



The Indomitable Yash Pal Ghai: Being Kenyan in Kenya

By Seema Shah



Ghai returned to Kenya in 2008, “with no expectations” of getting involved in constitutional work again. “We wanted to rest,” he says, remembering the decision that he and Cottrell Ghai took to settle in Nairobi. “We felt we were getting old.” Despite what he may have envisioned as a quiet life, however, the Ghais are never far from the limelight. Manji describes the Ghais’ life: “For all their living in Muthaiga in a nice house, all they do is work — and work and work and work.”

Ghai’s experience in and service to various nations have afforded him multiple opportunities to make a home outside of Kenya. “With his outstanding legal training, he could easily have developed ‘big man’ syndrome and sat in London and held court. He could’ve made himself an extremely nice life,” says Manji. Cottrell Ghai explains the decision to return to Kenya. “There was a conviction that he wanted to be Kenyan in Kenya; he still does feel pretty strongly Kenyan.”

Importantly, Ghai’s conception and quiet demonstration of his Kenyan identity has allowed him to carve out a special niche for himself in his home country. Indeed, Githongo credits Ghai’s ability to rise “above tribe” as one reason why Moi agreed to appoint him as Chair of the CKRC. “Yash made sense for Moi, who was in a political corner. He had no tribe but he was Kenyan. He was very sharp and very respected, but he wasn’t affiliated with any big ethnic groups. Moi, in his pure political, ruthless analysis, thought, ‘This is the right guy.’” Over the years, Ghai’s work with various

communities around Kenya has cemented his reputation. “Yash transcends. People see him, ordinary people see him as just Yash,” Githongo says.

Ghai’s model of Kenyan-ness has inspired others. Says Manji, “We grew up in the Moi era, and we were told not to engage in politics. Keep your head down, say nothing. I tried once or twice and was told very clearly not to talk politics at the table. There was this Asian tendency to quietly get on with your life and don’t let anyone know your thinking. Growing up under Moi, you weren’t entirely sure there was any kind of contribution you could make. What I loved about Yash was that I was suddenly free to think and talk about Kenyan politics and be political. Through his authority, he gave *me* authority to be political. There was something there that liberated me. I saw a model of how to be Kenyan and Asian. He really showed me how to make a contribution, and one way in which he did that is by demonstrating how to feel Kenyan by transcending tribe.”

It is unsurprising that – since returning to Kenya – both Ghais have continued to dedicate much of their time and energy to constitutional work. Indeed, they continue to invest time and energy in the Kenyan Constitution, ever-dedicated to its power to effect change. Manji refers to Ghai as “a constitutional optimist and something of an idealist.” Since resigning from the CKRC, Ghai has continued to publicly write and speak about the Constitution. On many occasions, he has also advised the government on constitution-related issues and developments. His “Katiba Corner” in *The Star*, which he and Cottrell Ghai began in late 2013, continues to offer the latest analysis and commentary – from themselves and other experts – on constitution-related matters in Kenya.



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The Father of the Constitution

Perhaps the Ghais’ most important contribution, however, and one that will house the professor’s legacy in Kenya for a long time to come, is the Katiba Institute (KI), an NGO dedicated to “achieving social transformation through the Constitution.” KI’s first Executive Director, Waikwa Wanyoike, recalls his enthusiasm for the position. “Yash is larger than life in academia and constitutional law. I knew his history quite well, and I knew he was very principled. He had gone into exile just because he didn’t want to compromise on his principles, and he had been extremely successful. There is no question that being able to work in an institution where Yash was the main person – for me – was icing on the cake. Who else would you want to work for with regard to constitutions in Kenya and globally? It was a moment of pride that I could associate myself with him and with an institute that he founded. Being able to take advantage of Jill as well, of her interest in and knowledge of law generally – again, that was a huge, huge bonus for me.”

