

By Mary Robinson

Chicago Attorneys Travel to **Africa**

In the End, It's All About the Children





N A FRIDAY AFTERNOON IN LATE JUNE,

our group of judges and lawyers, with accompanying friends and family, met up at O'Hare and began a journey to Africa. Our trip was sponsored by Global Alliance for Africa (GAA), a not for profit organization that works to enable East African communities and households to provide sustainable care and support for orphans and other vulnerable children affected by HIV/AIDS. (See: www.globalallianceafrica.org.) At its November 2007 Women and Children's Legal Rights Project event, GAA had honored Illinois Supreme Court Justice Anne Burke for her advocacy on behalf of children. Justice Burke decided she wanted to witness GAA's work first hand, give her 12 year old son the opportunity to participate in a GAA-sponsored art camp, and bring other professionals into contact with GAA. She worked with labor lawyer and GAA Board member, Joseph Burns of Jacobs, Burns, Orlove Stanton & Hernandez, to organize a CLE trip to Tanzania. Joe's fellow GAA Board Member, attorney Grace Leon Harris, signed on, as did Cook County Circuit Judge Sophia Hall and Cook County Associate Judges Cheryl Cesario and Rosemary Higgins. I offered to handle the CLE arrangements, something I assumed I would be doing from Chicago. But in one of those rarified moments when I listened to spirit over reason, I was persuaded to go along. We were joined by Mary Ann Monahan (a social worker/therapist friend of Rosemary) and Anne's son, Travis, and along the way, met up with Tom Derdak (founder and executive director of GAA), Grace's husband, Brian Harris (a business consultant and, we found, a wonderful photographer) and Joe's wife, Penny (an artist and organizer of the GAA art camp experience).

Travel to Africa is itself a commitment. We spent almost 20 hours on three flights, and plenty of quality layover time in between to get there. But there is almost no describing the pay-off. It is not just the opportunity to experience a land of great natural beauty, with almost unimaginable wildlife. There is something magical about Africa, a chance to experience life without modern complexities. Technology has clearly invaded and is enjoyed by middle or upper class residents of urban areas, but many of the children and families that we encountered lived without so much as the convenience of running water. Social problems are basic and stark. Yet time and time again, in discussions with our Tanzanian counterparts, we found ourselves recognizing the symmetry of the legal and social challenges that we all work to address, and we travelers grew to appreciate how the starkness of the African context brought clarity to our common challenges.

Arusha

Our first destination was Arusha, a city of about 300,000 in northern Tanzania, near Mount Kilimanjaro and several of the preeminent safari territories. It is also the site of two institutions that provided invaluable learning opportunities for us: the United Nations International Criminal Tribunal for Rwanda, and the Law Faculty of Tumaini University, Makumira University College, an institution founded by the Evangelical Lutheran Church in Tanzania.

GAA funds the Vijana Vocational Training Center in Arusha,

where older children in families that have lost or are losing parents to AIDS are taught skills that will enable them to support themselves and younger siblings. Programs include secretarial, welding, barbering and bicycle repair. Arusha is also home to a new GAA legal rights and services initiative designed to inform women about inheritance rights under civil law, so that when they lose their husbands to AIDS, they can resist efforts to have property return to their husbands' families under customary or tribal law. Many of the widows are themselves HIV positive, and their children could be left with nothing if they do not understand and pursue their rights.

On our first day in Arusha, we met with GAA staff at the Karama Lodge, where we were staying. The Lodge property was spread over a hillside of lush greenery, and consisted of a small building that housed a central office, a thatched-roof, open-to-the-elements-building that housed the restaurant and lounge, and several dozen treehouses (thatched-roof dwellings on stilts). We each had our own treehouse with mosquito-netting covered beds, a very basic shower and bathroom, and a porch separated from the interior by tent flaps. The restaurant building served as our meeting place, and that is where we heard from Boniface Kimboka, the director of the GAA Vijana Center, Julius M. Mercy, the young lawyer recently hired for the legal services project, and three social workers associated with the Arusha programs. Each (in fluent English) gave us descriptions of their work. Four of the five were very young adults, and they responded to the prospect of addressing American judges, particularly a supreme court judge, with varying degrees of nerves. All were delightful. They shared a quiet, almost dignified enthusiasm for their work and for the opportunity GAA was giving them to have some impact in the desperate struggles Arushan families were experiencing.

