

NOTES AND NEWS

Notes et Informations

UGANDA LAW DEVELOPMENT CENTRE

In 1968 the Uganda Government established a Law Development Centre which was incorporated as a statutory body by the Law Development Centre Act, 1970 (Act 21). The Management Committee's Annual Report for the year 1970 contains much useful information and the greater part of it is reproduced below.

“The statutory functions of the Centre are set out in section 2 of the Act in the following terms:—

2. (1) The Centre shall have the functions of,
 - (a) organising and conducting courses of instruction for the acquisition of legal knowledge, professional skill and experience by persons intending to practise as attorneys in subjects which shall have been determined by the Law Council under the provisions of any law in force;
 - (b) organising and conducting courses in legislative drafting;
 - (c) organising and conducting courses for magistrates and for such persons provisionally selected for appointment as such;
 - (d) organising and conducting training courses for officers of the Government and members of the Armed Forces of Uganda with a view to promoting a better understanding of the law;
 - (e) organising and conducting courses for officers and personnel of courts with a view to improving their efficiency;
 - (f) assisting any commissioner who may be appointed in the preparation and publication of a revised edition of the Laws of Uganda;
 - (g) assisting in the preparation of reprints of Acts of Parliament in accordance with any law for the time being in force;
 - (h) assisting the Law Reform Commission in the performance of its functions;
 - (i) undertaking research into any branch of the law;
 - (j) holding seminars and conferences on legal matters and problems;
 - (k) collecting, compiling, analysing and abstracting statistical information on legal and related matters;
 - (l) assisting in the provision of legal aid and advice to indigent litigants and accused persons in accordance with any law for the time being in force;
 - (m) compiling, editing and publishing law reports for Uganda;
 - (n) publishing periodicals, bulletins, digests or other written material concerned with legal and related matters; and
 - (o) disseminating and promoting generally a better knowledge of the law.
- (2) The Centre shall have such other functions as the Attorney-General may, from time to time, specify by statutory instrument.”

Administration

The governing body of the Centre is the Management Committee established by section 6 of the Act. Under section 7, the Committee is charged with the administration and management policy of the Centre and its executive authority to control and manage the Centre is (subject to general or specific directions) vested in the Director. The Committee has the following membership:—

Mr. Godfrey Binaisa, Q.C., Chairman.

Mr. G. S. Lule, Ag. Solicitor-General (*ex officio*).

Mr. J. M. N. Kakooza, Ag. Dean of the Faculty of Law, Makerere University (*ex officio*).

The Director of the Centre (*ex officio*).

Mr W. W. Rwetsiba, Permanent Secretary, Ministry of Education (*ex officio*).

The Hon. Mr. Justice Musoke, a judge of the High Court.

Mr. Gurdial Singh, Advocate.

Mr. Andrew Ssenooba, Advocate.

Staff

The present staff of the Centre comprises:—

Director The Hon. Mr. Justice K. T. Fuad,
M.A. (Cantab.), Barrister-at-Law.

Teaching Staff..... Mr. J. Obol-Ochola, LL.B. (Hons.)
(Lond.).

Mr. F. Butagira, LL.B. (Hons.) (E.A.),
Advocate, High Court of Uganda.

Mr. R. M. Wilkinson, B.A., LL.B.
(Cantab.), Barrister-at-Law.

Mr. R. M. Cooper, B.A. (Haverford),
M.A. (Oxon), J.D. (Harvard).

Personal Secretary
to the Director..... Miss L. Ridley-Thompson.

Bursar Mr. B. P. S. D'Souza.

Assistant Bursar Mr. D. S. Bwanika.

Librarian Miss M. M. Nadimo.

Mr. G. W. Mason, J.D., was attached to the Centre throughout the year.

