

CHAPTER 10

Legal Literature in the Sudan and the Administration of Justice

*by Michael Gaiger**

Introduction

It is not intended in this paper to give a general account of the existing state of legal literature in the Sudan as that has been done by Akolda Tier. My intention is to discuss the legal literature that is available to members of the judiciary and the problems created either by a lack of different kinds of suitable legal literature or a lack of legal material at the time it is needed.

In 1975 I was asked by the President of the Supreme Court of the Sudan to undertake a study of the Judiciary to see how it was working and to make recommendations on improvements that might be required. I spent a period of approximately six months interviewing not only judges, but also lawyers in government and private practice, police officers and administrators and also inspecting court facilities including libraries. I interviewed over 120 persons in all parts of the country. The members of the judiciary that I saw ranged from the President of the Supreme Court to lay magistrates and chiefs. My terms of reference, and hence my report to the President, covered a very wide field. In the time available it was not therefore possible to cover any particular aspect of the workings of the judicial system in great depth. However, in the report which is at present under study by a committee I did discuss the question of availability of written legal material to the legal profession and in particular the judiciary and point out some apparent problems arising from the lack of suitable materials. This paper uses material gathered for that report.

The Court System is Highly Centralized

The Supreme Court and Court of Appeal are in Khartoum and the Judiciary is controlled from there. Moves have been made to de-centralize the Court of Appeal, but by 1976 the only place outside Khartoum where there was a permanent division of the Court of Appeal was Wad Medani, which is easily accessible to Khartoum by the longest metalled road out of Khartoum of approximately 110 miles. The senior non-Mohammedan courts in the provinces are the province courts manned by province judges, under which come: resident magistrate courts; courts of magistrates, grades 1 to 3; Town Benches of lay magistrates; and customary courts of sheikhs and chiefs. The Province judges are responsible for administrative matters and are, in effect, the chief justices in their provincial areas.

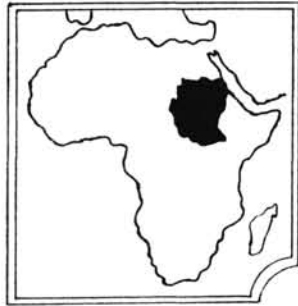
The Sharia court system runs parallel to the non-Muslim from the Supreme Court down. In the provinces, the province judge (personal) is the senior Sharia judge and a grade 3 judge the most junior, although in practice I doubt whether they have below grade 2. The Sharia courts, of course, only hear cases of Muslims relating to their personal matters and are governed by Islamic law.

The other courts hear all other cases both criminal and civil (including personal cases on non-Muslims) and this applies to Town Benches and customary courts as well. Although, one could say that the Town Benches hear mainly criminal cases and the customary courts mainly civil. Although I spoke to a number of Sharia judges, my main concern was with the other courts. This paper really concerns the non-Sharia courts. This does not mean that Sharia courts do not have their problems but, as their legal principles are revealed in the Koran and their writings are international, stemming from a world wide religion, the findings in this paper do not relate to them. This does not mean that they can be ignored. They cannot.

Physical Problems

By any standards, Sudan is a large country. It has a land area of approximately one million square miles. A large proportion of the northern area is desert inhabited, in part, by nomadic tribes. Travel throughout the country is by air, land (rail and road) and river and is often very difficult owing to weather conditions (sometimes seasonal), poor roads and the difficult terrain. Telephone, telegraphic and postal services are unreliable. For example, a cable warning of one's intended arrival by air Port Sudan from Khartoum may often not arrive, or will arrive well after one does oneself. Telephone services often break down making telephonic contact impossible.

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THE DEMOCRATIC REPUBLIC OF THE SUDAN



It can therefore be appreciated that members of the judiciary, in common with other persons working in Sudan, have serious problems in travel and in communicating with colleagues and other persons for professional purposes. This is aggravated by the fact that members of the judiciary are, by reason of their work, scattered throughout Sudan's vast land. Again, as in most jurisdictions, the workload of the judiciary is increasing rapidly. For a number of reasons, I need not discuss in this article, the number of judges needed at the appropriate levels is not increasing fast enough to cope with the increasing quantity of cases.

As a result of the difficulties of travel and the increasing pressures of work the, judges, and in particular the middle level judges who bear a large brunt of day to day work, cannot meet colleagues off station to: discuss professional matters; developments in the law; have little or no time to chase scarce legal materials to assist them with their work; and similarly, have no time to ensure that primary legal materials are consistently made available by the central authorities in Khartoum.

Availability of Legal Material

Primary Sources

I propose to refer to three sources: legislation, case reports, and practice directions/manuals of procedure.

Legislation

As in many countries with a former British administration, statutes and subsidiary legislation are periodically printed in revised editions which are supplemented by individual prints of legislation; possibly collected in annual bindings, depending on the enthusiasm of the administration. The last complete revised edition of the Sudan was published during 1954/55 preparatory to independence, which was attained on 1st January 1956. As far as I can gather there was only one printing of the complete set. One volume was reprinted in a revised form, but the work does not appear to have been an authorized revision.

Most individual judges have neither the 1954/55 set, nor do they have access to it. Some courts have some volumes from the set. There are courts which either have not been issued any volumes from the set or have lost all they had. Individual judges have been obliged to borrow from one another where there are more than one judge per station. Many judges have to borrow volumes from government departments in order to carry out their work.

