support. We were interested in two aspects of this issue:

1. Can we quantify the extent to which judges serve to block socially important legal change and otherwise support social norms that legislatures have indicated should shift?

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<sup>1</sup> See, for instance: Ann M Eisenberg, “Law on the Books vs. Law in Action: Under-Enforcement of Morocco’s Reformed 2004 Family Law, the Moudawana” (2011) 44 Cornell Int Law J 693 (proposing the use, not of judicial education, but of “legal empowerment systems” involving the use of paralegals and local advice centres to diminish the gap between the “law on the books” and the “law in action” in Moroccan family law).

2. Can judges be educated to diminish the kind of behaviour (which might or might not amount to legal error) described above?

This paper deals mainly with the second question above, while a study conducted in the Moroccan Courts as part of this project dealt mainly with the first.

Judicial education is a fraught topic since it must be placed beside the emphasis rightly placed on judicial independence. While this project does not aim to generate a defence of legal education against charges (especially in common law jurisdictions) that attempting to provide training to judges, simpliciter, is an inappropriate interference with the judicial function. Various iterations of this complaint and defence have already been written.<sup>2</sup> Rather, in this paper, we provide an introduction to the scholarly and professional literature about judicial education across the globe, with a particular focus on what is called “social context education” around gender inequalities. This information and the associated list of references will be of use to civil society organizations, judicial organizations, law reform efforts, and others.

## 2 Description of the larger project

Our project addresses the timely IDRC priority areas as it aims to develop collaborative research to build capacity for Canadian and Moroccan partners to affect social and economic policies on gender issues in Morocco. Recent research in Morocco suggests that despite significant reforms to laws that impact women, these reforms have not achieved their full potential (Eisenberg, 2011). While Morocco has introduced reform to marriage, divorce, inheritance, and child custody laws, the successful implementation of these changes requires that judges be aware of these reforms and willing to challenge conventional gender-based codes. Our preliminary research suggested that judges, drawing on conservative and religious frameworks, may lack that willingness. Such approaches not only deny women their legal rights, they structure women’s economic and social well-being. This pattern points to the importance of research on judicial decision-making and ways of intervention.

Since the French establishment of the Moroccan judicial system, the religious nature of family law has deeply affected women’s social and economic conditions. Local women’s organizations denounce the double standard in the legal system of the country, pointing out that the lack of gender equity within family law makes it difficult for women to leave abusive relationships, thus contributing to systemic violence against women.

In 1993, under former King Hassan II, a first attempt was made to reform family law and separate it from its religious foundations. Although the changes were not extensive, they marked a turning point in the

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<sup>2</sup> T Brettel Dawson, “Judicial education on social context and gender in Canada: principles, process and lessons learned” (2014) 21:3 Int J Leg Prof 259 at 269, 270; Katherine Swinton, “Judicial Impartiality and Social Context Education” in Thomas A Cromwell et al, eds, *Hum Rights 21st Century Prospects Inst Process* (Montreal: Editions Themis, 1997) at 262; Livingston Armytage, “Judicial Education on Equality” (1995) 58:2 Mod Law Rev 160 at 163.

history of feminist movements in Morocco. In 2004, the parliament ratified substantial reforms to family law aimed at establishing gender equality. These included fixing the age of marriage at

18 years for both sexes, making polygamy virtually impossible, giving priority in child custody to the mother, and requiring judicial pronouncement for divorce. In July 2009, rights pertaining to communal land were partially amended through the Ministerial Decree No 2620, recognizing women as beneficiaries in transfer or sale of land.

However, as a number of studies indicate, these changes have had little impact on the lives of women. A survey of women seeking justice through the courts found that although the number of women using the courts increased after the new law was implemented, 2 out of 3 women experience great hardship in obtaining their rights. Due to such difficulties, many women remain in abusive relationships. Indeed, a recent government report on the prevalence of gender-based violence among married or divorced women shows that 17% of Moroccan women experience violence in marriage due the courts' failure to correctly apply the Family Code. As a result of the failure to consistently apply the reformed laws, the law continues to underserve women. This project investigates a crucial actor in this process – judicial decision-making.

