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Contents

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Uganda

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The Republic of Uganda (official name according to Constitution (Const.) art. 2) is a unitary state. As in the case of many ex-colonial countries in Africa, Uganda as a territorial unit came into existence as a result of the colonial period of the last century, with the consequence that the republic's boundaries were determined not by ethnic or linguistic considerations, but by considerations of colonial strategy and administrative convenience. Uganda thus includes within her boundaries some four major *linguistic* groupings, namely, Bantu, Nilotic, Nilo-Hamitic and Sudanic. But despite their heterogeneousness the people inhabiting what is now modern Uganda have lived together in varying degrees of harmony for many centuries past. Uganda achieved statehood on 9 Oct. 1962,[1] when the British Colonial authorities handed sovereign power to the first independent Government of Uganda under the British Uganda (Independence) Order in Council, 1962,[2] which contained the Independence Constitution of Uganda. In 1966, as a result of a successful revolution against the then President, an Interim Constitution was promulgated, but that was replaced by a new Constitution enacted by a Constituent Assembly on 8 Sept. 1967.

On 25 Jan. 1971, the Armed Forces of Uganda took over the powers of government and vested these in General *Idi Amin Dada*. By a Proclamation published on 2 Feb. 1971 under Legal Notice no. 1 of 1971, and through the Constitutional (Modification) Decree no. 5 of 1971, numerous constitutional changes were effected.

I. CONSTITUTIONAL SYSTEM

1. Nationality

The substantive law which governs nationality is contained in Const. Chapter II while the Uganda Citizenship Act (Act 63 of 1962, Cap. 58)[3] complements the Constitution in matters relating to nationality and sets out the procedural requirements for the acquisition and loss of citizenship. There is a common citizenship throughout the state which is acquired principally through birth, although women married to citizens are entitled to naturalisation as of right, if they so desire. Citizenship can also be acquired by aliens through naturalisation after a specified period of residence in the country. Naturalised citizens can be deprived of their citizenship for grave offences against the state or for offences against the citizenship laws.

2. Territorial Division of the State

For the purpose of administration, Uganda is divided into 18 districts (Const. Schedule 2). In each district there are further administrative divisions, in descending order, of county (or *saza*), sub-county (or *gombolola*), and parish (or *muluka*).

Under a recent decision of President *Amin* to re-organise territorial administration there will be established 10 provinces comprising about 38 districts.

3. State Organs

a. *Central organs.* – President *Amin* has suspended Chapters IV and V of the Constitution of 1967 concerning the Executive and the Legislature. All existing appointments and offices, except public

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[1] See The Uganda Independence Act, 1962, 10 & 11 Eliz. 2 c. 57.

[2] S.I. 1962 no. 2175, revoking the Uganda (Constitution) Order in Council, 1962, S.I. 1962 no. 405.

[3] All references to Chapters (Cap.) are to those contained in the 1964 Revised Edition of the Laws of Uganda.

offices, were terminated. Parliament was dissolved and all legislative powers taken over by the President for exercise by means of decrees.

The President has established a Council of Ministers – the Cabinet – to advise him in the exercise of his executive and legislative functions. The Ministers, as also the Minister of State who are part of the Cabinet, are appointed by the President. Recently the President has decided to create the office of a Prime Minister or Vice-President.

The President has also announced the creation of a Supreme Council and of the National Forum.

b. *Local organs of state power.* – The rules on local administrations are to be found in Const. Chapter VII and in the Local Administrations Act, Act 18 of 1967. The organs of state power in the districts are the district councils, elected for a period of four years. The executive officer of each district council is the Secretary-General, who is assisted in his functions by an Assistant Secretary-General. These two persons are elected by the political party having the greatest numerical strength in the council. The function of the council is to administer such services as Parliament may prescribe, including primary education, local health services, water and road services. In addition, councils have limited legislative powers regarding the regulation of matters of local concern.

Over each county (or *saza*), sub-county (or *gombolola*), and parish (or *muluka*), is a public official, whose function is to enforce the laws made by Parliament and by the district council. It is also his duty to ensure that the policies of the government and of the district administration are observed in his area.

4. The Judiciary and the Department of Public Prosecutions

a. The Constitution provides in Chapter VIII that where any question as to its interpretation arises in any proceedings in any court of law except a court-martial, and the court is of opinion that the question involves a substantial question of law, the court may refer the question to the *Constitutional Court.* Such reference must be made where any party to the proceedings so requests, although the court making the reference need not make the reference if it is of the opinion that the question is not of sufficient importance to the proceedings to require a reference to the Constitutional Court. When any such reference is made to the Constitutional Court, that court gives its decision upon the question and refers the case back to the trial court, which then proceeds to dispose of the case in accordance with the decision of the Constitutional Court. The Constitutional Court is made up of an uneven number of High Court judges, the minimum number of which for any one hearing must not be less than three.

b. Uganda is divided into eight magisterial areas; in each of them there are as many *Magistrates' Courts* as the population and size of the area demand. Each court is under a magistrate who may be one of the four grades (in an ascending order): Magistrate Grades III, II and I, and Chief Magistrates. The powers of each magistrate, which include both civil and criminal jurisdiction, vary according to his grade (Magistrates' Courts Act, Act 38 of 1964, Cap. 36).

The *High Court* of Uganda exercises supervisory jurisdiction over all the Magistrates' Courts and hears appeals from these courts.

The *Court of Appeal* for East Africa (which is a court set up by treaty jointly by Uganda, Kenya and Tanzania) is the final court of appeal in all matters except issues relating to the interpretation of the Constitution, when the Constitutional Court (see *supra* 4 (a)) is the final court of appeal (Const. art. 89).

c. In addition to the system of courts described above there are a number of *special courts,* namely, military courts, an industrial court and arbitration tribunals.

