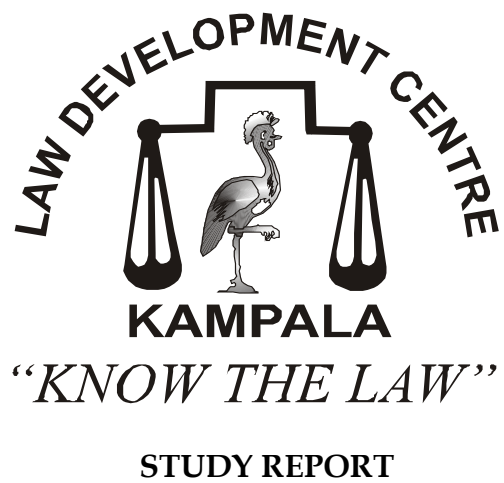


LAW DEVELOPMENT CENTRE



REVIEW OF THE LDC ACT, CAP 132

JUNE 2016

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EXECUTIVE SUMMARY

Good legislation is fundamental to the running of any institution and thus it is desirable to have an effective, flexible and consistent law, one in conformity with the government policies and laws in order to avoid confusion and have an up-to-date legislation that governs its operations. The LDC management and its stakeholders have had concerns over some of the provisions of the Act, some of which have made the decisions of the administration slow or hard to implement.

It is a good practice that government departments and agencies should pursue a culture of continuous improvement and regular review of their laws in order to take into account the changing social, legal and technological advances.

It is against this background that LDC under its department of Law Reporting, Research and Law Reform undertook a study to review the LDC Act, Cap 132 to bring it to conformity with the legal, economic, social and technological developments in Uganda.

The LDC Act provides for the establishment of the Centre and its administration. It is as old as the institution itself which came into existence in 1971 and since then the Act has never been reviewed or attempts to review it have not been brought to fruition. It therefore contradicts some of the provisions of recent legislations, does not take into account the developments in legal education in Uganda, the concerns and recommendations made by different stakeholders and contains obsolete provisions that have been superseded by the legal, economic and social developments in Uganda.

The department developed an issues paper in the year 2015, consultations were made through conducting interviews with respondents in four selected districts of Uganda (i.e Mbale, Gulu, Mbarara and Kabarole- Fort Portal). The respondents included judges, magistrates, advocates, LDC Alumni, civil servants, police officers,

This report is structured in four chapters;

Chapter 1 provides the introduction, background and context, problem statement and objectives of the study. It describes the origin of the review of the Act, the anomalies in the Act and points out what the study will do to address the gaps such as reviewing the mandate of the Centre, the name, composition and term office of the Management Committee, definitions in the Act and proposing legislative reforms for the Act.

Chapter 2 examines literature that has been written or touches the LDC Act. The different reports from which the provisions of the Act emanate.

Chapter 3 discusses the methodology that was used to conduct the study (the study design, task force, study area, population and sample selection and data collection methods).

Chapter 4 explores the findings of the study, analysis and the recommendations made from the study. The chapter discusses the issues for consideration in detail and these include the functions of the Centre, name, composition and term of office of the Management Committee, conforming the Act with provisions of other statutes, consideration of technological developments and emerging issues.

LIST OF ACRONYMS

AG	Attorney General
CLE	Continuing Legal Education
CLET	Committee on Legal Education and Training
CSOs	Civil Society Organizations
DPP	Directorate of Public Prosecutions
JSI	Judicial Studies Institute
KSL	Kenya School of Law
LDC	Law Development Centre
LST	Law School of Tanzania
M.C	Management Committee
MoFPED	Minister of Finance, Planning and Economic Development
MOJCA	Minister/Ministry of Justice and Constitutional Affairs
MUK	Makerere University Kampala
NCHEN	National Council for Higher Education
NLS	Nigeria Law School
PFMA	Public Finance Management Act
PS	Permanent Secretary
ULS	Uganda Law Society
UTIA	Universities and Other Tertiary Institutions Act

SOs

Standing Orders

CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.1 Introduction

The LDC Act, 1970 was enacted to establish the Law Development Centre (LDC) as the only institution mandated to carry out the post graduate training of persons who intend to practice law in Uganda. The establishment of the Centre came as an upshot of the Gower Committee,¹ which suggested that there should be two separate institutions to carry out legal education training. These two were Makerere University which would teach substantive law while the LDC would teach professional skills in legal training.

LDC's functions emanate from the recommendations of the Gower Committee which envisaged that in addition to conducting the post graduate course in law, LDC would provide courses for magistrates, the police, the army and perhaps para-legal and sub-professional personnel, law reporting, corroborative law reform and revision, legal aid and advice office, research, continuing legal education and legal ethics.² Some of these functions are reflected in the LDC Act.³ The Act also provides for the administrative and governance matters of the Centre.

1.2 Background and context

The review of the LDC Act is premised on the resolution of the LDC Management Committee in their meeting held on 22nd February 2012. The Committee resolved that the Director LDC should set up a committee to review the LDC Act and propose necessary amendments to it. The proposals would then be submitted to the Hon. Minister of Justice and Constitutional affairs and the Hon. Attorney General who will then present them to Cabinet and Parliament.

¹Government Memorandum on the Report of a Committee Appointed to Study and make Recommendations Concerning Legal Education

² Ibid, page 27, paragraph 14

³ Section 3, LDC Act, Cap 132

Consequently, on 28th February, 2012 the Director appointed a committee to review the Act and propose appropriate amendments thereto. It was composed of;-

SN	NAME	POSITION
1	Nelson Nerima	Chairperson
2	Edward Ocen	Secretary
3	ExpeditKkaaya	Member
4	Precious Ngabirano	Member
5	George Omunyokol	Member
6	Joyce Werikhe	Member

The Committee carried out consultations with some stakeholders, a report was written and proposed amendments made. However, the amendments did not take effect.⁴ Beginning with the year 2012, LDC underwent a restructuring exercise which saw the renaming of the Department of Law Reporting and Research to the Department of Law Reporting, Research and Law Reform and the creation of new job posts including the position of Legal officer-Law Reform to carry out the legislative reforms of laws that affect the operations of the Centre, legal education and also to be the contact person for legal advice on proposals for law reform generated by Parliament, government ministries, agencies and departments.

The views presented in this report thus made reference to the recommendations made by the Nerima Committee, the interviews carried out with different stakeholders and respondents in the four districts of Uganda (Mbale, Tororo, Gulu, Mbarara, Kabarole and Kampala).

⁴ Draft report of the Committee appointed to review the LDC Act, Cap 132, October 2012.

The Law Development Centre aims at becoming the leading centre for professional legal training and knowledge; to develop and implement policies and procedures to ensure good governance and quality services delivery; integrate ICT services and systems in all processes; provide legal aid to the indigent and vulnerable persons in society and become the leading resource of legal publications.⁵ However, all these cannot be achieved with an outdated and archaic law hence need for the review of the Act.

1.3 Statement of the Problem

The Act having been enacted in 1970, there have been economic, social, institutional, technological developments and changes in the teaching of legal education in Uganda. Legal education in Uganda has been liberalized and this has had an impact on the LDC Act. Study reviews of different committees on Legal Education of the Law Council have made various recommendations that would require regulatory reform if they are to be implemented.

The Act presently does not reflect these changes. As such, the law needs to be brought in tandem with these changes. There are issues that have been raised by different stakeholders that necessitate the review of the Act.

Section 2 of the LDC Act establishes a centre called the “Law Development Centre” and its incorporation as a body corporate with perpetual succession and a common seal that may sue or be sued in its own name. The Centre’s main function is to carry out courses of instruction for the acquisition of professional skills, knowledge and experience to people intending to practice law as attorneys.⁶

The name of the Centre has come under criticism that “Law Development Centre” connotes that its main objective is to keep the legal profession aware of developments in the law and assist in the development of the law. The study will therefore gather the views of the stakeholders on the name of the Centre.

⁵LDC Strategic objectives, 2013/14-2017/18.

⁶Section 3(1), LDC Act.

The Act has several gaps and anomalies such as inconformity with recent legislation, restrictive and out-dated definitions.

- (i) The enactment of the Public Finance Management Act, 2015⁷ had an impact on the LDC Act. Whereas by the enactment of the LDC Act, a financial year run for twelve months from January to December 31st, with the enactment of the Public Finance Management Act, the definition of financial year refers to a period of twelve months commencing on the 1st day of July to the 30th day of June of the following year.⁸ The LDC Act should be brought into conformity with the PFMA.
- (ii) Reference to “sales tax”; With the enactment of the Value Added Tax,⁹ sales tax was replaced with value added tax but section 30 (b) of the LDC Act still makes reference to sales tax. The Act needs to be amended to reflect this position and bring it in harmony with the VAT Act.
- (iii) The Act does not provide for a proper word for people qualified to practice law in Uganda. Section 3(1)(a) LDC Act states that the Centre shall conduct courses of instruction for the acquisition of legal knowledge, professional skill and experience by persons intending to practice as ‘attorneys’ in subjects to be determined by the Law Council. The official name of legal practitioners in Uganda is “advocates” as reflected in the Advocates Act,¹⁰ which defines an advocate as any person whose name is duly entered upon the roll of advocates.¹¹ The LDC Act still refers to legal practitioners as attorneys. The Act needs to adopt the proper name for legal practitioners.

⁷ Act No. 3 of 2003

⁸ Ibid, section 2.

⁹ Cap 349, Laws of Uganda

¹⁰ Cap 267 as amended by the Advocates (Amendment Act) 2002

¹¹Section 1(1), Advocates Act

- (iv) The interpretation section defines a secretary as the secretary of the Management Committee yet the secretary is a person appointed by the Committee as an employee of the centre to perform the duties of a secretary.¹² The interpretation section restricts the role yet this is not the case.

The mandate of LDC; some of the functions of the centre as stated in section 3 of the Act have been overtaken by institutional developments in several government agencies and departments which have been established to take on such roles. It has been stated by some stakeholders that the Centre's function were stipulated at rather a multifarious scale.

Management Committee; the composition of the Committee as of when it was constituted is at the rear of the developments that have taken place in the education system and the government institutions themselves. The effectiveness, responsiveness and efficiency of LDC's internal decision-making and implementation, may be greatly encumbered by the fact that the majority of the members of the Committee are busy public officials outside the Centre, or they carry heavy commitments in private legal practice. It only caters for one university (Makerere) which at the time of enacting the Act was the only university conducting law at undergraduate level.¹³ There are fourteen universities teaching law in Uganda. The members of the Committee have overtime become busy public officials and may not be able to attend regular meetings of the Committee yet the Act does not provide for the members to appoint representatives.

The Committee being composed of mostly members from the legal fraternity does not provide for the close collaboration between the Centre and other stakeholders in other sectors. Besides the need for technical expertise is not realised due to the imbalanced representation.

¹² Ibid section 17(2).

¹³ Section 7

The Act does not conform to the provisions of the Universities and Other Tertiary Institutions Act.¹⁴ This Act regulates all tertiary institutions of higher learning in terms of management and the general administration of the institutions. The Act provides that all public tertiary institutions shall have a governing body called the 'Governing Council'.¹⁵ Its duty shall be to manage the affairs of the institution and exercise general control over the property of the institution. The LDC Act provides for the Management Committee as the governing body of the Centre. The study will seek the views of the stakeholders on whether the name of the Committee should be changed to conform to the provisions of the Universities and other Tertiary Institutions Act.

The term of office of the members of the Committee is considered to be rather too short. The period of two years may be short for the members to make fruitful contribution to the Centre.

The LDC Act does not take into account the developments in technology but still refers to the manual system of paper record keeping and communication. There is need to amend the LDC Act to embrace technology as it makes record keeping easier and the mode of communication faster. With the enactment of the Electronic Transactions Act¹⁶, there have been several developments in technology but the LDC Act does not reflect these changes.

Another development is the establishment of the LDC Alumni Association; in order for the Centre to connect with the former students, the alumni association was established on 21st June, 2013 and it comprises graduates and former students of the institution. This is an important initiative at the Centre and will serve a vital importance in fostering links between the Association members and the Centre. However, it is important that the Association should derive its mandate from the LDC Act. There is therefore need for the Act to provide for such development.

¹⁴ Act N0. 7 of 2001 as amended in 2003 and 2006.