In August, Mr. Allen, who had been on the teaching staff, left the Centre to take up his appointment as a Chief Magistrate. Mr. Wilkinson, formerly a college lecturer at Fitzwilliam College, Cambridge, and an assistant lecturer at Manchester University, arrived at the Centre in August and Mr. Cooper, who had been Law Clerk to Mr. Justice Brennan of the U.S. Supreme Court, took up his duties in September. The Committee wishes to place on record its appreciation to the International Legal Center, New York, for making Mr. Cooper's services available.

The Director spent the first four months of the year as Chairman of the Visitation Committee to Makerere University College, in addition to his ordinary duties. He is Chairman of the Law Reform Committee, an *ex officio*

member of the Law Council, Chairman of the Disciplinary Committee for Advocates, and a member of the Faculty Board of the University Law Faculty.

Mr. Butagira went to Harvard in September to study for the LL.M. degree. Mr. Obol-Ochola was absent from the Centre in August and September while he was in Germany conducting research on agrarian reforms in developing countries.

Bar students

As indicated in Sessional Paper No. 3 of 1969 (Government Memorandum on the Report of the Committee Appointed to Study and Make Recommendations Concerning Legal Education) no new students have been accepted for training for the English Bar. However, in accordance with the undertaking given by the Government that those who had already embarked on the course would be given every opportunity to qualify for the Bar, there are still seven Bar students at the Centre studying various subjects. Makerere University has agreed to consider any person who has passed Part I of the English Bar Examinations as eligible to apply for a place on the LL.B. course and it is anticipated that several students will take advantage of this concession to be able to continue their legal education in Uganda.

Lay magistrates

Twenty-one magistrates completed the 8th Diploma Course (which began in August 1969) on the 25th June, 1970. . .

The 9th Diploma Course was scheduled to begin on the 20th September, 1970. In the event it had to be postponed until the beginning of 1971 at the request of the Chief Registrar so that the opportunity could be taken of including new recruits to the magistracy who were in the process of being selected. The syllabus being taught is much the same in outline as the one set out in the First Report except that more emphasis is being placed on practical training. On the present course magistrates range in age from the middle twenties to the middle fifties and in experience from thirteen years on the magisterial bench to no experience at all.

The Magistrates' Courts Act 1970 (Act 13 of 1970) which was drafted at the Centre last year was passed on the 5th June, 1970. Since it was not brought immediately into force the Director and staff of the Centre took the opportunity of holding lecture/seminars on the new Act on Saturdays, from September to November, in the main towns of each of the eleven magisterial areas. The Centre had prepared detailed explanatory notes on the Act, indicating the derivation of each of the 245 provisions and indicating in what way the law had been altered, and these notes formed the basis of the lectures and were given to each person who attended. The Centre was encouraged to note that although the lectures were primarily designed for magistrates, many police officers engaged in the criminal process accepted invitations to attend all over the country. It is anticipated that the explanatory notes will be useful for some years to come (if only to enable magistrates to ascertain quickly whether authorities on provisions replaced by the new Act are still relevant) and the Centre has commissioned the Government Printer to print sufficient copies for distribution to all those who have to use the Act.

During April 1970 members of the staff held one-week refresher courses for magistrates in the following magisterial areas: Fort Portal, Mbarara, Jinja and Mbale. On these courses magistrates were brought up to date

on amendments to the law and recent decisions of the High Court, and their attention was drawn to current mistakes commonly made by magistrates. The staff is in a unique position to do this because the Centre receives and peruses every judgment or order in all criminal and civil cases which reach the High Court in the exercise of its appellate and revisional jurisdiction. Magistrates were able to discuss the practical problems that face them in the field and it was plain that they appreciated the contact that was maintained with them. Certainly the staff of the Centre found this contact highly stimulating and instructive. Some of the Chief Magistrates actively contributed to the courses and all appeared enthusiastic about the whole idea in principle. The Centre will continue to conduct courses and give lectures to magistrates up-country whenever its other commitments permit.