The project will produce policy-relevant knowledge and propose culturally-sensitive judicial education strategies centred on the Moroccan Family Code's attention to women's legal rights.

The project has three objectives: to investigate ways in which Moroccan judges make decisions in cases involving family law; to research different pedagogical approaches' applicability to Moroccan judicial education; and to facilitate collaboration between Canadian and Moroccan experts in sharing expertise on judicial education. These objectives are aligned with IDRC(CP) objectives – collaboration, influence on policy and practice, and improving learning capacity.

First, we have undertaken a national study of judicial decision-making in Morocco to assess the impact of family law reform. This study presents new data on the extent to which reforms in family and assault laws are being implemented.

Second, as there is no existing Moroccan program for judicial education in family law (with only a few in other judicial educational areas) we examined the applicability of current approaches to judicial education. Given that research demonstrates the importance of appropriate pedagogical techniques in judicial education, we have prepared detailed resources for developing pedagogical approaches to judicial education.

Third, a workshop that brought together Canadian and Moroccan experts in judicial education and gender equity to discuss the issues and possibilities of judicial education in Morocco. **Add detail**

### 3 Description of partners

This work was carried out with the aid of a grant from the International Development Research Centre, Ottawa, Canada, IDRC.

### 3.1 Research Institutions

Centre for Feminist Research  
York University  
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Université Mohammed Premier  
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Morocco

### 3.2 Core Team Members

#### 3.2.1 Sonia Lawrence, Canada

##### **Appointment/Affiliations/Current Position**

Sonia Lawrence is an Associate Professor at Osgoode Hall Law School of York University. She graduated from the University of Toronto's joint LLB/MSW program, and went on to serve as law clerk to Chief Justice Beverley McLachlin of the Supreme Court of Canada. With the help of Fulbright and SSHRC Fellowships, she then attended Yale Law School where she obtained an LL.M and focused on constitutional equality issues and welfare administration. She is the Director of the [Institute for Feminist Legal Studies](#) at Osgoode, sits on the executive committee of the Centre for Feminist Research at York University, and has visited at the Ontario Institute for Studies in Education and the University of Kent Law School (UK). She has sat on the Legal Committee of the Women's Legal Education and Action Foundation.

##### **Research Focus and History**

Her work centers on questions of equality and includes examinations of the use and abuse of cultural knowledge in courtrooms, the Supreme Court of Canada's equality jurisprudence, the influence of feminism in Canadian law, sentencing regimes for 'drug mules,' diversity on the bench, and section 28 of the Canadian Charter of Rights and Freedoms. She is currently workshopping a paper which looks at the use of analogy in equality law and social movements.

##### **Courses and Awards**

Professor Lawrence teaches first year mandatory courses in Canadian constitutional law, has taught Canadian criminal law as well. She teaches a specialized seminar in Law, Gender, Equality, and supervises students who are focused in their graduate legal work which considers questions of law, discrimination, race and gender.

##### **Recent Publications:**

Professor Lawrence has published extensively in the areas of gender and the law, judicial independence, and legal education. Her published book chapters and refereed articles include "Choice, Equality and Tales of Racial Discrimination: Reading the Supreme Court on Section 15"

in *Diminishing Returns: Inequality and the Canadian Charter of Rights and Freedoms*, “Reflections: On Judicial Diversity and Judicial Independence Forthcoming” edited collection *Judicial Independence*, *Counting Outsiders: A Critical Exploration of Outsider Course Enrollment in Canadian Legal Education in the Osgoode Hall Law Journal*.

