

EXPORT AND IMPORT OF THE RULE OF LAW IN THE GLOBAL ERA

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I. INTRODUCTION

When an officer of the Kigali Bar Association in Rwanda said their members would like an e-commerce training, I was amazed. Rwandan phone lines don't work and the infrastructure was destroyed after the genocide. "Why?" I asked. "We want to be prepared," said the Association's officer who survived the 1994 genocide that left only a few judges alive and only sixteen lawyers in the entire country.

Developing countries are eager to prepare for the global era and developed countries seek new markets and avenues of trade. Emerging nations also need to establish the rule of law because it is a prerequisite to receiving aid from the World Bank, the IMF and mandated by certain agreements such as the African Growth and Opportunity Act (AGOA). New democracies need developed countries to export training and education regarding their long-established laws. Equally important is the need for developed nations to import knowledge of emergent countries' laws in order to trade with them and understand their training requirements.

Let me first share with you my experience in exporting United States laws and legal ethics in seminars abroad and, secondly, discuss the effectiveness of teaching overseas. Lastly, let me focus on lessons learned from such experiences, i.e. the need for continuing programs, the contacts developed and the knowledge gained from other countries' laws and cultures.

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II. EXPERIENCE

Experiences, teaching and mentoring abroad can be the most rewarding part of one's professional career. Exporting United States laws and importing knowledge of foreign laws adds to the increasing globalization of the rule of law.

My first experience overseas was in Tibet when I was investigating for the Tibet Information Network. I was asked to discuss the United States Constitution at adult education classes in the Tibetan section of the capital, Lhasa, which is overrun by Chinese military and Chinese settlers. Although the students were not lawyers, they were men and women at the forefront of the Tibetan quest for freedom from the Chinese. It was enlightening to discover how much they wanted to adapt their way of life to American constitutional liberties. "Change comes with education," commented one of the less shy participants.

I was thereafter invited to teach a seminar on international intellectual property for practicing lawyers at the International Law Institute in Kampala, Uganda. Most of the lawyers had a general practice and wanted to learn not only the international norms of intellectual property law but also practical tips for handling their cases. A Ugandan judge, who joined us for a session asked about United States copyright decisions because he had a publishing matter before him and was interested in cases of a more active copyright jurisdiction.

The workshops we held with hypothetical cases created interesting discussions, provocative questions, and a congenial fun-filled atmosphere. Since the class members always lunched together, this gave us an opportunity for informal talk and learning experiences for both me and the Ugandan lawyers.

Since Rwanda borders Uganda, I went to Rwanda to address the Kigali Bar Association, the only active bar association in the country. Their lawyers were interested in three topics—intellectual property, arbitration and e-commerce. Although my Ethiopian Airlines flight was four hours late, the President and the Treasurer of the Association waited for and greeted me at the airport. The participants at the seminars included not only members of the Rwandan Bar but the Attorney General, the Justice Minister and Parliamentarians. Such attendees who were responsible for revising pre-genocide statutes (even those that still referred to the former colonial power's King of Belgium), wanted to study United States laws to use as a basis for their revisions.

Although Rwanda has an exemplary Copyright Statute,¹ developed with the help of the World Intellectual Property Organization, enforcement of the laws was minimal. Rwandan lawyers were interested in pursuing their client's claims more actively. We discussed their trademark cases as well as United States and

1. Rwanda Law Governing Copyright, No. 27/1983 of November 15, 1983.

East African decisions. Electronic commerce law was an entirely new topic for the Rwandan legal community. The participants appeared to be interested in our relevant statutes as well as the legal problems raised by doing business electronically. The arbitration section of the seminar was aided by a presentation from the head of the Rwandan Arbitration Court. We discussed differences between the United States and Rwandan methods of arbitration.

Because United States elections were forthcoming when I was in Kigali in 2000 and the first elections after the genocide were scheduled in 2003, lawyers asked me about fair and free elections in the United States and the laws governing them and in 2003 they asked about, as well as the United States Supreme Court case relevant to the 2000 election.

The students at the Rwandan Law School in Butare, the second largest Rwandan city, were mostly interested in international intellectual property laws since there were no courses offered on that subject. Their professors also sat in on the training.

My experience in Rwanda prompted me to initiate and find funding for two ethics trainings for the Rwandan justice system, as requested by members of the Rwandan legal community. Juridical ethics is an important topic for countries accused of lack of judicial transparency. As World Bank president, James D. Wolfensohn, said "it is a question of ethics" as to "how a country is run."² Many of the horrors of the genocide went unpunished because of the lack of impartial judges and prosecutors.

