

TGCL

Tanzanian-German Centre for
Postgraduate Studies in Law

at the University of Dar es Salaam School of Law (Formerly Faculty of Law)
in cooperation with the University of Bayreuth

TGCL bulletin 3 | 2011



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*TANZANIAN-GERMAN CENTRE FOR
POSTGRADUATE STUDIES IN LAW (TGCL)*

*AT THE UNIVERSITY OF DAR ES SALAAM SCHOOL OF LAW (FORMERLY FACULTY OF LAW)
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CREDITS

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EDITORIAL

DEAR READER,

It is with great pleasure that I take this opportunity to greet our Alumni, who have demonstrated their ties to each other and to the TGCL through the founding of a TGCL Alumni Association. In doing this they have shown that they acknowledge the TGCL as their alma mater, their 'nourishing mother', who has helped them to gain higher qualifications by providing them with mental food. The term *alumnus* was first used to designate a student who was given board and lodging by his school in addition to lessons. *Alumnus* is derived from the Latin word *alere*, which means 'to nourish'. The word *alumnus* (*alumna* in the feminine) has come into general use as a term referring to the former student of a school or university. The better known form *alumni* is the plural of *alumnus*.

I hope that the TGCL Alumni Association will be a source of inspiration and support among its members in the future, that the alumni will be able to keep in touch within the TGCL family, and that rich experiences will result from exchanges across the various fields of their work. By reserving space for Alumni Association news, our annual bulletin will make its own contribution to maintaining and strengthening this association.

The TGCL is part of the University of Dar es Salaam School of Law (Formerly Faculty of Law), which was founded 50 years ago and celebrates its Golden Jubilee this year. On the occasion of this Jubilee I would like to express my hearty congratulations to the Faculty. For me personally, the year 2011 is a reminder that I visited die Faculty of Law for the first time thirty years ago as a young postgraduate student. While I was there I made valuable personal and professional contacts, some of which have continued to this day and have been strengthened through our joint work for the TGCL.

Bayreuth, 1 November 2011



TGCL CONFERENCE ON CONSTITUTIONAL LAW REFORM

This year's TGCL Annual Conference held at the UDSM School of Law on 30 September 2011 dealt with the reform of the Constitution of the United Republic of Tanzania of 1977 (with Amendments) – currently a much discussed topic in Tanzania. After the recent constitutional reform in Kenya, a debate on the constitutional reform process in Tanzania has set in.



The protagonists of the TGCL Annual Conference, from left to right: Dr Mvungi (Speaker), Prof. Wanitzek (TGCL Project Leader), Prof. Fimbo (Chair), Prof. Haule (Speaker).

After the introductory address by TGCL Project Leader Prof. Ulrike Wanitzek, Dr Sengondo Mvungi, Deputy Vice Chancellor (Academic) at the University of Bagamoyo, presented his paper on "Constitutionalism: What Type of Constitutionalism Do Tanzanians Deserve and Want?". He supported demands for a fuller Bill of Rights and the abolishment of numerous claw-back clauses; for a clear separation between the Parliament and the executive; and for a reform of the electoral system. He was followed by Prof. Romuald Haule, Dean of the Faculty of Law, Ruaha University College, Iringa, who spoke on constitutional reform under

the aspect of "people in search of legal identity". According to the speaker, the search for legal identity may be looked at under three aspects: the relevance of common and civil law elements in the legal systems of the East African region; legal theories commonly used, such as those of natural law versus a legal positivist approach; the role of the courts and of the rules of procedural law. The following lively discussion between the lecturers and the audience, which included academics and students of the UDSM School of Law, was chaired by Prof. Gamaliel Mgongo Fimbo, UDSM School of Law. ■

FOUNDATION OF A *TGCL ALUMNI ASSOCIATION*

Seventeen TGCL students and alumni founded the new TGCL Alumni Association during a meeting at Protea Hotel Courtyard in Dar es Salaam on Friday 30 September 2011.



The joyful founding members and their Patron, Hon. Judge Dr Steven Bwana (back row, centre), after establishing a TGCL Alumni Association.

