



**ROLE UK**  
Rule of Law Expertise

**PEER-TO-PEER  
IN ACTION: A  
CASE STUDY  
OF SIFOCC**



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## ROLE UK

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# CONTENTS

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**01** Introduction

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**02** Introduction to SIFoCC

---

**03** Planning the Observation Programme

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**04** The Observation Programme in Action

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**07** Attending the New York Conference

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**09** Lessons Learned and Initial Outcomes

---

**12** Conclusion and Next steps

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# INTRODUCTION

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In 2018, ROLE UK supported a pair of assignments working with the Standing International Forum of Commercial Courts (SIFoCC), facilitating an incoming observation visit from judges from three jurisdictions to the UK, and subsequently their participation at the second SIFoCC conference in New York in September 2018. This activity was the first of its kind for SIFoCC, and represented a significant departure from ROLE UK's usual model of assignment support, which typically involves providing assistance to deploy UK pro bono expertise overseas.

This short paper is to bring together the evidence from these assignments and their outcomes, as well as from ROLE UK's other elements of support to SIFoCC in Years 4 and 5 of the Programme, namely the support provided for Justice Kamere, President of the Commercial High Court of Rwanda to attend the inaugural SIFoCC Conference in 2017, and the costs of the Chief Justice of Iraq to attend the New York conference in 2018. It has two main objectives:

1.

To draw out lessons learned on judicial peer-to-peer working, for the benefit of ROLE UK's judicial stakeholders in the UK and partner countries;

2.

To assess the value of the incoming visit model and its suitability for future assignments.

With the buy-in from Chief Justices from each jurisdiction, the assignments have both improved the capacity of the individual justices who joined the observer programme, and helped inform wider judicial reform priorities on their return, including case management, use of technology, and the building of long-term peer-to-peer relationships between the judiciaries involved.



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# INTRODUCTION TO SIFoCC

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SIFoCC, established in 2017, is a forum which brings together the world's commercial courts in order to facilitate collaboration between members and allow courts to make a stronger contribution to the rule of law in their respective jurisdictions. Members of SIFoCC are drawn from the senior judiciary in a variety of jurisdictions, encompassing places where commercial court practice is well-established, as well as countries with newer commercial courts, or who are still building the institutional capacity needed to effectively resolve commercial disputes. By developing peer-to-peer networks, particularly between established and developing jurisdictions, one of SIFoCC's aims is to support increased growth and investment, in line with recommendations from the World Bank on

the importance of effective dispute resolution mechanisms for countries seeking investment.

Because SIFoCC is a gathering of commercial court representatives on equal terms, technical assistance undertaken under SIFoCC's name lends itself best to a peer-to-peer model, an approach which prioritises leadership from "external" peers rather than the supply driven model which has been heavily criticised as a development approach.<sup>1</sup> SIFoCC's conferences and the workstreams that are developed in-between them, promote information sharing and collaboration between judges in all configurations: amongst developing courts, and established courts, and between the two.



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<sup>1</sup> <https://www.roleuk.org.uk/resources/peer-peer-approaches-pro-bono-rule-law-support>

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# PLANNING THE OBSERVATION PROGRAMME

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In advance of the second SIFoCC conference in September 2018 in New York, the SIFoCC secretariat in London approached ROLE UK about the possibility of developing an observation programme for individual judges from selected SIFoCC members, or potential members, in developing countries, to visit countries with established commercial courts. The impetus for developing this programme came from the first SIFoCC meeting in 2017 and the call from developing country members for assistance from established members to build capacity and promote discussion on best practice. It also followed ROLE UK support to a representative from the Rwandan judiciary who attended the first SIFoCC conference in London in May 2017, providing a logical follow-up to the forum's work supporting developing jurisdictions.

The first cohort of observer judges was originally to be drawn from The Gambia, Iraq, Rwanda, Sierra Leone and Uganda. These jurisdictions were the five SIFoCC member countries identified as potentially benefitting most from the visit, both individually and in relation to

each other, as one of the outcomes of the assignment would be to build a long-lasting collegiate relationship between the participants. However, due to challenges in timing and in securing nominations from the respective Chief Justices in these countries, the visit was revised to incorporate representatives from three jurisdictions: The Gambia, Uganda, and Sri Lanka. ROLE UK therefore approved support to a two-part assignment: first, supporting the judicial observation visit in London, UK; and second, supporting the same three judges to travel to the second SIFoCC conference in New York, to feed back on the lessons learned from their observation visit to the wider SIFoCC audience and to increase their opportunities for peer-to-peer networking, as well as strengthening links between the judges in their own cohort. The participation of all three countries was to feed into wider programmes of cooperation between the England and Wales Judicial Office and their jurisdictions.