### **3.2.2 Soumia Boutkhil**

Associate-Professor of English, Gender and Women’s Studies at the University Mohammed I, Oujda, Morocco. She holds a Ph.D. in English Studies from the Université Nanterre-Paris X. Dr. Boutkhil is the initiator and current head of the Graduate multidisciplinary programme on “Gender, Society and Human Development,” the first of its kind in the country. As a Fulbright Visiting Scholar for 2008-9 at Rutgers University, Dr. Boutkhil wrote and lectured extensively on women’s status in Morocco with a particular focus on the interpenetrations of law and religion. She has also written and published extensively and her recent publication as a co-editor was a book titled, ‘The World as a Global Agora: Critical Perspectives on Public Space’. Over and above her academic commitments, Dr. Boutkhil co-founded the “Identity and Difference” research group at her university, within which she initiates and leads most of the group’s academic activity. She also served 2 years as vice-president of a women NGO that provides among other services legal assistance and a shelter for women victims of violence.

### **3.2.3 Enakshi Dua**

Associate Professor in Gender, Sexuality and Women Studies at York University, Canada. She has extensively published on equity policies and anti-racism policies. She has more than 30 years of experience in gender equity in several organization as including universities. Within the university, she has held a number of administrative positions that deal with gender, anti-racist, and equity issues. She has served as Director of the Centre for Feminist Research, Chair of the CAUT Equity Committee, the co-chair of the Sub-committee to the Joint Committee of the Collective Agreement on Equity, at Queen’s University, as well as the York University Faculty Association’s Equity Officer. She has carried out research on gender issues in India and feminism in a global context. She has experience in international research agencies, as she served on the Board of Directors for the Shasti-Indo Canadian Institute.

### **3.2.4 Dr. Larbi Touaf**

Associate Professor of English at the University of Mohamed I, Oujda. He holds a Ph.D. in English Literature from the Université Paris-Sorbonne. Dr. Touaf is a fellow of the Maxwell School of Citizenship and Public Affairs at Syracuse University, NY, and a Fulbright Visiting Scholar for 2013-14 at SUNY Cortland. He has written and published extensively and his recent stint as a co-editor was a book titled, ‘The World as a Global Agora: Critical Perspectives on Public Space’. Over and above his academic commitments, Dr. Touaf established the “Identity and Difference” research group at his university, is a member of the North-East Modern Language Association as

well as the Middle East Studies Association based in the United States. Dr; Touaf initiated diverse student research project on gender and public space. In addition, his expertise in civic engagement and service learning gave a new direction to the gender studies programme towards more experiential learning. His involvement in the project will serve to bring theory to practice.

## **4 Study of Legal Decisions**

A significant part of this project focused on evaluating the judicial response to the 2004 Moroccan family law reforms. This study was carried out by Hasna Boutkhil & Rachid Sbia, under the direction of Professors Boukhtil and Touaf of Mohammed University, Oujda, Morocco. This effort to determine whether the law was having the intended impact – improving legal outcomes for women in situations of (inter alia) family breakdown and family violence is a way of understanding the need for judicial education. Of particular interest in this context is the possibility that the need for social context education might be uneven, geographically, and so the study is designed to take account of the urban/rural divide and other differences that might help develop effectively focused educational programming for judges. The paper produced by this study is available at <http://glp.info.yorku.ca/family-law-reform-in-morocco/>.

## **5 Judicial education**

A significant component of the project is to examine what tools exist to ensure the implementation of gender based reforms in law. The two countries brought together in this project have quite divergent practices with respect to judicial education. Internationally, Canada has long been recognized as a leader in the provision of judicial education and particularly with respect to social context education. Although Canada is a mixed legal system (with both civil and common law jurisdictions within), legal training and judicial appointment are aligned with Anglo-common law systems worldwide. Judges come from the senior ranks of the legal profession, with no particular training required beyond a certain number of years at the bar. The implementation of judicial education programs was seen as a way to try to ensure that judges would learn about judging and continue to learn throughout their judicial appointment. In contrast, in Morocco, like most civil law systems, becoming a magistrate is a career path that is chosen while still in training. Judges are trained to that position, working their way up judicial ranks throughout a career in the judiciary.