Not all the volumes of the 1954/55 edition are needed. Some volumes have been almost completely superseded by later legislation. After all, over twenty years have passed since the edition was published. Also, since independence in 1956 the pace of change and, inevitably, the amount of legislation has increased. Between 1956 and 1976 over 1300 statutes were passed. It can therefore be appreciated, that it is essential that judges have the supplements to the Official Gazette containing the statutes, or at least access to them, in order to satisfy themselves of the current position of the statute book.

It is rare to find a complete collection of laws. In an article in the 1965 Sudan Law Journal, Professor Cliff Thompson stated: "The rareness of a complete collection is indicated by the University of Khartoum's inability to accumulate one until 1966 after having spent a year of intensified effort to locate missing items".¹

Judges are certainly no better off than anyone else. It might be possible if one were to search carefully in the Supreme Court in Khartoum to find copies of all the laws passed since 1956, but outside Khartoum one is unlikely to find a complete set. An extremely small number of courts (not individual judges) had most of the supplements. I can only remember two courts I visited which were in that position. Most courts lacked a large number of supplements, particularly the older ones, and some courts had very few. Neither an annual "Noter-Up", nor annual list of legislation is published in either Arabic or English. From time to time individuals, on their own initiative, have made lists of legislation, but in January, 1976 there was no published comprehensive list of either legislation in force or of legislation enacted since the 1954/55 edition of the laws. As a general rule judges were therefore in a doubly difficult position. They had neither access to a complete set of the legislation of the Sudan, nor were they in a position to check and see which legislation they lacked.

The position has changed somewhat since I made my survey. A revision of the laws was started in 1974 but only two volumes (arranged chronologically) out of approximately eight had been published at the time I wrote this article.

The system of distribution of supplements is somewhat complicated. Consequently there are omissions and delays in distribution. One court I visited had not received supplements for 18 months. In other words, the judge was not less than 18 months behind with his legislation. The more fortunate courts received their supplements, but irregularly. Again there were delays of months before supplements arrived. For example, in one province court I visited in June 1975, the latest supplement they had received was for December 1974. Judges in other courts informed me that this was quite normal.

Another contributory factor to the delay in receipt of legislation by judges are delays in the printing of the laws. Laws are not usually printed as soon as they receive presidential assent. I was not able to go into the delays in publication of laws and work out, for example, the average delay in publication particularly those containing penalties. However, I was assured that there were delays and noted this from my own experience during my two years stay. One wonders how far the judiciary may be able to apply the principle of *ignorantia juris non excusat* in such a situation. This would appear to be of particular concern where unpublished laws create criminal offences with penalties.

Case Reports

From time to time collections of case reports have been made in Sudan. In March 1955 the Judiciary produced a digest entitled Cases in the Court of Appeal and High Court 1-1-53 to 30-6-54. A collection of civil case reports in two volumes (1900-1931 and 1932-1940) in the African Law Report Series has been published. A collection of criminal case reports has also been put together by the Law Faculty and printed in roneo form.

Annual case reports have been published in the Sudan Law Journal and Reports (SLJR) since 1956. It combines reports of cases and articles on legal matters in one annual volume. The 1968 volume, as an example, contained 48 case reports covering 163 pages, varying in length from less than half a page to twelve pages. The average report is two or three pages long. The volume also contained three articles covering a total of just under one hundred pages. Up to 1976, 16 issues of the SLJR had been published; the maximum number of reports being 93 in one issue and the minimum 13 in another. It is published by the judiciary, but articles are usually contributed by members of the Law Faculty in the University of Khartoum. The general view in Sudan is that what was a good publication has generally deteriorated over the last few years.

The reports concentrate on the Court of Appeal and the Supreme Court and are narrow in their subject matter. Judges complain that cases are frequently included in the reports that deal with points already covered in earlier reports. The proportion of criminal cases reported is much higher than that of civil cases and the majority of the former appear to be homicide cases. The selection thus has not improved since the late 50's when Professor Twining worked on the reports. Indeed, it was better then as High Court decisions were reported. Now province courts which appear to have a similar jurisdiction are rarely reported.

The reports in recent editions vary considerably in quality, format, and even in terminology. In some the facts are too brief and in some it is not easy to discover the *ratio decidendi*. What is of more concern, is that the SLJR is taking progressively longer to appear in print. In early 1976, the 1971 edition was the last in print and that contained only 13 reports. Again, as with legislation, there is no annual 'Noter-Up'. Judges and all other practising lawyers are obliged to search through all of the issues of the SLJR for all the cases on a specific point.

Practice Directions/Manuals of Procedure

The head of the judiciary does not issue practice directions, as such. For many years he has issued what are called court circulars. They appear to take two forms; there are those that appear to elucidate problems that arise in practice, and there are others that are in the form of directions.

There is some criticism of the circulars as it is not always clear as to what they are meant to be. Some judges rely on them, on the basis that if they state a view on a legal matter, that will be the view supported in the Supreme Court in cases that go there on appeal. Other judges are wary of what might be taken as an attempt to direct them in their work. Whatever the differences of opinion are on the circulars, generally some of them are followed by the majority of the judges. These usually relate to matters of procedure. For example, there is an important circular on how to try cases arising from "tribal fights" (where there are many persons in two or more groups charged with multiple offences, from homicide on down the scale).

