



CILC CIRCLE

Family Law in Morocco

CILC supports the implementation of the new (progressive) Moroccan family code, called Mudawwana 2004. As was highlighted in Focus no. 23 (June 2008), this code aims at more equality between men and women through better protection of women's rights than the former family code from 1957.



Moroccan and Dutch experts before the ISM

Obviously, the adoption of such a new code necessitates the training of legal professionals in order to promote uniformity in interpretation and implementation all over the country. Up till now, however, such courses for court clerks did not exist. One of the activities within the CILC project is the development of courses for court clerks and their training in the application of the new family code. For this purpose French, Belgian and Dutch experts have been working jointly with a Moroccan working group consisting of sixteen court clerks, representing various Moroccan regions and thus different specific circumstances. From January 20-23, 2009 and May 6-9, 2009 Mr Harry Witsiers, vice-president of the Middelburg Court of First Instance, and I participated in two consultations with the Moroccan working group in which we exchanged ideas and experiences.

First consultation

On January 20, 2009 Ms Fatima

Dasser, responsible for the initial training of court clerks at the "Institut supérieur de la magistrature" (ISM), warmly welcomed us at the Rabat-Sale airport and drove us to our hotel. The next morning she accompanied us to the aforementioned institute where Mr Abderrafi Erouihane, director of the court clerks training program at the institute, gave us a hospitable reception. Mr Erouihane spoke about Morocco, the project and the important role of a Moroccan court clerk in the court's contact with citizens in family law matters. In turn, we shared our experiences and previous (touristic) visits to the country with him.

Later on, we moved to the meeting room where we met members of the working group and started the discussions. Relevant topics included the management of a family law court section, how to establish equality in law, the role of a court clerk, the legal position of a child, alimony, reconciliation and mediation in divorce proceedings. To me, it was very

interesting to notice that similar developments as have taken place in the Netherlands during the last four decades are taking place in Morocco now - in a sometimes faster pace than in the Netherlands at that time. For example, these developments concern the position of a divorced person, the role of the aforementioned reconciliation and the establishment of equality in law. It is remarkable that the influence of religion on family law in Morocco is still considerable when compared with the situation in The Netherlands.

The consultations were held in Arabic and French. As most of the Moroccan participants speak French, we could often directly communicate with them. This resulted in lively discussions and personal contact which we enjoyed very much.

Back to the roots

After the end of the consultation, Ms Dasser kindly asked whether

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CILC is a Dutch non-governmental organization. CILC contributes to legal reform in countries all over the world, in close collaboration with local partner organizations and Dutch legal experts.

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▶ we wanted to visit any special sites in Rabat. I had a special request: having lived in Rabat as a child, I very much wished to see the house I had lived in. After a short quest, we found the needle in a haystack! It was one of my personal highlights of the trip to Morocco. The next day we convened again at the institute. Topics of the consultation included the training and working conditions of court clerks, the length of procedures, the applicable law and treaties, the enforcement of judgments, adoption and the role of the public prosecutor in family law. We had a lot of good, in-depth discussions, in a very pleasant atmosphere. Tired but satisfied we ended the consultation. We then had dinner with i.a. Mr Erouihane. We had some nice conversations on the situation both in the Netherlands and in Morocco. The next morning we flew back home.

Second consultation

On May 6, 2009 Mr Erouihane met us at the airport. Together with his assistant, Ms Jamilla

Basria, he drove us to Ifrane, an alpine ski-resort in the Middle Atlas region which is referred to as the 'Switzerland of Morocco'. We stayed at the local club of the Ministry of Justice together with the working group members. This was very interesting because it gave us the opportunity to have more informal discussions with our counterparts outside the official meetings. The next two days the consultations were devoted to the presentation of the courses drafted by the sub-groups of the working group. Each sub-group presented its topic and afterwards comments were given. Topics included the rules of behavior for court clerks, communication, the management of a family law court section, marriage, divorce, reconciliation, the enforcement of judgments and procedural rules. Once again some very interesting discussions took place. Among the most remarkable ones were those concerning the Dutch same-sex marriages and the ban on polyandry which means that a woman is not allowed to have more than one husband. Also memorable were the discussions about the various ways in which the family law in different