### **5.1 Social Context Judicial Education**

For those unfamiliar with the concept of social context education, it may be helpful to divide judicial education into three main fields (without suggesting that these forms of education are offered in isolation from each other, which would not be correct):

Process based programming, in which judges learn about managing trials, or settlement processes, or other required procedures, including for instance, how to draft clear and useful judgments.

Substantive programming, in which judges might discuss new rules or precedents (for instance, with respect to family law support payment rules, or sentencing rules, or new constitutional cases) in order to better understand the implications for changes in judicial practice in a particular area of law.

Social context judicial education moves the focus from law and legal procedure to the society in which the judging is happening. As Dr. Brettel Dawson writes: It is probably no coincidence that ‘differences and disadvantages’ rooted in social context are often at the heart of what makes cases difficult or contentious. Being able to respond effectively requires judges to enlarge their mentality (Nedelsky, 2001, p.103), or put another way, broaden their understanding of the breadth of human experience. In another article, Dawson writes: “Social context” is a term coined by the Canadian Judicial Council. It encompasses the idea that judging is grounded in human conditions and the society where judging takes place. Law should therefore respond to the needs and reasonable expectations of the communities it serves in a manner consistent with constitutional values, recognizing that social context is a component of many cases given that social realities shape individuals and disputes.<sup>3</sup>

Discussions of social context judicial education often point to the lack of diversity amongst judges on many measures, for instance race/ethnicity and gender, but of course also social class.<sup>4</sup> Their exposure to the lived realities of the people in their courtrooms may be extremely limited. But it is not just their own social circumstances but their education which contributes to limited understandings of the context in which law is being applied. Their legal training might be limited either by subject matter (for instance, if they focused mainly on commercial/transactional matters) or by the nature of legal training itself, which has traditionally focused on positioning law as a scientific discipline in which learned rules are applied to found facts.<sup>5</sup> We can dispute about the meaning and impact of this approach to law (is this a flaw in adjudication or a core technique by which law preserves hierarchy and domination?) but for legal learners, the result is a consignment of significant swaths of human experience to irrelevance and extra curricular status. Arguably, this is less a feature of legal education than a source of constant struggle in legal education, but the impact of this vision of law and the emphasis in teaching is that judges may not only be ignorant about the reality of inequality and difference in society, but believe their ignorance to be a virtue in terms of judging, if such “contextual” issues are irrelevant to law.

Of course, inequality and difference have driven many important social movements to demand, sometimes successfully, changes in law. When these movements succeed in forcing legislative change which must then be implemented by judges, reformers may feel disappointment and surprise that the hard won legal victory does not appear to be changing the situation on the ground. This experience is repeated over and over again, and has been subjected to searching macro and micro level analyses.

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<sup>3</sup> T Brettel Dawson, “Judicial Education: Pedagogy for a Change Symposium” (2015) 2015 J Dispute Resolut 175 at 179, FN15.

<sup>4</sup> Dawson, *supra* note 2 at 269.

<sup>5</sup> *Ibid* at 262.

The question for us here is about how to bring lessons from lived experience to judges in a way that highlights the *legal* relevance of those experiences.

The Canadian experience with social context education is outlined in Brett Dawson's *Judicial Education on Gender and Social Context in Canada: Judicial education on social context and gender in*

*Canada: principles, process and lessons learned*, among other articles which focus or comment on the history of this form of judicial education.<sup>6</sup> Starting in the mid-1990's, this form of education was deemed a priority for the National Judicial Institute.<sup>7</sup>

Before turning to a review of the scholarship in this area, two points about the Canadian initiatives around social context education. First, while early NJI programming in the area of social context took the form of dedicated sessions which might be loosely described as 'sensitivity training' on race and gender, these gradually gave way to a policy of integrating social context education throughout the extensive educational offerings of the NJI.<sup>8</sup> Secondly, the pedagogical model of judicial education as developed by the NJI has always been oriented towards training that is both judge-led and focused on active learning as opposed to lectures.<sup>9</sup>

