

Irish legal project fostering

Brian Gallagher is a former Chairperson of FLAC and is now managing partner in Gallagher Shatter, with a wide range of legal practice including constitutional and administrative law, civil litigation, employment law and family law. Brian is a member of the Law Society's Human Rights Committee. He is involved in the Law Society's 'Rule of Law' project (see page 7 for details).

was in a group which travelled to Addis Ababa in November 2008 at the request of the Ethiopian Ministry of Justice to provide training to judges, prosecutors and ministry staff. The trip was part of the wider 'Rule of Law' project of the Law Society and Bar Council of Ireland. It comprised five days of seminars intended to promote an awareness and understanding of the fundamentals of the administration of justice and a respect for human rights and the rule of law. Nearly 90 legal professionals and staff from all over Ethiopia participated in each session. Seminar topics included international human rights law, the importance of an independent judiciary, access to justice, criminal law basics, alternative dispute resolution and regulation of the legal profession.

Ethiopia has a very advanced constitution (available in English) and civil/criminal legal system. Parallel to this it also has systems of customary and religious courts, particularly in rural areas. The statutory legal system takes precedence over the customary/religious ones. For many Ethiopians, however, access to the statutory system is difficult or impossible, given that in a country of about 70 million people, there are only approximately 1500 lawyers.

From discussions with our Ethiopian colleagues, it rapidly became clear to me that the basic problems with access to justice in Ethiopia today bear many similarities to those experienced in Ireland when FLAC was set up 40 years ago, although they are much more severe than in the Ireland of the 1960s. Ethiopia does not provide a state system of free legal aid or advice in either criminal or civil matters. There are serious resource problems; judges and prosecutors are poorly paid and many have second jobs. Legislation is not distributed in a timely fashion; issues of the official Gazette containing new federal

laws are not sent out to either courts or other legal officers. Legal libraries are practically non-existent. Members of the public are generally almost totally ignorant of the country's laws and/or legal system.

Obviously the most likely reason for these deficiencies is lack of funding. Participants were acutely aware of the shortcomings of the country's legal system and were very willing to make improvements (I was reminded that in Ireland in the 1960s, while we did have access to statutes and statutory instruments, we had very few Irish legal textbooks).

The training was the context for my meeting with the Executive Director of the Ethiopian Women Lawyers Association (EWLA), Ms Mahdere Paulos. I was very much reminded of FLAC when I met the EWLA. It describes itself as a "non-profit, non-partisan organisation with an objective of enhancing the political, economic, legal and social rights of women". To achieve these aims, EWLA "has set its programmes through research and law reform advocacy, public education and legal services". The legal services they provide consist of free advice and counselling to women, mediation for disput-

ing spouses and provision of free legal aid for court appearances. Since its establishment in 1995, approximately 73,000 clients have benefitted from EWLA legal support, provided from its head office in Addis Ababa and its branches in the nine districts of the city, its six regional offices and its 54 local committees. Because of the national shortage of lawyers, much of the work is done by paralegals.

Mahdere told us that EWLA's work includes examining old laws which are contrary to the current constitution, providing paralegal training, paying litigant travel expenses and providing a toll-free telephone advice service. They have devised a 'conciliation form' which is sent to the husband and mediation ensues. Family law problems can be difficult to solve by mediation, as the women come for help only as a last resort. However, because of the trust people have come to place in EWLA, about 80 percent of problems are apparently resolved. The EWLA takes very different stance on family law from the traditional process, where community elders tell women they must obey their husband. EWLA paralegals inform the women of their legal rights and also deem it part of their brief to recom-



Brian Gallagher (seated, centre) pictured with participants in the legal training courses organised by the Rule of Law project in Ethiopia

Photo courtesy of Brian Gallagher

the rule of law in Ethiopia



Photo courtesy of Hilikka Becker

L-R: *Ercus Stewart SC, Patrick Dillon Malone BL and Hilikka Becker, solicitor with the Immigrant Council of Ireland, who also travelled to Ethiopia to provide training on legal practice and procedures to local practitioners*

mend HIV tests where there is domestic violence involved.

The EWLA carries out research and advocacy and where there is a need for new legislation (especially in the area of gender-based violence) it makes submissions to Parliament. Anecdotally, the EWLA also supplies copies of the Penal Code to police, as in many cases this is not supported by central government.

Domestic violence is deeply rooted and culturally acceptable in Ethiopia. Much of EWLA's time is devoted to projects aimed at eradicating gender-based violence, and on our visit we heard of projects such as 'Best Area Husband,' with a calf as the prize. This may seem to our Noughties, sophisticated mindset to be ineffectual, but the EWLA is convinced that using non-confrontational methods and respecting traditional practices will achieve much where the state itself has few or no resources to devote to eradicating gender-based violence.

My experience in Ethiopia convinced me that the FLAC methods are successfully applicable in countries which are very different from Ireland.

CASE STUDY: Here is an example of a case taken on by EWLA lawyers, from a booklet of selected casework:

In the course of K's marriage, she gave birth to three children. After her husband's death, his grandchildren from a previous marriage pursued K and her three children in the Sharia courts (Muslim religious court) claiming a share of the late husband's estate. K refused to be judged by the Sharia court and wanted the matter dealt with in the state courts. Article 34.5 of the Ethiopian Constitution states that "the Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute," i.e. the consent of both parties is required to give the Sharia court jurisdiction.

Despite this constitutional right, the Sharia court denied K's request to be judged by the state courts and gave judgment in favour of the grandchildren. K appealed to the Upper Sharia Court of Appeal which reaffirmed the judgment. K then came to the EWLA

which decided to take on the case and represent her in the state courts. It was concerned that the higher Sharia court had denied K's constitutional right and that this would affect not just her but all Muslim women in Ethiopia. Furthermore, the Constitution states in Article 3.1 and 3.7 that women have equal inheritance rights with men. EWLA brought the matter unsuccessfully before the Supreme Court (as in Ethiopia the civil courts are not permitted to adjudicate on constitutional issues).

EWLA then brought the matter before the 'Council of Constitutional Enquiry' which is the body charged under the Ethiopian Constitution with dealing with constitutional matters. There the error in interpretation was acknowledged and judgment given in favour of K. EWLA complained that this case took a very long time from start to finish - some four years, but I told them it would take at least as long in Ireland!