The *Industrial Court* is a court which deals with trade and labour disputes. The parties may refer their disputes to this court by mutual consent or the minister responsible for labour may refer a dispute to the Industrial Court if the parties to an existing dispute fail to settle the dispute under certain conditions (Trades Disputes (Arbitration and Settlement) Act, Act 20 of 1964, Cap. 200).

There is finally the system of *arbitration tribunals* under the Arbitration Act (Act 29 of 1930, Cap. 55) which deals mainly with commercial disputes. This Act incorporates the Geneva Protocol on Arbitration Clauses 1923, and the Geneva Convention of 1927. A tribunal under this law may ask the High Court for an opinion on a question of law by means of a procedure known as case stated, and when requested to do so must file its award in the case in the High Court. The High Court has then power to set aside the award if in its view the award has been obtained in an irregular manner or where the arbitrator is guilty of misconduct. Once an award has been filed in the High Court it is enforceable as if it were a decree of the High Court itself.

d. The *Director of Public Prosecutions* is in charge of all criminal proceedings in the country. All state attorneys and state prosecutors who conduct criminal prosecutions are under his direction. In the exercise of the above powers, the Director of Public Prosecutions is subject to the direction and control of the Attorney General (Const. art. 71). In addition to supervising the functions of the Director of Public Prosecutions, the Attorney General is also in charge of all civil proceedings against the state or against the government of the day. He is assisted in this by the Solicitor General, who is subject to his direction and control. In addition to his functions of supervising criminal and civil proceedings in the name of the state or the government, the Attorney General is also vested with very wide powers of supervising court proceedings generally as the public watchdog of the state in the state's role as the fountain of justice. In this role the Attorney General exercises the prerogative and statutory powers of the state to control subordinate courts and exercises superintendence over the state of law and order in the land. He can thus initiate proceedings for the vindication of public rights which have been injured; he can intervene in any proceedings before any court for the purpose of stopping a miscarriage of justice, as, for example, where the parties to the proceedings themselves conspire to pervert the course of justice (art. 122).

II./III. SOURCES OF LAW AND A CONCISE HISTORY OF LAW

1. The *Constitution* is the supreme law of Uganda (art. 1). After the Constitution, the most important source of law is the continuous number of laws (called Acts) enacted by Parliament. These are numbered consecutively according to the order in which they are enacted (*e.g.*, the Diplomatic Privileges Act incorporating the Vienna Convention on Diplomatic Relations 1961 is Act 2 of 1965). Each Act is published as a supplement to the weekly Official Gazette. At the end of every year all the Acts enacted in that year are collected (as Laws of Uganda, 1965, 1966, *etc.*). There exists a large body of subsidiary legislation (made under the authority of Acts of Parliament) which is made up of orders, rules, regulations and bye-laws and which is enacted by the different organs of state power such as the President, Ministers and other authorities. This body of law has the same force and is published in the same manner as laws made by Parliament.

The Independence Constitution of 9 Oct. 1962 preserved all the laws existing at the time, subject only to the overriding requirement that such laws must not be inconsistent with its provisions and must therefore be construed accordingly. An identical provision is re-enacted in the 1967 Consituation (art. 115). The "existing laws" preserved by the Constitution include laws made by all the previous parliaments, including laws enacted during the colonial period when the power to legislate for Uganda was vested in the British Crown or its representative (the Governor) in Uganda by virtue of its right of treaty over Uganda.

2. The earliest *colonial legislation* for Uganda dates from 19 June 1894, when by notice in the London Gazette, Uganda came under the provisions of the British Africa Order in Council, 1889, which in turn had been promulgated under the British Foreign Jurisdiction Acts, 1843 to 1878. By virtue of the above Gazette notice, a local jurisdiction was set up in Uganda for which the British Crown legislated from time to time and until the date of independence, by means of Orders in Council, the most famous of these being the Uganda Orders in Council, 1902, and the Uganda (Independence) Order in Council, 1962 (*supra* n. 2). In addition to the Orders in Council there exists a large body of statutory law enacted either by the Governor or by various colonial legislatures between 1897 and 1962 (when Uganda achieved independence). There has, since 1910, been a revised edition of Uganda's Statute Law, the latest being the Revised Laws of Uganda, 1964 (16 vol.). The Revision incorporates all the statute law of Uganda (some 350 acts) which was in force as at 31 Dec. 1964. It also includes all the subsidiary legislation made under the authority of the Acts contained in the Revision, as well as enactments of the various District Councils which were in force on the same date. The Acts in the Revision are each given a chapter (- Cap. -) number, *e.g.*, The Geneva Conventions Act, Act 31 of 1964, is referred to as Cap. 323 in the Revision. There have been many amendments to the laws contained in the 1964 Revision and these amendments are annotated in a Noter-up to the Revised Laws of Uganda which is published annually.

3. In addition to the laws enacted by the Parlia-

ment of Uganda and the District Councils, there are three other types of law in Uganda, namely, the *laws of the East African Community*, *case law* and the *customary law* of the different religious and ethnic groups in Uganda.