Immediately after our session with the GAA staff, two members of the law faculty of the University, Dean Daniel Pallangyo and Professor Siphon Limbe, joined us for our first CLE program on the state of children's rights in East Africa. Professor Limbe reviewed trends in international law on the rights of children, including efforts to curb the use of corporal punishment and female genital mutilation. We learned from a compilation of the relevant laws of 19 East and Southern African countries that none prohibited corporal punishment in the home (though efforts were underway to change that position in South Africa and Uganda), but several limited or prohibited corporal punishment in alternative care settings and in schools. The table compiled by Global Initiative to End All Corporal Punishment of Children can be found at <http://www.endcorporalpunishment.org/pages/pdfs/charts/Chart-East-SouthernAfrica.pdf>. Worldwide data is also available at that website. However, Professor Limbe explained and Dean Pallangyo echoed, the laws that have been enacted have proved hard to enforce because of societal attitudes. Police, prosecutors and magistrates bring assumptions about the authority of fathers and teachers to their work, and many are resistant to interfering with that authority. We quickly found ourselves in an animated discussion of the parallel U.S. experience with domestic violence laws and the difficulty of implementing laws that challenge ingrained social attitudes.

Lawyer supporters of the Global Alliance for Africa are planning a series of programs on legal issues affecting Africa. Plans include: **Late October 2008:** reception welcoming Daniel Pallangya, Dean of the Law Faculty of Tumaini University, Makumira University College, with discussion of environmental law challenges in Africa. **November 2008:** CLE program on United Nations International Criminal Tribunal on Rwanda. **Winter 2009:** CLE program on rights of women and children.

If you would like to be notified of these events, send contact information (email or regular mail address) to Mary Robinson at mrobinsonethics@aol.com.

The same problem poses the major obstacle in efforts to wipe out genital mutilation. In many traditions, the rite is performed when the girl is an infant. In others, it is performed in preteen years, where girls are brought one by one before an assemblage of onlookers, the same knife (without sterilization) is used to cut each, and many suffer not only the trauma of the pain and public exposure, but also infection and other health complications. Yet any girl who would resist the rite knows she would be banished by her family and tribe. In the face of durable and potent tradition, civil and criminal authorities who would hope to end the practice face an uphill battle.

We found ourselves torn between continuing what had become a riveting discussion and surrendering to the forces of jet lag, which, not surprisingly, won out. We retired to our tree houses, some of us with our luggage, some without. British Airways had managed to get all our luggage through London and to Nairobi, but Precision Airlines had a problem getting it that last few hundred miles from Nairobi to Arusha, which gave us an insight on how life is different in Africa. The missing bags trickled in one or two at a time, over the course of several days. Our guide, who handled all of our lodging and transportation arrangements, visited or sent a driver to the Kilimanjaro Airport once a day to see what showed up, and no one seemed terribly concerned about what did not. On our second full day, those who were missing bags visited 'Woolworth's,' one of the few clothing stores with American clothes, and paid Marshall Field's prices for Wal-Mart-

quality goods. We freshened up, a few of us with hot water, many of us without. And we shivered our way through dinner, having not realized that winter in Arusha can be rather chilly, especially because the lodgings do not have heat. On the other hand, mosquitoes do not favor the cooler temperatures and we were grateful to encounter very few of them during our stay.

