

C.L.E.A.R. Kenya

CHRISTIAN LEGAL EDUCATION, AID AND RESEARCH TRUST

1. Background

In developing countries it is now widely accepted that the improvement of legal and governmental institutions is fundamental to economic development. In response to this the CLEAR programme was started in 1999 by Kenyan lawyers (from the 200 strong Christian Lawyers Fellowship) who designed it to address the problems they have experienced in years of practice in various fields of the law. In the first instance, it sought to combat the twin problems of insufficient legal representation and the need for legal rights awareness among Kenya's most marginalized communities. This has impacted on both the criminal and civil justice systems.

Subsequently the project has expanded. In Kenya and Uganda, CLEAR volunteers work at three tiers of influence: The first as above, in educating and providing legal services to the poorest in society. The second tier fights public interest cases, such as the one which secured the right to ID cards for street children. The third is the newest level of influence, at government level through interaction with Human Rights and other relevant Commissions in both countries. Prison reform and reform of the criminal justice system represent a major focus of the work in both countries. In Kenya, government spokesmen have indicated they believe nearly 90% of those currently in prison should not be there.

The Criminal Justice System

In Kenya it is said that 'justice is open to all and so is the Intercontinental hotel'. Currently

there is no legal aid for criminal defence with the exception of representation in the High Court for murder cases. The corruption within the police force combined with the fact that few criminal cases are represented result in hundreds of innocent defendants finding themselves in prison or on death row.

The death sentence is mandatory under the Penal Code for crimes including treason, murder and robbery with violence. Cases of robbery with violence are heard by magistrates courts where there is no legal aid and limited rights of disclosure and as a result many defendants are sentenced to death without any legal representation.

In addition Kenya's 78 prisons are appalling. They have been described in detail in a booklet published by the Kenya Human Rights Commission entitled *A Death Sentence - Prison Conditions in Kenya*. This was also confirmed in the International Bar Association's *Report on the Legal System and Independence of the Judiciary in Kenya* (1996). Official figures are scarce, but in 1995 a Government minister stated that more than 800 prisoners had died in the first nine months of the year. (Source: *Kenya – the quest for justice*. Amnesty International Briefing, September 1997)

The Civil Justice System

There is no legal aid available for those who have a problem which involves civil law. In Kenya your land can be stolen, you can be illegally evicted as a tenant or an errant father can refuse to pay maintenance to his family and if you are poor there will be no legal advice or redress. The challenge is enormous so CLEAR has concentrated on succession and family law cases since tribal traditions often dictate that a widow is robbed of her home and land by her late husband's brothers and sisters. Such practices are illegal and yet widows are mostly unable to obtain legal redress since court fees are beyond their means let alone the cost of legal advice.

2. The Aims of the Programme

The aims are threefold:

1. Legal Aid and Representation

To provide and co-ordinate a network of experienced advocates who undertake legal representation/provide legal advice on a pro-bono basis for individuals and community groups who are in danger of being denied justice. The work concentrates on criminal defence and family/succession cases where the need is greatest. CLEAR advises, and if necessary, represents people who do not have the means to pay for a lawyer and assists with the court fees required for filing a case.

2. Public Interest Litigation and Legal Reform

CLEAR seeks to use test case litigation as a tool for legal reform. In particular it concentrates on laws which compound the problem of poverty, as opposed to general human rights campaigning and surveillance which is undertaken by other NGOs in Kenya such as the Kenya Human Rights Commission. To date CLEAR has undertaken cases seeking law reform in areas concerning: harassment and arbitrary arrests of street children; the Government's refusal to issue ID cards to the homeless and legal representation for victims of torture. It has also successfully challenged the Government's failure to bring a trial within a reasonable time. Currently CLEAR is working on a constitutional reference, in collaboration with British lawyers, challenging the mandatory death sentence for the offence of robbery with violence. It is envisaged that campaigning will form an important element of this work in the future and collaboration is anticipated with international NGOs such as Amnesty International, Human Rights Watch, the International Justice Mission and the Bar Human Rights Committee in London.

3. Legal Education

To disseminate information through workshops at the grassroots with emphasis on increasing basic rights awareness among Kenya's marginalized communities. User-friendly

legal rights publications have been produced in Swahili and English covering basic matrimonial, succession and landlord and tenant law.

3. Structure of the Programme

CLEAR benefits from the fact that the fellowship contains many experienced lawyers who practice in a wide variety of fields across the country and are prepared to contribute to a network of pro bono advocates. Lawyers in the network work closely with other NGOs such as Kituo Cha Sharia (a national legal advice organisation), FIDA (a woman's rights NGO), the Philemon Trust (working to reform and improve prison conditions) and the International Justice Mission.

CLEAR provides centrally resourced offices in Nairobi and Mombasa to co-ordinate and case manage the work of the advocates across the country. It also furnishes the research facilities and researchers for the educational and legal reform aspects of the programme. It is an organisation which operates within the remit of the existing Christian Lawyers Fellowship of Kenya, which is a society registered under the Societies Act Chapter 108 of the Laws of Kenya.

In the newest project in Uganda, CLEAR is currently supporting a proportion of the office expenses and in both Kenya and Uganda it hopes to fund full-time advocates to move the work forward – especially to meet the needs of those suffering injustice through wrongful imprisonment.

4. Detailed Plans

From 1999 to date CLEAR has:

- Undertaken legal representation on a selective basis in criminal cases at all levels of the Criminal Justice System, including the Court of Appeal. Cases where the sentences passed are capital or corporal are prioritised.

- Undertaken several public interest cases each year involving judicial review/constitutional references.
- Held legal education workshops on a monthly basis for community groups in churches, schools and colleges.
- Produced user-friendly legal publications to educate Kenyans as to their legal rights.
- Conducted daily legal advice and education talks on local radio stations.
- Worked with the Philemon Project, an ex-prisoners ministry, which undertakes prison visits and assists CLEAR in identifying defendants who have been the victim of unfair trials.
- Appeared on behalf of numerous prisoners to secure their release from lengthy periods on remand without any evidence being presented against them.

Christine John,

International Secretary of the LCF, with oversight of the CLEAR Project.

For further information, please contact Christine John, International Secretary, LCF, International Office, The Ship, Ship Lane, Marsworth, Nr. Tring, Herts. HP23 4NA. Tel: 01296 663798, or email: international@lawcf.org