## 5.2 Review of Organizations and Scholarly writing focused on Judicial Education

Interest in judicial education extends far beyond Morocco and Canada, of course. Over the past few decades, numerous national and international organizations have grown up, along with a vast literature considering specific judicial education initiatives along with general questions about judicial education including a significant amount of attention to pedagogical models. The following section of this review concentrates on material addressing gender and social context, but is illustrative of the vast array of

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<sup>6</sup> Donna Hackett & Richard F Devlin, "Constitutionalized Law Reform: Equality Rights and Social Context Education for Judges" (2005) 4 J Law Equal 157; Richard F Devlin, "Jurisprudence for Judges: Why Legal Theory Matters for Social Context Education" (2001) 27 Queens Law J 161; Hackett & Devlin, *supra* note; Lynn Smith, "Judicial Education on Context Special Issue: Symposium Honouring the Late Mr. Justice Kenneth Lysyk: Kenneth Lysyk as a Judge: Judicial Education" (2005) 38 UBC Law Rev 569.

<sup>7</sup> The National Judicial Institute, created in 1988, is "an independent, not-for-profit institution committed to building better justice through leadership in the education of judges in Canada and internationally". "Building Better Justice - The National Judicial Institute", online: <<https://www.nji-inm.ca/?langSwitch=en>>. A helpful and thorough history of the movement of the highest echelons of the Canadian judiciary towards acceptance of the idea of social context education, and the impact of the advocacy of the first female Justice of the Canadian Supreme Court, Madame Justice Bertha Wilson, is available in Cairns Way, Rosemary & T Brett Dawson. "Taking a Stand: Bertha Wilson's Public Commitment to Judicial Education" in Kim Brooks, ed, *Justice Bertha Wilson: One Woman's Difference* (UBC Press, 2008).

<sup>8</sup> National Judicial Institute, *National Judicial Institute: Social Context Education: Integration Protocol for Social Context (Approved by Board of Governors)* (2009).

<sup>9</sup> note 7; Dawson, *supra* note 3; Dawson, *supra* note 2; Swinton, *supra* note 2.



materials available. Often not available publicly, however, are detailed examples of the curriculum and materials from judicial training sessions. While some of this may simply be related to the limited audience for judicial education, but another factor no doubt is the heightened sensitivity about judicial training, particularly in the common law world. Concern that judicial training will be seen as a form of inculcating bias will be acute in the context of social context education which attempts to address difference and inequality in society, often in areas where there is considerable public dispute.

### 5.2.1 Organizations

In addition to many national and sub-national organizations dedicated to judicial education<sup>10</sup> a number of organizations and initiatives related to transnational or international judicial education have also been developed.<sup>11</sup> Both these programs and academics interested in questions of judicial education have also produced a very wide range of scholarly articles and books describing, critiquing, assessing and developing the form and substance of judicial education across the globe.<sup>12</sup>

## 5.3 Identifying the need for judicial education on social context

As Professor Livingston Armytage has suggested, multiple purposes exist for Judicial Education. It could be aimed at accountability, socialization, or justice reform.<sup>13</sup>

## 5.4 Pedagogical approaches in social context judicial education programming

For the most part, those writing and practicing in the area of judicial education agree that participatory models in which judges lead the sessions are the best model based both on judicial preference and

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<sup>10</sup> A short list of examples in the English speaking world: “National Judicial Institute, Abuja [Nigeria]”, online: <<http://www.nji.gov.ng/aboutus.php>>; “National Judicial College of Australia”, online: <<http://njca.com.au/about/>>; “National Judicial Academy, India”, online: <<http://www.nja.nic.in/>>; “Judiciary of England and Wales - Judicial College - Training”, online: <<http://www.judiciary.gov.uk/training-support/judicial-college/training/>>; “Ecole Nationale de la Magistrature (République française, Ministère de la Justice)”, online: <<http://www.enm-justice.fr/>>; note 7.