The circulars have at times been bound together in collections for easy reference. Even in their bound form, they could not be classed as practice handbooks or procedure

manuals. They cover a variety of matters which are not necessarily related and do not give a comprehensive coverage of court procedure and practice. Most judges agree that the circulars do have a value, or a potential value as practice directions, but they are hard to come by and many are out of date and need revision.

Secondary Sources

I propose to refer to; journals and other outlets through which criticism, comment and research findings about Sudanese Law can be communicated; books covering Sudanese legal subjects; and foreign legal publications.

The Sudan Law Journal and Reports is the only regularly published Sudanese journal that provides a forum for articles on legal matters. I understand that the editor has difficulty in getting enough material for printing. This may be partly due to the deteriorating standards of the SLJR. However, the journal does provide a means through which those persons who have something to say can contribute. Over the years some excellent articles have appeared and they are read.

It is a pity that because of the delays in publication an article cannot be very topical. Comment on recent cases and legislation is often valuable. I gathered that there is a real desire by judges and practising lawyers in the Sudan for constructive comments on some of the legislation appearing from time to time. For example, when I was there a number of codifying Acts were enacted; published comment on them would have been useful to many of the judges. There was a time when the SLJR was issued to individual judges for free. This is no longer the case, although a number of copies do go to some courts. The free copies are insufficient in number to be distributed to the judges away from the province courts. It is true that judges may purchase copies of the journal, but not all judges, particularly the more junior, can necessarily afford them. There is now a set of 16 volumes some of which are out of print, but even then a young judge has to find a tidy sum in order to buy all that are in print.

Books Covering Sudanese Legal Subjects

There is no doubt that there is a lack of Sudanese books on legal subjects that can be used by practitioners. In 1976 the only books I came across were a treatise on the common law by Dr. Zaki Mustafa published by the Oxford University Press; a book on land law by Dr. Saeed el Mahdi, which, I believe, was published by the Khartoum University Press; and Gledhill's Penal Codes of Northern Nigeria and Sudan. Professor Cliff Thompson had produced an important three volume roneoed set of collected materials on the customary law relating to land, but it is doubtful whether a complete set now can be found outside the University of Khartoum.

Materials relevant to legal practice have been collected by persons in the Law Faculty and are available elsewhere. One valuable source of material is the Central Records Office, the repository of the national archives. It holds a great quantity of relevant matter, including reports by District Commissioners and the like. These, I am sure, would be of value to legal practice particularly in the area of land and tribal custom if they could be sifted through and collated by, or under the supervision of, experienced persons.

In short, there is a serious shortage of books by Sudanese writers and others about Sudanese law and practice. There is a certain amount of collected, but unpublished, material available and there is other uncollated material waiting to be put in a useful form.

Foreign Publications

As we have noted above, Sudan has a common law heritage. No one expects Sudan to slavishly follow what happens in the law courts of England, India or Egypt, to name three countries that do influence its legal thinking. However, there is a need for Sudan to seek guidance from other jurisdictions, just as all common law countries do. There is an interesting article on the subject in the Sudan Law Journal by Sayed Galal Ali Lutfi, in which he maintains that "English law will no doubt continue as the main guidance for our future development".² The judge in Sudan who disputes the need to study foreign case law and text books is a rare person indeed. I did not meet one.

Foreign law books kept for the use of judges are found mainly in the Judiciary library in Khartoum. If one takes four province courts as a sample, by air Juba is 751 miles from Khartoum; Wau via Malakal 707 miles; El Fasher via El Obeid 561 miles; and Port Sudan 564 miles. Taking into account the not overly reliable travel and postal communications, one can safely say that the judiciary library is not readily available to the bulk of judges outside the three towns (Khartoum, Khartoum North and Omdurman).³

Apart from this, the library is required to be improved. It is poorly stocked in some sections and overstocked in others. For example, it is, in my opinion poor in mercantile law, constitutional law, damages and forensic books and law reports other than from the United Kingdom. On the other hand, it is over-endowed with law journals from obscure sources and overlapping series of law reports from Britain. The contents of the library are not catalogued or classified. One cannot find what one wants without a physical search. They do not have foreign law reports. One province court had three odd volumes of the All England Law Reports. My guess was that some former judge there had borrowed them from Khartoum and had not returned them. Most courts have only one or two foreign books that are reasonably up to date. Some might have a set of Halsbury's Laws of England (3rd Edition) but without an up-to-date supplement. Some courts had no up-to-date, or nearly up-to-date, books of any kind. These were usually the courts that were also poorly equipped with Sudanese sources.

Individual judges often have small personal libraries, but many of the books they have were purchased as students and naturally have become out of date. I observed that practising advocates, on the other hand, usually had their own small libraries of reasonably up-to-date books. Indeed, the average competent lawyer had a better library than the best judicial library I saw in the provinces. The best province library I saw had about sixty books, of which perhaps a half dozen were not old editions and it was in the same town as the best advocate's library I saw. The advocate had several hundred books and was keeping up with new editions.