¹⁵ *ibid*, section 77.

¹⁶ Act N0.8 of 2011, Laws of Uganda.

The Act needs to be reviewed to remove redundant and outdated provisions that were applicable at the establishment of the Centre. For example, the Act states that any act done and preliminary expenses sanctioned by the Minister of finance in connection with the establishment of the Centre shall have the same effect and validity as if the act had been done and the expenses validly incurred by the Centre; and the centre may continue any such act or thing commenced under any such sanction but remaining unfinished at the date of the coming into force of this Act as if the act or thing had been initiated and carried through by the centre.¹⁷

The Act provides that the Management Committee shall make standing orders to provide for the management and conduct of the business of the Centre or any other matter connected with the Centre. The section states that standing orders providing for the salary structure of the staff, pensions and gratuities, contributory arrangements to funds and allowances to committees and subcommittees should be made with prior approval of the Minister of Finance. These provisions cannot be made in isolation from the other general matters of the Centre thus would subject all the standing orders to the signature of the Minister of Finance. One would wonder why the Minister of Finance would play a role in the administration of the Centre.

1.4 Objectives of the study

The overall objective of the study is to review the provisions of the LDC Act and make recommendations for its reform.

The specific objectives of the study are:-

1. To review the mandate and functions of the Centre to reflect institutional development and the changes in legal education.
2. Review the name, composition and term of office of the Management Committee of the Centre and make recommendations for changes.

¹⁷Section 29, LDC Act.

3. To bring the Act into conformity with recently enacted laws that have had an impact on the Act.
4. To undertake a comparative study with legislations of other institutions in different jurisdictions and adopt the best practices.
5. To consider the technological developments that merit reform of the Act.
6. To make legislative proposals for amendment to the LDC Act.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

During the study, a range of sources of literature were reviewed including text books, reports, journals, other pieces of legislation, policy documents to enable the Centre to gather more information on the review of the Act, borrow the best practices from similar institutions and jurisdictions. These were considered as follows:-

A. The Government Memorandum on the Report of a Committee Appointed to Study and make Recommendations Concerning Legal Education (Gower Report)¹⁸

This is the initial report that considered the review of legal education in Uganda and following the Report, the Law Development Centre was established under the LDC Act in 1970. The Committee made many proposals to make that formed most of the provisions of the Act to wit;

- i) The LLB training would provide only basic education for all law jobs but the product would not be ready to practice law in the traditional sense. Therefore, such graduates had to spend another year at the Law Development Centre developing their mastery of practical skills. This is where the name of the Centre is derived.¹⁹
- ii) The Centre would not be governed by the Makerere University Council and Senate but instead have a Committee of Management whereof its composition was also suggested to consist of the Vice Chancellor (principal at the time)-MUK, the Attorney General, the Law Society, the Law Department -MUK and the Director LDC.²⁰

¹⁸ Supra

¹⁹ Gower Report, page 2, paragraph 8

²⁰ Ibid, page 33, paragraph 32.

- iii) Other than conducting the post graduate legal training, the Committee's recommendations further led to the current functions of LDC as provided in section 3 of the Act. These include;
- ❖ The training of magistrates; LDC would take this function that had been previously exercised by the Entebbe Law School.²¹
 - ❖ Research and law reform; the primary responsibility for law reform was entrusted to LDC and then the law teachers of the university would be utilized to participate in research. It was envisaged that there would be a Law Reform Committee based at the Centre. This role would go hand in hand with the research function where there would be a research institute established to carry out legal research and this institute would be handled by Makerere University.²²
- iv) Another function related to the above is preparation and publication of Law Reports and any other legal magazines.²³
- v) The Centre was at that time a prospect of para-legal training and Continuing Legal Education (CLE) for the advocates, public prosecutors and higher grade magistrates. This would be helpful in training those newly entering a field of specialisation.²⁴

The Gower Committee was the first to study and make recommendations for the conduct of legal education in 1969, changes have taken place in legal education training and the institutions that carry out legal training thus need for a periodic review. Therefore, in 1995 the Committee on Legal Education and Training (CLET) headed by Justice Benjamin Odoki undertook a study aimed at reforming the legal sector by strengthening it as an essential component of the government's Capacity Building Plan.

²¹ Ibid, page 48, paragraph 90

²² Ibid, page 51, paragraph 104

²³ Ibid, page 51, paragraph 105

²⁴ Ibid, page 51, paragraph 106

B. The Final Report of the Committee on Legal Education, Training and Accreditation in Uganda, September 1995 (The Odoki Committee Report)

The Committee on Legal Education, Training and Accreditation in Uganda was appointed in May 1995 to study and review legal education, training and accreditation in Uganda and make the necessary recommendations. It was headed by Justice Benjamin Odoki as the chairperson and it was mandated to explore the legal education sector in general including the roles of Makerere University, the Law Development Centre and other institutions such as the Law Council and the Uganda Law Society (ULS); assess the need for provision of continuing legal education for the profession both in the private and public sector among others. The Committee was to establish whether ULS or any other body would in any way coordinate CLE and the modalities on how the course should be conducted.

The Committee made a review of different issues and concerns raised about the Law Development Centre. These included; LDC's monopoly over the conduct of the Post-Graduate Bar Course, the mandate of the Centre and the need for provision of Continuing Legal Education for the profession both in the public and private sector.

Whereas the Committee made a deep analysis of the functions of LDC and recommended that LDC is relieved of its duties and that these duties be taken up by other institutions, the respective institutions are nonexistent thus would leave the functions unenforced. This meant that the recommendations were partly or not at all implemented.

For instance the provision of legal aid was to be ceded and a national system of legal aid, spearheaded by the MOJCA, supported by the ULS be introduced. Law Reporting was to be taken over by an independent, corporate entity- The Council for Law Reporting and the LDC staff who had been trained in the area would then be transferred to this Council. There was supposed to be additional training for magistrates organized within the internal framework of the judiciary. It further observed that whereas LDC had been instrumental in coordinating CLE programs, it was no longer practical to centralize all CLE programmes thus recommended that MOJCA, NGOs, ULS will organize courses for

state attorneys, judges, magistrates and advocates then would whenever necessary call on the collaboration of LDC.

C. The Report of an Expert Group under the title of Training and Institutional Needs Assessment Mission, 2007

The inquiry was conducted between 14th and 24th June 2003 to provide an in-depth assessment of the needs of LDC that would strengthen its capacity to implement its core activity of producing quality legal education for both lawyers and non-lawyers.

The Expert Group made a review of earlier reports such as the Gower Committee and noted that the circumstance in Uganda had changed while the activities of LDC had remained constant. That LDC still considers itself as a bridge between university legal education and professional legal practice and maintains all of the same activities on its agenda. It also made a review of the Odoki Committee report and stated that entrants into LDC were not well grounded in substantive law and thus LDC had to carry out an extra duty of remedial training which consequently had impaired the Centre from providing quality professional training including CLE.

It further added that the functions of LDC made it too ambitious thus some of the functions could be better implemented by other institutions. It recommended that the Centre cedes them accordingly.

Peculiar in this report was a consideration of other issues affecting the performance of LDC and these are; clearing the backlog in all LDC publications to produce two researches per year by 2010, develop and implement human resource systems to attract and retain a competent workforce by 2010 and review and strengthen organizational and management structures and processes to realize LDC's strategic objectives by 2010.

This report faces the same challenges as that of the Odoki Committee because the institutions to take up the roles of the Centre are non-existent.

D. The Report of the Netherlands Programme for the Institutional Strengthening of Post-Secondary Education and Training Capacity (NPT), 2007

The study came as a result of a needs assessment that had been carried out in June 2003 in the sectors of education, local government, JLOS and procurement in government sectors. The outline of the project was to strengthen LDC's capacity to effectively implement its core mandate to produce quality-well trained and grounded advocates.

As a result of the funding by the Netherlands government, a review of legal education was carried out in 2008 and a report produced in 2009. The recommendations made and implemented were in relation to the conduct of the Bar Course in regard to admissions, firm rooms and library facilities. The MC members carried out study tours aimed at providing insight into making decisions for the Centre and training on corporate governance and strategic management tools. Some of the recommendations not implemented include holding regular meetings with institutions involved in legal education and training and other relevant stakeholders to create a link between LDC and the other institutions.

However, this study did not consider the regulatory reforms required under the LDC Act.

E. The Final Report on the Legal Education Review in Uganda, 2008 (The Ssempebwa Committee Report)

The Committee chaired by Professor Ssempebwa was established to review the previous reports following their earlier recommendations as such to;

- i) Establish the nature and status of LDC within the legal education sector in Uganda.
- ii) To review the LDC mandate
- iii) Make recommendations to strengthen the role of LDC within the broader field of legal education.

This was the last publication on the review of legal education in Uganda. It considered the Odoki Report and either made additions to the Odoki Report or seemed to restore the current position of LDC in regard to the structure and mandate of LDC.

F. Nerima Committee Report, 2012

This Committee was set up after the Management Committee meeting of 22nd February 2012 which resolved that the Director, LDC sets up a committee to review the LDC Act and propose necessary amendments to it. The proposals would then be submitted to the Hon. Minister of Justice and Constitutional affairs and the Hon. Attorney General who would then present them to Cabinet and Parliament respectively.

On 28 February 2012, a six member committee was composed to review the LDC Act, Cap 132 and propose appropriate amendments. The terms of reference of the committee were to study/review the LDC Act and identify areas that needed to be amended to be in line with recent and future developments in legal training, the legal profession and related matters in the country and the East African region; propose necessary amendments to the Act, prepare and submit a report on the proposed amendments to the Act. The report was compiled though it was never submitted to the line Minister nor the Attorney General.

Therefore, the review of the LDC Act, comes in as a reconciliatory tool to merge all the positions that have been advanced by the previous respectable committees. For comparative purposes, LDC being one of the pioneer post graduate legal training institutions across the East African region, it is the only institution that is still governed by an old statute. This review will therefore capture the recent developments in the legal education sector and also provide for the smooth operation of the Centre.

CHAPTER THREE

METHODOLOGY

3.1 Introduction

This chapter discusses the methods and tools used to conduct the study and gather information.

3.2. Study design

The study was undertaken using the qualitative method of data collection. This was done through task force meetings and individual interviews that enabled the researcher to collect facts, views, opinions and concerns of the stakeholders to identify the gaps and anomalies in the Act and the extent to which the glitches in the Act have affected the implementation of the law and the magnitude of the emergent problems.

3.3. Study Area

Study consultations were carried out in the four regions of the country (East, West, Central and North) in the districts of Mbale, Mbarara, Kabarole, Gulu and Kampala. The study also drew comparisons with legislations from other countries in the East African regions such as Kenya and Tanzania, and other countries like Ghana, Nigeria, South Africa and the UK.

These districts were chosen on the following criteria;

Mbale, Mbarara, Gulu; these were chosen because LDC has got study centers operating short course in Administrative Officers' Law Course and the Court Bailiffs course.

Kabarole (Fort Portal); although there is no study centre there, Fort portal has got numerous law firms, a magisterial area and a High Court Circuit hence the targeted respondents were advocates and judicial officers.

Kampala; this is where LDC is located thus was a good source of information for the study.

3.4 Population and sample selection

The study was conducted amongst selected respondents in the four districts who either had the knowledge about the Act, or who could easily comprehend the provisions thus make an opinion about the law and those who are knowledgeable about the institution itself. These included advocates, state attorneys, judges, government officers, magistrates, police officers, district leaders and LDC staff themselves.

3.5 Data Collection Methods

Data was collected through desk research and review, consultative meetings with the task force and key informant interviews.

3.5.1 Desk research

During the study, review of different material relating to the Act was considered. These included, reports, text books, journals, publications and various pieces of legislation. This was aimed at finding the anomalies in the law and helped in drawing solid conclusions on the review of the Act.

3.5.2 Key Informant Interviews

Key informant interviews were conducted to explore further the Act and its provisions, verifying earlier information received during consultations with stakeholders on the task force, help gather personal views and opinions on the different provisions of the Act based on their knowledge and experience.

3.5.3 Taskforce Meetings

A task force composed of representatives from different institutions that are directly or indirectly involved in legal education and training was constituted in order to give support to the department through validation of the issues paper, questionnaire and study report.