<sup>11</sup> “Promoting the Rule of Law | Rule of Law Initiative [American Bar Association]”, online: <[http://www.americanbar.org/advocacy/rule\\_of\\_law.html](http://www.americanbar.org/advocacy/rule_of_law.html)>; “IN AFGHANISTAN AND IRAQ: Strengthening the Rule of Law through Judicial Education and Law School Development”, online: <<http://search.proquest.com/openview/864c5996299dd0dd7a36f5b6325cc52e/1?pq-origsite=gscholar&cbl=12816>>; “International Association of Women Judges: Judicial Training Programs: The Jurisprudence of Equality Programs (JEP)”, (10 February 2014), online: *Int Assoc Women Judges Adv Hum Rights Equal Justice All* <<http://www.iawj.org/JEP.html>>; Carrie Allison Brooks, Barbara Mullins Nelson & Patricia H Murrell, “Personal and Professional Development for Judges: The Institute for Faculty Excellence” (2011) 18:3 J Adult Dev 135; Anand Bhattarai & Kishor Uprety, “Institutional Framework for Legal and Judicial Training in South Asia (with Particular Reference to Bangladesh and Nepal)”, online: <[http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/LDWP2\\_LegalJudicialTraining.pdf](http://siteresources.worldbank.org/INTLAWJUSTICE/Resources/LDWP2_LegalJudicialTraining.pdf)>; Chief Justice Robert French, *Judicial Education - A Global Phenomenon* (Sydney, Australia: The International Organization for Judicial Training, 2009).

<sup>12</sup> See the Bibliography included at the end of this paper.

<sup>13</sup> Livingston Armytage, “Educating Judges—Where to From Here?” (2015) 2015:1 J Dispute Resolut, online: <<http://scholarship.law.missouri.edu/jdr/vol2015/iss1/10>> at 167–168.

alleviating concerns about judicial independence.<sup>14</sup> There is almost no relatively little empirical work on the efficacy of various models of judicial education (however we measure efficacy – in terms of retention of material or implementation of ideas) but there is a fair amount of more or less scholarly assessment of judicial preference which points clearly to participatory models over traditional forms of learning.<sup>15</sup> The Canadian experience as described by Dawson involved the realization that lecture based traditional approaches used for judicial skills training would not work for social context, a “very sensitive and personal endeavor”.<sup>16</sup> Armytage has called for more research into what works best for judges, noting particular aspects of the role itself and characteristics that develop with the role (Armytage flatteringly describes judges as “rigorously autonomous, [with intense] short term problem-orientation... [motivated] to pursue competence for its own sake rather than for promotion or material gain.”<sup>17</sup>).

In practice, judicial education, even that which is “judge-led” often involves experts who are not judges. People with significant experience in the field, therefore, including T. Brettel Dawson and Livingston Armytage, point to the need to expand a least a bit beyond judges as pedagogues, noting that this is particularly the case in respect of Social Context education because of “...the challenge of proactive, progressive leadership in ever-changing societies persists.... “judge-led” should not be permitted to mean only what judges want – as distinct from what judges may need.”<sup>18</sup> Dawson’s suggestions aim to be more precise about which judges ought to be leading programs (alongside non-judges, as primary presenters and facilitators), pointing out the need for “judicial champions”, that is members of the judiciary who are “receptive to the presence of social context in judging”.<sup>19</sup>

Methods commonly discussed are

- Facilitated small group discussion of problems<sup>20</sup>
- Interactive<sup>21</sup> with practical exercises
- Lectures should be “short, focused”<sup>22</sup>
- Providing feedback<sup>23</sup>

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<sup>14</sup> *Ibid* at 168; Dawson, *supra* note 2 at 272 (“as decision makers within the law, judges will only speak freely when they are with other judges”).

<sup>15</sup> Dawson, *supra* note 3 at 188 (“course evaluations completed by judges in the NJI national courses and court-based seminars depicts consistent support for the model:”).

