

“Challenges of Self-represented litigants in person and Strategies to meet those Challenges”

Commentary: The Kiribati Experience by Sir John Muria, Chief Justice of Kiribati

The Honourable Chief Justice Warren has highlighted the challenges facing self-represented litigants and some of the strategies suggested to address those challenges. I believe it is fair to say that the challenges facing self-represented litigants are common features in many of our jurisdictions.

Many studies have been done in Canada, UK, Australia, New Zealand and other places, on the subject, and in particular on the effect of self-represented litigants in our justice system. The findings of those studies are wide and varied, and present a real challenge to the question of access to justice from the perspective of a self-represented litigant. It may well be quite apt to note, as one litigant had stated in the Canadian study that there is *“no more fairytale about access to a justice system”* because the problems are real.

My commentary on the topic of self-represented litigants, is very much a sharing on my part, of our experience on self-represented litigants in Kiribati.

Kiribati is a tiny country lying on the Equator and sitting at the centre of the Pacific Ocean, comprising of 33 atolls and coral islands, spreading over 3.5 million square kilometers (or 1.3 million sq. miles), most of which is water. The actual land area is only 800 square kilometers or 310 square miles. The population of Kiribati is just about 107,000 people who are all facing the mammoth challenge of access to justice as they struggle to face the reality of climate change.

In our small developing jurisdictions, such as Kiribati, self-represented litigant is not so much a consequence of a failure in the justice system, rather it is very much an existing reality ever since the introduced justice system was established in the country. It was then, not yet regarded as a problem since legal representation was not available nor was it regarded as a need in those days. People brought their own cases personally to the Courts. There were also very few disputes brought to the Courts in those days.

As progress in the country's development sets in, litigation before the courts in Kiribati has increased. The number of unrepresented litigants has also increased in all cases – criminal, civil, family and land. The Legal Profession had recently been established, but it is a small profession and still in its embryonic age. There are presently about 50 local I-Kiribati qualified lawyers in the country. Of the 50 qualified lawyers, only 11 are in private practice, 4 in the Office of the People's Lawyer (like the Public Solicitor's Office in some jurisdictions) and the rest are in Attorney General's office and other Government Departments and its agencies. In real terms, therefore, only 15 qualified lawyers are available to offer legal representation to litigants in the entire country.

Of course, and even more challenging is that only 4 of the 15 would be available to offer legal representation to the general public and litigants who cannot afford private lawyers. Kiribati's population is about 107,000 scattered over an area of 3.5 million square kilometers, most of which is water. The volume of cases channeled through the Courts in Kiribati is well beyond the stamina of the small band of legal practitioners who are available in the country at the moment.

A demonstration of the challenges faced by the justice system in Kiribati, when it comes to the question of self-representation, can best be gauged by the following statistical report given to me by my Court IT officer. The figures are for the Magistrates Courts in South Tarawa:

“Report in % per Represented and Self-Represented from November 2012 to November 2013”

Period	Type of Cases	No. of Cases Filed	No. of Cases Represented	Represented in %	Self Represented in %
Nov 2012 to Nov 2013	Land	3176	70	2.21	97.79
Nov 2012 to Nov 2013	Criminal Betio	1763	30	1.7	98.3
Nov 2012 to Nov 2013	Boundary Betio	383	28	7.3	92.7
Nov 2012 to Nov 2013	Civil Betio	1500	135	9	91
Nov 2012 to Nov 2013	Criminal Bairiki	386	10	2.5	97.5

Nov 2012 to Nov 2013	Civil Bairiki	751	41	5.4	94.6
Nov 2012 to Nov 2013	Civil Bikenibeu	612	36	6	94
Nov 2012 to Nov 2013	Criminal Bikenibeu	1102	11	1	99

The above figures reveal that more than 90 % of the cases dealt with by the lower Courts in Kiribati were those of unrepresented or self represented litigants.