KI is also a reflection of Ghai’s commitment to Kenya. There is a commitment to harnessing local expertise and building a strong base of highly skilled lawyers. Says Wanyoike, “How do you justify calling yourself an institute when you use consultants, when you aren’t a repository of expertise? We knew that, if we have the right people, even if we weren’t able to mobilize financial resources, we

would still manage. We also wanted to build a new group of technical experts for the future. We saw ourselves as an extension of teaching institutions, a place where people could come and learn about real life problems.” This extends to more than the training of lawyers. KI’s Executive Assistant says, “Before KI, I didn’t understand the constitution, but now — working with him — I have learned a lot. I can say I am more knowledgeable about my rights and I can interpret some of the articles, despite not being a lawyer. He has impacted a lot of people in terms of trying to offer trainings to different communities and the world. A lot of people are more knowledgeable and they appreciate and have pride in Prof. for what he has done for this country.” The focus on technical expertise goes hand in hand with broad inclusion. Wanyoike describes KI’s desire to focus on groups that ordinarily would not get attention. More than half of KI’s lawyers are women, and they appear before the Supreme Court more than other female litigators.

True to Ghai’s spirit, KI fights hard to stay true to its own mission and priorities, relying as little on donors as possible. “The programming of KI is not driven by donors or grants. 60-75 percent of litigation is not reflected in activity reports for donors. It’s being creative, based on the needs and demands of the country at the moment.”

And it has worked. Says Manji, “What you see in Katiba is the most robust lawyers you can imagine. Yash has got an incredible eye for good lawyers. Waikwa is a really good example - he is Kenya’s most brilliant lawyer. Everyone at Katiba is the same — the starting point is great lawyers and great legal minds and everything else follows.”



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Years of Exile

Both Ghais continue to be a mentor to many, including Manji, who describes how the couple took her under their collective wing when she became the head of the British Institute of East Africa. “They were absolutely exemplary in looking after me. Any time I wanted advice or anything I ever asked, they did for me. They were just outstanding.” Speaking of Ghai specifically, she says, “He’s my teacher, as well as a mentor and an advisor. He’s the grandfather of everything we are trying to do. There are many of us who feel that.” Mutunga concurs. “When I became CJ, he was a great mentor and advisor. He was one of the scholars and judges who inducted the Supreme Court in Mount Kenya Safari Club (Yash used his contacts to get us these prominent jurists). His contribution to the development of progressive jurisprudence based on the 2010 Constitution is exemplary. His and Jill’s work at the Judiciary Training Institute has been legendary.”

The Ghais also continue to support KI. Says Wanyoike, “At an intellectual level, they have always been very present, but at an administrative level they have not. They have always given us a lot of autonomy to operate, while also creating as much time for us as we have needed. People told me that Prof. is difficult to work with, because he is headstrong, but that was never borne out in my experience. He insists on integrity and honesty, and as long as he has confidence that is what is

driving you, he is not in your space. People don't know this. He has so much deference and respect for people who work for him. If there is ever a difference of opinion between him and the staff, he will almost always defer to what staff have decided. He is extremely loyal to people who work with him. This is at all levels."

Today, Ghai can often be found seated at the desk in the home office he shares with his wife, a large room whose walls, shelves and surfaces seem to spawn books. "It's like a bomb of papers," Githongo says with a laugh. "He is the uber big brain. Yash can stay up half the night and in the morning you have a written constitution... and it's flawless. It's astonishing stuff." And when he is seated in front of his computer, referring from time to time to one or the other miniature pyramids of books surrounding him, he appears the quintessential professor. At certain moments, when he pulls out his old, dog-eared copy of the Kenyan Constitution - peppered with his hand-written notes in the margins - to point to key sections and emphasize his arguments, he *remains* the quintessential professor.

Most days, Cottrell Ghai is seated across from him. "We never realized the sheer power and importance of the role of Jill in the beginning," Githongo recalls. "Jill came in a bit later, and when she became visible, people did not know how to place her. Then they realized that she's as formidable a mind as Yash. She's ferocious, totally big brained and knows her stuff. It's a team, a very formidable team. I don't think Yash would have made it this far, with the years of disappointments and betrayals, without her."



Yash Pal Ghai with his family

Ghai agrees, crediting his wife as his partner in thinking, writing and editing. Even if it is not a

jointly authored work, Ghai says, it is the product of “hours of discussion” with Cottrell Ghai. He is lucky, he says, to have such a valued professional partner in his wife. When asked about her career, Cottrell Ghai is dismissive. “I wasn’t *that* distinguished and I’ve never been *that* ambitious. I’ve always told Yash that the most interesting things I’ve done in my life have been because of him.”