Uganda is a member of the *East African Community* which came into being on 1 Dec. 1967, and is a regional grouping of the states of Uganda, Kenya and Tanzania for certain matters of common interest such as trade, finance, industry, scientific research and communications. The Community is founded upon treaty (the Treaty for East African Co-operation, between the Republics of Tanzania, Uganda and Kenya, signed at Kampala 6 June 1967) and it is this treaty which gives to the Assembly of the Community and to some of the Community's other executive organs the power to enact laws and regulations on such subjects as the treaty allows them to (art. 43 and Annex X). The predecessor of the East African Community was the East African Common Services Organisation, which was in turn successor to the East African High Commission. The Treaty is part of the statute law of Uganda, being incorporated in the East African Community Act (Act 28 of 1967). This Act preserves the laws and regulations made by the Community's predecessors, provided these do not conflict with the provisions of the Treaty.

Owing to its past connection with Britain, Uganda belongs to the Common Law tradition which recognises *judicial precedent* as a source of law.

Yet another source of law in Uganda is *customary law*, a term which embraces not only traditional rules of conduct which over the years have acquired the force of law within a particular community, but also the customs, written or otherwise, and whether modern or ancient, which are considered as binding upon members of a particular religious persuasion. In this wider sense customary law is deemed to include not only African customary laws but also the various schools of Islamic law and Hindu law since all these laws have one characteristic in common, namely, that, not being part of the statute law of Uganda, the courts will not take judicial notice of them (except where a rule has become notorious) and parties relying on such laws must establish the validity of their claim by expert evidence. Much of what was customary law before has over the years been enacted in the form of local laws. (So the 1964 Revised Edition of the Laws, vol. XVI, contains over 40 laws enacted in this way by the former Kingdom of Buganda (now making up four separate districts) between 1904 and 1964).

IV. PRIVATE LAW

1. Contracts

Before the coming of Europeans to Uganda many types of contract, *e.g.*, of sale, loan, were recognised. Unlike the English Common Law concept of contract, the principle of consideration was not an essential element of a contract. The British applied the Indian Contract Act, 1872. After independence, however, Parliament enacted the Contract Act (Act 8 of 1962, Cap. 75) in which the English Common Law of contract was adopted and the Indian Contract Act, 1872, repealed. This new Act affects only contracts made after 1963. The Contract Act incorporates the English Law Reform (Married Women and Tortfeasors) Act, 1935, which, *inter alia*, confers upon married women the right to make contracts independently of their husbands. But the Act excludes the application to Uganda of the requirements of the English Statute of Frauds, 1677, and the English Statute of Frauds Amendment Act, 1828.

Of interest is the Sale of Goods Act (Act 28 of 1930, Cap. 79), which governs contracts for the sale of goods. It should be noted that the English Common Law principle of "market overt" is not recognised by the Law of Uganda. This type of contract is additionally subject to the provisions of the Registration of Titles Act (Act 22 of 1922, Cap. 205) and to the Land Transfer Act (Act 6 of 1944, Cap. 202), which latter Act regulates the transfer of land between Africans and non-Africans.

2. Torts

Many European scholars have expressed doubts as to whether African customary law recognised any difference between torts and crimes. In European law, what characterises a crime is the element of individual punishment; and for tort it is compensation. In African customary law compensation was payable by both a tortfeasor and a criminal, and not infrequently compensation was a communal responsibility; a crime was characterised by the greater seriousness of its effect on the community as a whole as compared to a tort. It is clear therefore that the line between torts and crimes was largely blurred. The law of torts is based on the English Common Law. The Law Reform (Miscellaneous Provisions) Act (Act 23 of 1953, Cap. 74) governs the right to recover damages by an injured person or his dependants. The Act also governs claims arising out of fatal accidents. It also incorporates the principle of contributory negligence into the statute law of Uganda.

The Government Proceedings Act (Act 48 of 1958, Cap. 69) permits the Government to be sued in both contract and tort in much the same way as a private person.

3. Family Law

a. *Marriage*. – The following marriages are recognised:

(1) *Customary marriage*. – This cannot be called a single institution because of the existence of a variety of group laws. In some areas marriage consideration (or dowry) is paid. Such marriages are potentially polygamous. It has not yet been tested in court whether a foreigner could legally marry under Uganda's customary law. Divorce is recognised under customary law.

(2) *Marriage under statute*. – Marriage under the statute law of Uganda can be monogamous or polygamous. It is monogamous when contracted under the Marriage Act (Act 5 of 1902, Cap. 211), under the Marriage of Africans Act (Act 14 of 1903, Cap. 212), and under the Hindu Marriage and Divorce Act (Act 2 of 1961, Cap. 214). Such a marriage can be celebrated either at a state registry or in church.

b. The Divorce Act (Act 15 of 1904, Cap. 215) governs *divorces* and related matters in the case of monogamous marriages. The High Court, and, in the case of Africans, a Grade I Magistrate, can entertain a divorce petition from any person domiciled in Uganda. A husband may petition for divorce on the ground of adultery by his wife, but a wife seeking a divorce has to show that her husband has changed his religion from Christianity to some other religion and gone through a form of marriage with another woman, or has committed an incestuous act, or adultery with bigamy or rape, sodomy or bestiality, or adultery coupled with cruelty, or adultery with desertion without reasonable cause for at least two years, or has married another woman and committed adultery.