<sup>16</sup> Dawson, *supra* note 2 at 271.

<sup>17</sup> Armytage, *supra* note 13 at 170, 172.

<sup>18</sup> *Ibid* at 173; Dawson, *supra* note 2 at 268 (noting the need for experts on diversity, disadvantage and difference, those with direct experience or academic expertise working alongside judges in judicial education programming and delivery).

<sup>19</sup> Dawson, *supra* note 2 at 267–68.

<sup>20</sup> *Ibid* at 271.

<sup>21</sup> *Ibid* at 272.

<sup>22</sup> *Ibid*.

<sup>23</sup> *Ibid*.

## 5.5 Content of social context judicial education programming

The specific content of actual judicial education seminars is often quite difficult to access for those not otherwise involved in the process. This is related to the concerns already mentioned about judicial independence, confidentiality, etc.<sup>24</sup>

## 5.6 Evaluation and Impact of social context judicial education programming

Many academics are surprised to see that there is very little evaluation of the impact of judicial education.<sup>25</sup>

Some of the reasons for the lack of rigorous attention to questions of impact rather than satisfaction no doubt relate to concern about judicial independence. Others simply parallel the similar approach taken to measuring teaching in many institutions of higher learning, where student satisfaction is the main and perhaps only part of impact that is measured. But many long term actors in the field also recognize the need to “critically assess the measurable impact that judges’ learning is having towards creating a more just society”.<sup>26</sup>

# 6 Workshop

A final aspect of the Project was to bring together academics and civil society actors from Morocco and Canada. As developing approaches to judicial education requires that they are appropriate for the national context, in order to achieve this goal, we organized a workshop with key researchers, feminist lawyers, and judges. This workshop was organized to facilitate collaboration between Canadian and Moroccan experts. Secondly in order to support relationship-building between Morocco women’s rights NGOs and the judicial sector, the workshop focused on the two key components of the project; gender and the law in Morocco and expertise on judicial education. This meeting took place at Mohammed I University in Oujda Morocco May 19-20 2017. More information about the workshop is available here: <http://glp.info.yorku.ca/third-page/>

Both Canada and Morocco, in their regional contexts, are seen as jurisdictions in which women activists, NGO’s, lawyers and judges have had some success in getting issues of gender inequality onto national agendas and legal reforms. In neither country, however, do these achievements seem particularly stable. Ongoing work in both countries is required to ensure ongoing commitments and to ensure implementation of past commitments on the part of governments. The extent to which concerns of Canadian and Moroccan women’s advocates and academics in relation to judicial attitudes towards

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<sup>24</sup> Dawson, *supra* note 3 at 278 FN12 mentions the confidentiality requirements placed on non-judicial faculty in NJI programs.

<sup>25</sup> *Ibid* at 185 (“[t]his is a very inconclusive inquiry in judicial education”).

<sup>26</sup> Armytage, *supra* note 13 at 173.

gender parallel each other suggested that there would be fruitful opportunities to discuss the challenges of legal and social reform with a focus on judicial education, and the opportunity to develop further collaborative initiatives.

## **6.1 Design**

The workshop design was based on ensuring multi-sectoral participation to ensure maximum attendance of Moroccan stakeholders including local judges, NGOs, and scholars. As a result, the workshop brought together a range of Canadian and Moroccan experts in the areas of gender and the law, judicial and equity education. The presence of feminist lawyers and NGO was especially important, as the inclusion of these actors allowed for broad discussion of the issues, as well for wide dissemination of the results, and would facilitate capacity building in many of the agents involved in women's legal claims. It would also allow building a broad base with which to make inroads in judicial education.

As a result the questions for the workshop was extended to include:

- (1) what are the gender biases in the law;
- (2) what are the patterns in decision making by judges in Morocco:
- (3) what are the patterns in decision-making in gendered based cases in Canada;
- (4) what are the initiatives in judicial education and equity education, and how effective have these initiatives been.