Ghai also sees his children and grandchildren at least once a year, and he considers himself lucky to have made lasting peace with his ex-wife, who is now a friend. Vacations are sometimes extended family affairs. It is lucky, Ghai thinks, that it is possible to be one family in this way. Cottrell Ghai agrees, saying that seeing the children remains an important priority for her husband. She worries that he does not get more time with them. Ghai also maintains old relationships, taking the time to visit and vacation with his close friends, whenever possible. Whitford says, “I admire him to no end. I feel very lucky that he would regard me as a close friend. I certainly regard him as a close friend. We came from totally different upbringings, but we just hit it off. If he thinks well of me, I feel immensely grateful for that and flattered.”



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One of his most recent projects has been support of social justice centres in Kenya. Wanyoike describes his commitment to these centres, which are based mainly in Kenya’s poor, informal settlements. “He has actually contributed a significant amount of money to establishing social justice centres, but he won’t take credit for it.” Kavoi describes the impact of this work on Kenya today. Ghai’s support has allowed the centres to maintain offices and it has also sent students to university. He uses his networks to link the centres to other like-minded organizations, helping promote their impact. Githongo describes such work as exemplary of Ghai’s independent spirit and deep-felt conviction for promoting rights, especially amongst those who are most disempowered. “Yash is a very frustrating figure for [the elites]. He is retired and is hanging out with Mathare Social Justice guys. He should be at the country club; that’s the model.”

Increasingly these days, Ghai expresses a desire to withdraw from public life. He is working on a biography of his personal hero, Chanan Singh. It is a project that means a great deal to him, both because of the great admiration he had for Singh and because he promised his best friend – Singh’s son – that he would do it. “In the last year, I feel age with a vengeance. Things I write take three or four times longer than they used to.” And yet he seems rejuvenated by a walk through his neighborhood, where he is a well-known and beloved figure, inevitably greeted and often thanked by strangers. “It is a bit like being married to a rockstar,” Cottrell Ghai says, describing the public attention. Wanyoike remembers being star-struck long ago, before he had officially met Ghai. “In 2010, I was visiting Kenya, and I went to Uchumi in Sarit. I saw him there, shopping with Jill, and I had this huge urge to introduce myself and say hi. But then I thought, ‘When you are that well-known, you don’t want people to come up to you in the store.’ So I disciplined myself.” Cottrell Ghai says, however, that her husband enjoys the attention. “It gives him a warm feeling; he feels

appreciated by people in Kenya.”

It may seem strange that, after all the betrayals Ghai endured in his home country, he carries on with the same work, fighting for the same cause. According to Githongo, this is because Ghai’s work was always aimed at the common man. “When a watchman recognizes him, *that’s* what is more important for him, and *that’s* who he wrote the Constitution for.” He goes on, “Once Kenyans respect you for something, no one can take it away. The watchman on the road, the packers in the shops will give him that respect — not because he’s powerful or rich but because he has stood up for the people. Kenyans realize that the same people that have cheated them have cheated him. Ghai has been called “the man who solved the world,” a title at which he shakes his head. In Kenya, though, Githongo says Ghai is known as “*mtu wa roho safi* (a pure-hearted man). That’s the way ordinary people know him, describe him and appreciate him.”

Reflecting back on his career, Ghai says, “I always wanted to serve the people if I could. I have always been conscious that, if I have been doing something good, it’s because I probably had better opportunities than others.”



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Githongo believes that Ghai’s work will continue to impact Kenya for generations to come. “His contribution to human rights is without equal. He is in the very fortunate position that people will appreciate him more and more as time passes. It’s a slow burn. Kenyans realize.” Manji agrees, remarking, “It’s not just in the books, or in the law courts. He protests in the streets! He’s got a real connection to ordinary people, and that to me is his contribution to human rights.”

Ghai’s work has not always made him popular, especially in Kenya. In fact, Ghai recently lamented certain politicians’ rhetoric, which blames the Constitution for problems that clearly are the result of elites’ unwillingness to respect the rule of law. Mutunga is not surprised. In fact, the former Chief Justice points out that Ghai was honored by the Queen of England for his work while his home country failed him. Mutunga refers to Matthew 13:57, a Bible verse that reads, “And they took offense at him. But Jesus said to them, “A prophet is not without honor except in his own town and in his own home.”

“He continues to work against the grain,” Githongo says, “so his phone won’t ring. The moment the crisis comes, the phone will ring off the hook. All the hoodlums will call him then. He’s our fireman.”

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