

Rule of Law Initiative – the Kenya experience

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In October 2009, I represented the Bar Council of Ireland, in a needs assessment mission to Kenya, on the Kenyan Justice System. This originated from an email, titled “Kenya” which surfed into my inbox, sometime in 2008. It came via the Rule of Law Initiative. Curious, I opened it. The subject was to investigate doing a Rule of Law project in Kenya.

From the early stages, I advertised for a small team. The terms of employment included; no pay, long hours, and unlimited set-backs. Endeavouring them to “*be true*” like Mahatma Gandhi was stretching it. The team includes; Ercus Stewart SC, Diane Duggan BL and Mernan Femi-Oluyede (solicitor). Our objective is; to provide legal assistance, enhance Rule of Law in Kenya, empower people on the ground to affect positive change themselves and operates from a “what they need” approach, to how we can assist to those needs.

But where to start? The team launched into discussions, with the Law Society of Kenya (“LSK”), who presented a detailed report, identifying numerous issues (including reform of the judicial sector).

The contents of the report explained how the post-election violence of 2007, led Kenya into unprecedented violence, ethnic animosity and mass displacement. This was ignited by suspicions of ballot-rigging. Between Dec 2007 and March 2008, sexual violence became rampant. It consisted of rape, gang rape, defilement, genital mutilation, sodomy, forced circumcision and sexual exploitation. Both sexes of every age were targeted. The perpetrators, were state security agents, (e.g. the police), neighbours, and relatives. It left 1,133 Kenyans dead, 3,561 seriously injured and over 300,000 displaced from their homes. Prior to the elections, Kenya had enjoyed relative stability. However public confidence in the judicial system has virtually collapsed. Why? In part due to the delay in investigations and prosecutions, and the disappearance of key witnesses relating to the post election violence. Without swift reform in the judicial system, and political will, the Rule of Law in Kenya threatens to collapse in full, by the next elections, scheduled for 2012.

A number of issues within the judicial sector are of immediate concern. For instance; there are only 4 magistrates, who must case manage the concerns of four million people, who reside in their district, i.e. the slums of Nairobi; Nearly 1 million cases remain in backlog. It was obvious, the team alone could not provide all solutions. Raising the LSK issues onto the international stage, would be key for us.

We presented our objectives, with the report sent by LSK to The International Bar Association Human Rights Institute (“IBAHRI”). The IBAHRI co-ordinated, with the International Legal Assistance Consortium (“ILAC”) and with the support of the Law Society of Kenya (“LSK”)

scheduled a trip in October to Kenya. By the invitation of IBAHRI, I (on behalf of the team) was included as part of the delegation of legal experts who were to conduct a needs assessment mission.

The October mission coincided with the former UN Secretary-General Kofi Annan four-day assessment visit. We were fortunate to meet him. His presence was aimed to keep the Kenya on the international radar. The international dimension was enhanced by the ongoing work by the International Criminal Courts. It was a bonus when the National Press and TV began reporting our mission and this notably raised the LSK efforts. Further during our visit, the Chief Justice, appointed a President for the High Court and Circuit Court equivalent.

On February 15 2010, the mission findings were published. The report outlines major obstacles facing the judicial system, and assesses where international and regional expertise may be most constructively applied in order to provide assistance.¹

For the team, the trip, forged connections with and between the following;

1. NUI Human Rights Center, Galway with University of Nairobi. The latter are at the initial stages of setting up a The Centre for Human Rights and Peace (CHRP). In March the Kenyan Ambassador, will give a talk in NUI on the constitution.
2. The Center for Justice and Crimes against Humanity (CJCH) with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law of Lund, Sweden (RWI);
3. Strengthened ties with LSK.

To date, the team, would like to acknowledge the following; Members of the Bar Council, Mr. Justice Garret Sheehan, Micheal Greene (consultant) in A&L Goodbody Solicitors and Caroline O’Connor BL, who continues to act on our behalf, while posted out in Nairobi with the UN.

The Irish appear to be held in high regard in East Africa. It became self evident that our constitution, the independence of our judiciary, the Northern Ireland peace process, and the relentless work by missionaries, commands huge respect. On a personal note, it heightened my awareness of how lucky, we in Ireland are. ■

¹ Available at: http://www.ibanet.org/Human_Rights_Institute/HRI_Publications/Country_reports.aspx