The United States Agency for Development generously supported the ethics projects enabling the Association of the Bar of the City of New York (ABCNY) to hold two ethics seminars were held in Kigali and Butare in 2002. Two members of the ABCNY joined me on the first week-long program along with Michael Johnson, a former Chief of Prosecution at the International Criminal Tribunal for Yugoslavia and Acting Deputy Prosecutor for the Rwanda Tribunal. Judge David Ebel of the Tenth Circuit Court of Appeals, who taught ethics at Duke University and helped formulate a Canadian judicial ethics code, was a wonderful addition to the group and of great assistance to the Rwandan judiciary. Joining us with the presentations were the Rwandan Minister of Justice, the President of the Supreme Court, the Attorney General, the head of the Military Court and a Supreme Court judge who oversees the functioning of the country's courts and personnel. Judges from all over the country attended the seminar.

We spent two days at the Law School at the National University in Butare, where we were greeted with an elaborate reception and a chance to chat with the students and faculty. Among the audience for the training were graduating

2. Manny Fernandez & Steven Pearlstein, *World Bank Defends Policies; Critics Say Debts Should Be Forgiven*, WASHINGTON POST, April 28, 2001, at E1.

seniors who were to be appointed as judges at informal tribunals (“Gacaca”—Ga-cha-cha, meaning grass because these communal courts are held on the grass). These prospective judges will try over 500,000 alleged genocide perpetrators that conventional courts are not able to handle. There were difficult practical problems such as the senior student, soon to become an unsalaried judge, who said, “Either I can pay my fare to come here tomorrow or use the money to feed my family.” (The government cannot afford salaries for Gacaca judges).

The follow-up ethics seminar was joined by Professor Mary Daly, who teaches ethics at Fordham Law School and Tom Strunk, a lawyer who teaches ethics at the West Point Military Academy.

My subsequent trip to Rwanda in 2003 was to prepare an international training on gender and the law for the Ministry of Gender funded by the World Bank. I not only met many hard-working female lawyers in parliament, the government and NGOs, but I also studied Rwandan laws to determine the requirements for change. The input of female leaders was essential to my formulating a program for the training. (Although Rwandan women constitute 48.8% of the Parliament, more than any other country in the world, some of their laws lack the gender sensitivity that Rwandan women seek). Several statutes have been revised, but there are still no laws on domestic violence, sexual harassment or equal opportunity, and there is no statutory infrastructure for the commendable Constitutional mandate for a Gender Monitoring Office and a National Council of Women.

Several women at the ABCNY, including Sara Rakita, a Human Rights Watch lawyer in Rwanda for two years, have been working on a training manual for the international program, which is planned for 2005. In the works and depending on funding, are ethics training sessions for Kenya and one for Nigeria, both of which countries are accused of corruption in their judiciary.

My interest in the Rwandan genocide and the pursuit of justice for the perpetrators led me to attend trials at the International Criminal Tribunal for Rwanda in Tanzania where I met the President, judges and prosecutors of the Court. Through guile and inadvertence of the guards, I interviewed the only woman on trial for rape and genocide, who is allowed no visitors. Such adventures are an added feature of training experiences abroad.

Teaching overseas is not only an enriching experience, but enables lawyers to lecture on foreign and international law in the United States. For instance, my preparation for the intellectual property seminars in East Africa allows me to contribute to the forum: “Doing Business in Africa,” that the ABCNYs Committee on African Affairs will be holding in the spring. Likewise, the knowledge of international, European and African gender-expertise gained in researching international gender laws for the Rwandan training enables me to participate in pertinent programs in this country.

III. EFFECTIVENESS

Without a result trainings are purposeless. The most productive programs that I have been involved with were the Rwandan ethics trainings. During the weekend of the first session officers of the Rwandan Bar established a Permanent Commission on Ethics to review and answer questions regarding ethical practices. The training participants also recommended an overall ad hoc Committee to enforce ethical rules for prosecutors and military court judges. Internal Ethics Committees for judges and prosecutors were also suggested as well as a codification of ethics rules for each group to be publicly disseminated. (Ethics rules were previously spread out over many statutes so there was no easy reference to them and they were not available to the public). The participants also recommended further ethics training sessions, permanent contacts with the ABCNY for assistance, better working conditions for judges (who are not well-respected and poorly paid), a longer than one-year term for military judges; and more emphasis on respect for ethics codes and strict adherence to their rules.