Courses for the armed forces

Three courses were run by the Centre for the Armed Forces during the year. The first course (5th-19th May) was attended by 16 officers; the second (3rd-14th August) by 23 senior N.C.Os., and the third (1st-18th December) by 17 officers. The courses covered the elements of constitutional law, the law of evidence, criminal law and procedure and the Uganda legal system. An examination was held at the end of each course and the results, together with a report on each participant, were forwarded to General Headquarters. It is hoped, when the staffing situation permits, that the Centre will be able to offer courses on specific military law.

Labour officers' course

The Centre ran a course, organised by Mr. Wilkinson, for 18 labour officers from the 1st-19th December; the participants were accommodated at the Centre. The aim of the course was to give the officers a thorough understanding of labour law (including the new Trade Union legislation) and to teach them how to conduct relevant cases, both civil and criminal, before the courts. Lectures were given on the following subjects: labour law and general common law principles; criminal procedure (including the drafting of charges); civil procedure and the elements of the law of evidence.

Handbooks, etc.

In August the Centre published, and widely distributed, Notes on the Uganda Bills of Exchange Act, prepared by the Hon. Mr. Justice Phadke, a Judge of the High Court. The Notes, which extend to 47 typewritten pages, contain a concise summary of the main provisions of the Act and reference is made to a large number of East African and English cases. The Notes also contain a Digest of 52 cases on the law applicable. The Committee wishes to thank Mr. Justice Phadke for making his valuable work available to so many teachers and students in Uganda.

As soon as the new Traffic and Road Safety Act 1970 (Act 38 of 1970) was passed, the Centre realised that many of the new provisions were so novel, and the drafting so complicated, that magistrates and police officers would need guidance in its application. The Centre produced a handbook of 30 typewritten pages within a few days of the coming into force of the Act on the 1st January. All judicial officers, state attorneys and police officers engaged in enforcing the law were given copies. The handbook contained the following parts:—

Part I: Special powers of the police.

- Part II: Specimen charges for 73 offences.
 Part III: A table of penalties for offences.
 Part IV: A note on "special reasons" for not ordering disqualification.

The Handbook for Magistrates mentioned in the First Report has grown greatly in content and is in the final stages of preparation. Depending on his other more pressing commitments, it is hoped that the Government Printer will be able to print it during the first half of the year. Most of the provisions of the new Magistrates' Courts Act are fully explained and reference is made to a very large number of local cases reported in the earlier Monthly Bulletins which are no longer available. Emphasis is placed on the everyday practical problems that face magistrates when they are trying cases in the field away from libraries.

A handbook on quantum of damages has been prepared by a member of the staff and the typing is all but finished. Approximately 250 cases have been digested, of awards for personal injuries and damages awarded in cases of defamation and false imprisonment.

The Monthly Bulletin

The Centre continued to publish throughout the year, each month, a digest of important, interesting or instructive decisions of the High Court in its original, appellate and revisional jurisdiction, in criminal and civil proceedings. The Bulletin never failed to come out during the month following that in which the decisions were reached. The Bulletin is distributed to all those holding judicial office, Government lawyers, members of the Law Society, law students, labour officers and police officers. Copies are also sent to institutions in Kenya, Tanzania, Ethiopia, Zambia, Papua & New Guinea, the U.K., and the U.S.A.

The Monthly Bulletins for the year under review contain 276 cases. In July 1970 and February 1971 cumulative indexes were produced of all the cases digested from the inception of the Bulletin. The latter index, for example, contains a reference to the cases included in the Bulletins from September 1957 to December 1970. During the year the following "Comments" and Appendices (all but one written or prepared by staff at the Centre) appeared in various issues of the Bulletin:

- Actions for the recovery of land held under customary law and limitation.
- Application of customary law in Uganda: judicial ambivalence and indifference.
- Compensation for seduction of schoolgirls in civil customary law.
- Criminal prosecutions and the consent of the DPP.
- Criminal prosecutions for failure to pay graduated tax.
- Contributory negligence of servants and agents.
- Customary law and repugnancy.
- Customary law: to whom applicable.
- Functus officio.
- Grievous bodily harm and proof thereof.
- Judicial proceedings at the locus in quo.
- Jurisdiction of magistrates.
- Magistrates' Courts Act 1970: explanatory notes and comparative table.