Effects of Non-Availability of Legal Materials

I do not consider it possible to quantify the effects, good or ill, of the non-availability of legal material to the Sudan Judiciary. I have no doubt that some persons might argue that good comes from lack of some material. Maybe some judges are more pragmatic; rely more on Sudanese customs; dispense swifter justice and so on, because they are not tied too much to their "books". On the other hand, one wonders how many persons may have received illegal prison sentences, or been wrongly convicted for crimes that have been removed from the statute book? How many have been convicted on inadmissible evidence?

What I can do is briefly give the general feeling of the judiciary in relation to each area where there is either a lack of needed material, or where judges lack existing material due to delays or failure of the system to make the materials available. I can also show what appears, to me, a general pattern that is emerging from reported cases and which, in my view, appears to show that Sudanese jurisprudence is being effectively hindered in its development by the shortage of basic legal materials.

Lack of Copies of Legislation

The most obvious result of judges lacking up-to-date copies of legislation is that cases have to be adjourned while the relevant legislation is being sought. I was told that this has happened not infrequently. In 1966, a Sudan case received headlines in the international press presumably because of the efficiency of customs officials in arresting a man on an international flight passing through Khartoum with a quantity of gold secreted in his baggage. When the case came up for hearing, the magistrate was obliged to adjourn it while the relevant exchange control legislation under which the man was being charged was sought. I was informed of another case which to the reader would appear apocryphal, but my informant was reliable. In that case, a junior judge made an order which was set aside by a senior judge on the grounds that the order conflicted with legislation amending the Act under which it was made. The second judge's decision was upset by the Court of Appeal as his decision was contrary to yet later legislation.

Province judges and resident magistrates complain that there are too many appeals to them which could have been avoided if the courts, at first instance, knew their law. No doubt there will always be some cases where ignorance of the law does not necessarily arise from lack of copies of relevant legislation, but in Sudan in 1976 this must have been the main reason. I was told, although I did not see records of actual cases, that some people had been fined or imprisoned under repealed legislation. Presumably their cases would have involved comparatively minor infringements of the law with light sentences, but if this has happened it does highlight the potential and actual dangers of lack of current legislative material in the judiciary.

Lack of Sudan Case Reports and Sudanese Secondary Sources

I find it difficult to separate these headings when discussing the effect of their scarcity on the work of the judiciary. It appears to me that the lack of Sudanese law reports has in particular, been a cause of (or has contributed along with legal training

and communication problems and other factors) to a lack of consistency in judicial decisions, particularly in matters such as statutory interpretation and sentencing by the judiciary throughout the country; and an increasing dependence on foreign text book writers by the judges.

One appreciates that lack of consistency in sentencing is a problem everywhere. However, I do consider the problem is aggravated in the Sudan by the lack of up-to-date case reports. It would seem that a disturbing situation is evolving where the development of a truly Sudanese common law and indeed jurisprudence is becoming more a vain hope than a practical reality as time goes on. Apart from a lawyer's hope that Sudan will make its own unique contribution to what Professor G.V.V. Nicholls called, "...one of the great collective achievements of man's intellect and spirit",⁴ there is also the worry that the quality of justice must suffer.

I mentioned above that in my view, a general pattern was emerging from reported Sudanese cases which I consider shows that Sudanese jurisprudence is being hindered in its development by the shortage of basic materials. The lack of Sudanese authorities has been evident for some years. In 1959 Professor Twining who was then at the Faculty of Law, University of Khartoum, was in a position to state:

"Undoubtedly the present unsatisfactory position of law reporting is holding up legal development in the Sudan. For instance in the 33 decisions reported in 1956 SLJR 57 foreign cases were cited, 56 English, 1 American and all were treated as authoritative. Yet only 4 Sudanese decisions were cited and one of those was overruled. In the 1957 SLJR 28 cases will be reported. In these 41 foreign cases were cited, all English, 2 of which were not followed whereas 7 Sudanese decisions were cited one thrice and one of these was distinguished. It is also significant that secondary sources especially English text books are still frequently referred to in judgments. Thus secondary sources, all foreign are cited in the 1956 volume for 11 and in the 1957 volume for 17 propositions of law.... Furthermore the lack of published reports encourages decisions per incuriam and 'pocket pistol law'. A collection might be made by appeal to advocates and ex-judges - beyond the Law Faculty - ways round problems are being considered but in the face of a long line of precedents it would be unwise to express any further pious hopes."⁵

What Professor Twining did not mention is that text books are often quoted in judgments uncritically as if they are authorities on the points of law to which the quotes relate. It is common practice to refer to a proposition of law and then to say "see Russell on Crime page so and so" or "Gour's Penal Law page so and so". It also is not uncommon to see "the authority for this is Ratanlal page so and so".