At the second session, the Kigali Bar had codified its ethics code. With the help of Judge Ebel, judicial ethics rules were drafted and incorporated into one document. Judge Ebel later participated in two Law Reform seminars that produced drafts of both judicial and prosecutorial statutes improving and restructuring these segments of the justice system. Both of these drafts are now law as well as a statute establishing a Superior Council of the Judiciary that approves the appointment of judges and that can sanction them for infractions of the judicial code.

The effectiveness of the Tibetan training was proven by one of the student's immigration to the United States, where she is fighting for Tibetan rights similar to those in the United States Constitution. One of the students at the Ugandan training now practices intellectual property law there after completing a masters at the South African Law School at the University of Witwatersrand.

The Rwandan seminars were effective for the presenters to learn about local laws from overseas lawyers and to identify their needs rather than imposing United States concepts. Preparing for the trainings enabled us to import knowledge of international and African laws to advise United States clients dealing abroad.

IV. LESSONS LEARNED

Knowledge gained from global trainings was threefold, i.e. continuing training requirements, contacts developed abroad, and countries' customs and laws.

A. Continued Training Requirements

Continuing commitment to a project is necessary to effectuate the goals of global trainings. The fact that there was a follow-up Rwandan ethics seminar and a continuing interchange with the Kigali Bar enabled the training objectives to be met. This is not to minimize the purposefulness of short-term programs that can also produce results through ongoing contacts and cultivation of other countries' customs and laws. One-time trainings can also help with current legal problems and be inspirational for further study and professional practice in a specialized area. However ongoing projects can assist in not only drafting, but finalizing legislation and professional codes.

B. Contacts Developed

Developing and continuing contacts is not just about acquiring clients, although that can be the outcome of overseas professional relationships (particularly with the increasing privatization plans in emerging democracies). Ongoing contacts are important in guiding seminar participants in their careers and advising them on specialties in the law. Mentoring in this global era not only helps overseas lawyers develop skills and ongoing associations keep us abreast of legal changes in foreign countries. For instance, a Rwandan judge recently told me that there was a complete overhaul of their judiciary. All the judges were sacked and must now reapply for a seat on the bench and adhere to a strict, recently-legislated Judicial Code.

For me, an offshoot of keeping connected with female Rwandan lawyers was the ability to suggest and advise them on incorporating a Woman's Law Association and to complete an article, "Rwandan Women Reborn" that will be published later this year.

C. Knowledge Of Countries Customs and Laws

Without a background in local customs, we are less helpful to participants in training seminars. We may seem out of place and too foreign to understand attendees' needs. It is even helpful to appreciate local dress codes. I learned that, even if it's hot in Africa, women lawyers wear black suits both to deflect Kampala dust and the droppings of the flamingo storks constantly circling the city. Even female lawyers who are parliamentarians wear traditional dress in Rwanda. The Rwandan Supreme Court judge, who participated in the ethics trainings, stressed the importance of proper dress to elicit esteem for the profession and show respect for the court.

Learning local laws is important in suggesting and drafting revisions of statutes. For instance the Rwandan rape law is very limited and denies prosecution for deeds commonly committed during the genocide—penetrating

women's vaginas with gun barrels, bottles and sharpened sticks. Female Rwandan lawyers realize this law must be changed as well as the adultery statute that penalizes women with imprisonment, but only fines men. Revisions of these laws, adapted to international standards, have been sent to the Ministry of Gender.

It is also important not to offend lawyers whose laws and customs are different than ours. For instance, abortion is outlawed in Rwanda except in medical emergencies and homosexuality is viewed with disfavor. Additionally, unlike our system, Rwandan lawyers are not permitted to participate in any business.

The best way to learn about local customs and laws is to make a preparatory trip. But, absent that, one can always speak to someone from a country's diaspora; the Mission to the UN of that country can give you the name of a person to contact.

V. CONCLUSION

My experience in teaching and formulating trainings for overseas participants has been the most interesting and rewarding part of my professional career. It has led to more involvement and further service to overseas lawyers and United States clients.

The effectiveness of trainings benefits legal communities abroad and enables them to familiarize themselves with international and United States laws and adapt them to their own justice system. Among the lessons learned from these trainings are not only the need for continuing programs, but also the professional and personal pleasure of maintaining contacts with overseas lawyers. Additionally, knowledge of foreign laws helps in advising clients and developing our own clientele and expertise.