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# THE OBSERVATION PROGRAMME IN ACTION

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Participants spent a week with the Commercial Court and the other Business and Property Courts in London, setting out to improve their knowledge and confidence of a range of areas, including:

- Effective case management strategies in commercial cases
- The use of technology
- Management of pre-trial issues
- Techniques for encouraging settlement
- Handling of trials
- Decision-making and reasoning

The programme provided an intense schedule of observations, meetings with senior judges and officials and interactions with other relevant institutions in the UK legal sector including the International Law Books Facility.

As the judge for day to day leadership responsibilities for SIFoCC, the observation visit in London was led by Mr Justice Robin Knowles CBE. Mr Justice Robin Knowles, together with

the SIFoCC secretariat, led the judges in a full programme of study which encompassed observation, reflection, and discussion. The pro bono time dedicated by Mr Justice Robin Knowles was complemented by other UK specialists including:

- The Lord Chief Justice, Lord Justice Gross, Mr Justice Andrew Poppelwell, judge in charge of the Commercial Court at the time of the programme
- HHJ Waksman (as he was then) of the Commercial Court
- Mr Justice Birss and Mr Justice Fraser of the Intellectual Property Courts, Tech and Construction Court
- Joe Quinn, senior listing officer of the Commercial Court
- Daniel Hull, Commercial Court listing officer
- Wilf Lusty, senior operations manager at the Business and Property Courts
- Karen Brewer of the Commonwealth Magistrates' and Judges' Association

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Together these individuals gave a significant amount of pro bono time over the week, allowing the judges to meet a much broader cross section of judges and judicial staff than would have been possible had the visit been outgoing from the UK.

In their debrief with ROLE UK, judges asserted that the programme of the study visit was well suited to their needs, and each identified different aspects of the programme as particularly useful. For Justice Anna Bitature from Uganda, the opportunity to learn about case management and procedures at a practical level was highly prized; while for Justice Zainab Farida Jwara Alami, from The Gambia, the opportunity to have meaningful peer-to-peer conversations with a range of judges and to access legal books through meeting with the International Law Books Facility was considered most useful. The judge from Sri Lanka, Justice Mahinda Samayawardhena, noted that the practical nature of the work was useful even when particular elements weren't transferrable, for example, introducing technology: "When there are computerised systems, it is often thought that things then 'magically improve', however there are wider systems that enable this and it was useful to see and understand this in context."<sup>2</sup> The opportunity to watch an experienced sitting commercial court judge

in action was also highly prized by all three participants, who referred to engagement with Mr Justice Knowles as "a masterclass" in the development of reasoned, brief and timely rulings.

As well as promoting north-south links between the established commercial court system of England and Wales and the developing judiciaries in each country, the visit was also intended to build links between the three observers over the course of the week and beyond. To stay in contact with each other between London and New York and subsequently after the programme, Justice Alami noted "we maintain collegiate links with each other through WhatsApp to share ideas and share questions and thoughts",<sup>3</sup> which they have continued to use after the completion of the programme. SIFoCC envisages that this more informal networking between this small cohort of observer judges will be complemented in future years by more formal communications, which also support connections across the years where participants will not have had the opportunity to build personal links.



## KEY OPPORTUNITIES

- The opportunity to learn about case management and procedures at a practical level
- Meaningful peer-to-peer conversations with a range of judges
- The opportunity to watch an experienced sitting commercial court judge in action was also highly prized



***“We maintain collegiate links with each other through WhatsApp to share ideas and share questions and thoughts.”***

**JUSTICE ALAMI, *The Gambia***

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# ATTENDING THE NEW YORK CONFERENCE

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To follow up on their experiences in London, the judges subsequently attended the second meeting of SIFoCC in New York. The meeting included talks, roundtables and discussions with judges from across the 35 SIFoCC member jurisdictions from around the world, providing a significant opportunity for judges to share experiences, learn from each other and see in action what they learned during their time in London. The judges were able to reflect on the lessons learned from the London observation visit by listening to the experiences of other commercial jurisdictions, participating in relevant sessions and presenting to the 100 or so delegates on the results from the observation visit; and the progress each judge had subsequently made.