I perused the reports over a number of years and the following table emerged:

Year	No. of Cases Reported	Sudanese Cases Cited	Foreign Cases Cited	Text Books Cited
1900/1931	137	19	88	2
1932/1940	129	5	54	7
1956	33	4	56	8
1957	28	9	41	14
1958	27	4	70	13
1959	34	3	26	14
1960	79	26	52	29
1961	76	17	32	44
1962	93	66	52	75
1963	87	37	34	38
1964	62	21	40	19
1965	51	19	37	59
1966	64	44	28	45
1967	81	43	32	39
1968	46	41	27	49
1969	60	38	37	53
1970	46	17	21	41
1971	13	9	16	24

It will be noted that my figures for 1956 and 1957 are slightly different to Professor Twining's, but not so different as to be significant. The table shows a gradual increase in the number of Sudanese cases cited over the years, only to see them decrease in number progressively from 1968. On the other hand, foreign cases cited

tended to decrease in relation to Sudanese cases, unfortunately to increase again in recent years so that in 1971 foreign cases cited were nearly double the Sudanese cases at 16 to 9. Again, the position with regard to citation of text books is serious, particularly since 1968. In 1971 the text books cited at 24 to 9 were nearly three times the number of Sudanese cases cited and at 24 to 13 nearly 2 books cited per case reported. If this trend continues with regard to text books there is, in my view, a danger that Sudanese jurisprudence will be shaped more and more by the authors or editors of foreign text books like Ratanlal, Winfield on Tort and the like.

I discussed the figures in the table with many of the judges and the overall reaction was that text books tend to be quoted because original law reports, either Sudanese, English or Indian, are not as a rule available and so secondary sources, i.e. text books, albeit often old editions, are resorted to by the judges. They also maintained that foreign cases often have to be quoted because there is no available Sudan report. In my view the position is very serious indeed. If nothing is done to ensure that sufficient Sudan cases are reported and made available within a reasonably short time, judges will either resort more and more to foreign sources, particularly text books, or make their own individual law creating a very uncertain situation and as Allen put it bringing "the law into discredit".

Again as I see it, the smaller the number of Sudanese authorities there are to refer to the more foreign content there is likely to be in the Sudanese cases that do get reported. The legal spectrum will get narrower and narrower. It is a vicious circle.

Lack of Foreign Legal Publications

Many of the judges and other lawyers stressed the importance, as they saw it, of access to material on English and Indian law. One has to accept that the Sudanese common law has drawn largely on Britain and India for over seventy years. The Sudan rules of Civil and Criminal Procedure are inherited from the Indian Codes. Partnership law and bankruptcy law, as but two examples, come from England. It is therefore not unreasonable for the judges to want access to works like Mulla's Code of Civil Procedure and Sohoni Code of Criminal Procedure, Lindley on Partnership and Williams on Bankruptcy.

Likewise, as the doctrine of precedent has been accepted with the common law, although ideally precedents should be Sudanese, the judges look to English and Indian and, to a lesser extent, other common law reports for guidance when Sudanese precedents are either small in quantity or do not exist. Again, they must keep abreast of developments abroad in the fields in which they work whether or not those developments will be followed in the Sudan. The judges have a need for legal material even though foreign, just as a potter needs his clay. The hope is that they can mould the material available to them and progressively create something that can be seen as an indigenous jurisprudence.

The position now is that the majority of the young newly appointed judges, having not long left a university reasonably well provided with what Sudanese material there is and a comparative wealth of foreign material, find themselves starved of material of all kinds. Whatever their university background they have been trained to look for authority somewhere, be it in a code and commentaries or in law reports. They may not find Sudanese authorities and they normally cannot find the English or Indian reports they also need. If they have no text books available, they do the best they can. If they have books at all, they are often either old books or books they own and with the natural result being a habit of relying too much upon the few books they possess. My conclusion in seeing this happening was that the lack of access to a good selection of foreign materials, particularly law reports, perhaps paradoxically contributes to the stifling of a healthy growth of Sudanese jurisprudence. The judges see this themselves. It was clear from their evident concern over the scarcity of foreign materials that they felt they were missing the stimulus to be obtained from being able to use a diversity of materials to assist them in the gradual building up of a Sudanese common law.

The Needs of the Sudan Judiciary

The Judges' View

The majority of the judges, particularly at the lower levels, think in terms of what they need to get them through a working day. Some are overworked and many work under pressure. Therefore they cannot cope with more than the basic material needed to enable them to avoid errors through ignorance and to give reasonably well-informed judgments.

It was noticeable that as a general rule the judges outside Khartoum expressed concern over lack of legislative material, the SLJR and books on procedure and basic principles in matters of tort, contract, damages and evidence. Some in Khartoum, nearer the higher realm of the judiciary, expressed similar concern but were also interested in books on constitutional law, jurisprudence, sociology, political science and the learned journals.

An Outsider's View

My impression was that there is a crisis situation in the Sudan judiciary in relation to the non-availability of legal materials and that urgent short term measures need to be taken to provide as many judges as possible with convenient access to:

- a. current statutes;
- b. up to date case reports of some kind;
- c. some sort of manual and procedure including possibly practice directions;
- d. a small selection of foreign text books and source books.

I will deal later at a little more length with the items I have mentioned. In my view the judiciary's short term needs must be met before one can think in terms of what more sophisticated long term needs they may have.

What Is Being Done

Those responsible for the judiciary in the Sudan are aware of and worried about the problems outlined in this paper. The survey referred to in the Introduction was arranged because of the President of the Supreme Court's personal concern about a number of matters including a lack of accessible legal literature. No official paper has yet been published concerning the report, its recommendations and their implementation and so such measures as the judiciary intends to take to alleviate the present situation are not yet known.