parts of the country is applied and on the possibility for Moroccan judges and court clerks to have an official sticker on their cars providing them with immunity from police control. Especially the latter was fascinating, because it touched upon the issue of our consultations of equality in law and rules of behavior. We were very positive about the quality of the presented courses and the propositions made by the members of the working group. In the Netherlands, courses like these and similar propositions on the improvement of the work in a family law court section, are usually made by the court administration or by judges. During the first consultation we had noticed that in divorce proceedings, in Morocco statutory reconciliation and mediation are focused on avoiding divorce, whereas in the Netherlands statutory reconciliation does not exist anymore and mediation is focused on a smooth ending of the marriage. This mirrors the different cultural perceptions on marriage and divorce. It was interesting to hear, during the second consultation, that

some members of the working group considered the Dutch role of mediation of possible interest for Morocco as well. Contented about the consultations and the touristic trips made around Ifrane, and grateful for the positive feedback from our Moroccan colleagues, we left the city at the consultation's end. On the day of our departure for the Netherlands, Ms Basria enthusiastically guided us to some highlights of Rabat, like the Medina and the Oudayas Kasbah. It was a nice ending to a very interesting and pleasant CILC-trip.

Next steps

Now it is up to the working group to finalize the courses. Within the framework of the CILC-project, a group of court clerks will be trained to train their colleagues, using the courses. In November 2009, members of the working group will pay a study visit to the Netherlands.

*Majella Vriend
Court Clerk at the Arnhem Court
of Appeal*

CILC EXPERIENCE

Building Rule of Law Institutions in Southern Sudan

In July I visited Juba, the capital of Southern Sudan, to see how CILC can contribute to the building of Rule of Law institutions.

Since 2005, after having signed the Comprehensive Peace Agreement (CPA) with the regime in Khartoum, Southern Sudan is an autonomous region with its own (interim) constitution. It has suffered tremendously from a long and devastating war since the 1960s. They are therefore starting to build up a democratic governance structure from scratch, while also basic infrastructure is lacking, combined with an extremely poor population. 2010 will be a crucial year when general elections will be held in Sudan. And in 2011 Southern Sudan will hold a referendum whereby the people of Southern Sudan can decide if they would like to stay part of Sudan, or

become a sovereign state. Both events are a source of continued tensions between Juba and Khartoum, but were nevertheless agreed upon in the peace negotiations. Helping the rule of law institutions in Southern Sudan means basically three things: improving and sometimes developing (new) legal systems; providing basic infrastructure, and training the people. It is therefore important that a legal training institute as well as a law faculty will start to operate as soon as possible, so that Southern Sudan can offer the so much needed legal education, instead of having to rely for 100% on education abroad. The Government of Southern Sudan will need well educated legal professionals to further build up its institutions, and it is here where

CILC will try to assist where needed, based on similar work we do in for example Rwanda and Uganda. We do this in the framework of our fragile states program, an area where we have built up considerable and specialized experience, such as in Afghanistan and Kosovo. Southern Sudan, as well as Afghanistan, are unique in the sense that they lack a history and tradition of modernized

legal systems, and this requires a deep understanding of the local context and the priority needs that these countries face. CILC hopes that in partnership with other development partners it can make a contribution to regain stability in Southern Sudan through the delivery of legal education.

*Marc Holtkamp
CILC Project Manager*



Georgian Art with an Extra Dimension

On December 15, 2008 the “Kopala Art Gallery” in Tbilisi, Georgia, hosted an unusual exhibition and sale of art works that were created by persons with mental health problems.

Different types of skilled and beautiful artistic works, such as painting, knitting, embroidery, tapestry, wood carving and bee wax candle work were presented to representatives of the professional community, foreign embassies

and organizations and the public at large in Tbilisi. The exhibition took place in the framework of the project “Georgia: Improving the Human Rights Situation through Upgrading the Mental Health Care and Inclusive Education”



and it was dedicated to the social support of people with mental health problems and their rehabilitation in society. Funded by the Social Transformation Program (Matra) of the Ministry of Foreign

Affairs of the Netherlands, the project is being implemented by CILC, Global Initiative on Psychiatry (GIP-Tbilisi) and Georgian Health Law and Bioethics Society (GHLBS). The poster of the Exhibition is composed of various paintings of Gela Djincharadze who has been creating his artworks for about 3 years. His paintings may vary but they remain spiritually related inasmuch as they all express the inner world of a human being through their bodily form and appearance. Indeed “there is sun in every one, it needs only getting a chance to shine”.