All three judges were active participants in the SIFoCC conference as part of their respective country delegations. Addressing the forum, the judges outlined what they had gained from the London observation visit and how they have implemented and shared lessons learned upon returning to The Gambia, Uganda and Sri Lanka. Following the assignment in London, all

three judges made recommendations to their Chief Justices, in particular, the value of developing a commercial court guide similar to that used by the Judiciary of England and Wales, and of progressing the use of technology. Justice Mahinda Samayawardhena noted that the observation visit had allowed the judges not just to learn theory, but to learn how to put theory into practice effectively, and the judge from Uganda stressed the importance of being able to meet with individuals from both within and outside the Judiciary.

ROLE UK also supported the attendance of the Chief Justice of Iraq, Faisal Zidan, at the conference, as part of a partnership between the judiciary of Iraq, the judiciary of England and Wales and the British High Commission in Iraq. This trip, which represented Iraq's sole and first presence at the conference, was followed up by a visit to London at which the Chief Justice spoke extensively about his experiences at the conference and the intended follow-up. Following his visit, the Chief Justice convened a cross-government meeting on the status of commercial law in Iraq, set up a workshop for

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experience sharing with the commercial courts of Kuwait and Qatar, and facilitated English language lessons for a shortlist of judges from whom a future participant in the observer programme would be selected. Although the Chief Justice's attendance was a separate assignment to the observation programme, the

short notice support given to this activity was only made possible because of the existing relationship between ROLE UK and SIFoCC: demonstrating how sustainable relationships can create opportunities for strategic interventions with a wider range of stakeholders and are a catalyst for long term impact.



## KEY REFLECTIONS

- The observation visit had allowed the judges not just to learn theory, but to learn how to put theory into practice effectively
- It also stressed the importance of being able to meet with individuals from both within and outside the Judiciary

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# LESSONS LEARNED AND INITIAL OUTCOMES

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As noted above, these assignments were a departure from ROLE UK's model, which usually involves the deployment of UK pro bono specialists in developing countries. From a technical and logistical perspective, the delivery of the incoming visit presented a challenge to both SIFoCC and ROLE UK, and the first visit to London underscored the need to set clear expectations with the judges about the purpose of their visit and the practicalities of spending time in London as a visiting professional. The lessons learned from London were able to be instituted in New York and the judges felt this second leg of their trip went more smoothly from a logistical perspective.

All three judges were highly positive about the

activity itself and in debrief conversations immediately afterwards, identified specific areas that they wanted to take forward in their respective jurisdictions. In New York, all reported that they had made some changes to their case management processes, such as the use of ex tempore judgements. All three judges had also directly made recommendations to their respective Chief Justices, including development of a commercial court guide. Justice Anna Bitature from Uganda had also been in touch with the International Law Book Facility, a charity which donates relevant law books to developing jurisdictions with whom the judges met in London and secured a shipment of books for the commercial court.

## INITIAL OUTCOMES

- Made some changes to their case management processes
- Directly made recommendations to their respective Chief Justices, including development of a commercial court guide
- Secured a shipment of books for the commercial court



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## LESSONS LEARNED

- Buy-in from Chief Justices makes it more likely that recommendations will be taken on board

From an institutional perspective, the participants' meetings with their respective Chief Justices is an important step in ensuring that the changes which could arise from the SIFoCC visit go beyond behavioural change for the individual judges and can improve the workings of commercial courts in each country in a way which is targeted to their needs. From an activity design perspective, this also reinforced the need to have buy-in from Chief Justices on their participation in the observer programme, as it makes it more likely that recommendations will be taken on board and used in planning. Requesting Chief Justices to nominate their own representatives within a set of guidelines makes it more likely that the individual chosen will be in a good position to make these recommendations, and is the only realistic way to sensitively secure nominations from the range of jurisdictions who might make up future SIFoCC delegations.

From the perspective of SIFoCC, having Mr Justice Knowles willing and able to dedicate an intense week to supervising and hosting the judges was also a significant contributing factor to the success of the assignment, and the SIFoCC secretariat felt that the observation would not be a "sustainable" programme without dedication at a senior level to provide pro

bono support to the delegation. The link to the SIFoCC conference itself – in this case, ensuring that judges could attend New York as part of a separate follow-up trip – has also contributed to the sense of sustainability around the visit, by raising the profile and enthusiasm of other SIFoCC members for participating in the scheme either as observers or as hosts. Attendees at the conference also included the World Bank, who attended the feedback session and noted that SIFoCC's mission as a forum makes it possible for them to work together.