UN Tribunal

On the morning of our second day in Tanzania, we visited the UN International Criminal Tribunal for Rwanda. With the assistance of United States Seventh Circuit Court of Appeals Judge Ann Claire Williams and Erin McGinley, who have done substantial work with the Tribunal, we were able to meet with Charles Adeogun-Phillips, a Barrister and Solicitor of the Supreme Court of Nigeria and Solicitor of the Supreme Court of England and Wales, who serves as Senior Trial Attorney and Lead Counsel for the Tribunal. A man of commanding presence and eloquence, he offered a mesmerizing account of the process of constructing the strategies and procedures for prosecuting war crimes. Among the issues he and colleagues confronted was how to indict the crime of genocide. What are its components? How much detail must be pled? What level of intent and what level of participation makes a person guilty of genocide, as opposed to murder? By the time the Tribunal was first impaneled, many of the perpetrators had fled to countries that were considered safe harbors, and the Tribunal staff faced the daunting challenge of persuading the international community to bring enough pressure to secure the arrests of the perpetrators. Largely through the cooperation of other African countries, over 70 perpetrators have been arrested, including the former Prime Minister of Rwanda and about 60% of his cabinet. When the Prime Minister, Jean Kambanda, was tried and found guilty, it became the first time a head of state had been convicted of genocide.

Another challenge was developing a definition of rape as a tool of genocide. Adeogun-Phillips explained that Hutu men who coveted the more beautiful Tutsi women, but did not themselves have Tutsi wives, were essentially told that this was their chance to have a Tutsi woman. Proving the

rapes presented its own challenges. Some of the women who had been spared death because they were useful as sex slaves had new husbands and families with whom they had not shared their experience as victims of war crimes, and they did not want to lose the lives that they had managed to rebuild by testifying about what they had experienced.

After meeting with Adeogun-Phillips, we were able to sit in on an ongoing trial of a Rwandan priest and former rector of Christ-Rei College, Hormisdas Nsenigimana, who stands accused as a death squad leader, and whose alleged crimes include arranging the massacre of Tutsi's who had taken refuge at the college. With headphones that provided translations, we watched the cross-examination of a defense witness who apparently had been quite young at the time of events she was called to describe and was reporting more of what her sister and father had told her than what she recalled herself. The witness, though, had ample personal antagonism for the prosecutor who was attempting to cross-examine her, and the prosecutor, in turn, had a properly British response to his opponent's effort to rehabilitate the witness, asserting a continuing objection as a 'principled stand,' accompanied by regret that his opponent was not joining him in principle.

I had walked into the Tribunal with some reserve. A couple of months earlier, Paul Rusesabagina, the hotel manager whose story was portrayed in the movie, *Hotel Rwanda*, made a presentation at Benedictine University, and expressed some concerns about the efficacy of the UN tribunal for purposes of healing a country whose people need to move into the future with one another. He noted the expense (about \$250 million) and time (over ten years) expended to prosecute what felt like a handful of individuals (35 trials have been completed). A wealth of information about the work of the Tribunal, including a searchable database of documents and case law, can be found at the Tribunal's website: www.ictj.org as well as the anger still harbored by both Tutsis and Hutus about what has not been done. Rusesabagina reported that Rwandans are working to develop a Truth and Reconciliation Commission patterned on the South African experience, which

understandably can accomplish goals that are not within the power of an adversary system of justice. Yet, seeing the work in process, reading the litanies of criminal acts that have been charged, and hearing the accounts of what has been accomplished, I walked out appreciating the importance of an international undertaking to hold those who abuse power and perpetrate atrocities accountable. The Tribunal and its staff have persevered in the face of onerous political and legal challenges. They have created a body of law and a set of practices that did not previously exist, and their work has brought agents of unspeakable violence to justice, limited though it may be. I left with great respect for what has been accomplished, and with the conviction that, whatever its limits, the process is an essential component of a civilized response to genocide.