A monogamous marriage may be declared null and void on the grounds that at the time of marriage either party was insane or had a spouse still living, or that the parties were within the prohibited degrees of affinity or consanguinity or that the respondent was permanently impotent or that the consent to marry was obtained by fraud. Where the marriage is annulled because a former spouse is alive, the children of the marriage are entitled to succeed to property as though they were legitimate children, provided that the second marriage was *bona fide*. The same applies where the marriage was annulled on the grounds of insanity. A spouse may petition the court for a judicial separation on the grounds of cruelty, adultery or desertion without reasonable cause for two years. Upon a decree of divorce or judicial separation being granted, the court may order the husband to pay the wife alimony and may make such other order as it thinks fit in relation to the maintenance, education and custody of minor children. The guardianship of children can be given, if this is in the interests of the children.

c. The Adoption Act (Act 5 of 1943, Cap. 216) governs the *adoption* of children. The Affiliation Act (Act 12 of 1946, Cap. 217) enables unmarried mothers to obtain maintenance for their children from the natural fathers of those children.

d. *Polygamous marriages* can be contracted under the Marriage and Divorce of Mohammedans Act (Act 7 of 1906, Cap. 213). The same Act, as its name implies, also governs divorces and related matters arising out of such marriages.

4. *Succession* under customary law is governed by the clan system. The heir is chosen, and the deceased's property is distributed, in accordance with rules of customary law. Today, however, a person's will is given full force. Succession outside the customary law is governed by the Succession Act (Act 1 of 1906, Cap. 139). The Act contains provisions on testate and intestate succession. Apart from privileged wills, *e.g.*, by soldiers, all wills have to be in writing and signed in the presence of two witnesses.

V. COMMERCIAL LAW

1. In discussing this problem we will in the first place consider the important role played by *para-statal bodies* (corporations) in the economic life of Uganda. The term "para-statal bodies" refers to companies the share capital of which are either wholly or partly subscribed to by the Government of Uganda. Normally the Government owns all the shares, but in a number of cases the Government owns only the greater proportion (usually 51 per cent) of all the shares in a para-statal body. Typical of para-statal bodies is the National Housing Corporation. Its governing body is the Board of Directors, which is presided over by the Chairman. The Minister of Works, after consultation with the Cabinet, nominates all the directors.

One of the most important corporations is the Bank of Uganda, which is the country's Central Bank and operates in two parts – a Banking Department and an Issue Department. At its head is the Governor of the Bank. It comes under the overall responsibility of the Minister of Finance.

Commercial banking in Uganda (see the *Banking Act*, Act 5 of 1955, Cap. 88) is in the hands of nine banks, which, with one exception, are branches of overseas banks. The one exception is the Uganda Commercial Bank, whose capital is wholly subscribed by the Uganda Government. It conducts its business on normal commercial lines and in competition with the other commercial banks. It is under the general superintendence of the Minister of Finance.

Of interest also are the following para-statal bodies: (1) the National Insurance Corporation (under the supervision of the Minister of Finance); (2) the Uganda Development Corporation – a holding company which has over 15 subsidiaries, *e.g.*, Nyanza Textile Industries Limited; United Garment Industry Limited; Uganda Hotels Limited; Uganda Cement Industry Limited; Lango Development Corporation Limited; East African Distilleries Limited. It has investments in about 10 associated companies, *e.g.*, Kilembe Mines Limited (copper); the Steel Marketing Corporation of East Africa Limited; Associated Match Company Limited; Uganda Fish Marketing Corporation Limited; Uganda Grain Milling Limited.

Proposals are under way to reorganise the existing para-statal bodies and create new ones.

2. Uganda's *Companies Act* (Act 1 of 1958, Cap. 85) confers upon the Registrar of Companies wide powers. He can, for instance, investigate the affairs of a company if he is reasonably satisfied that the provisions of the Companies Act are not being complied with. He may call upon companies to produce all or any company books, or to supply him with any information which he considers fit. If a foreign incorporated company wishes to transact business in Uganda it has to register certain papers, *e.g.*, its prospectus with him. Any non-compliance with his orders is an offence punishable by a fine. The Registrar is required to report to the High Court if he is of the opinion that an unsatisfactory state of affairs in a company's books exists or that a full and fair statement of the affairs of a company has been withheld. In a number of cases the court can appoint investigators, *e.g.*, where the Registrar reports a case of fraud or oppression of members. The Registrar can initiate an inquiry if he reports circumstances suggesting that it is desirable so to do. Under the Act no company, association or partnership of more than 20 members can carry on any profit-making business, except as a registered company under the Act. The Partnership Act (Act 19 of 1933, Cap. 86), applied to Uganda the rules of Equity and Common Law applicable to partnerships in England. The concept of limited partnerships is not recognised by the Act.

3. The *Bankruptcy Act* (Act 15 of 1930, Cap. 71) contains the law of bankruptcy in Uganda.

4. The Uganda *Bills of Exchange Act* (Act 15 of 1933, Cap. 76) governs the use of cheques and similar financial devices, which are widely used in Uganda.

VI. STATE DIRECTION OF TRADE

1. The *economy* of the country is run in accordance with a series of five-year Development Plans. The current Plan is for the period 1966–1971. The various Ministries and Working Parties were responsible for the assembling of the various data and projects which now constitute

the Plan. The preparation of the integrated Plan is the responsibility of the Planning Commission, which reports its decisions to the Cabinet for approval. The Plan places emphasis upon the development of the agricultural sector of the economy and upon planned industrialisation.

2. *Trade* is controlled principally through the annual Budget, by means of which the Government is able to direct the general fiscal policy of the nation, *e.g.*, by prescribing the incidence and level of direct and indirect taxation. Owing to the existence of the East African Community, the introduction of the annual Budget is preceded by the closest consultations between the Finance Ministers of Uganda, Kenya and Tanzania. The level of trade is also controlled by the Government through its power to regulate the activities of the commercial banks. This control is exercised through the Central Bank.

