and defects in the investigation, prosecution and trial of criminal cases in Malawi, and that these delays and defects were causing widespread dissatisfaction in the country.

This dissatisfaction is not attributed to a single cause, but is the result of a combination of circumstances, particularly those stemming from a shortage of appropriately qualified and experienced personnel, and those resulting from a "spate of technicalities" which "proliferated out of all sense of proportion". The shortage of staff led to a failure of proper cooperation between the courts, counsel and police, and the position was one of "everybody in the court at the time all learning together".

Behind all the recommendations made, the Commission emphasised "the need for a sound legal and judicial system, and a magistracy and judiciary that command respect and confidence", the need for a "system of criminal justice as simple and uncomplicated as possible, directed at enforcing the criminal law against guilty persons speedily and decisively, without unnecessary regard for technicalities". The recommendations were made to achieve this, "that the guilty shall be convicted speedily and properly punished (and) . . . the innocent shall be set free and that they shall also be set free quickly".

COLIN BAKER[1]

THE AFRICAN LAW REPORTS

A new law-reporting organisation has been established for the countries of English-speaking Africa. *The African Law Reports* will operate under an editorial grant from the Ford Foundation, administered by the *Sailer* Project of the International Legal Center, New York, and will be published by Oceana Publications Inc., Dobbs Ferry, N.Y. The organisation is under the direction of Dr. Alan Milner, Fellow of Trinity College, Oxford and formerly the Dean of the Faculty of Law, Ahmadu Bello University, Zaria, Nigeria.

The Existing Law Reporting Systems

Although law reports are one of the basic tools of any common law system, many of the common law jurisdictions of Africa suffer the disadvantage of inadequate law reporting. With the exception of commercially operated series in East, South and until recently Central Africa, African law reports have normally been published under the aegis of individual colonial or independent governments. Almost without exception, they have been highly selective in their coverage, of variable editorial quality, and sporadic in their publication.

At an early stage of colonial rule, the British government sponsored the publication of individual series of reports for many of its African territories. Some ended almost before they began, as in the case of the old Sierra Leone reports (1912-1924, 1 volume); others filled only a few slender volumes over several decades (e.g. Northern Rhodesia 1931-1954, 5 volumes; Nyasaland 1922-1952, 6 volumes; Zanzibar

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1868-1956, 8 volumes); yet others had long and relatively successful careers, as in the case of the Nigerian (1880-1955, 21 volumes) and Kenyan (1897-1956, 29 volumes) series. Impetus to collective reporting was given by the establishment of regional courts of appeal in East, West and Central Africa but at the present time only the Court of Appeal for Eastern Africa remains in operation and the regional reports have been discontinued save for the Eastern Africa Law Reports.

The history of post-independence law reporting in many parts of Africa is not encouraging. The West African Law Reports gave coverage mainly to Ghana and the reports from Sierra Leone and the Gambia dwindled to nothing. The series ran for three years and gave way in 1959 to the Ghana Law Reports but the most recent volume of the G.L.R. is for 1962. In Nigeria, five individual series began in 1955-1956; the Supreme Court reports came to an end in 1960, when a new National Committee on Law Reporting was formed under the auspices of the Federal Ministry of Justice to initiate a national series of reports. The most recent issue of the All Nigeria Law Reports is for 1962. In the regions Northern Nigerian reports are current to 1965; those of Lagos to 1963; Western Nigeria to 1962; and Eastern Nigeria to 1961. None have been published in Midwestern Nigeria since the creation of the region in 1963. Now, even a newly-formed commercial series, the Nigerian Monthly Law Reports, appears to be faltering, for at the time of writing the most recent issue to hand is nine months old.

Elsewhere, the picture is checkered. The Gambia, for example, published no reports at first instance until 1956 and then none since 1957; its Court of Appeal cases end in 1960; Sierra Leone has just begun publication of a new series (the volume for 1960 was published in 1967); Liberia has a current series produced in the United States; West Cameroon will shortly produce a single volume for recent years; Botswana published a slim collection of 1964-65 reports in 1966; but Lesotho, Zambia, Swaziland and Malawi have published nothing since independence.