The difficulties with regard to the publication and distribution of the Legal Supplements are not altogether in the hands of the judiciary, nor is the judiciary responsible for publication of the revised edition of the laws. Apart from bringing personal pressure to bear, the President of the Supreme Court (now the Chief Justice) is thus not able to take direct action to make improvements.

The publication of the Sudan Law Journal and Reports is under the control of the judiciary. In 1975 and 1976 moves were being made to improve the journal and to catch up with the backlog. However, if facilities and financial and other resources are not improved I cannot see that improvements will come quickly. Indeed there is a danger that the SLJR will get further behind schedule with no improvement in quality.

What Should Be Done

There is a need to investigate the methods of publication and distribution of the legal supplements in order to find why they take so long to get to the courts using them. Hopefully this would show why, for example, it takes so long for a law to come off the printing press. It would show whether it is really necessary, as happens now, for supplements to go from the printer to the Attorney General, from the Attorney General to the Supreme Court and from the Supreme Court to individual courts and judges in the provinces. Again, it should be possible to find why all the supplements do not get delivered. Are they misdirected or not even sent? These matters are obvious matters for investigation. The results of such an investigation will point the way to improvements which will require the joint co-operation of the Government Printer, the Attorney General and the Chief Justice.

It is stating the obvious to say something needs to be done to speed up publication of the SLJR. The report makes detailed recommendations about this and they cannot be discussed here. What I can say is that there is a need to get reports quickly to the judges.

Occasionally copies of important judgments are sent in roneoed form to some judges but this is not sufficient. There is a need for the judges to have monthly or quarterly collections of reports, albeit if only in digest form and roneoed and stapled together. Again, one needs to look at the SLJR and see whether it can be produced more cheaply and quickly and in another form if this will speed up publication. Ways of ensuring that it is made available to the largest possible number of judges must also be investigated.

The general attitude in the judiciary to the suggestion that there should be a procedure manual is one of enthusiasm, but there are some judges who feel that judges would depend too much on a manual. There is no doubt that there is a risk that this would happen with some judges: the advantage gained from producing a manual, which would hopefully encourage a uniform approach to sentencing and interpretation and would refer to and be a focus for Sudanese case law rather than foreign, would far outweigh the risk. Such a handbook or manual could be available to practitioners also. They would certainly buy it as they have no other comparable publication to which they can refer. It should contain a fairly wide range of subjects but not be so ambitious that it would never be printed. One could see in it such matters as civil and criminal procedure, damages and sentencing, evidence and interpretation. In addition it could include practice directions.

I would add that certain foreign manual type books like Odgers' Principles of Pleading and Practice in Civil Actions and Archbold's Pleading Evidence and Practice in Criminal Cases are already used in the Sudan when they can be obtained. The use of these is not necessarily bad but it would appear appropriate for them to be used only when a home-produced manual cannot help. The day to day practice and procedure in the courts should be much more susceptible to fairly rapid change than other aspects of the imported legal system.

Foreign legal material is becoming so expensive that the judiciary has some difficulty in keeping up with paying for periodicals, replacement volumes and annual supplements before it finds the money for such new works as it may need. The time has come for the judiciary to be ruthlessly selective in its purchasing policies in order that it provide within its limited budget for as wide a number of judges as possible. It is not practical, for example, to have a subscription to all the law reporting services of England or India or to more than a few learned journals. Even when the budget is tight it is usually possible to buy somewhere near the working requirement provided selection procedures are strict and are adhered to.

Putting Legal Literature in Context

It is impossible to consider legal literature in relation to the Sudan judiciary without considering other matters, some of which I have already mentioned. As Professor Twining has said: "Thus as with legal education, so with legal literature, serious analysis quickly pushes the enquirer into studying the legal profession itself".⁶

In Sudan's case, and I presume elsewhere, one has to go beyond the legal profession itself when studying the problems related to legal literature. The sheer size of Sudan combined with the scattered locations of courts and the poor communications all present difficulties. First, more copies of relevant material are needed than perhaps might appear at first necessary. Second, getting the material to its destination and getting it there quickly is difficult. The Sudan judiciary's methods of administration and its structure are also relevant. If more modern methods of administration are devised and if there are changes in the structure of the judiciary this would improve the chances of providing a uniform access to legal materials.

Then there is selection and training of judges. In Sudan persons are eligible for appointment to the judiciary if they have a University of Khartoum law degree or a degree from the University of Cairo, Khartoum branch. The former is similar in content and standard to degrees awarded in other common law countries. Indeed the university used to have an arrangement that students took the London LLB before their own degree was introduced and now they have external examiners from Britain. The Cairo degree is the degree of a Civil Law country with some Sudanese material but has no substantive common law content.

Potential judges in the Sudan are selected in much the same way as civil servants. They apply and provided there are vacancies, which there always are in the judiciary, most applicants are accepted. There is not at present any weeding out procedure after appointment, during training for example. It can be appreciated that legal material must therefore be in a form that can be readily used by judges with different levels of ability. One can envisage that there will be different approaches to the use of legal materials by graduates from the two legal systems. Consequently the way judges are trained may have an extremely important effect on how they use available legal materials or whether they use them at all.

There was no established training scheme in January 1976 although training was under review and during 1975 a course of lectures on matters of practice was undergone by new recruits. The course included matters like procedure, where to look for the law, interpretation and the doctrine of precedent.