Murder re-defined.

Opting into customary law by non-Africans.

Possessing suspected stolen property (section 299 of the Penal Code).

Specimen charges for the more common Penal Code offences.

The importance of keeping it in the family.

When is a building not a building (section 284 of the Penal Code)?

The East Africa Law Reports

During the year under review the Centre (with the assistance of the Hon. Mr. Justice Dickson) continued to select cases from Uganda for publication in the East Africa Law Reports, and 39 cases were forwarded to the Editor.

The African Law Reports

Early in the year the Centre began to send each Monthly Bulletin to the General Editor, Dr. Alan Milner. His staff then makes a preliminary selection from the cases digested for possible inclusion in the African Reports. The Centre has forwarded 114 cases (not all decided during the year) on this basis. The Editor bears all postage expenses and in return for the work involved the Centre receives free copies of the Reports. It is the opinion of the Centre that this excellent series deserves support in view of its "Trans-African" approach and its meticulous editing. The work of the Uganda High Court will gradually become wider known, both to other courts which have the same common law experience and to those engaged in research.

By courtesy of Dr. Milner, the Director was able to spend a week in July in Oxford, studying the techniques of law reporting, indexing, etc. The opportunity given and the advice willingly offered was much appreciated by the Director who hopes that the knowledge and experience gained will be of great benefit when the Centre is able to publish regular law reports for Uganda.

Seminars

In co-operation with the Uganda National Association of Mental Health the Centre held a seminar on "Suicide and the Law" on the 5th December at the premises of the Centre. Papers were presented by Dr. Frank Farrelly, Consultant in Psychiatry, Butabika Hospital, the Rev. Christopher Senyonjo, Bishop Tucker Theological College, and by the Director. The seminar was well attended by members of the University, the legal and medical professions, and the probation and welfare services. The opportunity was taken to hold the Annual General Meeting of the Association at the Centre at the conclusion of the seminar. The Director subsequently accepted an invitation to serve on the Mental Health Advisory Committee.

A two-day seminar was held at the Centre (7th-9th August) on "Law in a Developing Country". It was mounted by the Law Society and the Faculty of Law, Makerere University, in conjunction with the Milton Obote Foundation. The Director presented two papers and Mr. Obol-Ochola one. The seminar was attended by many persons in Uganda and several participants from Kenya, Tanzania and Zambia.

Outside lectures

The Director lectured, as an honorary lecturer, on the law of evidence

to third-year LL.B. students at Makerere University, sharing the course with Mr. Francis Ssekandi of the Department of Public Prosecutions. Throughout the period under review the Director and staff gave lectures and participated in seminars run by various training institutions in Uganda. These institutions were the Institute of Public Administration, Nsamizi Training Centre and the Uganda College of Commerce. Those who attended these lectures and seminars included such persons as theological students, government officials in the district administration, and veterinary officers. The Centre also helped in giving "career talks" for final-year students at the University.

Law examinations for administrative officers

The Centre was again responsible for conducting law examinations for administrative officers. These were held in May, July and December. The examinations were preceded by courses of lectures, organised by Mr. Obol-Ochola, which aimed at assisting the officers in understanding the subjects in which they were to be examined and to impart examination techniques. Throughout the year the Centre has been working with the Institute of Public Administration in reconstructing the whole examination and it is intended that the Centre and the Institute will mount a far more comprehensive course in law for administrative officers. The Centre has undertaken to cover the basic elements of criminal law and procedure, the law of evidence and the legal system, while the Institute will be responsible for constitutional and administrative law.