From nation to nation, the problems are very similar. The difficulties obviously lie in arranging the supply of judgments and in organising adequate editorial and printing services. The size of a country may well be a significant factor: Nigeria and Ghana, the largest nations of West Africa, have both found that the hazards of organising the supply of many judgments from many courts are very real, especially when competent secretarial assistance is limited. A small country with a single judicial centre and a small volume of cases in its superior courts will have no difficulties in arranging supply and even the editorial function may be performed relatively easily and inexpensively by a single judge or member of the Ministry of Justice. Once the volume of cases increases, the editorial problems multiply: the selection of reportable cases becomes crucial, for not all decisions of the superior courts cast glory on the skill of their authors. In the colonial series of reports, it was common for a judge to produce a volume of "selected judgments" from time to time, using his own unarticulated criteria for selection—and the series frequently mirror both the judge's personal preferences and the

infrequency with which he was called upon to make a selection at all. Now, the growth of the former colonies frequently leaves the judges with little time for this chore and yet no effective substitute may be available. An editorial office needs personnel, equipment and a certain amount of technical experience, which cannot always be provided. Finally, it is often no longer possible to make the services of the Government Printer available to produce the reports quickly and efficiently; there has been a very slow build-up of technical skill in the printing industries of Africa and the very necessary and desirable Africanisation of personnel in the public sector of the industry has in many places slowed down production. In an era of increased legislative activity, too, much of the time of a Government press may be taken up by the publication of legislative and other official documents and result in low priority being given to the production of law reports.

The Establishment of The African Law Reports

It is against this background that *The African Law Reports* were set up in 1966. The basic conception is that of a publications project of a dual nature: first, one which will operate at an international level; and, secondly, one which may develop increasingly on a national level.

(1) *The international aspect*

The intention here is to bring together reports from each English-speaking jurisdiction into a single series and thereby provide easily accessible information about the common experience of African nations. This is of immediate practical relevance.

(*a*) The basic corpus of law in the majority of the nations co-operating in the project is English common law and equity. The statutory structure is often virtually identical, being either statutory enactments of the common law, the re-enactment of English statutes in local form, or the adoption of model codes devised by the British Colonial Office. In the primary matter of providing judicial information to help in the development of the law, therefore, each jurisdiction will be able to derive assistance from the experience of others who have already begun to work out their solutions to similar problems.

(*b*) There is special significance in an African country looking to African solutions of problems arising out of economic and social development. It is widely realised in Africa that English law can frequently not offer appropriate solutions to African problems and there is a growing willingness to look for assistance in the experience of other African countries at a similar stage of development.

(*c*) This is becoming of greater relevance as new generations of lawyers are produced in Africa who have not been educated in England. It seems likely that they will become increasingly less inclined to look automatically for an English law solution and more prepared to draw on African experience. A parallel can be seen in the interchanges of lawyers which have taken place between independent African countries to make available the members of larger legal professions to the countries with professions which are extremely small. The interchanges have inevitably produced a stimulus to look at the comparable legal experiences of other countries.

(*d*) There is a growing frustration, too, in several African countries

—shown perhaps most clearly in the universities but also by some of the judges and law officers—at their inability to profit more from this experience. The diversity of law reporting series is coupled with the scarcity of old volumes on the open market and the difficulty of obtaining current volumes. In only a few instances has it proved possible to reprint series which are out of print. The former colonial practice of exchanging official publications has not been continued by many independent African governments and official library budgets are frequently so low that several governments have been deterred from making good the deficiencies in their holdings of law reports by the sheer number of old series which would have to be collected.