The Minister of Commerce and Industry, as the name implies, is concerned with the development of Commerce and Industry throughout Uganda. Under the External Trade Act (Act 8 of 1952, Cap. 103), he is responsible for prescribing the goods that are required to be produced, exported or imported under licence. The same Minister can, under the Distribution and Price of Goods Act (Act 9 of 1952, Cap. 104) determine the maximum price for the sale, retail or wholesale, of any goods. He may, as an extraordinary measure, requisition foodstuffs and essential commodities like sugar for their proper and equitable distribution. Under the Produce Marketing Act (Act 1 of 1953, Cap. 243) the Minister (normally of Agriculture) may declare any agricultural produce, *e.g.*, rice, to be controlled. He may declare a buying season for such a produce. He may determine fixed prices which growers are to receive.

The co-operative movement is of particular significance in Uganda's economic development. It is mainly concerned with the processing and marketing of cotton and coffee. The movement is supervised by the Government.

VII. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT

1. Copyright

The law which governs copyright in Uganda is the Copyright Act (Act 12 of 1964, Cap. 81). Copyright vests initially in the author, and, in the case of work commissioned or made in the course of the employment of the author, in the person who commissioned the work or in the author's employer. Copyright in an unpublished work expires 50 years after the end of the year of the author's death, while copyright in published works expires at the end of the year in which the author dies or 50 years after first publication, whichever happens last. The law permits the granting of licences which enable the doing of acts which would otherwise amount to infringements of copyright, and the Minister responsible has power to grant licences where he is satisfied that licences have been unreasonably refused or have been subjected to unreasonable restrictions.

2. Patents

The Uganda law of patents is still closely linked to that of England, for the Patents Act (Act 7 of 1939, Cap. 82) provides that any person who is the grantee of a patent in the United Kingdom or any person deriving his right from such a grantee by assignment shall be entitled to have such patent registered in Uganda, provided the application is made within three years from the date when the grant was made in the United Kingdom and on the payment of the prescribed fees. Such registration confers on the grantee or his assignee the same privileges and rights as though the patent had been granted in the United Kingdom with an extension to Uganda.

3. Trade Marks

The Trade Marks Act (Act 14 of 1952, Cap. 83) contains the law which governs trade marks in Uganda. The expression "trade mark" includes any device, name, word, letter or any combination thereof which has been registered as such under the Trade Marks Act. In order to be a trade mark the mark must satisfy the following main requirements: firstly, it must be registrable; some marks are not registrable, *e.g.*, terms in common use or which are scandalous in design or are contrary to law or morality. Secondly, the mark must not have been registered as a trade mark before, or be by reputation attributable to some person other than the person applying to have it registered as a trade mark.

Registration confers the right to the exclusive use of the registered trade mark by the person claiming that right and confers protection in the case of the violation of that right. The law, however, does not prohibit the use of unregistered trade marks; it merely refrains from extending to these the kind of protection it affords to registered trade marks. In an action for passing off, the person whose trade mark was registered earlier in time prevails over any earlier users of the trade mark.

VIII. PRINCIPLES OF JUDICIAL PROCEDURE IN CIVIL AND COMMERCIAL CASES

Civil procedure in the High Court is governed by the Civil Procedure Act (Act 1 of 1928, Cap. 65), and Rules made under it. Procedure in the Courts of Chief Magistrates and Magistrates Grade I is governed by the Act and the Rules. The remaining grades of courts (Magistrates' Grades II and III) are governed, in matters of civil procedure, by the Magistrates' Courts (Grades II and III) Civil Procedure Rules, 1965, made under the Magistrates' Courts Act (*supra* I 4b).

The procedure for appeals from the High Court to the Court of Appeal for East Africa is governed by the Eastern African Court of Appeal Rules (S.I. 1972 no. 179 and 1973 no. 51). The Rules provide (see Rules 25 and 52) that in any case not provided for by the Rules, the current practice and procedure of the English Court of Appeal is to apply.

On arbitration, see *supra* I 4b.

IX. PRIVATE INTERNATIONAL LAW AND INTERNATIONAL LAW OF PROCEDURE

Most of Uganda's international private law and law of procedure are not codified. The general principles of Private International Law in Uganda are similar to those of English Private International Law.

Of the codified international law of procedure, the following is of interest: The Foreign Tribunals Evidence Act (Act 33 of 1964, Cap. 45) provides for the taking of evidence within Uganda or outside Uganda in relation to proceedings pending before courts within or outside Uganda. By the same Act, Uganda courts may ascertain the position of the law from courts in other countries (s. 12). In relation to the execution of judgments, there is first the Judgments Extension Act (Act 3 of 1908, Cap. 46) which makes provision for the execution by Uganda courts of decrees and warrants made or issued by courts of Kenya, Malawi and Tanzania. There is secondly the Reciprocal Enforcement of Judgments Act (Act 9 of 1922, Cap. 47), and the Foreign Judgments (Reciprocal Enforcements) Act (Act 4 of 1961, Cap. 48), which are concerned with the enforcement in Uganda of judgments obtained in superior courts in Commonwealth countries and other countries, respectively. These two Acts are concerned with liquidated civil debts (exact sums) other than taxes and fines.

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(Completed in August 1973)

Union of Arab Republics

Chafik Chehata *

1. Inception

The Union of Arab Republics (*Ittiḥād al-djumhūriyyat al-'arabiyya*) comprises Egypt, Libya, and Syria. These three countries, while keeping their own individual personalities both internally and internationally, have so bound themselves together as to create a new entity, known as the Union of Arab Republics (UAR).

The first foundations of the Union were laid by the Tripoli Charter proclaimed on 27 Dec. 1969 by the Heads of State of the United Arab Republic (Egypt), Libya, and the Sudan. The latter country was to have been a member of the tripartite federation which was the subject of a declaration broadcast on 8 Nov. 1970. On 27 Nov. 1970 Syria announced its adherence to that declaration, and the federation thus became quadripartite.

