

Library Resources for Lawyers in Tanzania

A Report to the British Council

Background

1. In the summer of 1998, the Bar Overseas Advocacy Committee presented an advocacy training course for lawyers in Tanzania which was well attended and very successful. A report was subsequently prepared for the British Council by Simon Carr on behalf of the four members of the Bar who presented the course. My own impressions were later expressed in an article written for Counsel Magazine in the following December, a copy of which is appended. In particular I was struck by the appalling lack of library resources available to lawyers in Tanzania and was determined that this should be addressed. I took the view then, as I do now, that the availability of an effective legal profession and infrastructure is a crucial development issue as well as the condition precedent for civil liberties and human rights. I was impressed by the determination of the profession, particularly the younger generation of lawyers, to grapple with these difficulties and confident that they would receive the support of the UK Bar in those efforts. The provision of second-hand books to our colleagues in developing countries - however well intentioned - is an inadequate response. The availability of new technologies permits immediate access to relevant and up to date source materials at a modest cost, either on shared computer library workstations or via the Internet. A generational leap is both possible and desirable.

2. The project described below arises from that background. It is a pilot scheme which the Bar Human Rights Committee hopes to extend to other

jurisdictions in Africa and elsewhere. The tremendous success of this trial in Tanzania is a great encouragement to us in this important work.

The Course.

3. Between 27th September and 1st October 1999, I visited Dar es Salaam to present an Exhibition and Training Course for lawyers and members of the Judiciary on the use of IT resources for legal research. The Department for International Development provided financial support for the scheme by way of payment of travel expenses, shipping and accommodation costs and the programme was primarily run at the premises of the British Council in Dar. BC staff had, over previous months, offered considerable assistance in encouraging and supporting the idea and providing local liaison with the Tanganyika Law Society and the Courts and Law Officers. They also provided invaluable logistical and technical support during my visit and will continue to monitor the use of resources provided as a result of the project. I am particularly grateful to Sharon Crowther and Eke Mwaipopo for the enormous help they provided and continue to provide to this scheme.

4. The course also received very considerable support from organisations and individuals in the United Kingdom, including the Bar Human Rights Committee of England and Wales. Doughty Street Chambers provided three desktop computers for use in the Exhibition and a fourth was donated to the TLS by Stephen Hockman QC. Steffan Roberts, IT Manager at Doughty Street, provided enormous technical and practical assistance in relation to the equipment and software used. Crucially, three major British legal publishers - Blackstone Press, Butterworths and Sweet & Maxwell - provided many thousands of pounds worth of core texts both in hard copy and on CD-rom. I would like to express my sincere thanks to each and to pass on the

immense gratitude of the legal profession in Tanzania.

5. The course opened with an Exhibition and presentation on 27th September, attended by over one hundred legal professionals. On display were a very large quantity of books donated to the British Council Library by the publishers, together with the four machines loaded with software and texts. During the course of the day, delegates were addressed as to the use of such technology in modern legal practice - in particular upon the use of legal information available on the Internet - and had an opportunity to try out the donated software. At the conclusion of the session, the donated disks were formally presented to a representative of the Chief Justice, with duplicate copies being provided to the Law Society, Faculty of Law, Tanzanian Women Lawyers' Association, Law Reform Commission and Attorney General's Chambers. A further copy was made available for use in the library of the British Council.

6. Over the next two days, twelve representatives from the donee organisations attended for training in the use of the machines and software in order to permit them to "cascade" the knowledge throughout their own institutions. At the conclusion, one machine was formally transferred to the TLS to be a dedicated library resource for the Association's members.

7. On the fourth day, discussions were held with the Registrar of the Court of Appeal of Tanzania in relation to Judicial training, and with the Director of Public Prosecutions about future training of prosecutors.

8. On Friday 1st October, the Chief Justice assembled Judges of the Court of Appeal, the High Court and the Magistracy in Court No. 1 for a further exhibition, presentation and demonstration. Over twenty members of the Judiciary attended and

the event received coverage in the national press and television.

Future Developments in Tanzania.

9. The presentations and training were received with tremendous enthusiasm by lawyers and Judges alike. It was especially encouraging that many, including the older generation of lawyers, were stimulated into considering acquiring or developing their computer literacy skills. There is plainly a need for widespread computer literacy amongst lawyers if the best use is to be made of the resources donated. The original bid proposed an element of basic training to be provided locally, although this fell outside the small budget which was available. It may be that courses are available locally at a small commercial cost. It is important that every encouragement is given to the acquiring of these skills as part of the training of every lawyer, and that the Tanganyika Law Society takes a leading role in this.

10. There are still considerable problems in relation to the publication of new legislation and case precedents locally. I understand that the historical Tanzanian Law Reports may be available on disk but this does not include reports from recent years. Moreover, it is clear from talking to individual lawyers that access to up to date legislative material is difficult.

11. In addition, whilst the donated materials will be a considerable resource to those practising in Dar es Salaam, lawyers in Arusha and other provincial centres will continue to suffer from a lack of resources as before. The High Court, for example, sits in eleven regional zones. If the lack of adequate resources is a serious problem in Dar, it is likely to be acute elsewhere.