*Tamar Okujava
Project Manager Global Initiative
on Psychiatry – Tbilisi*

CILC CORE BUSINESS

The Innovation of the Rule of Law

The rule of law is the most important ordering and governance mechanism known to us. Although innovation is nowadays high on the agenda in both the public and private domain, it rarely concerns the rule of law.

Apparently, innovation and the rule of law are not concepts that naturally go hand in hand. This can be explained from the conservative character of the rule of law: it is focused on order and status quo and its orientation is mainly top down. Innovation, on the other hand, often comes from bottom up and is firmly rooted in society; it is creative and flexible.

However, the relation between rule of law and innovation is closer than it seems at first sight. The justice and peace that should result from the rule of law is essential in daily human lives, like clean air and water. Rule of law is thus closely related to a prosperous life and meaningful and constructive mutual personal relations. The innovation of the rule of law needs to maneuver between chaos and organization, between freedom and direction, between creativity and practicality. In-between lie the opportunities

for more justice, increased predictability and cultural meaning.

Four rule of law organizations in The Hague - HiiL, Microjustice, the European Academy for Legislation and CILC - have decided to collaborate in this challenging field of opportunities in the so-called Innovative Rule of Law Initiative (IRI). The initiative is being financed by the Dutch ministry of Economic Affairs in the context of the program Peaks in the Delta (*Pieken in de Delta*) that stimulates innovative projects to strengthen and support the regional economy and lead to a better international competitive position.

IRI has been set up as an open forum. It provides for the collection of ideas for processes, products and services deemed unique, innovative and promising for the strengthening and improvement of the rule of law. The participants are in first instance the four IRI

partners, but broader participation is an essential component of the concept and will be actively pursued. The initial focus will be on a variety of products and services in legislation and regulation: the application and distribution of justice, procedures that provide individuals with effective access to legal protection and conflict resolution, methods of constructing legal systems in developing countries and countries in transition, measuring the quality of legislation and the legal system, knowledge sharing and development, and supporting IT applications. Meanwhile the four IRI partners will work on the development of an Innovation Model - a generic description of an innovative product development process. IRI attaches much importance to seek its input and ideas in the innovation process together with the business sector and other social organizations. In order to achieve innovation, five successful guiding business innovation principles have been identified: the vision to create, systematic processes that stimulate creativity, reward and recognition systems, focus on needs, and growth oriented leadership.

CILC’s input in the partnership consists of a comparative study on its practical experiences in



the transfer and exchange of knowledge and expertise in the past years on administrative law in Serbia, Estonia, Lithuania and Azerbaijan, resulting in a CILC toolkit on the do’s and don’ts in the international transfer of knowledge on administrative law. If the outcome of this process proves to be successful, toolkits on other legal issues will be developed as well. This innovative working process provides for the opportunity to make other and new connections between countries, legal themes, partner organizations, CILC expertise and project management methods. CILC trusts its added value and positive outcome.

*Marie José Alting von Geusau
CILC Director*

EDITORIAL

CILC is in motion and the actual challenge is to keep the pace and translate this dynamic into the strengthening of the rule of law in the countries CILC has committed itself to. Working for almost 25 years in this field CILC has developed a strong identity, working methods, a network and a CILC culture. The desire to keep up the quality and to anchor the knowledge and experience in rule of law development is wished for by the CILC staff, the partners and experts, and the CILC donor community. How can CILC be most effective in transferring knowledge and experience to its partners and vice versa, what do and can we learn from them? And how can partners learn from each other? The question is what the preconditions and circumstances in this process are, both on individual and collective/organizational basis, that facilitate and accommodate the transfer. As far as I can see it all boils down to 'learning'.