The Sudan, on account of special problems, was unable to carry out its intention to form part of the proposed federation, and thus the Union of Arab Republics, proclaimed at Benghazi on 17 April 1971, comprised three countries: the Arab Republics of Egypt, Libya, and Syria.

Following this proclamation a Constitution was promulgated on 20 April 1971 (*al-djarīdat al-rasmiyyat al-ittiḥādiyya* no. 1 of 21 Dec. 1971) permanently setting up the Union of Arab Republics. It was approved by popular referendum in the three countries above mentioned on 1 Sept. 1971.

2. Constitution

The Union's Constitution has 72 articles. According to art. 4 "the system of government within the Union of Arab Republics is democratic and socialist". However each republic keeps it own Constitution, which must not conflict with the Federal Constitution (art. 11). Art. 12 sets out a list of essential freedoms and obligations, from which no derogations may be made.

The Union has a single capital city (art. 8). Cairo was designated as capital of the Union by a decision of the Presidential Council on 5 Sept. 1971. Moreover, the Union and its constituent republics are to have a single national flag and a single national anthem (art. 7).

The Union has an independent personality, enabling it to sign treaties and agreements with foreign countries (art. 14 par. 1 *lit.* d and art. 59). Whilst the Union involves the abolition of diplomatic representation as between the member countries, each of them nevertheless maintains its own independent diplomatic relations with foreign countries (art. 14 par. 1 *lit.* d) and with the United Nations.

3. Relations Between the Union and Its Member States

The Union aims at establishing a common foreign policy (art. 14 par. 1) and general and joint development plans (art. 4 *lit.* a). The Union is also to set up a unified policy in the field of teaching and education.

The Constitution provides for a uniform military high command (art. 14 par. 2 *lit.* b), each member state nevertheless keeping its own army (art. 69).

Under art. 64, the importance of which must be emphasized, the army and police of each member state can intervene, even without invitation, for the purpose of thwarting subversive activities in the territory of another member state.

The Council of Ministers of the Union shall establish contacts with the competent Ministers of the member states in order to ensure that federal laws and decisions be duly executed (art. 25).

4. Institutions

The Constitution provides for a Presidential Council, a Council of Ministers, and special Councils – which share executive power.

Legislative power is exercised by a Federal Assembly.

Finally, a Constitutional Court is provided to exercise the judicial power.

a. The *Presidential Council* is composed of the

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Presidents of the federated republics (art. 15). The President is elected by the Council for a term of two years, which may be renewed (art. 16). At present the President of the Council is the President of the Syrian Arab Republic.

In principle Council decisions are by majority, but in some cases, notably those involving the state of war or peace, decisions must be unanimous (art. 14 par. 1 *lit.* b).

b. The *Council of Ministers* has seven members, nominated by the Presidential Council, which also nominates its President (art. 29). At present the Council of Ministers has four Egyptian members, two Syrians, and a Libyan.

Ministers may not combine their federal duties with holding another office in their own countries unless specially authorized by the Presidential Council (art. 23).

The functions of the Council of Ministers are: drawing up draft federal legislation and decisions; preparing the Union's budget; supervising the application of federal legislation and decrees.

c. *Special Councils* are formed by decision of the Presidential Council (art. 27). Their function is to take charge of questions of economics planning, social security, *etc.*

Each minister is the president of a Special Council.

Provision is also made for unification of professional bodies. This will result in a federal professional council.

It should also be noted that a "political Front shall be formed by unanimous decision of the Presidential Council. It will be composed of representatives of the political organizations of each member State" (art. 62).

The status of federal officials is to be established by federal legislation (art. 28).

d. *The Federal Assembly.* – The Constitution gives legislative powers to an Assembly of 60 members, 20 from each of the 3 states. At present, the President of the Assembly is a Libyan elected to that office.

Members of the Assembly are elected by the People's Assembly of each republic, from among its own members (art. 29), for a period of four years.

It must be emphasized that a member of the Federal Assembly cannot at the same time be a member of the People's Assembly of his own country (art. 29).

The Federal Assembly holds two sessions a year, each of three months duration.

Among the functions of the Assembly are the examination and ratification of federal legislation, the approval of the budget, and the ratification of treaties.

The Presidential Council can dissolve the Federal Assembly, but the new Assembly must be set up within three months of the dissolution, and cannot be dissolved for the same reasons (art. 45).

e. *The Constitutional Court.* – The Presidential Council nominates the six members of this court, two from each republic (art. 46). They are nominated for a period of two years, and are eligible for re-nomination.

The court has jurisdiction over appeals raising the question of constitutionality of federal legislation, or the conformity of republican legislation with the provisions of the Constitutions or with federal legislation; and over appeals against Union administrative decisions (art. 48).

The decisions of the court shall be enforceable in the territory of all republics which are members of the Union.

5. Sources of Federal Law

The Federal Assembly drafts federal legislation. The members of the Assembly have the right to propose legislation, as has the Presidential Council (art. 35). Legislation drafted by the Council of Ministers has, like all other legislation, to be put to vote in the Assembly.

Legislation does not become effective until approved by the Presidential Council. It comes into force one month after publication in the Federal Gazette (*al-djarīdat al-rasmiyyat al-ittiḥādiyya*). It is applied by the competent authorities in all the member republics (art. 38). It takes priority over republican legislation in fields which are within the jurisdiction of the Union (art. 37).

If the Assembly has been dissolved, or is in recess, unanimous decisions of the Presidential Council in urgent matters have the force of law. But such decisions must be submitted to the National Assembly when it next meets (art. 19).

