

Rule of Law International Project: Improving access to justice in Malawi

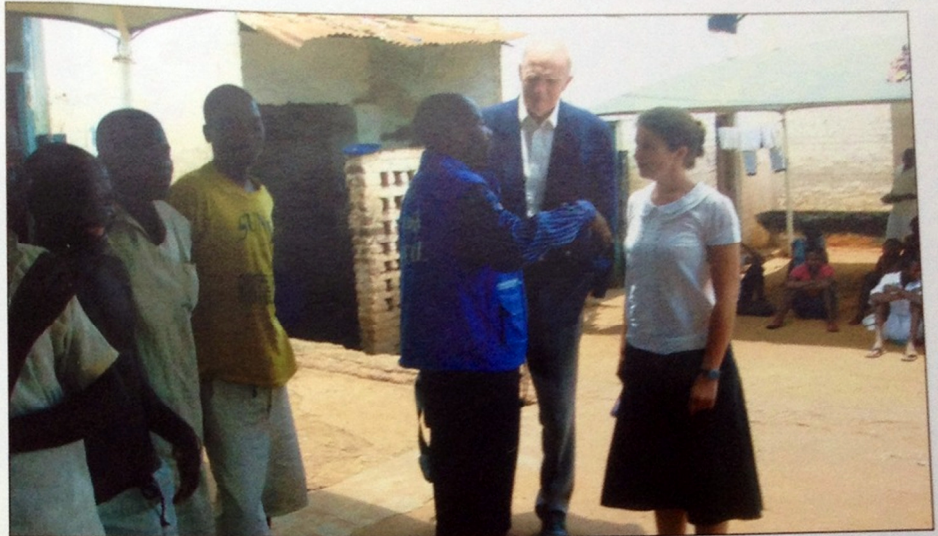
by Eithne Lynch, solicitor, and Ruth Dowling BL, IRLI, reporting from Malawi

Irish Rule of Law International is a project-orientated, non-profit charity established by the Law Society and the Bar Council. It has set up projects in Ethiopia, Kenya, Kosovo, Vietnam, South Africa, Zambia and Malawi. Part-funded by Irish Aid, our Malawi project aims to increase access to justice for those held within the heavily congested criminal justice system in Malawi through capacity building, training of police officers and Magistrates (lay judiciary), involvement in a prosecution-led diversion programme, running of bail clinics.

A pilot project was launched out of Lilongwe, which is in the administrative central region, in August 2011. Two programme lawyers are on the ground in Lilongwe. Ruth Dowling BL is based in the Department of Legal Aid with ongoing outreach clinic work within the local prisons. Lilongwe has two prisons in its immediate vicinity, Maula adult prison and Kachere, a juvenile facility. Solicitor Eithne Lynch is based in the Director of Public Prosecution's office, with an ongoing placement in Lilongwe Police Station.

The prosecution aspect of the project seeks to implement a restorative justice programme, assist with the progression of cases and act as a prosecution liaison with juvenile justice cases. By positioning ourselves in this manner the project is best placed to increase access to justice within the criminal system in Malawi. While we work on individual cases, we recognise the overwhelming need for systemic, sustainable interventions when it comes to confronting overcrowding. For this reason we are also focusing on these innovative approaches to restorative justice and diversion which can provide long term solutions to the problem.

With no representation defendants are often held in custody for years, often far longer than the maximum sentence allowed for the offences they are alleged to have committed, until a trial court acquits or sentences them. Warrants are regularly misplaced with prisoners becoming lost in the system, unsure of what they are in fact charged with or how long they will be there. Ninety per cent of



Ruth Dowling BL (above right) with Michael Irvine, IRLI Director, at Kachere Juvenile Prison

all detainees in Malawi will never have access to any legal representation, advice or assistance. The vast majority of those are persons who have allegedly committed minor offences.

The programme lawyers work hand in hand with the police officers to implement a diversion programme in the police station. Diversion can be defined as the channelling of *prima facie* cases away from the criminal justice system, with or without conditions. Conditions range from a simple caution or referral to the welfare system, to participation in reformatory programmes and/or reparation or restitution. Diversion can take place prior to arrest, charge, plea, trial or sentencing. In the second half of the pilot year, a total of 45 people were diverted from police custody at Lilongwe Police Station, most of whom were minors and particularly vulnerable people.

Recognising that young people in particular needed additional care and protection, the project established an aftercare programme to assist young people who had come into conflict with the law. In collaboration with a Scottish NGO, Venture Trust, the project implemented the first ever diversion aftercare programme through the Malawi Police Services. This programme, Mwai Wosinthika (Chance for Change), aims to give young people the chance and opportunity to change their circumstance,

but perhaps more importantly and more empowering, giving them responsibility and therefore a choice about wanting to make a change in their behaviour and therefore how to deal with life's problems. One major consequence will be the reduction in numbers of young people placed in custody so that they can continue to learn in school or become productive members of their community and Malawian society. The pilot project has now been extended into 2013.

The most important success to date is the decision by the High Court to go into the adult prison and deal with the cases of people who have remained in prison since 2005. The programme lawyers have worked tirelessly at bringing numerous bail applications to the High Court on behalf of those who have never been to Court. After 16 months the President of the High Court Ms Esme Chombo has organised that her Court, DPP lawyers and Legal Aid lawyers will attend Maula prison and work through the back log.

More on the project in a future issue of FLAC News.

See irishruleoflaw.ie for more. To get involved, contact IRLI Co-ordinator Rachel Power at Distillery Building, 145-151 Church Street, Dublin 7 Tel: 01 817 5331 or e-mail: rpower@irishruleoflaw.ie