The Centre worked with a taskforce that provided the technical expertise required for the accomplishment of the objectives of the study and throughout the review process. The task force was composed of individuals and representatives from the following institutions;-

- (a) Judiciary
- (b) Law Council
- (c) Makerere University, School of Law
- (d) The Justice, Law and Order Sector (JLOS)
- (e) Solicitor General/Ministry of Justice and Constitutional Affairs
- (f) Uganda Law Reform Commission
- (g) Uganda Law Society
- (h) Deputy Director, LDC
- (i) Head Post Graduate Legal Studies and Legal Aid, LDC
- (j) Head Department of Law/CLE, LDC
- (k) Head, Law Reporting, Research and Law Reform
- (l) Manager Publishers, LDC
- (m) Head, Library Department
- (n) Legal Officer-Law Reform, LDC

3.5.4 Data analysis and Entry

Data was analysed using the qualitative method of analysis and was deductive in nature, the responses were interpreted and backed up by use of verbatim responses recorded during the study to provide evidence and proof of views and opinions of the respondents on the subject under study.

3.5.5 Validation and consensus building workshop

At the end of the review, a consensus building workshop was held to discuss the findings and build consensus for recommendations and proposals for reform.

CHAPTER FOUR

FINDINGS OF STUDY

4.1 Findings and Analysis

Before we commence on the findings on the issues under study, it is important to note that most of the respondents were knowledgeable about the LDC Act save for 2 respondents from Fort Portal who had never seen or heard about the Act.

This chapter presents the views of the different respondents interviewed and the analysis of the views in comparison with the current law. There are recommendations made in the report from the general perspective of the findings.

4.2 Name of the Centre

The study sought to establish whether the name of the Centre should be changed and another name adopted. The Law Development Centre was established under section 2 of the LDC Act as a body corporate with perpetual succession, a common seal and power to sue or be sued in its own name and any other acts or things that a body corporate does or suffers.

The study thus sought to gather views to establish as to whether there was need to change the name or not. There had been concerns raised that there should be a change in name because of the negative perceptions held by some people especially at the mention of LDC.

Findings; in the five districts where the study was done i.e Mbale, Gulu, Mbarara, Kabarole (Fort Portal) and Kampala, out of the 41 respondents interviewed, 37 were against the change of name while the other four seconded a change of name.

The respondents advanced reasons such as; the reputation, distinctiveness that the Centre has built overtime, need to ensure continuity since it is now a brand name, the name encompasses all the functions of the institutions and also to avoid confusion amongst the

members of the public. Other respondents stated that what makes an institution is not a name but its functionality.

The reasons advanced for change of name were that LDC is a training school and there is no law that it is developing. It should instead be called a Practicing School; Uganda Law Development Centre or Uganda School of Law since similar institutions across the region are called “Schools”. The other reason put forward is that the alumni of LDC have got a negative perception on the name of LDC because some associate it with trauma, failure and pain. Thus suggestions were that the name be changed to Law Development Institute.”

Analysis;

Drawing from the above findings, it is evident that the name and reputation of the Centre has been built over time and is now a brand name having existed under the name for the past forty years. An earlier report made by the Nerima Committee compiled in 2012 reported that some stake holders had suggested the change of name to *Uganda School of Law* but the Committee had recommended that the name is retained since the functions of the Centre stretch beyond a mere School of Law. Moreover, there is already valuable national and international good will in the name ‘Law Development Centre’.

The government having established that only a law degree couldn’t meet the needs of the legal profession, it was accepted that there is need for further professional training and appreciated that such kind of training had been successful in other countries.

As a result, the government then stated that the Law Development Centre be established as an autonomous body by an Act of Parliament to enable it to operate with some degree of independence from Makerere University where law graduates would spend another year of training to develop their practical skills.

Recommendation

LDC has build its reputation for 40 years worldwide that even other institutions borrow best practices from it. Thus it should aim at making the reputation even better.

The name of the Centre should be retained as it is since we already have Makerere Law School, changing the name would break the continuity already in existence and to avoid confusion in the public since some members of the public do not actually know the difference between LDC and Makerere University.

4.3 Functions of the Centre

The study also sought to get views of the respondents on the different functions of the Centre. The mandate of LDC has for long been under contemplation by different stakeholders with reasons that the functions were set at a rather ambitious scale and some can no longer be exercised by LDC. Save for the post graduate training that has not been cast in doubt, other functions hang in balance as to whether they should still be in the Statute.

At the moment LDC is mandated under section 3 of the Act to do the following:-

- (i) Postgraduate legal training,
- (ii) organising and conducting courses in legislative drafting,
- (iii) organising and conducting courses for magistrates or persons provisionally selected for appointment as magistrates,
- (iv) organising and conducting training courses for officers of the government and members of the Uganda Peoples Defence Forces,
- (v) courses for officers and personnel of courts to improve their efficiency,
- (vi) assisting the commissioner appointed for the preparation of a revised edition of the Laws of Uganda,
- (vii) assisting in the preparation of reprints of Acts of Parliament,
- (viii) assisting the Law Reform Commission in the performance of its functions,

- (ix) undertaking research into any branch of law,
- (x) holding seminars and conferences on legal matters and related matters,
- (xi) assisting in the provision of legal aid and advice to indigent litigants and accused persons,
- (xii) compiling, editing and publishing law reports for Uganda,
- (xiii) publishing periodicals, bulletins, digests or other written material concerned with legal and related matters, and
- (xiv) disseminating and promoting generally a better knowledge of the law.

Findings; From the information gathered, one of the respondents from Mbale stated that section 3 (1) (c) on the centre conducting courses in legislative drafting should be removed from the Act since this is a course unit on the curriculum and is thus a repetition. She further observed that some of the functions have out lived their usefulness such as organising courses for newly appointed magistrates and 3(1) (d) which provides that the Centre is to conduct courses for officers of the government and members of the UPDF for better understanding of the law. She stated that this provision should be revisited since the courses are open to all the members of the public not only the officers mentioned in the Act.²⁵ Another respondent suggested that section 3(1) (d) should include non-state actors.²⁶

The study did not seek only a review of the existing functions of the Centre but also sought to see if the Centre could take on new functions. Some respondents suggested that LDC needs to partner with ULS to carry out continuing legal education (CLE) for all lawyers because the one conducted by ULS leaves out the lawyers from government and its agencies since it only targets its members, majority of whom are in private

²⁵ A State Attorney, DPP's Office, Mbale District.

²⁶ A State Attorney in Mbarara district

practice.²⁷ Another respondent suggested that LDC should take on regulation and supervision of law degrees at universities.²⁸

Of the 41 respondents from the five districts, eighteen suggested that the functions are too many and are either redundant or over ridden by the conduct of the bar course and should be considered for revision and fourteen respondents suggested that the functions should remain as they are.

Analysis

The origin of the functions of the Centre is the Gower Committee Report and will consider the functions that have been in the spotlight and these include;-

- a) *Organising courses in legislative drafting*;²⁹this was one of the envisaged skills by the Gower Committee where the professors stated that the role of a lawyer should not only be in private practice but also in public service, thus the Committee suggested that skills in drafting legislation, delegated legislation etc.³⁰ As a result, teaching legislative drafting was incorporated in the Act. It is true that at the moment, there are many government institutions and agencies that would need lawyers with legislative drafting skills such as the Uganda Law Reform Commission and the First Parliamentary Counsel under the Ministry of Justice and Constitutional Affairs (MOJCA) to mention but a few.

Besides it being a subject offered on the Bar Course, there are various people that would need the training in Legislative Drafting and have not gone through the Bar Course such as Parliamentarians and Councillors. Furthermore even persons who have gone through the Bar Course need refresher training especially if they find themselves employed by the MOJCA. At the moment the only institute that carries out a specialised course in

²⁷ Ibid

²⁸ Respondent from Mbale Local Government

²⁹ Section 3(1) (b), LDC Act

³⁰Gower Report, page 5, para 15

legislative drafting is the International Law Institute which is rather too expensive for many people to afford.

The Bar Course curriculum was reviewed in the year 2015 and at the moment Legislative Drafting is one of the elective subjects on the Bar Course. Furthermore, the training on the Bar Course is short lived and may not enable someone to become a qualified drafts person unless they have received comprehensive training in the Course.

For comparison purposes, all the other East African Law Schools, none of their legislations provide for the distinct function of conducting the course of legislative drafting. However, the Zambia Institute of Advanced Legal Education Act, under section 4(1) and 4 (1) (c) provides for the functions of the Council of the Institute and among others it is to provide national, regional and international legal post graduate studies and training in legislative drafting.³¹

The draftsman's intention at that time probably could be that they were considering lawyers who would join the Attorney General's chambers and Parliament. Presently, legislative drafting is one of the subjects taught on the bar course, and it is indeed helpful to lawyers joining government institutions such as MOJCA, Parliament, Local Government, and other institutions that will carry out review of laws. For example, in the year 2013, NEMA undertook to review the NEMA Act and the regulations thereunder.

The legal profession plays a very big role in having a successful legal drafting process. The quality of legislation is greatly improved when different kinds of legal practitioners with a wide range of knowledge, skills, and experience, and who understand the methodology of law, are meaningfully involved in all stages of the drafting process. The lawyers provide technical expertise concerning the structure and format of legislation, proper use of special and transitional clauses, and correct terminology and definitions;

³¹ The Zambia Institute of Advanced Legal Education Act, Cap 49, Laws of Zambia.

provide substantive expertise relating to harmonization and compliance issues (with the existing laws or national and international standards).

Whereas there is a great demand for legislative drafting skills, there is shortage of legal professionals who can draft modern legislation.

Recommendation

The provision should be retained, build internal capacity and LDC should adopt Legislative Drafting as a Course on its own and train officers from national or regional participants.

*b) Organising and conducting courses for magistrates and persons provisionally selected for appointment as magistrates;*³² LDC started training lay magistrates from 1974 and stopped the training in 1997. The training led to an award in Diploma in Law and Judicial Practice.

LDC has previously carried out similar trainings such as the New Sudan Judiciary Personnel Law Course from April 2004 to 14th February 2006. At the moment, LDC does not carry out training of magistrates but short term training of two weeks is carried out by the Judicial Training Institute.

Findings; Most of the respondents stated that training of magistrates was not being done. The Centre prepares students for the bar more than for the bench e.g on the training on how to evaluate evidence as a judicial officer.³³ Another respondents stated that the subsection has outlived its usefulness because all those who graduate from LDC after the bar course can now apply to become magistrates.³⁴

Analysis

³² Section 3(1) (c), LDC Act

³³ Interviews with

³⁴State attorney, Gulu District

This function was taken over from the Entebbe Law School. This training was meant to be for at least one year after which the magistrates (Grade 11 and 111) would then be appointed. The Committee stated that before it could achieve a fully qualified magistracy, there was need to upgrade the existing one through initial and refresher courses at LDC.

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The first magistrates course was at Nsamizi Law School, Entebbe which commenced in 1961 after the then Ministry of Legal Affairs (now MOJCA) established the Law School. Initially the purpose of the one year course was to train African Court judges and magistrates to a level whereby legislation designed to integrate the customary and central government courts systems could be put into effect. A short course in introduction to criminal law was held for newly recruited trainee-magistrates, who would then later return to undertake the Diploma in Law.³⁶ The aim of both the long and short courses was to give non-professionally qualified magistrates a practical knowledge of the law through mock trials, inquests and preliminary inquiries.³⁷ This course was also meant to encourage more lay magistrates to join MUK under the mature entry scheme thereafter be admitted to LDC and in the end this would increase the number of qualified magistrates.³⁸

The Odoki Committee recommended that additional training for magistrates or newly appointed magistrates should be organised by the Judiciary within the framework of the judiciary's scheme of CLE. It further recommended that LDC graduates who have been appointed as magistrates without any previous experience should undertake a two weeks training programme consisting of an induction course of not less than two weeks, followed by a sixth months attachment to a senior magistrate.³⁹

³⁶ A. P.J. Allen The Law School at Entebbe, East African Law Journal, Vol 1, June 1965 at page 148

³⁷ Ibid

³⁸ At the time, Uganda had 245 lay magistrates, Gower Report, page 14, para 58

³⁹Odoki Report, paragraph 152, page 58

Previously, the judiciary used to send Grade II and III magistrates for training at LDC. In the late 2000, the positions were slowly phased out and as a result the training offered by LDC could no longer carry out such training. At the moment at the retirement of a Grade II magistrate, he/she is replaced by a Grade I.