The Presidential Council promulgates regulations necessary for the enforcement of federal legislation (art. 20). They become enforceable only after publication in the Federal Gazette (art. 22).

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(Completed in December 1972)

Union of Soviet Socialist Republics

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The Union of Soviet Socialist Republics (USSR) (*Soi͡uz Sovetskikh Sot͡sialisticheskikh Respublik*) as a federal state was constituted on 30 Dec. 1922. The first state of the working people, founded as a result of the victory of the Great October Socialist Revolution of 1917, was the Russian Soviet Federative Socialist Republic (RSFSR) (*Rossiĭskai͡a Sovetskai͡a Federativnai͡a Sot͡sialisticheskai͡a Respublika*).

I. CONSTITUTIONAL SYSTEM

The Constitution of the USSR (USSR Const.) now in force was passed on 5 Dec. 1936. The economic base of the socio-political structure of the USSR is formed by the socialist system of the economy which is built on the basis of the socialist ownership of instruments and means of production. Economic life in the USSR is determined and directed by state economic plans.

In the Soviet Union a society has been created in which private ownership of instruments and means of production and the exploitation of man by man has been completely abolished. There are no longer any classes or groups living on the fruits of other people's labour and the relationship of class domination and subjection has disappeared. Soviet society consists of two non-antagonistic classes, the working class and the collective farm peasantry as well as the intelligentsia. Community of the vital interests of workers, peasants and intelligentsia is the basis of the socio-political and ideological unity of the Soviet people.

The basis for people's existence is personal labour alone. The Constitution of the USSR recognises labour as the duty and a matter of honour of every able-bodied citizen according to the principle: "He who does not work shall not eat". In the USSR the principle of socialism operates: "From everyone according to his abilities, to everyone according to his labour".

Distribution in accordance with labour is to an ever-increasing degree supplemented by the satisfaction of the needs of people from social funds, *i.e.*, without payment (education, medical treatment, pensions, care of children in childrens' institutions).

The entire life of socialist society is built on the basis of extensive democracy. In the USSR the sovereignty of the people is exercised in the following manner: by elections to the Soviets of Working People's Deputies; the activities of the Soviets of Working People's Deputies and the organs formed by them and subordinate to them; the permanent and direct participation of citizens in the activities of the Soviets; people's control over the activities of state organs; extensive discussion of the most important questions of All-Union, Republican and local significance as well as of draft laws and decisions of local organs of state power: nationwide voting (referenda) of the most important draft laws; the activities of mass social organisations through which the working people actively participate in state administration in deciding questions of economic and cultural development; meetings of citizens at their place of work and residence and conferences of workers of individual branches of the economy and culture; the administration of justice through elected courts.

The foundation of the entire systems of state organs in the USSR is formed by representative organs, the Soviets of Working People's Deputies elected by the people to whom they are accountable and subordinate.

The Soviets of working people's deputies, organs of state power and of people's self-administration, carry out their function in close contact with the mass social organisations of the working people.

The highest form of socio-political organisation in the USSR is the Communist Party of the Soviet Union (CPSU), the guiding and directing force of Soviet society and the people's socialist state, the vanguard of the whole Soviet people. The Communist Party, in accordance with the Constitution of the USSR directs and coordinates the activities of state and social organisations with the aim of a planned and organised construction of communism.

The main tenor of the Party guidance is the elaboration of policies on the basis of a scientific approach according to Marxism-Leninism, an analysis of concrete circumstances taking into account the demands of the economic laws of socialism and the material conditions of the life of society and the experience and the interests of the people.

Apart from the elaboration of general policy and the solution of specific problems at one stage or another, the Party also gives detailed instructions to various organisations which are part of the system of political organisation of society, taking into account their peculiarities and the specific forms and methods of their activities. In doing this, the Party in itself does not replace other organisations of the working people, does not allow superflous tutelage, confusion of the functions of the Party and other organs, or unnecessary duplication of work. By means of persuasion and explanation, advice and recommendations the Party is striving towards a state of affairs where the members of these organisations by developing their own initiative and spontaneity proceed along the path outlined by the Party and these organisations themselves develop along democratic lines and draw ever wider circles of the working people into their activities.

Party guidance is also exercised by means of selection and placement of leading cadres and the control of their activities within the framework of the Soviet Constitution, on the basis of Soviet law and in accordance with the statutes of social organisations.

Party guidance of Soviets and social organisations is exercised through Party groups in non-party organisations. These groups are set up in accordance with the Statute of the CPSU, at congresses, conferences, meetings called by Soviet, trade union, cooperative and other mass organisations of the working people, as well as within the elected organs of these organisations where there are not less than three Party members. It is the task of these groups to increase the all-round influence of the Party and to execute its policies, strengthen Party and State discipline, check the fulfilment of Party and Soviet directives. Party groups are subordinate to their respective Party organs and are obliged strictly and unswervingly to follow decisions of their leading Party organs.

1. Citizenship of the USSR

In the Soviet Union there exist both a citizenship of the USSR and of the Union and Autonomous Republics.

a. According to USSR Const. art. 21 a single citizenship extends to *all citizens* of the USSR. Every citizen of a Union Republic is a citizen of the USSR. According to the Federal Law on Citizenship of 19 Aug. 1938 (*Vedomosti Verkhovnogo Soveta* (VVS) *SSSR* 1938 no. 11) the following are citizens of the USSR: (1) All persons who were subjects of the Russian Empire on 7 Nov. 1917 and who have not lost Soviet citizenship; (2) persons who have acquired Soviet citizenship in the manner prescribed by law. Decrees of the Praesidium of the Supreme Soviet of the USSR have been issued on general aspects of citizenship, by which the law above cited has been amended. It has been established, for example, that citizens of the Lithuanian, Latvian and Estonian SSR became USSR citizens from the moment these Republics joined the USSR.