The matter of training bears some relevance to the question of whether a procedure manual or handbook could be usefully produced. It is quite feasible for a manual to be produced for training purposes which continues as a useful practitioners aid for successful students. See the report by Eli Jarmal on a course held in New Jersey in 1964 where the students found the loose leaf material produced by their instructors "invaluable" in performing their daily duties in practice.⁷

It is also necessary to take university teaching methods into account. I have no personal knowledge of the methods of teaching in either the University of Khartoum or the University of Cairo. However, a significant number of judges put partial blame on the judges' addiction to foreign text books on the teaching methods at the University of Khartoum from which most judges graduated. They considered that the way that they were taught placed an undue emphasis on certain text books and not enough on case law.

Then there are available facilities. For example courts often lack serviceable typewriters if not both in English and Arabic, certainly in one language. Judgments are usually handwritten and there is only one copy. This causes problems when there is an appeal, particularly to the Court of Appeal or Supreme Court where not less than three judges sit.

Verbatim law reporting is unknown. Law reports are based on what can be found, either the available copy of the judgment or the court files, which may not be as helpful as they should be because of the lack of copying facilities. Judges record the evidence of witnesses in handwriting whether a trial lasts one day or one hundred and there is one witness or there are fifty.

The national language of Sudan is Arabic but the working language in Southern Sudan is English. The language of most common law jurisdictions is English. Text books and law reports are seldom if ever translated into Arabic. Thus, one can have proceedings conducted in Arabic with some cases cited in English. Incidentally, English is the medium of teaching in the law faculty of the University of Khartoum and Arabic in the University of Cairo. Not all judges are fluent in English, particularly some of those graduating from the University of Cairo, although most are.

As I have stated above, there is a system of Sharia courts to hear personal cases of Muslims. There are also Town Benches and customary courts. The Town Benches in particular have expressed an urgent need for copies of legislation and for some sort of procedural handbook. Their needs are much simpler than those of qualified judges. Some Town Bench Judges are semi-literate and some are illiterate. They might even need summarized versions of legislation which can be assimilated easily when read out by colleagues. Likewise, the few cases they might have to know about may well have to be provided in digest form.

The Town Bench members, although laymen, have no qualified lawyer to guide them. Again, their training is relevant when considering what legal literature would be suitable for them. There is in fact no training scheme for lay magistrates although those resident magistrates who have time do try to show Town Benches where they go wrong. There is a danger of producing material that is too sophisticated for them. They need very simple material reminding them of key legislation and key sections in it, of a few important cases and giving them a simple guide to procedure. The importance of these people cannot be overlooked. There are 1,000 12 member panels i.e. 12,000 magistrates. They hear the bulk of the Sudan cases, at a guess about 70%. For example, in the year ending July 1973 they heard 191, 632 cases, 104,182 criminal and 87,450 civil.

What Help Is Needed And Can Be Given

There is no doubt that Sudan cannot rely on private enterprise of any kind to supply its legal literature needs. There is also no doubt that something has to be done urgently to provide the judiciary with basic requirements.

The speeding up of printing of legislation is outside the control of the judiciary but within government control. This is possibly an area where outside help could be given, both in helping with re-organization of the printery and in making available extra equipment that might be needed for printing the laws more expeditiously.

The SLJR could well be put back on its feet with outside help. Advice on re-organization and help with on the job training of staff and the provision of an inexpensive offset litho printer might well make all the difference. I would emphasize that on the job training is needed. Conditions vary so much in developing countries from those of the countries that can provide training that it is of more value for experts to work in the country with the persons being trained so that work methods can

be adapted to suit local conditions. It is little use having persons trained abroad, in comparatively ideal conditions, only to return and become disillusioned because they are unable to practise what they have been taught.

Help, not so much with the content but with the putting together of a handbook, is needed and can be given. Expertise in publishing of technical manuals is not always to be found in developing countries where the scope is so small. Again assistance with the provision of foreign books sometimes in multiple copies should and can be given.

General Comment and Some Suggestions

The great majority of the members of the Sudan judiciary, which is wholly Sudanese, are men of integrity working under difficult conditions. They make the most of the material they have but have no control over either the legislative process or the Treasury. Thus it is not easy for them to get what they may consider to be necessary changes in the judicial structure nor to persuade the authorities of the importance of their need for finance to improve the availability of legal material.

They are not unique in this respect. Indeed it would seem that there is need for the Commonwealth which encompasses the majority of common law jurisdictions to set up an agency to do a number of things. One of its objects should be education. It should enlighten lawyers to the dangers of their often complacent and wholesale acceptance of foreign legal systems and of apathetic attitudes which prevent the development of their own indigenous legal systems. It is not just enough to provide adequate basic legal literature. One has to ensure it is appreciated and used when it is available. Lawyers often will have to be taught to use their own indigenous materials.