The Judicial Studies Institute (JSI) was established in 2004 and one of its functions was to provide training to judicial officers to prepare them for their daily work. As a result, newly appointed officers are supposed to be taken through an induction course usually for two weeks. However, the JSI is not accredited to carry out the training and the Judiciary Administration Bill which would provide a legal framework seems to have stalled.⁴⁰

Currently, advocates who have attained the Post Graduate Diploma in Legal Practice can become magistrates straight from LDC and there is no requirement to have the clerkship from senior judicial officers. However, the training at the Bar Course does not comprehensively equip advocates with judicial officers' skills yet the only training the new magistrates receive is an induction for two weeks.

Recommendations

- (i) The function should be retained in the Act and LDC should set a training program for judicial officers.
- (ii) LDC may carry out joint training of judicial officers with other training institution such as the JSI.

⁴⁰ The Judiciary Administration Bill, 2011

c) Organizing and conducting training courses for officers of the Government and members of the UPDF with a view to promoting a better understanding of the law,⁴¹

LDC has never in particular carried out training of UPDF officers nor police officers. Reference to the UPDF Act was made in 2000 when the ULRC made a major revision of the Laws of Uganda. At the moment, LDC does not carry out specialized courses for the UPDF officers but carries out the Diploma in Law, Diploma in Human Rights, the short course for Administrative Officers'' Law Course and court bailiffs and brokers. In the past LDC has carried out the following trainings;-

i) Southern Sudan Ministry of Legal Affairs and Constitutional Development Law Course from 19th November 2007 to 18th April 2008

ii) Town clerks law course from July 1982 to October 1991;

iii) Paralegal law course between 12th November to 14th December 2007;

iv) Journalists law course from 1st April to 30th May 1997;

v) Water Law and Policy Certificate Law Course from 8th November 2010 to January 2011.

Findings; One of the respondents stated that this section should be removed since all the courses are open to the public.⁴² The other respondent stated that it should include non-state actors as well.⁴³

Analysis

This function also emanates from the Gower Report which suggested that should funds allow, the Centre would carry out training courses in law for police, military officers, probation officers, prison officers, sanitarians and others. The vision of the professors was that the courses would be done at the Centre or by the Centre teachers going to the police

⁴¹ Section 3 (1) (d), LDC Act

⁴² A respondent from Mbarara district from the DPP's office

⁴³ A sub county chief in Mbarara district

training college (as then was) or comparable educational facilities.⁴⁴ This was one of the short courses that were conducted by the Nsamizi Law School at Entebbe and the targeted group was government officers such as police officers and probation officers.⁴⁵ When LDC took over the roles of the School, the courses conducted attracted administrative officers, prosecutors, court interpreters, labour officers and army officers. The rationale for the course was to promote knowledge of the law to officers whose work requires legal knowledge. LDC would be the suitable for the training because teaching non-lawyers requires sensitivity which university lecturers lack and the non-technical approach which many practitioners may not be able to display.⁴⁶

During the first magistrates course, the Head of the Entebbe Law School was joined by a lecturer, who transferred from the Uganda police. `Later in 1963, a second lecturer, a lawyer from Nigeria, also joined the staff thus enabling the School to hold two courses simultaneously. Thus more subjects were introduced into the curriculum including the ones for administrative officers, specialist police and probation officers.⁴⁷

At the moment, LDC carries out training of government officers in Administrative Officers Law Course, short courses for court brokers and bailiffs, officers from JLOS institutions such as the Human Rights Commission, Prisons, tailor made courses such as the one that was conducted for the Uganda National Bureau of Standards (UNBS) staff.⁴⁸

The JLOS Integrity Committee Report of 2014 stated the need for more training as pointed out that the police officers carry out inadequate investigation, abuse of the 48-hour rule, coerce suspects into writing statements, conduct improper searches on suspects' premises, face difficulties in getting medical evidence and inadequate training for police

⁴⁴ Gower Report, page 50, paragraph 102

⁴⁵Supra, East Africa Law Journal.

⁴⁶ Ibid, paragraph 103

⁴⁷ Peter A. P.J Allen, the law school at Entebbe, Uganda, East African Law Journal, Vol 1 1965 at page 148

⁴⁸ Seven UNBS staff were trained by LDC between 27th February and 19th February 2015.

in basic and specialized fields which include management of scenes of crime, handling children in conflict with the law, and handling sexual and gender based violence cases.

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Therefore there is a lot of potential that LDC can explore in its trainings and such is one of them. The provision is inhibiting by limiting it to members of the UPDF and other officers from government yet LDC has previously carried out such trainings.

Recommendations

- i) The provision should be redrafted to cater for all officers of government and other members of the public or governments.
- ii) LDC to create partnerships with the UPDF training institute in Jinja for any specialized training.

*d) Organizing and conducting courses for officers and personnel of courts with a view to improving their efficiency;*⁵⁰ LDC carried out its first Prosecutor Trainees' Law Course in 1999 until 2001. It also carried out an investigation and Prosecution Law Course for Weights and Measures staff in 2006.⁵¹

Findings; One of the respondents in Fort Portal stated that *"personnel of court are not trained by LDC although this is one of the roles of the Centre."* This is probably because there is no link between the Centre and the judiciary to carry out such training. This has

⁴⁹Chapter two, "Compliance with ethical and Integrity Standards in JLOS institutions", JLOSIC Report 2014, pages 16-24.

⁵⁰ Section 3(1) (e) , LDC Act

⁵¹ Information from the LDC library

therefore led to inefficiency in courts since some of the court clerks lack training or are not constantly equipped with knowledge on developments in the law and practice.⁵²

According to the JLOS Integrity Committee Report, 2014, the committee reported that they were informed that there were no court interpreters in most areas. They noted that the areas affected are Kanungu, Isingiro, Arua, Yumbe, Nebbi, Moyo, Adjumani, Koboko and Zombo districts where different dialects are used in court. This means that there is need for numerous interpreters for each dialect. The respondents to the committee also observed that there was lack of sign language interpreters in JLOS institutions including courts. There was also intentional misinterpretation by some existing court interpreters which was attributed to corruption.⁵³ Thus it was recommended in the JLOS report that there is need to train court interpreters.⁵⁴

Recommendations

- (i) LDC should create partnerships with the relevant institutions such as the judiciary and other institutions so that officers and personnel of the courts of law and those institutions (paralegals) are trained in the basic knowledge of the law.
- (ii) LDC should put more emphasis on the Diploma in Law Course by marketing the course to as many stake holders and clients as possible.
- (iii) There is need to carry out a training needs analysis for such officers and organise workshops, seminars for such officers and personnel as and when deemed fit as provided in the Act. This will go a long way to ensure efficiency in the operations of the courts of law.

⁵² One of the Magistrates in Fort Portal

⁵³ Chapter two, page 31

⁵⁴JLOS Steering Committee Report, page 72, No. 17

*e) Assisting the Commissioner in charge of preparation and publication of revised edition of the laws of Uganda and assisting the Law Reform Commission in the performance of its functions;*⁵⁵ these two roles will be dealt with concurrently because they are handled by one institution, the Uganda Law Reform Commission (ULRC) under its Law Revision and Law Reform Departments respectively. Presently, the ULRC carries out consultations with staff of LDC during its law reform process.

Findings; some of the respondents stated that the duties of assisting in the preparation of reprints of Acts of Parliament and assisting the Law Reform Commission in the performance of its functions should be deleted since he does not see the reason why LDC should help ULRC in its work.⁵⁶ *“Those functions sound too many. Concentrate on post graduate legal training. Add research and publication of legal materials because that is what an academic institution should do. The rest cut out – like assisting in that and this....remove.”*⁵⁷ Another respondent stated that *“The Centre has been performing those functions for a long time with distinction. Why would you want to drop any of them now yet you have been performing them? That is what makes the Centre what it is. Please maintain. Continue with those noble tasks.”*⁵⁸ *“The functions are too many. I suggested that they should be reduced because she thinks that it is overwhelming.”*⁵⁹ *“Some of the roles are collaborative but should be complementary so they are all relevant.”*⁶⁰ *“Resources may not be available to carry out other functions, they will devolve the bar course.”*⁶¹ *“LDC should think of strengthening the law reporting departments and publishing infotainment magazines accessible to all advocates.”*⁶²

⁵⁵ Section 3 (1) (f) and (h)

⁵⁶ A State Attorney in Mbale District.

⁵⁷ One of the civil servants in Mbale District, an alumni of LDC.

⁵⁸ Interview with one of the advocates in Mbale district

⁵⁹ Interview with an advocate in Gulu District

⁶⁰ As per one of the magistrates in Mbarara District

⁶¹ Interview with a Senior State Attorney in Mbarara District

⁶² Interview with one of the magistrates in Fort Portal, Kabarole District

Analysis

Most of the functions of the Centre originated from the Gower Committee which among others envisaged that LDC would play an important role in the area of law reform which would be carried out with the function of research. It was envisaged that the Law Reform Committee would have its meetings at the Centre although LDC would have no control over the Committee.⁶³ This was to be through LDC's research facilities, library and secretarial staff and as a result assisting the ULRC was provided for as one of the functions of LDC.

The Constitution of the Republic of Uganda 1995 established the Uganda Law Reform Commission under article 248(1) and subsequently by an Act of Parliament, the ULRC Act,⁶⁴ and among its functions is to study and keep under constant review the Acts and other laws comprising the laws of Uganda with a view to making recommendations for their systematic improvement, development, modernisation and reform with particular emphasis on the elimination of anomalies in the law, the repeal of obsolete and unnecessary laws and the simplification and translation of the law.⁶⁵

The Odoki Committee made a review of the roles of LDC and stated that as much as LDC carries out this role collaboratively in carrying out research relating to some areas of law reform, they stated that the role should not be imposed on them by statute. On law revision, the Committee suggested that the role should be transferred to the Ministry of Justice or the Law Reform Commission.⁶⁶

LDC as an education institution plays an important role in the development of the law and legal reform. Elimination of the Centre from the processes of law reform would diminish the ownership and responsibility of the legal fraternity as a whole, including

⁶³ Gower Report, page 16, paragraph 67

⁶⁴ Cap 25, Laws of Uganda

⁶⁵ Section 10 (1) (a), Cap 25, Laws of Uganda

⁶⁶ Odoki Report, page 73, No. 6

academics, for initiating, considering and evaluating proposals for change.⁶⁷ This is meant not to underestimate the contribution of the legal profession through consultation.

The aim of any post graduate legal training school should be not only be academic teaching and research but also to making a positive contribution to the continuous improvement of the law and the operation of the legal system.

Recommendations

- i) The roles should not be deleted from the Act because legal reforms go hand in hand with research both social and legal. LDC is legally mandated to carry out legal research in any area of the law and most often the research leads to proposals for legal reform. Therefore, if LDC can help the ULRC in expediting the process, then there should be no reason as to why the statutory provision on law reform should be deleted.
- ii) LDC should consider better ways of responding as departments or individuals to requests from ULRC for submission of opinions on laws under review.
- iii) The best and most effective lawyers, in any form of practice, are those with a deep understanding of the law and the legal system; a deep understanding not just of the rules but of their context, their dynamics, their role in society, and their limits; an understanding, in particular, of where the law has come from, as well as an intuition about where it might go thus need for LDC's involvement in law reform.
- iv) These roles are merely collaborative and complimentary not that LDC is usurping the powers of the ULRC nor does this mean that ULRC relies on LDC to carry out its functions, thus it is prudent that LDC as the only post graduate

⁶⁷ Michael Coper, *Law Reform and Legal Education: Uniting separate worlds*, page 243

legal training institution in Uganda gives support to ULRC in the area of law reform. Furthermore, all laws in Uganda are made by the Parliament thus when LDC initiates proposals for reform, it forwards them to the relevant ministry that will then pass them to Cabinet.

- v) The provision should be retained and LDC shall give support to ULRC through drafting proposals for reform, undertaking research on the laws under review and consultations to gather views from LDC.
- vi) Combine the functions of law revision and law reform (section 3(1) (g) and (1) (h) since they are done by one institution.