Cases dealt with by the higher courts (High Court and Court of Appeal) are, however, in a different and almost in an opposite position is so far as criminal and civil cases are concerned, as shown by the following Table:

High Court Cases 2013

Period	Type of Cases	No of Cases Filed	No. of Cases Represented	No. of Cases Self-Represented	% of Self- Represented
2013	Criminal	44	44	0	0

2013	Civil	103	103	0	0
2013	Crim. Review	9	9	0	0
2013	Crim. Appeal	11	8	3	27.3
2013	Civ. Appeal	33	16	17	51.5
2013	Land Review	23	9	14	60.87
2013	Land Appeal	99	55	44	44.44

Court of Appeal

Period	Type of Cases	No. of Cases Filed	No. of Cases Represented	No. of Cases Self-represented	% of Self-represented
2013	Crim. Appeal	5	5	0	0
2013	Civ. Appeal	12	12	0	0
2013	Land Appeal	1	1	0	0

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With the number of legal practitioners available to go around, the question of self-represented litigants particularly, in the lower courts, will continue to be part of an everyday living reality in our justice system in Kiribati.

In some places, self-confidence may be one of the reasons for self-represented litigants to conduct their own cases before the courts. In small and under-resourced jurisdiction, such as Kiribati, confidence to represent oneself has, very often, little to do with the self-represented litigant's decision to bring his or her own cases to the courts. He has to bring his case in person to the courts because of the limited number of legal practitioners available or he can wait for a lawyer to be available to represent him, in which he may have to wait for a very long time. The majority of those who bring their cases to the courts in Kiribati, do so without legal representation.

Cost of litigation, however, is one of the hindering factors to securing legal representation in litigation in Kiribati. Where litigants are able to consult available legal practitioners, they are likely to face a high bill of costs and so may decide that the only way to bring their cases to the courts is by self-representation. There are, of course, litigants who are prepared to pay for legal representation, despite the high costs. In such cases and in particular, land cases, the members of the family very often contribute towards the payment of the costs.

The hard reality on the ground, in a small jurisdiction like Kiribati, is that there are simply not enough legal practitioners available to meet the demand for legal representation for all cases coming before the courts. A typical answer from a self-represented litigant, to the question from the court, "Would you like to see a lawyer?" the answer would go something like: "I went to consult a lawyer, but he/she was already instructed by the other side, and the other 3 lawyers in the office, at one stage or another, had already represented the other side in other matters." In a small society with a small band of legal practitioners available, the risks are too imminent to do otherwise than to accept the fact that self-represented litigants are very much part of the justice system under which we operate.

There is also the risk of vexatious and unmeritorious claims brought to the courts by self-represented litigants. In my experience, this was usually done by self-professed experts in litigation who felt that they could handle their own case better than if the lawyers could do. Either that or the self-represented claimants were those who kept filing their cases despite the court's decision against them.

The challenges associated with self-represented litigants are many, as have already been highlighted by Chief Justice Warren in her presentation. Delay in dealing with cases, loading the registry court staff with extra responsibility of explaining the court practice and procedure to self-represented litigants, and difficulty in meaningfully engaging self-represented litigants in managing their cases. It is difficult enough when one party is self-represented and the other is represented, but it is even more challenging when both the claimant and defendant are self-

represented. This is a great challenge for the courts and the justice system in a small jurisdiction, like Kiribati.

The approaches taken by our courts in our small jurisdictions to handle the challenges are very much basic and pragmatic. As the availability of resources is very limited, the court staff and very often the courts themselves, have taken on the extra task of explaining to the self-represented litigants the importance of seeking legal representation. Usually, most litigants opted for self-representation, in which case, the courts will then take the next step of reiterating to them the need to observe the practice and procedure of the courts so as to help them put their cases as clearly as they can to the courts.

A final comment that I wish to make is that, self-represented litigants are going to continue to exist in our justice system for some time to come. In that regard, some measure of assistance will have to be put in place to help the self-represented litigants put their cases properly before the courts, and to understand the outcome of their cases. Such measure, I suggest, goes beyond the tasks which the courts are able to render in the cases coming before them. It should include measures that will address barriers[♦] to access to justice, so that self-represented litigants know that they too can have a fair-go under our justice system.

[♦] Costs barriers (costs of accessing justice); formal barriers as to structure, formality and language of court; social barriers resulting in the perception that justice is for the rich, not the poor.