A couple of years ago the concept of the so called 'learning organization' has been developed by Stanford professor Peter Senge. He defines a learning organization as one that facilitates the learning of all its members and consciously transforms itself and its context. The insight that an organization was not only meant

for 'production' but also for the benefit of its employees, and through them to the organization as a whole, was innovative at the time. The benefits of this innovation have been demonstrated that successful learning organizations maintain levels of innovation better, respond better to external pressures, create better linkages of resources to 'customer' needs, show improved quality of outputs at all levels, are more people oriented and develop an increased pace of change within the organization. How to reach this appealing perspective, both for the internal CILC organization as to the external CILC work in its projects all over the world, its expert network, its relationship with its partner organizations and strategic partnerships?

According to Senge, the following five strategic characteristics should be developed. The first one is 'systems thinking', based on the belief that the component parts of a system can be best understood in mutual relationships with each other and with other systems, rather than in isolation. "We learn best from our experience, but we never directly experience the consequences of many of our most important decisions." We tend to think that cause and effect will be relatively near to one another. In order to

truly grasp the consequences of our actions we need a broader framework. Secondly, personal mastery is needed, the discipline of continually clarifying and deepening our personal vision, of focusing our energies and of developing patience. Individual learning does not guarantee organizational learning but without it no organizational learning occurs. To put it in legal terms: individual learning is a *conditio sine qua non* for organizational learning. An additional argument to develop a culture of personal mastery is based upon research that has shown that most learning in the workplace is incidental, rather than the product of formal training. Thirdly, mental models, ingrained assumptions, generalizations should be challenged by an open culture that promotes inquiry and trust. Fourth, an internalized vision is needed for people to excel and learn, not because they are told to, but because they want to. The challenge is to translate a vision statement into shared visions that galvanize an organization and that creates a common identity that can provide focus and energy for learning. Last but not least team learning, the accumulation of individual learning, should be fostered. It starts with 'dialogue' (dia-logos in the sense of free-flowing) in order

to suspend assumptions and enter into a genuine 'thinking together'. But it also involves the recognition of patterns of interaction that undermine learning.

Reality is stubborn, however. CILC has all characteristics at its disposal in both the internal and external processes, but scores on some stronger than on others. Experience has learned that the real concrete changeover can only be successful in an environment that is prepared to reach a balance between change and stability. It makes learning a paradox: it can only be accomplished when you are convinced of its necessity.

CILC moves ahead on this paradoxical path, investing in its organizational structure, strategic partnerships and networks, improving its personal performance, moving away from 'group and expert think', enjoying open exchange of ideas, experience and knowledge, in its overall aim of strengthening the rule of law to stabilize and develop all inclusive societies. A learning organization in a learning process. In this I trust the wisdom of the famous Buddhist proverb: "When the student is ready, the master appears."

Marie José Alting von Geusau
CILC Director

CILC ANNOUNCEMENT

Clinic on Legal Reforms in the Western Balkans

On Wednesday 25 November 2009 CILC organizes a Clinic on "Legal Reforms in the Western Balkans" in The Hague.

At present, all countries in the Western Balkans are involved in a complex process of legal and judicial reforms. The post-conflict character of the region strongly determines the opportunities for success and failure. In the CILC Clinic "Legal Reforms in the Western Balkans", moderated by Eric

Vincken, a platform will be offered for a discussion and dialogue in which the historical and societal backgrounds will be clarified and the complex processes will be explained by using a country case study (Serbia) and a topical cases study (enforcement law). In addition the Clinic offers the possibility to address the challenges of regional cooperation in this region. CILC is most honored to welcome Ms Olivera Purić, head of the Rule

of Law department from UNDP in Serbia, Mr Miloš Baltić from the GTZ Open Regional Fund for Legal Reforms in Southeast Europe and Mr Jos Uitdehaag, the key expert of the Balkans Enforcement Reform Project (BERP). The programme can be downloaded from www.cilc.nl. Admission is free. If you are interested in attending the Clinic please send an e-mail message to office@cilc.nl.



New website www.cilc.nl

Last summer, CILC launched its new website. Please take a look! Here you can find information on the latest developments, projects and other CILC business.

Dutch experts who are interested in working for CILC are kindly invited to register by means of the on-line form.