*f) Undertaking research into any branch of law and collecting, compiling, analyzing and abstracting statistical information on legal and related matters;*⁶⁸ the function of research is exercised under the Department of Law Reporting, Research and Law Reform (DLRR) by the Legal Officer-Research and Publications. Research projects are initiated annually by drafting a research proposal, carrying out the field study and a report is prepared and published at the end of the project.

Analysis

At the enactment of the Act, there was a research department at the Centre that had been instrumental in providing research materials and services to government officials and non- government officials. It was foreseen that this department would as well give assistance to bodies like the Institute of Social Research at Makerere, the Institute of Public Administration and the East African Legal Research Institute.⁶⁹

⁶⁸Section 3(1) (i) and k)

⁶⁹ Gower Report, page 16, paragraph 68

Legal research is defined as the process of identifying and retrieving information necessary to support legal decision-making. In its broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.⁷⁰

Research comprises "creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of humans, culture and society, and the use of this stock of knowledge to devise new applications."^[1] It is used to establish or confirm facts, reaffirm the results of previous work, solve new or existing problems, support theorems, or develop new theories.⁷¹

Research is an important component of any institution carrying out training. Research and publications are inseparable activities for any legal institution. Research comprises collecting data, compiling, analyzing and abstracting information from the final findings.

Recommendation

The two provisions on research section 3(1) (i) and (k) should be combined since (k) is a component of (I) and the function should be retained by LDC.

g) Law reporting; under section 3 (1) (m), LDC is charged with a function of compiling, editing and publishing Uganda Law Reports. Still this function is carried out under the department of Law Reporting, Research and Law Reform. It produces and publishes annual Uganda Law Reports and High Court Bulletin.

Findings; some of the respondents who commented on this role stated that the Law Reporting Department should be strengthened and the department should think of publishing infotainment

⁷⁰ J. Myron Jacobstein and Roy M. Mersky, Fundamentals of Legal Research, 8th ed. (Foundation Press, 2002) p. 1

⁷¹ OECD (2002) Frascati Manual: proposed standard practice for surveys on research and experimental development, 6th edition.

*magazines accessible to all advocates.*⁷² Another member of the bench had this to say that “*on law reporting, the function needs to be strengthened.*”⁷³

Analysis

At the time that the Gower Committee carried out the review, LDC was undertaking law reporting and legal publication under the guidance of the editorial Board consisting of the Director of the Centre, a High Court Judge and the Head of the Law Department at Makerere.⁷⁴ Since then LDC has exercised this right of preparing and publishing the Uganda Law Reports and also used to publish magazines like the Scope Magazine. However during the review by the Odoki Committee, it noted that the Uganda entire legal system had been handicapped by the absence of a viable system of law reporting, and observed that this role is important in the legal infrastructure of the country. They thus recommended that the role be transferred to an independent corporate entity to be known as the Council for Law Reporting as is the practice in most common wealth countries. However, this entity has not been established.

Recommendations

- (i) This Law Reporting function is a great support to the training and research function and is also a great source of income for LDC thus should remain with LDC.
- (ii) Enhance the functions of law reporting and legal publications and carry out rigorous marketing of LDC’s publications such as online publication.
- (iii) Merge the two subsections on publications 3 (1) (m) and (n) on law reporting and legal publications.

⁷² Interview with a magistrate in Fort Portal municipality.

⁷³ Interview with another magistrate in Fort Portal Municipality.

⁷⁴ Gower Report, page 16, para 69.

3.2.1 Additional functions of LDC

In addition to reviewing the already existing functions, the study also sought to know whether LDC could enlarge its mandate by adopting new functions other than the ones mentioned in the Act. Among the ones suggested were continuing legal education (CLE) for advocates. Presently, CLE for advocates is carried out by Uganda Law Society (ULS). LDC on the other hand has the CLE program under the Department of Diploma in Law and CLE, it offers CLE to students on the bar course training through ADR training.

Findings; among the responses received include; *“LDC should look at CLE for advocates, judicial officers to go for periodic trainings to keep them up to date with the law and professional training, for example after every after five years.”*⁷⁵ Another respondent suggested that *“LDC needs to partner with ULS for continuing legal education for all lawyers. The CLE conducted by ULS only targets its members, majority of whom are in private practice. This leaves out lawyers employed by government.”*⁷⁶

Analysis

This function was envisaged by the Gower Committee, and the Committee then stated that LDC would be the appropriate institution to conduct refresher courses or CLE for qualified lawyers as part of legal education if well financed.⁷⁷

Importance of CLE; the scope of the curriculum at undergraduate level does not cover all that a lawyer needs for the legal craftsmanship and professional skills. Secondly, the law is always evolving hence lawyers need to continually be updated on the developments in the law, need to be educated on areas that they may not be knowledgeable about and all in all, it improves a lawyer’s professional prowess. Thirdly, for the lawyers employed in the public sector, they must receive post-qualification training in areas like legislative

⁷⁵ Ibid

⁷⁶ As per a state attorney in Mbale District

⁷⁷ Gower Report, page 51, para 106.

drafting, negotiating petroleum or mining concessions, preparing foreign investment legislation, legal aspects of privatization, international commercial arbitration, prosecuting international crimes which are virtually unknown in the traditional law school programmes. The judges and magistrates have to be oriented in new areas such as judicial techniques, judicial administration and practice, constitutional litigation, extradition proceedings, ADR and the handling of new technology in judicial administration among others.⁷⁸

The Odoki Committee therefore recommended that all the programmes of CLE be coordinated by the Committee on Legal Education of the Law Council, which would have overall oversight over professional legal education in Uganda. This the Committee would do by advising all institutions (judiciary, MOJCA, NGOs such as FIDA) about the identified needs and in taking appropriate steps to prevent duplication of programmes. Beyond the coordination exercise, LDC would then be the focal point for organizing the CLE programmes in accordance with its available facilities, its tradition of legal education and the statutory functions entrusted to it.⁷⁹

The Ssempebwa Committee recommended that CLE is an important area in legal education that would require the input of a department of LDC. It was also their view that much as the institution recommended by the Odoki Committee would impart the on-job training through CLE, it would take an institution like LDC to reach out to individuals and firms in the private sector. It was thus the considered view of the Committee that the CLE department at LDC should reach out to institutions outside LDC to carry out such training same like the institute of Adult and Continuing Education of Makerere University.⁸⁰ Further that LDC would establish study centres and after freeing

⁷⁸ Odoki Report, page 61, para 157

⁷⁹ Odoki Report, page 62, para 161

⁸⁰ Ssempebwa Committee Report, page 50

up some space, it would accommodate programmes such as those fitting within the CLE function.⁸¹

The Advocates (Continuing Legal Education) Regulations,⁸² permit any institution to carry out CLE as long they meet the necessary requirements.

Recommendations

- (i) The function of holding seminars and conferences on legal matters and programmes should be redrafted to incorporate the role of CLE as a function of LDC.
- (ii) LDC should therefore seek approval of the Law Council to carry out CLE programmes.

4.4 Harmonisation of the LDC Act with other legislation

The study further sought to harmonise the LDC Act with other pieces of legislation such as the Public Finance and Accountability Act, 2003 and the Advocates Act, Cap 267. Having been enacted in 1970, there have been newer Acts that have affected some of the provisions of the LDC Act such as;-

- i) The Public Finance Management Act,⁸³ and the Advocates Act.⁸⁴ Section 1 of the LDC Act defines a financial year to mean a period of twelve months ending on the 31st day of December in each year.
- (ii) Section 3 (1) (a), provides that among the functions of LDC is to organize and conduct courses of instruction for the acquisition of legal knowledge, professional skill and experience by persons intending to practice as attorneys

⁸¹ Ibid, page 51

⁸² The Advocates (Continuing Legal Education) Regulations 2004

⁸³ Act No. 3 of 2015

⁸⁴ Cap 267, Laws of Uganda.

in subjects determined by law council. The use of the word 'attorneys' was a recommendation of government in the Gower Committee Report because government had considered the role of practicing lawyers in Uganda and noted that there had been strong criticism of the professional conduct of a good number of members of the profession and that many lawyers considered themselves as pleaders than as professional advisers. That the name "advocate" had, owing to the behaviour of more unscrupulous members of the profession, fallen into disrepute and the name carried the implication that the holder is a pleader only. As a result the government made a proposal that the name by which practicing lawyers in Uganda are known be changed to a name that is more reflective of a fused profession.⁸⁵ Thus the name "attorneys" was adopted and used in the LDC Act.

Before the establishment of the Law Faculty in Dar-es-salaam, legal practitioners used to be trained outside East Africa in the Inns-of Court in London, the King's Inns in Dublin, as barristers-at law and in India as advocates. In Uganda, however, the name 'Advocate' was adopted for all legal practitioners whether qualified in London, Dublin or India.⁸⁶

With the enactment of the Advocates Act,⁸⁷ reference to all legal practitioners is by the name "advocate" and thus defines an advocate as any person whose name is duly entered upon the roll of advocates and, for the purposes of section 19(2) and of Part VI of the Act, includes any person mentioned in section 6 (those exempted from the provisions of the Act).

The Black's Law Dictionary defines an 'advocate' as one who assists, defends or pleads for another; one who renders legal advice and aid and pleads the cause of another before

⁸⁵Recommendation 86, Gower Report.

⁸⁶ law.mak.ac.ug

⁸⁷ Ibid

a court. A person learned in the law and duly admitted to practice, who assists his client with advice, and pleads for him in open court.⁸⁸

It defines an 'attorney' as an agent or substitute, or one who is appointed and authorized to act in the place or stead of another. It's a person who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by reference to the proceedings of courts or the transaction of business in the courts.⁸⁹

- (iii) The Value Added Tax, Cap 349; the enactment of the Value Added Tax in 1996 and then subsequent amendments⁹⁰ saw the abolition of the use of sales tax and instead it was called the value added tax. However, section 30 of the LDC Act provides that the Centre is exempt from some taxes including the sales tax.

Recommendations

- (iii) Redraft Section 1(e) and define a financial year to mean a period of twelve months ending on the 30th day of June.
- (iv) The definitions of both 'advocate' and 'attorney' seem restrictive hence section 3(1) (a) should be redrafted to be all inclusive and refer to ' persons intending to practice law in Uganda.'
- (v) Redraft section 30 (b) and replace the word 'sales tax' with 'value added tax'.

4.5 Powers of the Centre, Section 4

4.5.1 Decentralization of LDC and its Courses, section 4

The study further sought to gather views of the respondents and stake holders on the review of this section with particular regard to decentralization of LDC and its courses and conferment of degrees. At the moment, LDC does not have enough space to

⁸⁸ Black's Law Online Legal Dictionary, 2nd Edition.

⁸⁹ Ibid

⁹⁰Cap 349, Laws of Uganda

accommodate all the courses at the main campus thus it has a few study centres but they are not enabled by the law.

Findings; one respondent said that much as this is a good venture, LDC should be careful not to lose the quality of its training.⁹¹Expand space to accommodate more students.⁹² Establish and supervise study centers.⁹³ However, there was caution that whatever reforms the Centre makes, it should ensure that maintenance of quality in training is the guiding principle. Lawyers from the Centre should stand out by way of quality - professional and ethical.⁹⁴A staff member of LDC was of the view that decentralization for the short courses is ok but for the bar course it should either remain at the main campus or have it decentralized but with the main campus being the Centre of administration. ⁹⁵

On the other hand, other respondents suggested that LDC cannot have enough space to accommodate everyone at the main campus yet there is need to reach out to all of them in all regions of Uganda as is the practice by some institutions to have branches in the different regions of the country ⁹⁶ Another respondent said that LDC should not decentralise because standards may be compromised.⁹⁷Another respondent stated that intakes (evening, weekends) are a better option to liberalizing,⁹⁸that room should be created for other institutions to accommodate the growing population and needs.⁹⁹

⁹¹ Interview with a state attorney in Mbale

⁹² Interview with the Assistant CAO, Mbarara district

⁹³ Interview with a magistrate in Mbarara district

⁹⁴ Interview with a state attorney in Mbarara district

⁹⁵Interview with one of the staff members of LDC on 14th January 2016.