(*e*) The problem outlined in the last paragraph has a direct parallel in all parts of the world anxious to obtain information about Africa. Most major law libraries want African materials and few can obtain them on any comprehensive basis for reasons of scarcity or expense.

(2) *The national aspect*

The publication of an international series of reports will in no way compete with the national series already established, since the basis of publication (as will be explained shortly) will be different. It is important, however, to make the best and most economic use of the pool of technical expertise which is represented in a law reporting organisation. It is therefore the policy of *The African Law Reports* to make their services available to any African country which feels the need for aid in operating a law reporting system and, if requested, to handle the entire operation from arranging the initial supply of material, to editorial work, printing and marketing.

The Scope of The African Law Reports

The initial decision reached in the inauguration of the international aspect of *The African Law Reports* has been that the quantity of material to be published is too great too allow the easy development of a single comprehensive law reporting series. *The African Law Reports* will therefore be published in subject-matter series, beginning with the publication of a Commercial Law Series. The pilot volume of cases decided during 1965 was published in the autumn of 1967 and work is considerably advanced on the preparation of two volumes for 1966. To give completeness of coverage, it is proposed not only to maintain a prospective service but also to give retrospective coverage to 1900 by the publication of previously unpublished decisions and the re-editing and republication in common format of previously published decisions.

No decision has yet been reached about subsequent series of subject-matter reports, except that it should prove possible to expand the organisation sufficiently to allow the parallel publication of several series. Consideration is being given to Public Law, Criminal Law, Procedure and Evidence, as suitable areas for the development of future series. There seems to be no good reason why parallel series should not give coverage to the entire range of litigation in each country, provided that the basic conception of subject-matter series is kept flexible enough to allow this coverage.

The core of *The African Law Reports*' co-operating jurisdictions is made up of the superior courts of the former British territories: Botswana, West Cameroon, the Gambia, Ghana, Kenya, Lesotho, Malawi, Nigeria, Sierra Leone, Swaziland, Tanzania, Uganda and Zambia. Liberia, Somalia and Sudan, sharing the common law tradition, are also included. Ethiopia, though not a common law country, is included because there are strong forces operating in the legal development of the country which are beginning to give greater relevance to a system of case law. Southern Rhodesia and South Africa are not included but already have well-developed reporting systems of their own.

The first of the national series of *The African Law Reports* will be a series published for Malawi. The previously published law reports of that country are to be found variously in the Nyasaland Protectorate Law Reports, the Decisions of the Rhodesia and Nyasaland Court of Appeal, the Rhodesia and Nyasaland Tax Appeals and the Rhodesia and Nyasaland Law Reports. No reports have been published since independence and the demise of the last-named series. Work has been in progress for the last two years in sifting these reports and analysing previously unpublished cases; all the cases which are felt to be of continuing significance in Malawi will be published in the standard *African Law Reports* format and will initially be comprised in two volumes covering the years from 1922 to the present date. No decision has been reached on future series for other countries but discussions are in progress with a number of governments who have shown interest in obtaining assistance with their reports.

[Contributed by A. MILNER]

THE COURT OF APPEAL FOR EAST AFRICA

By article 80 of the Treaty for East African Co-operation, signed at Kampala on 6th June, 1967, on behalf of the governments of Tanzania, Uganda and Kenya, the Court of Appeal for Eastern Africa was replaced by a "Court of Appeal for East Africa". The article provides:—

> "There shall be a Court of Appeal for East Africa which shall be constituted in such manner as may be provided by Act of the Community, and the Court of Appeal for Eastern Africa established by the East African Common Services Organisation Agreements 1961 to 1966 shall continue in being under the name of the Court of Appeal for East Africa and shall be deemed to have been established by this Treaty, notwithstanding the abrogation of those Agreements by this Treaty."

And article 81 regulates the jurisdiction of the new Court of Appeal in accordance with any law in force in each Partner State.

The Treaty, which provided for the setting up of an East African Community based on a common market, came into force on 1st December 1967.