Legislative drafting and proposals for law reform

Throughout the year the Centre submitted various proposals for the reform of the law to the appropriate authorities. In some cases the proposals were completely new and in others a continuation of work begun during the previous year. Most of the proposals were accompanied by draft legislation so that those interested could see how the proposals, if accepted, could be implemented. The Centre submitted work prepared on the law relating to procedure in High Court trials; inquests; criminal appeals and revisions; justices of the peace; graduated tax; murder and manslaughter; and corruption.

The major piece of legislation drafted for the Government at the Centre was the new Advocates Act (Act 22 of 1970). It was brought into force on the 21st August, 1970. The Act amended and consolidated the whole law relating to the legal profession and put into effect most of the proposals contained in Sessional Paper No. 3 of 1969, mentioned above.

In October the Centre offered to conduct a course aimed at teaching the elements of legislative drafting to Government lawyers. The proposed course had to be abandoned because no one was nominated for it.

The Centre assisted the Attorney-General's Chambers in the preparation of an up-to-date reprint of the Penal Code (cap. 106) incorporating the amendments made by the Code by eight Acts of Parliament and two Statutory Instruments since 1964. The reprint was authorised by S.I. 1970 No. 153 and the new edition was directed to be judicially noticed from the 1st November, 1970. The index to the Penal Code prepared by the Centre last year was included in the reprinted version.

Research

During the latter part of the year, Professor Peter H. Russell, Visiting

Professor, Makerere University, has been engaged in important research under the auspices of the Centre, with the assistance of Mr. Mason. The Professor has been engaged on a study of the administration of justice in Uganda with special reference to the consequences of the integration of the courts since 1964. The study will provide vital information for the Government upon which decisions can be made as to whether (and in which areas) the judicial system requires reform. Up to the time Professor Russell and Mr. Mason began their work, no systematic study of the practical results of integrating traditional courts with the central State courts had been carried out.

Mr. Mason has also been conducting research (as part of Professor Russell's general research project) into the main causes of the very considerable fluctuation in various years in the number of civil cases filed in the High Court in its original and appellate jurisdiction. The results of the study will indicate what the long-term trend is likely to be. . . ."

UNITED NATIONS REGIONAL SYMPOSIUM IN INTERNATIONAL LAW
FOR AFRICA: ACCRA, 14TH-28TH JANUARY, 1971

This Symposium was convened by the United Nations Institute for Training and Research (UNITAR) as part of its continuing programme of education in international law. UNITAR had accepted the invitation of the government of Ghana to hold the meeting in Accra, where all the discussions took place at the State House. African governments, international organisations, and other bodies had been asked to send representatives to the Symposium, which was also attended by a number of outside experts, many of whom gave written papers and oral statements to the meeting. The meeting was chaired throughout by Mr. Osei-Tutu, head of the Legal Department of the Ghana Ministry of Foreign Affairs, the Director of the Symposium being Mr. Oscar Schachter, the Deputy Executive Director and Director of Research of UNITAR.

The main areas explored at the Symposium were: (i) *Economic development agreements*, including both those between African countries (such as the East African Community), association agreements with the E.E.C., and agreements between private foreign investors and African governments. The problem of the transfer of technology and know-how, the question of incentive legislation for foreign investors, the content and revision of concessions agreements, participation by African governments in such enterprises, and the advantages of different forms of development aid, were some of the points canvassed under this heading. (ii) *State succession*, both to rights under treaties and in respect of rights and duties arising other than from treaty. State succession in regard to territory and boundaries was also examined. The continuity of the legal system from dependence to independence, and the enforceability of the rights and duties created by the predecessor state in the courts of the new state were vigorously discussed. Special arguments were adduced for treating new states emerging from colonial rule in a different way, so far as succession was concerned. Whether or not the new state should respect "acquired rights" vested in aliens under the former régime was one of the more controversial issues. In the boundary field, criticism was made by several speakers of the traditional view of international law on the matter, especially regarding the effect of "dispositive treaties". The roots of title, e.g., agreements between the former colonial powers and African rulers, might be invalid; though the contrary view was