⁹⁷ Interview with sub county chiefs in Mbarara district

⁹⁸ Interview with a state attorney in Gulu district, DPP's office

⁹⁹ Interview with a civil servant in Mbale Local Government

Analysis

One of the concerns raised overtime is the limited space at LDC that cannot accommodate the growing population produced by the different universities and other short courses. A cabinet paper was therefore drafted on decentralization and sent to the MOJ, consultations were carried out in the districts of Soroti, Mbale and Tororo to establish the possibility of having campuses established in the region.¹⁰⁰

The Odoki Committee had suggested that the bar course of LDC should in the short run continue to run the bar course for a period of five years. The long term approach was that market forces and the pressures on the LDC intake will lead to the establishment of competing institutions that would provide facilities for the Bar Course. Such institutions would have to be cleared by a system of accreditation devised by the CLET. The demonopolisation was to be preceded by the establishment of a total infrastructure of a viable system for the accreditation of the replicas of LDCs and the independent organization of a national bar examination by the Law Council/Committee of Legal Education for all products of the vocational training institutions. However, this didn't take off because the recommended institutions required for the demonopolisation are non-existent.

The Ssempebwa Committee made a consideration of this issue and proposed that to maintain the quality amidst the liberalization of undergraduate legal education, LDC would instead start study centres outside the main campus in order to create space for the core function of professional legal training. These centres were to conduct the diploma courses and certificates.¹⁰¹

¹⁰⁰Consolidated report on the consultations with stakeholders in the eastern region (Soroti, Mbale and Tororo districts) on decentralizing the Law Development Centre

¹⁰¹Ssempebwa report, page 50-51

At the moment, LDC has established a total of eight (8) study centres in the districts of Soroti, Gulu, Mbarara, Mbale, Lira, Fort portal and Rukungiri which have seen a successful completion of short courses in the Administrative Officers' Law Course.

In 2014, a Cabinet Memorandum was drawn and among the issues to be addressed was that at the time it was established would accommodate an average number of 40 students. The decentralization will ensure that quality legal education is accessible to all Ugandans in line with the government policy of bringing services closer to the people. Different stakeholders who were consulted during the study to draw the memorandum were of the view that LDC should be decentralized into constituent centres in the northern, eastern and western regions of Uganda. The AG proposed that the MOJ be instructed to make amendments to the LDC Act to provide for the decentralization of LDC into three constituent centres.¹⁰² Thus it is long overdue that there is an enabling section to provide for the establishment of study centres.

Nigeria Law School

The origin of the NLS is more less the same as the one of LDC. The NLS was established in 1962 by the Government of Nigeria to provide a Nigerian legal education to foreign trained lawyers and to provide practical training for aspiring Legal Practitioners in Nigeria.¹⁰³ Preceding the establishment of the school, legal practitioners in Nigeria would receive the requisite training in England and had been called to the English Bar.¹⁰⁴

In 1997, the Federal Government approved the Council's proposal to establish three campuses of the Law School in Lagos, Kano and Enugu. Subsequently, in 2009, other new campuses were approved to be established in Yola, Adamawa State and Yenagoa, Bayelsa State.

¹⁰² Page 5, Cabinet Memorandum, on "Decentralisation of the Law Development Centre into constituent regional centres", memorandum by the Hon MOJCA., 2014

¹⁰³ Nigerian Law School Lagos Campus: About Us". Nigerian Law School Lagos Campus. Retrieved 21 November 2009

¹⁰⁴ Leesi Ebenezer Mitee (29 March 2008). *"Introduction to Nigerian Legal Education"*. Nigerian Law Resources. Retrieved 21 November 2009.

All the other campuses of the NLS are headed by directors and report to the main campus' administration headed by the Director General.

Section 6 of the LST Act grants the School powers to establish centres and campuses for the purpose of extension of its services.¹⁰⁵

Recommendation

LDC should get financial support to establish study centres.

4.5.2 Conferment of diplomas, prizes and certificates in accordance with any law in force and as required by the Law Council; 106

The purpose of considering this section in the study was to establish whether LDC in addition to the courses it conducts now would also conduct degree programmes. Presently, LDC carries out the post graduate training in legal practice, diploma in law and other short courses.

Findings; out of the 41 respondents, sixteen said that it would be good for the Centre to conduct masters degrees with reasons that LDC should not be a static institution and universities don't give adequate legal training. Thus it was suggested that LDC could offer specialised degrees for example in civil litigation and criminal law as long as it has the necessary infrastructure and personnel. Other respondents thought that LDC could carry out specialised degrees such as civil litigation and sentencing.¹⁰⁷

The other eighteen respondents strongly disagreed with the proposal with reasons that LDC already has enough functions some of which are redundant, existence of universities carrying out Master's degree programmes, should concentrate on the bar course and have

¹⁰⁵ Law School of Tanzania Act, 18 of 2007.

¹⁰⁶ Section 4 (c), LDC Act

¹⁰⁷ A participant at the validation and consensus building workshop held on 8th June 2016 at Esella Country Hotel

LDC as a centre of professional training, this would require infrastructure, resources, funds, and committed facilitators among others.

Analysis

This recommendation was made in the Nerima Committee Report that the section on the powers of the Centre be broadened to include conducting degree programmes as authorised by any law in force.¹⁰⁸The Ssempebwa Committee categorically stated that the future of LDC lies in it recapturing the motive of its establishment i.e being the lead post specialised professional institution of legal education in Uganda which meant that the core activity of LDC would be the bar course and other post graduate courses for practitioners in the legal sector.¹⁰⁹

The '*other post graduate courses for practitioners*' would mean that LDC in addition would carry out other post graduate legal programmes. Therefore, offering specialised masters would be an additional. LDC is not a static institution but as the legal sector grows, the education demands would also increase and LDC should be seen to provide knowledge that cuts the edge.

However, another school of thought was of the view that before LDC can venture into other courses, consideration should be given to whether it fulfils the requirements of a degree awarding institution and whether there is available space.¹¹⁰

Recommendations

Including the conduct of degrees (whether specialised or not) would add another function to LDC to the already existing functions and this is likely to draw its focus from the Post Graduate Bar Course as the core function. LDC should not carry out degree

¹⁰⁸ 2012

¹⁰⁹ Ssempebwa report, page 42, paragraph 3.5.2

¹¹⁰ One of the respondents in Kampala

programmes because these programmes are carried out by universities and other institutions.

4.5.3 Charge such amounts for accommodation or other services provided as may be approved by the Committee;¹¹¹

This is one of the provisions in the Act that have been overtaken by events.

At the time of the establishment of LDC, it had a very small number of students that it would accommodate them at the Centre's facilities. However, overtime, as the institution grew and the number of entrants to the profession increased, accommodation was phased out in favour of other facilities.

The Odoki Committee recommended that LDC should expand its facilities for tuition by progressively winding up the provision of catering and accommodation for students. Further that LDC should be translated into a day institution and utilise the accommodation facilities for tuition and thus relieve government of boarding fees. At the time, LDC does not accommodate students nor does it give tuition to students.

Recommendation

LDC no longer provides accommodation but provides other services thus the section should be redrafted to delete the word 'accommodation.'

4.6 Management Committee

4.6.1 Name of the Committee, section 7

The study also sought to establish whether the name of LDC's Management Committee should be changed to "Governing Council" in order to conform to the provisions of the Universities and other Tertiary Institutions Act, 2001; the composition of the Committee and the term of office of the Committee members.

¹¹¹ Section 4(f)

Findings; out of the 41 respondents, thirteen respondents stated that the name should change while twenty six said that it was not necessary to change the name. Among the reasons advanced for change of name were that LDC is such a big institution to be governed by the M.C. “Management Committee is used for small institutions or organisations, primary schools, secondary schools or even committees to oversee small building projects. For corporate governance, you can’t have such a name.”¹¹²

The reasons advanced for the respondents against the change of name stated that there is no need because what matters is the content and performance of the Committee, as long as the two bodies perform the managerial functions and there is no conflict of laws, then there is no need. Further that LDC is not a university that needs hierarchy in management.¹¹³

Analysis

Section 2(1) of the Education Act,¹¹⁴ defines a Management Committee as a legal body established to manage a primary school. Under section 28, the management committee or board of governors of primary schools is constituted by the Minister of Education or a district education officer, by notice published in the *Gazette*.

The management committee (or sometimes referred to as the Board) is a body of people who have been given powers and responsibilities by the members of an organisation, to manage the affairs of the organisation.¹¹⁵

According to the Cambridge Online dictionary, a M.C is defined as a group of senior people who take decisions about how a company, or part of a company, is managed. The

¹¹² Interview with one of LDC staff

¹¹³ An interview with a state attorney in Mbarara district.

¹¹⁴ Act 13 of 2008, Laws of Uganda

¹¹⁵ www.leoisaac.com/boards

Group Management Committee is where all the decisions regarding the direction, strategy, and financing of the Group are made.¹¹⁶

In most African countries, the responsibility of overseeing the management of schools is entrusted to a school board of governors or a management committee. The term board of governors is most times used with secondary schools though in some places it is called a school council. The oversight of the management of primary schools is often entrusted to a management committee. Management committees usually have fewer members than boards of governors.

In order to ensure that governing boards operate on some common principles, every board has a constitution which provides basic guidelines and the legal framework for its operation. The constitution is usually approved by the Minister for Education, and it provides the blueprint for a board's operation as a legal entity. The constitution of a board of governors usually derives its powers from an education act or similar legislation. It should be noted, however, that there are likely to be differences in the constitutions of public and private schools, with those of the private schools being less strictly defined.¹¹⁷

Kenya Law School; the Kenya School of Law (KSL), has got the Board of Governors as the governing body,¹¹⁸ the Law School of Tanzania has got the Governing Board as the managerial body of the school established under section 15 (1) of the LST Act.¹¹⁹

Nigeria Law School; the School is run by the Council of Legal Education, the main campus in Abuja is led by a Director General while the other campuses are run by Deputy Directors General.¹²⁰

¹¹⁶ Cambridge Business English Dictionary @Cambridge University Press

¹¹⁷ Online learning for sports management

¹¹⁸ Section 6(1), KSL Act, No. 26 of 2012, Laws of Kenya

¹¹⁹ Act 18 of 2007, Laws of Tanzania

¹²⁰ www.nigerianlawschool.edu.ng

History of the name of the Committee; the Gower Committee had suggested that LDC be located in Makerere University under the exclusive control of its Council and senate. It was to be regarded as an Institute similar to the Institute of Social Research but was to have a Committee of Management on which the government and the legal profession should be directly represented.¹²¹

The proposal to have the change of name emanates from the Ssempebwa Committee which stated that in a bid to create structures, conditions of governance and management, there was need to ease the administrative burden on the teaching staff. It therefore recommended that government through appropriate measures including amendment to the law, facilitates the establishment of a Governing Council, an academic board, appointments and promotions board and other organs of government.¹²²

At the moment, there are sub-committees of the M.C that carry out the roles of appointments and other matters.

Recommendation

If the definition of a M.C as defined under the Education Act¹²³ is to go by, then LDC is not a primary school thus would need to conform to the provisions of the Universities and Other Tertiary Institutions Act.

Considering the history of the name of the Committee forty years ago and with the enactment of the UTIA, then the name of the M.C should be changed to Governing Council.

4.6.2 Composition of the Management Committee, section 7 (a) and (b)

The study further sought the respondents' views on the composition of the M.C in terms of technical knowhow and institutional representation. The issue was that the composition does not take into account representation by institutions, technical expertise

¹²¹ Gower Report page 33, paragraph 32

¹²²Ssempebwa Report, page 46, paragraph 3.6.3

¹²³ Supra

and the principle of gender equity. The Committee is comprised of the Solicitor General, the head department or faculty of law, MUK, the Director LDC and PS of the Ministry of Education as ex officio members and not more than four and not less than two members appointed by the AG who shall be persons appearing to the AG as having had the experience in the practice or administration of the law.