USSR Citizenship is bestowed on foreigners, on application, by the Praesidium of the Supreme Soviet of the USSR or the Praesidium of the Supreme Soviet of a Union Republic. Renunciation of citizenship is authorised by the Praesidium of the Supreme Soviet of the USSR.

b. The Constitutions of the Union and Autonomous Republics establish that on their territories citizens of all other Soviet Republics enjoy *equal rights* with their own citizens.

2. Soviet Federalism and the Administrative-Territorial Division

The USSR is a multinational state, in which there are over 130 nations and nationalities. All nations have equal rights and sovereignty. The free development of all nations of the USSR is guaranteed on the basis of the exercise of the right of the nations to self-determination and the creation of a Soviet multi-national state.

a. The USSR is a *federal state* of sovereign Soviet national states called Union Republics which enjoy equal rights and which have voluntarily united on the basis of agreement. At present the USSR consists of:

The Russian Soviet Federative Socialist Republic; the Ukrainian Soviet Socialist Republic; the Byelorussian Soviet Socialist Republic; the Uzbek Soviet Socialist Republic; the Kazakh Soviet Socialist Republic; the Georgian Soviet Socialist Republic; the Azerbaijan Soviet Socialist Republic; the Lithuanian Soviet Socialist Republic; the Moldavian Soviet Socialist Republic; the Latvian Soviet Socialist Republic; the Kirghiz Soviet Socialist Republic; the Tajik Soviet Socialist Republic; the Armenian Soviet Socialist

Republic; the Turkmenian Soviet Socialist Republic; the Estonian Soviet Socialist Republic.

The USSR as a federal state has its organs of state power and state administration, unified Armed Forces, a common citizenship, a consolidated state budget and a unified monetary system. The powers of the Union as a sovereign state, as laid down by the USSR Constitution, concern such spheres of state activity which in the interests of both the Union and individual republics demand guidance on a scale embracing the whole country as well as securing the defence of the interests of each individual Union Republic.

The Constitution of the USSR (art. 14) delegates to the Union powers of representation of the USSR in international relations: the conclusion, ratification and denunciation of treaties of the Union with foreign states; decisions as to war and peace.

Within the competence of the USSR are: the organisation of the defence of the country; the guidance of the Armed Forces of the USSR; the protection of state security; foreign trade on the basis of a state monopoly.

The Constitution of the USSR defines in detail the competence of the USSR in the sphere of the national economy: establishing of the economic plans of the USSR; the approval of the consolidated state budget of the USSR and control over its execution; the organisation of a common system of economic accounting, the levying of taxes and other revenues which form the Union budget as well as republican and local budgets. The USSR administers banks, industrial and economic institutions and enterprises as well as trading enterprises which are under All-Union authority, and transport and communications of All-Union importance. The Union also exercises general guidance over enterprises of industry and construction under mixed Union Republican authority, management of the monetary and credit system and the organisation of state insurance. Within the federal jurisdiction fall: the conclusion and allocation of loans, the establishment of common fundamental principles for the use of land, and equally the use of minerals, forests and waters, as well as common fundamental principles in the field of education and the health service.

With the aim of maintaining unity in the system of Soviet legislation the Constitution of the USSR assigns to the competence of the Union the establishment of Fundamentals of Labour Legislation, Fundamentals of Legislation as to the Court System and Court Procedure, Fundamentals of Civil Legislation and Fundamentals of Criminal Legislation, Fundamentals of Legislation concerning Marriage and the Family as well as fundamentals for some other branches of law. Detailed legislation taking into account the peculiarities of the historical, national and cultural development in these and all other spheres is enacted by the Union Republic itself. Because of this the unity of the principles of legislation for the entire federation and the consideration of local conditions is secured. To the jurisdiction of the USSR belong also the promulgation of legislation as to Union citizenship and the rights of foreigners as well as the promulgation of All-Union Acts of Amnesty. Within the jurisdiction of the USSR are: control over the observance of the Constitution of the USSR and the guaranteeing of conformity of the Constitutions of the Union Republics with the Constitution of the USSR, the ratification of boundary changes between Union Republics as well as the ratification of the formation of new autonomous republics and autonomous regions within the Union Republics.

b. *Sovereignty of the Union Republics.* – In the USSR the community of purpose of the working people of all nationalities ensures the harmonious unity of the interests of both the Union and of the Union Republics. Therefore each Union Republic exercises its sovereignty concerning general questions affecting the whole Union through Union organs, but in all other cases – directly.

A Union Republic has its own Constitution which is adopted by its supreme legislative organ. The Constitution of a Union Republic is modelled in conformity with the USSR's Consitution which reflects the unity of the Soviet State and the community of the socio-economic structure of the USSR. At the same time the Constitution of a Union Republic reflects historical, national, economic and other peculiarities of the Republic.

A Union Republic has the right to secede from the Union which is not limited either in time or by any other conditions (art. 17). A Union Republic has the right to territorial integrity: the boundaries of the Republic may not be altered without its consent (art. 18).

A Union Republic may create its own Republican military formations, the guiding principles of which the USSR establishes. It has the right to enter into direct relations with foreign states and to conclude agreements with them and exchange diplomatic and consular representatives. The general procedure concerning the Union Republics' relations with foreign states is laid down by the USSR.

A Union Republic has a number of rights as a