In order to facilitate dialogue with the different constituencies, the panels incorporated presentations from members of different constituencies. It also offered English, French and Arabic translation. Arabic translation was crucial for NGO participation.

## **6.3 Workshop participants**

Over 170 people attended the workshop. These who presented and attended the workshop included faculty who worked on gender and the law, judicial education, equity, representatives from the Canadian National Judicial Institute, feminist lawyers, judges and NGO. It also included graduate and undergraduate students. Students from the faculty of law especially found the workshop useful. It was exciting to have students present at the workshop as awareness among an emerging cohort of lawyers and judges will provide additional venues for judicial education.

## 6.4 Workshop results:

The workshop engendered a productive dialogue – and a range of issues were addressed. First, the issue of how to do this work with judges in Morocco emerged. Questions included the real and perceived need for judicial neutrality. In addition the discussion focussed on some of the social parameters for judicial education, such as the reception to social science evidence and social science methods, and the resistance to education. In this context, the discussion pointed to out the challenges in the Moroccan context would be similar to what much of the literature in the field has identified.

Second, the discussion focused on how useful is it to consider Morocco and Canada comparatively or together, given the differences in the two societies. Discussants consistently expressed surprise at the commonalities. Particularly as the Canadian participants highlighted recent and notable examples of gender biases in legal decisions in sexual assault, many noted similar biases.

Third, the discussion raised the question of what forces sustain violence against women in Canada and Morocco. In this, the role of “culture” and religion was identified.

The discussion identified the specific legal gendered Issues in Morocco. Drawing from several of the presentations, the discussion raised the ways in which the language of Moroccan Supreme Court described women as property of men, despite the fact that contemporary Moroccan law does not use this language. In addition, the issue of the marriage of minors (it was noted that the number of underaged girls becoming marriages is significant in the post-2004 period), incomplete reform of the Family Law in Morocco, marriage documentation rules, the extension of the registration period is being used in Urban areas to circumvent ..., under the Moudawana, judges are being more lenient than under the previous law, judicial Approval of Polygamous marriages at the Supreme Court level granting polygamy on the basis that no male children have been born to the first wife, law of Muslim women marrying non-Muslim men. The discussion highlighted the second class status of women in Moroccan law.

Questions about women’s access for justice were central. The continued challenges in terms of women’s access to justice, particularly when there is a continued preference for families to “deal with” cases of violence rather than going to the courts. The person in the position ‘en charge des femmes et enfants victimes de violence’, for instance, works with the religious authorities who tend to emphasize duties to the family and sacrifice.

The workshop also raised unintended consequences of legal reforms, for instance, the laws which allowed registration of religious marriage and restricted polygamy may have led to situations where religious marriage is being used to avoid the legal restrictions on polygamy.

The discussion included how to ensure that the Constitutional right to equality governs the legal system. Argument were raised from the audience about the “protective” nature of this law, and experts responded in part by reference to a study by NGO Marsad Oyyoun Nissaiya, which raised the importance of ‘looking through women’s eyes’ at legal decisions rather than describing them as protective without attention to the experience of women under these laws.

## 7 Conclusion

Our discussions with the research partners and workshop participants identified a wider role for the kind of social context education, encouraging critical thinking and self reflection, a role beyond the judicial sector. In particular, university education and the education of law students in general were identified as places where the thinking behind social context education would be a significant change in pedagogy with potentially positive effects for the position of women.

The Canadian experience with efforts to implement social context education for judges illustrates the reasons why this path was chosen – reasons that are echoed in the Moroccan context. This is despite the vast differences between the two jurisdictions, ranging from demographic differences, through the completely different legal systems in place (where Morocco is governed by a system of civil law, the Canadian system is bi-judicial and significantly dominated by a common law system). The challenge for Moroccan educators now is to generate a curriculum for social context education appropriate for the Moroccan context, and to build the kind of political support and connections required to implement such a curriculum into the training and ongoing education of magistrates and judges. In this effort, we are hopeful that the research, connections and discussions generated by this project will prove useful.