Findings; most of the respondents stated that the membership of the Committee should be varied. Among the reasons advanced is that since we have different law schools in Uganda or universities accredited to teach university legal education, then there was an imbalance to have only Makerere University representing all universities, the members of the Committee are busy government who may not be able to attend to the work as required, the Committee lacks persons with expertise in Finance and human resource.¹²⁴ Another respondent added that there is no need to have the PS from Ministry of Education but instead one from Ministry of Local Government since most of our trainees are employed by the Local Government, we would get more feedback. I don't see the need for a representative from Ministry of Education.¹²⁵

Some respondents made suggestions that the Committee should be reviewed to include representatives from National Council for Higher Education and a staff of the Law Development Centre.¹²⁶ The Committee should have a representative from the office of the DPP and Public Service Commission.¹²⁷

Analysis

The M.C is the top managerial body of LDC comprised of the Solicitor General, head department of law MUK, the Director LDC, the Permanent Secretary of the Ministry of Education. The other two to four members of the M.S are appointed by the Attorney

¹²⁴ Interview with one of the staff members of LDC

¹²⁵ An interview carried out on 14th January 2016 with one of the members of staff of LDC

¹²⁶ An interview with a sub county chief in Mbarara district.

¹²⁷ Interview with one of the magistrates in Mbarara district

General and the A.G is supposed to consider their qualifications in legal practice or the administration of law.¹²⁸

Brief history of the Committee; The origin of the composition of MC is derived from the Gower Report which had proposed that the Law Centre would be regarded as an institute of the University with a Committee of Management on which government and the legal profession would be directly represented. Other members would be the Vice Chancellor (the then Principal), the AG, the Law Society, the Law Department of MUK and the Director of the Law Centre.¹²⁹

The challenge that has been faced by the M.C is that the Committee lacks diversified membership, unequal representation of universities, non-recognition of the principle of gender equity and lack of a clear provision on whether these officials can appoint nominees.

As was observed by the Ssempebwa Committee, the management of the Centre is over centralised and is no longer necessary for the institution much as it may have served the Centre in its early stages of its development. That it seemed that the effectiveness, responsiveness and efficiency of the internal decision making and implementation is greatly encumbered by the fact that the majority of the M.C are busy public officials outside the Centre or who carry heavy commitments in private legal practice. Thus teaching staff have to spend a lot of time ensuring coverage and continuity of teaching and attending to various administrative chores through the numerous committees.

¹²⁸ Section 7 (b), LDC Act

¹²⁹ Gower Committee Report, pages 32-33, para 32.

Governance of universities and other tertiary institutions in Uganda is provided for in the Universities and Other Tertiary Institutions Act, 2001¹³⁰ which establishes the National Council for Higher Education.

Section 2 of the Universities and Other Tertiary Institutions Act defines a tertiary institution as any public or private Institution, School or centre of Higher Education other than a university, one of the objects of which is to provide post-secondary education offering courses of study leading to the award of certificates, diplomas and degrees and conducting research and publications.

Section 77 (2) provides the composition of the Governing Council of a tertiary institution and some of the members include the chairperson, one person representing a public University to which the institution is affiliated, a representative of the relevant professional body to the Tertiary Institution; a representative of the District Council in which the Tertiary Institution is situated; the Principal and Deputy Principal of the Tertiary Institution; a representative of the Ministry responsible for Higher Education; a representative of the Ministry responsible for the field of study undertaken by the Tertiary Institution; two representatives of the academic staff of the Institution one of whom shall be a woman; a representative of the alumni of the Tertiary Institution.

The NCHE Quality Assurance Framework for universities and the licensing process for higher education institutions¹³¹ provides that in constituting the management structures, representation of the interests of the various stakeholders including students and staff should be taken into account.¹³²

In this regard, LDC has got different committees that do take care of the staff affairs, but not all the stakeholders are represented on the Committee. This does not mean that the

¹³⁰ Act No. 7 of 2001, as amended in 2003 and 2006.

¹³¹ May 2011

¹³²Page 17, www.unche.or.ug.

M.C becomes overcrowded with members from the different institutions but fair representation should be made thereto.

The trend since the inception of LDC is that the other appointed members of M.C are usually advocates.

Law School of Tanzania

The school is managed by a Governing Board which is comprised of the Deputy Attorney General, Principal Judge, President of Tanganyika Law Society, Dean of Faculty of Law-University of Dar-es-Salaam, one member of the Tanganyika Law Society and one member representing the legal aid scheme.¹³³

Kenya School of Law

The School is governed by a Board of Directors established under section 6 (1).¹³⁴ The Board is comprised of the Principal Secretary, Ministry for the time being responsible for Legal Education, Principal Secretary to the Minister for the time being of Finance, the Attorney General, Chief Justice, Secretary to the Commissioner for Higher Education and a representative of the Law Society of Kenya.

Nigeria Law School

The School is led by the Director General and the other members of the board are deputy director generals of the different campuses of the School.

¹³³Section 15(1), LST Act

¹³⁴ Supra, page 11.

Recommendations

1. Participants at the validation workshop took into consideration the UTIA and agreed that the composition be revised as follows;-
 - i) Chairperson appointed by the Attorney General
 - ii) Solicitor General/his or her representative
 - iii) The Director, LDC
 - iv) The Permanent Secretary of the Ministry of Education or his/her representative
 - v) Representative of the Uganda Law Society
 - vi) Representative of the Law Council
 - vii) Representative of public universities accredited by Law Council to conduct the law degree
 - viii) Representative of private universities accredited by Law Council to conduct the law degree
 - ix) Representative of the Ministry of Finance, Planning and Economic Development and
 - x) Representative of the LDC Alumni Association.
2. Delete section 7(b) since the composition is comprehensive enough.
3. For purposes of composition, the provisions of section 77 of the UTIA shall not apply to the LDC Act.

4.6.3 Qualifications of the Chairperson of the Management Committee, section 10 (1)

The study sought to get the views of the respondents on whether the Act should remain silent on the few major qualifications of the chairperson or if they should be stipulated.

Section 10 (1) of the LDC Act provides that the Attorney General may in writing under his or her hand appoint any member of the M.C other than the Director to be chairperson of the Committee. Presently, the Chairperson of the M.C is a Supreme Court Judge.

Findings; One of the respondents stated that the chairperson does not have to be a Justice of the Supreme Court.¹³⁵

Analysis

Since its inception, LDC MC has had the following Chairpersons;-

- P.J NkamboMugerwa (1969-1970)
- G.L Binaisa (1971-1972)
- Hon. G.S Lule (1972-1976)
- Hon. M.B Matovu (Minister of Justice/ Attorney General (1977-1978)
- Justice S.T Manyindo, JSC as then was (1979-1984)
- Justice B.J Odoki, (1984-1996)
- Justice J.W.N Tsekooko, JSC (1991-2006)
- Justice Bart M. Katureebe, JSC (2007-2010)
- Hon. Lady Justice C.N.B Kitumba, JSC (2010-2014)
- Hon Lady Justice Stella Arach-Amoko, JSC (2014-todate)

Save for the earlier appointments where the Chairpersons were advocates, all the other appointments since 1979 have been Justices of the Supreme Court.

The LST's BOD is chaired by the Deputy Attorney General, the KSL is governed by a board and the Chairperson is appointed by the Cabinet Secretary and the Chairperson is chosen from the appointed members of the Board.

¹³⁵ An interview with a member of the senior management of LDC.

Recommendation

The section should provide for the qualifications of the chairperson of the MC. Proposals include;

- to have a sitting justice of either the Court of Appeal or Supreme Court.
- Someone qualified to be appointed a justice of the Court of Appeal or Supreme Court.

4.6.4 Term of office for the appointed members of the M.C, sections 10, 11

The study sought the views of the respondents on the term of office of the appointed members of the M.C is sufficient or not. Section 10(2) provides that the chairperson is to hold and vacate office as such in accordance with the terms of his or her appointment.

Section 11(1) provides that an appointed member of the Committee shall hold office for a period of two years. Section 11(3) further provides that when an appointed member or chairperson of the Committee ceases to be such on the Committee, he or she shall be eligible for reappointment.

Findings; Of the 41 respondents, 1 suggested the term of office to be 1 year, 9 said it should be maintained at two years, 11 suggested that it should be 3 years, 10 were in favour of 4 years while 10 were in favour of a five year term. The reasons advanced by the respondents were that two years is not a sufficient time for the members to have accomplished the tasks on the M.C. The reasons advanced for the five year term is that most strategic plans of most institutions run for five years as such it would be good to have the appointed members work within that period and also to have security of tenure.¹³⁶

¹³⁶ An interview with one of the respondents in Fort Portal Town

As such suggestions were made to the review of this section to increase the number of years to three or four or five as shown in the statistics.

The reason given to maintain the status quo is that once these members are given a longer term, there may be opportunity of abuse of office where they may misuse their positions to bring disrepute to the institution.¹³⁷

Analysis

The practice has been that the chairperson and the members are all appointed for two years. Once the term, expires, the renewal or reappointment takes a rather long time that involves a hefty bureaucratic process hence leaving managerial gaps at the Centre. As was stated by the Dr. E. Khiddu Makubuya, the then AG and Minister of Justice that “*The process of constituting a new Management Committee will take some time.*”¹³⁸This was after the term of office of the appointed members of the Committee had expired and it was to be extended. This extension wasn’t only for the chairperson but also for the other members.

The short term of office has caused a lot of inconvenience and tension to both the committee and LDC itself for instance the term of office may expire when it is approaching the graduation ceremony. For instance, the MC headed by Justice Bart Katureebe expired on 10th July 2009 yet LDC had a graduation slated for 31st July 2009, the former Director requested the then AG to re-appoint the members for a further two year term.¹³⁹ The current term of the appointed members will expire in April 2016 before the graduation ceremony and the Director has requested for extension of term of office and new appointments.

¹³⁷ An interview with one of the state attorneys in Mbale district

¹³⁸ This was derived from a letter written by the then AG to Hon Justice Bart Katureebe on extension of his term which had expired in 2009, dated 29th July 2009 and whose term had expired on 10th July 2009.

¹³⁹ Letter dated 15th July 2009.

The instrument of appointment from the office of the AG simply states that the Chairperson and the respective members are to serve a period of two years.

Recommendations

- i) The term of office for the appointed members of the MC should be extended to three years to enable members have meaningful contribution and also avoid delays in managerial decision making.
- ii) The three-year period may be renewed only once.

4.6.5 Disqualifications from membership to the Committee

The section provides for the instances that may eliminate someone's candidature to the MC. These include being a member of the Committee if he/she is a paid employee of LDC, insolvency or bankruptcy, being a non-resident in Uganda or has been convicted of an offence involving fraud or dishonesty.

The reputation of any managerial body needs to be protected and as such its members should be of high moral standing. As such institutions ought to aim at having a governing board with members that are regarded highly in society.

Recommendations

The section should be expanded to include other hindrances such as;

- (a) Being convicted of an offence that touches a member's moral turpitude (to be defined in the statute);
- (b) Absenteeism from the Committee's meetings for a period of three consecutive meetings without permission from the Chairperson or any reasonable excuse;
- (c) Being convicted of a criminal offence and sentenced to a term of more than six months without the option of a fine;

4.6.6 Remuneration of the members of the MC

Whereas the members of the MC are paid an allowance, the Act is silent about it. Presently, the members of the M.C receive remuneration in terms of allowances.

Recommendation

The Act should add a provision that the members of the Committee shall be paid such remuneration that the Committee will decide with the approval of the AG.

4.6.7 Notice of meetings

Section 13(9) provides that the notice of the ordinary meetings shall be served on the members in not less than seven days while for the special meetings, not less than twenty four hours before the meeting.

Considering that the members of the MC are busy officials, a notice of seven days and twenty four hours respectively is short.

Recommendation

Notice for ordinary meeting should be extended to at least fourteen (14) days then for special meetings it should be extended to seven (7) days.

3.6 Appointment of staff (section 17)

The study further sought the views of the respondents on the appointment of staff especially of the Director.

Section 17 (1) provides that the MC may, with the approval of the Attorney General, appoint a Director of the Centre for such period as the committee may determine.

The section does not provide for the process of appointment, is it head hunting/picking or does it go through a competitive recruitment process? The other issue is the name of the head of the institution, whether the 'Director' suits the position.