Secondly, it would need to educate governments and not only those of the newly developing countries. There are a number of important statements in Legal Education in a Changing World - but I would like to quote two that are related:

"The law and the legal system of a country can be a major resource for development. There are countries that may, of course, adopt techniques of development that rely only marginally on law",

and

"In the majority of the countries within our review law has been chosen as an instrument of change and development. In such countries a heavy burden is placed on the legal system".⁸

A good many governments do not appreciate that support given in the field of law can make a vital contribution to development, I have had government aid donors inform me that law has a "low priority" and also "we do not give aid for purchase of multiple copies of books". If something can be done to make known the place law has in national development it may be hoped that more aid would be channelled into projects for the development of law and sound legal institutions.

As far as the Sudan is concerned, legal literature can only be financed from Government funds or funds donated from outside. The impetus for producing Sudanese legal literature must come from public institutions like the University, the Judiciary, the Attorney General's Chambers and the Bar Association.

There is also no doubt that help is needed from aid agencies in the provision of expertise in matters like law reporting, the publication of law reports as well as other legal material. The country is not at a stage of development where the techniques of sophisticated publishing are readily available. There is not a large enough market to support persons who could acquire the required expertise.

The East African Literature Bureau provides a model for the kind of organization that could possibly, under the sponsorship of the agency, be set up on a regional or Commonwealth scale to publish essential literature with a limited market. Whether any existing Commonwealth institutions could assist in the setting up and operation of publishing ventures of that kind, I do not know. However, such ventures are what I presume most of us who are concerned about legal literature and other professional and technical material consider what is needed.

I mentioned that one has to go beyond the legal profession when studying the problems related to legal literature. In seeking to make provision for the production of suitable legal literature one may need also to look beyond the legal world. It would possibly be of advantage for the resources of a number of disciplines to be combined possibly in any agency of the kind I have suggested above, to set up publishing

Bureaus. They are likely to have many similar problems and would benefit from the economies of a joint approach.

The agency would also need to help common law countries like Sudan by: carrying out studies of their facilities, materials and existing techniques of production and distribution of materials; as well as advising and assisting them in obtaining technical help from the right quarters. I would emphasize that part of the education of aid donors would be to show the ways in which they can help and those they can hinder. Help in the provision of legal literature is not, for example, necessarily given by the donating of unasked for and out of date legal tomes: something that still happens. If the agency could bring common law countries together to assist each other in solving their legal literature problems something constructive will surely be achieved to the general benefit of common law.

Before I finish I would raise a number of questions that I have not mentioned earlier, but which I consider may be relevant when considering legal literature and ways of improving its quality and availability.

First, would it be useful to look into the two way benefits that may be obtained from a more universal adoption of exchange of legal materials between legal institutions? This presupposes that the materials are of a reasonable standard and that the exchange is equitable. In these days of hard currency shortages an arrangement where material can be obtained without having to find currency should be welcome. Also the arrangement encourages a healthy exchange of ideas.

Would the production of reasonable law reports be achieved through the use of law students as reporters? This is a matter of seeing whether it is desirable for legal education or training to have a law reporting element and whether it is practical.

What has to be done to ensure the editorial freedom of those who produce law reports if they are directly employed by governments or the judiciary? I refer to the freedom to select cases for publication and, where necessary, to make comments in editorial notes.

Have any countries successfully used a postal or air freight library service for judges and practitioners?

Have any countries with geographical problems like Sudan provided a service of copying extracts from text books and law report volumes for use by judges and practitioners in the provinces? What have they done about copyright problems?

Have methods of recording proceedings with tape recorders and the like been tried for law reporting services in developing countries and have they been successful?

Have microfilm and microfiche been used successfully anywhere for the recording of judgments and making them available for reference purposes?

Have computers any significant role to play in the storage of legal material in underdeveloped and unsophisticated countries?

It is possible that information on the matters referred to in these questions could well be beneficially shared through the co-operation of all common law countries possibly under the auspices of an agency of the kind referred to above.

Summary and Concluding Comment

1. Sudan has a common law system but cases are also decided in accordance with Sharia law and custom.
2. There are serious problems relating to the production of and supply of legal literature to the judiciary which appear to adversely affect the growth of Sudanese Jurisprudence.
3. The problems do not only relate directly to the supply of the literature itself but also (inter alia): to the communications system of the Sudan; the facilities of the judiciary; the selection of judges; their education and training; and the structure of the judiciary.
4. The judiciary is aware of its problems and is trying to make improvements. However it needs financial assistance and foreign expertise. Private enterprise cannot assist.

5. On a general note it would seem that there is a need for an agency to be set up which can help countries like Sudan, with research and advice and possibly also by sponsoring regional literature bureaus which may serve other disciplines also.
6. Whatever steps are taken at an international level to assure the provision of adequate legal material to the professions in common law countries they must be taken soon.
7. One cannot over-emphasize the urgency of the problem in developing countries like Sudan. The matter is one for close co-operation between all common law countries.

FOOTNOTES

1. (1965) S.L.J.R. 474.
2. "The Future of the English Law in the Sudan" (1967) S.L.J.R. 219.
3. See the map attached to this paper which gives an idea of the distances involved.
4. "Migration of the common law" - 8" Canada 76 L.Q.R. 74 (1960).
5. (1959) J.A.L. 176, at 177.
6. The Concept of a National Legal Literature, Chapter 2 of this book.
7. Arden House II, Toward Excellence in Continuing Legal Education (1964).
8. Legal Education in a Changing World: Report of the Committee on Education in Developing Countries, International Legal Center, New York 1975. p. 37.