12. Moreover, Judges and lawyers in Tanzania need to be able to access the wealth of jurisprudence, particularly human rights law, which is available from other jurisdictions and international tribunals and agencies throughout the world.

13. What is required is the regular publication and widespread distribution of legal materials to lawyers throughout the country, together with a portal for entry into the international community of lawyers and legal information. The natural and obvious next step is the establishment of a website for lawyers in Tanzania which will provide the means to achieve these aims. This is an idea which has been greeted enthusiastically by the Chief Justice and by the Law Society. I very much hope that the British Council will support this proposed development and will again feel free to draw upon the experience and expertise of the Bar in the UK, and upon the British legal publishers, in this regard.

Extending the Library Resources Scheme.

14. It is very important that this pilot scheme is now followed up in other jurisdictions, particularly in East and Southern Africa. The BHRC has approached the Foreign and Commonwealth Office in London direct to discuss the funding of such schemes, and will be meeting with the sponsoring publishers again in the autumn. It may be that the value and success of the programme in Tanzania will elicit enthusiasm, for example, in Uganda, Malawi and Botswana.

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In September a second advocacy training course, organised by the Bar Overseas Advocacy Committee, was held in Dar es Salaam. Tanzania has only developed a system of civil courts in recent years, following a return to multi-party democratic government. The court system, procedures and jurisprudence essentially follow the British common law model and there is enormous enthusiasm to maintain links with professional bodies and individuals in the UK. The developing profession, and the Courts, however are beset with difficulties. An impressionistic sketch may be adequate to describe some of these.

The Problems.

The quality of the High Court Judges is high, but they are overwhelmed with work and have no resources. There appears to be an automatic right of appeal at virtually every stage of both criminal and civil proceedings. As a result, the Courts are simply unable to process cases effectively. For the last two years, for example, the High Court has been tied up almost exclusively in hearing election petitions from candidates who lost in the last election.

As a result, serious criminal work has virtually been put on hold. The local press reported mass plea and directions hearings for remand prisoners, including capital murder cases, who had been awaiting trial for between 4 and 10 years. Prison conditions are appalling and many do not survive the wait. A chilling example was provided by one of my students who asked to be excused for a day to prosecute a murder. He returned at lunchtime because the defence attorney had forgotten the date and failed to attend. The Judge stood the case out until next year. The defendant, he told me, had been in custody awaiting trial since 1990.

Most criminal prosecutions are conducted in court by police officers. These include armed robbery, for example, which carries a minimum 30 year sentence. Only homicide cases - generally tried in the High Court but sometimes by a senior Magistrate - have prosecuting attorneys from the Attorney General's Chambers. There is some provision, it would seem, for pro-bono representation for the most serious of cases but the great majority of defendants are unrepresented. Frequently, the accused speaks only Swahili and the proceedings are conducted in English.

The present system of qualification for attorneys involves obtaining a law degree and then attempting to obtain an internship with the Attorney's Chambers or the Tanzanian Legal Corporation. At the present moment here is no post-graduate

professional training and no training at all in advocacy. Most young graduates go immediately into service as Magistrates in order to obtain the necessary experience to apply for internship. They may spend several years trying cases - often very serious ones - without any further training or supervision. At the end of internship, application is made to the Chief Justice for call at a private interview at which suitability is assessed, but no objective means of assessing this or appeal against refusal.

Lawyers locally, including the Judges, recognise the many deficiencies in their present arrangements and are trying to grapple with the most serious of these. They are very keen to preserve a British influenced common law structure and to develop proper training and professional standards for an emerging profession. However, they have had little help as yet from us. Although there are developing human rights groups, and other active organisations within the profession, they are seriously underfunded. The average salary for a lawyer employed in government service is about £60 a month.

Library Resources.

The advocacy course was necessary and well received. However, a further pressing need identified by delegates was for books. There is no comprehensive Law Library in existence, not even at the Law Courts, the Law Society or the University. Individual lawyers and Judges have access to law books and reports on an entirely ad hoc basis. Some, including Magistrates, have little or no access at all. The results are:-

- that the law is uncertain and applied unevenly*
- judgements and verdicts often depend upon the accident of access to a particular text or report*
- cases are frequently adjourned because one side has an undisclosed and unknown authority*

The problem appears to be the cost and difficulty of ordering books from abroad, and the absence of an adequate system of reporting local statutes and cases.

Further assistance.

Many individuals and Chambers helpfully send second-hand law texts to the developing countries. However, the emergence of new technologies, and the availability of research facilities on the Internet, ought to enable lawyers in such countries to access the most up to date materials without enormous expence. A further programme is accordingly being proposed to set up library IT resources within Tanzania to which the judges and lawyers will have access. A course is being arranged to exhibit and demonstrate texts on CD-Rom, and to provide basic computer and Internet access skills. The major law publishers have been approached to support the scheme and I am hopeful that they will do so.

In the longer term, and from a wider perspective, there is much that can be done for colleagues throughout developing Commonwealth countries . A serious, co-ordinated programme of support by the Bar and the Inns, and the international exchange of expertise and information, could have a substantial effect upon practice in a number of jurisdictions. A more pro-active effort might well improve the quality of justice we are apt to criticize in certain countries. . I hope that, at a time when human rights is at the forefront of the Bar's attention, such opportunities to make a positive contribution will not be missed.

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