Findings; Some of the technical persons consulted stated that this role should be left to the Centre administration with probably the exception of the Director and his deputy. There should be clear qualifications and appointment procedure for the Director and Deputy Director. Have the MC appoint the Director and Deputy Director.¹⁴⁰

Analysis

Currently, when the position of the Director falls vacant, the MC is put to notice. They will then direct that the position is advertised, applications will be received, interviews carried out and the successful candidate is appointed by the MC with approval from the AG.

The name Director is not commensurate to the level of qualification required for the position of the Director and does not tally with similar positions in the government structure. This has led to denial of privileges and benefits such as travel and allowances. The position of Director is supposed to be at the same level as that of CEO or Executive Director. Furthermore, with the establishment of study centres across the country, there will be need to create a distinction in the managerial positions.

¹⁴⁰ An interview with one of the staff members of the Centre.

Kenya

Section 14(1) of the KSL Act provides that the School shall have a Director who will be the CEO of the School and the Secretary to the Board of Governors. The Director is appointed through a competitive recruitment process.

Nigeria Law School

The School and its branches are headed by a Director-General of the Nigerian Law School who is among others supposed to;

(a) be a holder or a former holder of the office of a professor in a faculty of law in a Nigerian university; or

(b) be a holder of such qualification as are required for appointment as a professor in a faculty of law in a Nigerian university; or

(c) is a legal practitioner who has on the date of application, or had at any time prior to that date, been in active legal practice for not less than ten years.¹⁴¹

Recommendation

- i) Section 17 (1) should be redrafted to provide that the appointment of the Director should be through a competitive recruitment process and the qualifications should be left to the discretion of the M.C.
- ii) The name of the Director should change to 'Executive Director'.

¹⁴¹ Section 6(2), the Legal Education (Consolidation) Act, Cap 206, Laws of the Federation of Nigeria.

- iii) Section 17 (2) should be made general to all the officers and agents appointed by the Management Committee.

4.7 Technological developments, section 14, 13,

The study sought to have the views of the respondents on adoption of technological developments in the operations of the Centre. This was aimed at looking at the possibility of adapting electronic means of communication and the legislative amendments that could affect service of documents especially for the managerial body of the Centre.

The findings show that there have been several technological developments that would have an impact on the provisions of the LDC Act. According to several respondents interviewed by the research teams, there is need to have electronic mode of service of documents, e-filing system, electronic communication and data transfer. This is because the system is much cheaper and time saving.

Analysis

Section 13 (9) provides that the notice of meetings for the MC shall be served by or on behalf of the secretary on every member either personally or by leaving the notice at the member's usual place of residence or business address.

The world is now a global village and thus need to match the developments. However, caution was needed to provide safeguards in adopting the developments.

Currently, the transaction of business of the Committee is through circulation of papers, keeping of minutes is by entering them in a minute book and by leaving the notices of meetings at the members' physical/business addresses.

Recommendation

The Act should provide for the electronic mode of service of notices and documents.

8.8 Role of the Attorney General and the Minister of Justice

The study also sought to establish as to whether the line minister should play a role in the decision making of the Centre thus have some roles of the Attorney General delegated to the Minister of Justice and Constitutional Affairs. Presently, all appointments and approvals are done by the AG.

Findings; most of the respondents proposed that the Minister is a political appointee, there is need to have a technical person, legal adviser of the government who is independent of political values, so it can be Attorney General in consultation with the Minister. Whereas the AG has to be a lawyer, the Minister may not necessarily be a lawyer. A few respondents proposed that the role should be transferred to the Minister since most institutions recognize the line minister and that the AG already has many roles and for efficiency his duties should be exercised by the Minister.

Recommendation

The roles in the Act should remain with the Attorney General.

4.9 Standing orders section 32

The Act gives powers to the MC to make standing orders (SOs) in respect to the management and conduct of the Centre and such orders may provide for the salary structure of the secretary, officers, servants and agents of the Centre, the appointment, discipline and dismissal of the secretary and officers of LDC, the provision of pensions, gratuities and other contributory arrangements to any fund or pension scheme by the employees of the Centre, books of account to be kept by the Centre and allowances and expenses to be paid to members of the Committee and subcommittees.¹⁴²

¹⁴² Section 32(1).

The SOs made in regards to the salary structure, pensions and gratuities, contributory arrangements and allowances and expenses are to be subjected to prior approval of the minister of finance (MOF) and the other SOs are to be approved by the AG. The current LDC SOs provide for the general administration of the Centre, remuneration and pay policy, staff discipline committees, salary scale and structure among other things.¹⁴³This implies that prior to the passing of these standing orders, they had to be approved by both the minister of finance (MOF) and the AG. The SOs of LDC is one whole document thus the financial provisions cannot be approved by the minister of Finance in isolation of the other provisions. This implies that all the orders have to be approved by the minister of finance. This has created a lot of bureaucracy thus delay of processes yet the Management Committee could approve the orders and then further seek approval of the Attorney General.

The reading of the section implies that the draftsman envisaged that the MC would make distinct SOs governing the general staff matters and the financial matters but as stated above it is one whole document providing for all the matters.

The review of this section is aimed at;-

- Granting the MC autonomy as the managerial body of the Centre and
- Reduce on bureaucracy by reducing on the stages of approval.

This could be done by;

- (i) The SOs or regulations covering all the matters of administration of LDC should only be subjected to approval by the MC only.

¹⁴³LDC Standing Orders, May 2014

- (ii) The SOs or regulations made in regard to finance should be then made with prior approval of the AG, who may consult the relevant ministers. This is to give the MC autonomy in reviewing salaries and any other financial approvals to avoid bureaucracy.
- (iii) LDC to seek further guidance of the drafts person on whether to use SOs or regulations.

4.10 LDC Alumni Association

The study also considered to provide for the establishment of the LDC Alumni Association:

The word alumni has its origin in the Latin language that means ‘pupil’ literally ‘the nurtured’. Today the term refers to the graduates of university or a similar educational institution. In a narrower sense it may refer to a group of graduates of a university or, in a broader sense, to everybody connected to a university. An alumni association is an association of graduates or, more broadly, of former students (alumni).¹⁴⁴ Since decades alumni societies have existed at universities in the United States and some European countries. Especially in Great Britain and France there is a long tradition of alumni societies. In Germany alumni societies have been established not before the late 1980s.¹⁴⁵

Convocations and alumni associations/convocations are provided for under the Universities and Other Tertiary Institutions Act.¹⁴⁶ The LDC Alumni Association was established on 21st June 2013 to connect the institution with the former students, and it comprises graduates and former students of the institution. This initiative was undertaken to serve as a link between the Association members and the Centre.

The objectives of the Association include to promote, foster and maintain links between the Association members, between the members and present students and promote a

¹⁴⁴<https://en.wikipedia.org/wiki>

¹⁴⁵www.alumni.uni-stuttgart.de

¹⁴⁶ Section 70(1), supra page 20.

beneficial relationship between the Association and LDC for academic, professional and LDC' s wider objectives, promote and protect the academic reputation of LDC.¹⁴⁷

Recommendation

The Act should include a new section to provide for the LDC Alumni Association.

¹⁴⁷ Article 3 of the LDC Alumni Association

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APPENDIX- STUDY INSTRUMENTS

LAW DEVELOPMENT CENTRE

INTERVIEW GUIDE FOR KEY INFORMANTS FOR THE REVIEW OF THE LAW DEVELOPMENT CENTRE ACT, CAP 132

[The purpose of this guide is to enable the Centre to elicit the views of the stakeholders on the provisions of the Law Development Centre Act].

Name of the Centre

1. (a) *In your opinion, do you think the name "Law Development Centre" suits the purpose for which the Centre was established? Yes/no (For the answer given, probe for reasons).*
(b) *If the name is to be changed, what name would you propose?*

The functions of the Centre

2. The Act provides for functions of the Centre as follows;-
 - (i) conducting courses of instruction for persons intending to practice law as advocates;
 - (ii) conducting courses in legislative drafting;
 - (iii) conducting courses for magistrates and persons appointed as magistrates;
 - (iv) conducting training courses for government officers and members of the UPDF, personnel of the court;
 - (v) assisting the commissioner in charge of publication of a revised edition of the laws of Uganda;
 - (vi) assisting in reprinting Acts of Parliament;
 - (vii) assisting the Law Reform Commission in its duties;
 - (viii) undertaking research;
 - (ix) assisting in the provision of legal aid to the indigent litigants and accused and
 - (x) compiling and publishing the law reports of Uganda.

(a) What is your opinion on the each of the said functions?

*(b) Would you like to suggest any other new functions that the Centre may carry out?
If so, which ones?*

Powers of the Centre

3. The Act among others gives the Centre powers to conduct examinations and confer diplomas, prizes and certificates.

Do you think the Act should provide for conferment of degrees? What other courses/qualifications would you propose?

Management Committee

4. The Universities and Other Tertiary Institutions Act, 2001 provides that every public tertiary institution shall have a governing body called “the Governing Council”.

Do you think the name of the Management Committee of the Centre should be changed to conform to the provisions of the Universities and Other Tertiary Institutions Act? Yes/no. (Probe for reasons for the answer given).

5. (a) The Management Committee is composed of the Solicitor General, head of the department or faculty of law, Makerere University, the Director LDC, Permanent Secretary of the Ministry of Education (ex-officials) and other two members appointed by the Attorney General.

(i) *Do you think the Committee is well constituted in terms of technical know-how and institutional representation? Yes/no.*

(ii) *If not, what proposals would you make to the composition of the Committee?*

- (b) The current term of office for the appointed members of the Committee is two years.

In your opinion, do you think a two year term for the members of the Committee is sufficient?

Technological developments

- (c) Currently, the transaction of business of the Committee is through circulation of papers, keeping of minutes is by entering them in a minute book and by leaving the notices of meetings at the members’ physical/business addresses.

With the technological developments in place, what is your opinion on these provisions?

Role of the Attorney General (For technical personnel well acquainted with the operations of the Minister and Attorney General)

8. The current Act gives the Attorney General power to make and approve various decisions of the Centre.

Do you think the Attorney General's roles should be taken over by the Minister of Justice? Yes or no. (Probe for reasons)

Questionnaire guide for technical personnel

LAW DEVELOPMENT CENTRE
INTERVIEW GUIDE FOR KEY INFORMANTS FOR THE REVIEW OF THE LAW
DEVELOPMENT CENTRE ACT, CAP 132

[The purpose of this guide is to enable the Centre to elicit the views of the stakeholders on the provisions of the Law Development Centre Act].

1. Establishment of braches and campuses

What is your view on the Centre establishing branches and campuses?

2. Management Committee (sections 7, 10 and 11)

i) What is your view on the composition of the Committee in regards to technical expertise considering that most members of the MC are from the legal field? Please consider this in relation to the provision of co-opting members under section 16.

ii) Is it ok to have only Makerere University to represent both private and public universities conducting legal education training in Uganda?

iii) Should the law provide for the qualifications of a chairperson of the Committee or the discretion should be left to the Attorney General as is the case?

iv) Is the tenure of two years enough for the members of the MC or it should be extended?

3. The Universities and Other Tertiary Institutions Act, 2001 provides that every public tertiary institution shall have a governing body called “the Governing Council”.

Do you think the name of the Management Committee of the Centre should be changed to conform to the provisions of the Universities and Other Tertiary Institutions Act? Yes/no. (Please give reasons for your answer)

4. What is your view on the term of office of the appointed members of the MC. The current term is two years.

5. Appointment of staff (section 17)

- i) What is your view on the provisions on appointment of officers of the Centre?
- ii) Do you think there should be well laid out procedures/processes, qualifications and any other terms and conditions that the Committee should follow in appointing the Director of the Centre?

6. Remuneration etc of staff Section 18(1) and other provisions relating to finances of the Centre

- a) At the moment the remuneration of staff is determined by the MC as permitted by the standing orders.

It is a proposal that all provisions relating to salary should be brought under this section. i.e salary structure, provision of pensions, gratuities and other retirement benefits, books of accounts kept by the Centre, allowances and expenses to be paid to the members of the MC and other subcommittees (Section 32 (1) (a), (c), (d) and (f).

- b) What would be your proposals on the provisions of section 32. Please consider the stages of approvals of the standing orders.

7. Standing orders (section 32)

- i) The members of the working group agreed that the title be amended to cater for the provision of empowering the Minister to make regulations. What is your view? Do we need regulations or the standing orders are sufficient?