Safari

After the visit to the Tribunal, we headed in two jeeps to the Ngorongoro Crater, where we would experience African wild-life. The Crater is a 12 mile-wide expanse of what was left when, eons ago, a volcano imploded, and it has become a natural wildlife preserve.

On the ride to the Crater, one of our jeeps had a flat, and we spent some time by the side of the road while the drivers worked at getting their jack to work, giving us another priceless opportunity to know life in Africa. The Maasai (an African tribe that lives by ancient traditions) inhabit the area, and a Maasai mother and her children wandered over to where we were stranded. With the help of Daniel Pallangyo (the Dean who became our traveling companion), himself part Maasai, we spent about a half hour chatting with the family. The mother had a baby who did not look well strapped to her back, and some of our members asked about the baby's health. The mother explained that the baby was ill, but she had no money to take him to a doctor. Daniel asked whether the family owned cattle, which they did, but the mother said it was not her prerogative to decide to sell a cow, only her husband could do that, and he was not willing. Before we left the Maasai family, some of our members offered the mother some money to take the baby for care. Days later, when we passed through

the same area, we recognized one of the sisters who told us that the baby had been taken to a doctor and was doing well.

We stayed at a place called the Farm-house, which provided more upscale lodgings where we all had hot water. The Crater itself was amazing. We rode through herds of wildebeasts and zebras, got within two car lengths of an elephant, watched ostriches doing their mating dances, and saw a lake literally covered by maybe thousands of pink flamingos.

After our wild game ride, Daniel Pallangyo gave us a presentation on environmental law in Tanzania, which is his area of concentration and, we found, his passion.

He explained that, consistent with certain international environmental declarations, Tanzania had adopted an act to address environmental problems about four years ago, but the minister had not promulgated the regulations necessary to make the act effective, nor have the tribunals required for enforcement of the act been appointed. In contrast to the United States, Tanzania does not have heavy industry, but it struggles with vehicle pollution. Vehicles that are not compliant with pollution control laws in other countries get shipped to Tanzania. As does much of the second-hand clothing we contribute to charities which sell to auctions. We saw a young man in Arusha



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wearing a Maine East jacket. Having gotten behind more than one offending bus or truck, we had no trouble understanding what he was talking about. Daniel told us, with some obvious excitement, that in the face of executive inaction, Tanzanian courts have begun to recognize a private cause of action for enforcement of the right to a safe environment. A recent case was brought by residents of a neighborhood in Dar Es Salaam (Tanzania's capital and largest city) that was being used by the city as a dumping ground for solid waste. The court sustained the residents' claim that the Tanzanian constitutional guarantee of the right to life included a right to a safe environment, and the court found that the residents of the affected neighborhood had standing to pursue a case against the city. Just think what United States strict constructionists would have to say about that as constitutional interpretation. Tanzania has enjoyed independence only since 1961. Perhaps the ruling is the result of having a constitution adopted in more polluted times.

Daniel presented two more topics before we left the Farmhouse: the Tanzanian court structure and Tanzanian criminal law. Two of the more interesting things we heard were that the court system is plagued by corruption (we found ourselves muttering 'Greylord' in response to some of the stories) and that Tanzania's criminal code requires all citizens to report crime, making the failure to do so itself a crime (though not one that has, as yet, been prosecuted). We were an unruly audience, chiming in whenever we chose. No doubt, our personality types contributed, but just as importantly, the things Daniel explained to us were just too interesting to sit and listen to in silence. Daniel plans to be in the United States this fall, and has agreed to take part in a CLE program in Chicago on environmental law.

Art Camp

When we left Ngorongoro, we returned to Arusha. On our first evening back, we visited the homes of two of the students of the GAA Vijana Center. Both were short structures with mud walls and dirt floors, without power or running water. The two girls who were our hostesses had decorated the walls of their rooms with magazine pages (which, we were told, help contain

run-off when it rains). The poverty of the residents of these neighborhoods was stark, and the families that invited us to visit had lost members to AIDS and had other members who are now ill. Yet there was not a sense of overwhelming despair that could have accompanied the conditions. And the children were delightful. Their smiles were delightful, their laughter was delightful, the way they treated each other and the way they accepted us was delightful. That, above all else, is the part of Africa that will remain with me forever.