Of the three jurisdictions which participated in the first training, The Gambia is of particular note because of the way it has linked in to the developing partnership between the Gambian Judiciary and the Judiciary of England and Wales. In late January 2019, The Gambian Judiciary held a week long Magistrates' training programme on case management, judicial ethics, judgement writing and training of trainers. This training was delivered by Justice Robin Knowles, Martin Picton, Peter Thornton and Dr Karen Brewer of CMJA. Justice Zainab Alami, the Gambian SIFoCC observer programme participant, also attended the opening day along with a significant number of senior judges, and delivered a presentation



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## ONGOING OUTCOMES

- The visits have directly informed priorities for the Gambian Judiciary; including training for

Magistrates on civil case management and the development of the first ever theft sentencing guidelines in Gambia

civil case management. The remainder of the day contained an interactive session on the same subject, a priority which had been identified by Justice Alami during the observation visit and taken forward with UK expertise from the judicial office of England and Wales. In addition, this highly successful training resulted in a set of guidelines for theft sentencing – the first of its kind in the Gambia.

In the Gambian case, there is therefore evidence to suggest that the knowledge and perspectives Justice Alami picked up during the observation visit were useful in affirming priorities for the Gambian Judiciary as a whole. Furthermore, her participation in the visit in London has contributed to the ongoing partnership between the UK and Gambian judiciary at a time of key transition and reform for the justice sector in Gambia. Furthermore, the relationship with SIFoCC is likely to continue to increase capacity and potential for peer-to-peer learning on case management through the forum's workstream on creating working groups. One such group being established is on case management, with a view to producing a paper

and presenting the findings at the third conference in 2020. Justice Alami, with the support of the Gambian Chief Justice, has expressed interest in joining the working group as it forms.

Identifiable outcomes in the commercial courts of Uganda and Sri Lanka have been less significant than those in The Gambia, at least at this early stage. However, it is important to note that substantive information flows between the judges and SIFoCC and ROLE UK have been limited outside of the visits themselves. Using lessons learned from previous assignments with judicial partners, ROLE UK were aware of the likelihood of low information from judges on their return and information gathering debriefs were built into both the London and New York visits. SIFoCC intends that the three judges will be active participants in future forums, beginning with Singapore in 2020, during which they will also meet with the next cohort of observers. This ongoing involvement will not only benefit the judges, but will also allow for more information gathering on the part of SIFoCC to understand and evaluate the long-term impact of the programme.

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## CONCLUSION AND NEXT STEPS

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As a peer-to-peer process involving stakeholders from multiple jurisdictions, ultimately the results of each judge's visit under the SIFoCC observer programme will be led by the priorities in each individual judiciary. However, where these fall within long-term peer-to-peer partnerships, especially those supported by ROLE UK, there may be potential for follow-ups, like those in The Gambia, which respond to those identified priorities and also incorporate opportunities to reconnect with observer programme alumni and understand their subsequent experiences.

The design of this visit was always intended to be the first iteration of a multi-year observer programme, encompassing not just the participants of this year but other developing jurisdictions who are current or prospective members of SIFoCC. As noted above, one of the outcomes of the Iraqi Chief Justice's participation in the conference was to build interest in having an Iraqi judge attend the next visit – an opportunity which would fit within existing work being done to strengthen the rule of law and commercial sector in Iraq as part of a holistic approach to improving peace and security. It is expected that other jurisdictions with whom the judicial office have been working closely, and who were initially tapped as observers on this visit – such as Sierra

Leone or Ghana – could also be future participants, although this should be assessed by the SIFoCC secretariat based on their understanding of the jurisdictions that would truly benefit from a visit at their particular stage of development.

In order to expand the reach of the observer programme, the SIFoCC secretariat has proposed that programme hosts rotate before every conference, with the new host jurisdiction leading on the preparations for the assignment with inputs from the previous host to ensure that lessons and best practice are passed on. Thus far, interest has been expressed by Australia and Singapore in hosting the next observer visit. While this will allow the observer programme to be a truly international peer to peer programme in line with the forum's wider goals, it does mean that future iterations of the observation are unlikely to be within ROLE UK's programmatic remit as a supporter of rule of law partnerships involving UK pro bono legal expertise. However, if funding can be secured for future iterations of the observer programme, it has the potential to be a valuable aspect of SIFoCC's offer to developing jurisdictions and an instructive example of how peer-to-peer judicial work can be used to strengthen connections and share lessons between commercial court judges for the benefit of all.