We spent the next two days with those delightful children. Over two hundred of them came from orphanages and schools and the streets to the Art Camp hosted by GAA at the Vijana Center. Chicago and Gary-based artists, African artists, and art therapists from the Art Institute of Chicago taught this incredible collection of youth ranging from toddlers to teenagers different art forms: drawing, batik, weaving, painting, block print, percussion and dance. The children moved from one activity to another, and were served tea (with biscuits) and lunch (bean stew on Saturday and goat stew, traditional celebration fare, on Sunday). We met the goats before they became stew.

Throughout both days, a band played in the courtyard, with and without the contributions of the children who rotated through. We law-types served as assistants to the teachers and kitchen help. Anne Burke spent the better part of both days working with the block printers. Joe Burns personally washed two hundred plastic cups, four separate times (tea and lunch both days) and two hundred plastic plates twice, all in a bucket of water with a bar of soap, while others of us helped rinse in two other buckets. Several of the children came by to help. Ironically, when older boys or even our friend, Daniel, were teased about lending a hand, they had to decline because the job was "not for men." At the end of the second day, all of us, children and adults, marched with the band playing and the children waving home-made celebration sticks about a mile through town to an auditorium where the musicians and dancers and several of the older children performed for the rest of us.

Zanzibar

Nothing we did after that carried the same exuberance. On the other hand, we were pretty tired, and were glad to head to the island of Zanzibar, where we ended our trip with several days at a beautiful beach resort and with very little in the way of planned activity. We did make time for a presentation by Tom Derdak on tribal and customary law in East Africa. Otherwise, some of us just chilled, and some chilled and took a spice tour. One late afternoon, we all boarded two very primitive looking, hand-carved boats called dhows, and we sailed the waters of the Indian Ocean under the able handling of crews of three for each dhow.

We also spent time planning ways to bring slices of our incredible experience home, to you, our colleagues in Chicago. Our hope is to sponsor a series of CLE programs that will join the Tanzanian and the United States experience on challenges we all face, from how we protect our children from violence to how we provide them a healthy, safe environment. We hope, too, to use those programs to raise funds for the work of Global Alliance for Africa. For more about the projects sponsored by GAA, visit www.globalallianceafrica.org.

Personally, I wish I could bring you the children. They are the magic of Africa, and being with them was a potent reminder of why I cared to be a lawyer in the first place. Perhaps it is because things are simpler there and because the needs are so great, but it is also because our African friends provided such vigorous examples of what matters in life. It became easier to remember that, in the end, what we do as lawyers and judges forms both the present and the future for the children of our times. We're hoping that some of you would like to share our enthusiasm for shaping a reality these children—and all of our children—deserve. ■

Mary Robinson left her position as ARDC Administrator in March 2007, and now practices in the area of lawyer ethics and professional responsibility, including selected ARDC matters. She is also an accredited CLE provider and presents programs for professional responsibility credit.

Highlights of the GAA Trip to Africa



Clockwise, from top left: Joseph Burns, Justice Anne Burke, Thomas Derdak, and Rosemary Higgins on the dhow; the goats became celebratory goat stew for the Art Camp students; dance lesson at the GAA Art Camp; the author, with students and artists at the GAA Art Camp; (left to right) Mary Robinson, Mary Ann Monahan, Grace Leon Harris, Joseph Burns, Judge Rosemary Higgins, Travis Olison, Dean Daniel Pallangya, Justice Anne Burke, Thomas Derdak, Judge Cheryl Cesario, and Judge Sophia Hall, overlooking Manyara National Park, on their way back to Arusha after the Safari; Joseph Burns and Justice Anne Burke visiting the home of a Vijana Center student.