The meeting was chaired by TGCL Student Adviser Hon. Judge Dr Steven Bwana. After the welcome by TGCL Project Leader Prof. Ulrike Wanitzek, TGCL Coordinator Dr Kennedy Gastorn introduced the subject and made suggestions for the procedure. Some of the students and alumni had submitted propositions beforehand, including a draft constitution for the new association by Robert Omondi Owino, and suggestions for the conception and structure of the alumni association-to-be by Stephen Wilbard Msechu. The participants agreed to establish the TGCL Alumni Association. They discussed the structure and individual provisions of the draft constitution, the goals and planned activities of the association, the members' rights and duties, membership and financial regulations. Finally, the founding members adopted a draft constitution and elected the leaders of the TGCL

Alumni Association.

The TGCL Alumni Association will have a Board which consists of the chairperson, the vice-chairperson, the secretary, the treasurer and five country representatives for Burundi, Kenya, Rwanda, Tanzania and Uganda. The Electoral Committee will be chaired by the Association's Patron. The founding members elected Hon. Judge Dr Steven Bwana to be the Patron of the Association.

The Patron welcomed the elected leaders on whose behalf the vice-chairperson extended his vote of thanks for the confidence the members entrusted in them for being the first team to lead the association. The Patron, Coordinator and Project Leader thanked the members for their active participation and congratulated them for the courage they showed in establishing the TGCL Alumni Association. ■

2011 GRADUATION

The Golden Jubilee of the University of Dar es Salaam School of Law (Formerly Faculty of Law) provided the framework for this year's graduation on 20 October 2011.



torate of Public Prosecutions); Ms Aisha Nabukeera, Uganda (Africa Human Rights Monitoring); Mr Robert Omondi Owino, Kenya (doctoral student, University of Bayreuth, Germany); Ms Annet Ttendo, Uganda (doctoral student, University of Oxford, UK); Ms Milka

Some of the happy TGCL graduates with their Coordinator Dr Kennedy Gastorn (centre).

Fifteen of the TGCL students are among the new graduates. Some of them have already returned to their former employments or have started new jobs or further studies: Ms Hawa Juma, Tanzania (Centre for Environmental Law and Governance); Ms Juliana Kimwaga, Tanzania (Board of External Trade, Export Processing Zone, Ministry of Industry and Trade); Mr Thomas M. Sipemba, Tanzania (IMMMA Advocates); Ms Janeth N. Machulya, Tanzania (Prevention and Combating of Corruption Bureau); Mr Josephat T. Mkizungo, Tanzania (Attorney General's Chambers, Direc-

Wahu Kuria, Kenya (Amuka Justice Initiative); Ms Agatha Leandy, Tanzania (FB Attorneys); Mr Dieudonné Mweru, Burundi (Avocats sans frontières); Ms Lucy Peace Nantume, Uganda (Foundation for Human Rights Initiative Uganda); Ms Jolly Ntungire, Rwanda (Benishyaka Association); Ms Sheillah Nyanzi, Uganda (Ligomarc Advocates); Ms Rhoda Cherotich Rutto, Kenya (Attorney General's Chambers).

The TGCL congratulates its graduates warmly, and wishes them all the best for their personal and professional future. ■

TGCL ALUMNI ASSOCIATION BOARD MEMBERS

Chairperson:	Grace Kazoba Kamugisha
Vice-chairperson:	Stephen Wilbard Msechu
Secretary:	Milka Wahu Kuria
Treasurer:	Rhoda Cherotich Rutto
Country Representative Burundi:	Dieudonné Mweru
Country Representative Kenya:	to be nominated later
Country Representative Rwanda:	Jolly Ntungire
Country Representative Tanzania:	Hamza Ismaili
Country Representative Uganda:	Lucy Peace Nantume
Patron:	Hon. Judge Dr Steven Bwana

THE EAST AFRICAN COMMUNITY INTEGRATION PROCESS

The following contribution by Dr Stergom-ena Tax, Permanent Secretary in the Ministry of East African Cooperation, United Republic of Tanzania, was presented at the TGCL Annual Conference on 4 October 2010 by Mr Eliabi K. Chodota on behalf of Dr Tax.

FROM THE FORMER EAC TO THE NEW EAC

The East African countries have a long history of socio-economic and political cooperation in which Kenya, Tanzania and Uganda formed the East African Community (EAC) in 1967. The former EAC lasted for ten years only. Major factors which contributed to its collapse in 1977 included (i) ideological differences, with member states pursuing divergent political ideologies; (ii) inequitable sharing of benefits and costs, with disagreements on the sharing of benefits from jointly owned common services organisations;

PARTNER STATES

- Republic of Burundi
- Republic of Kenya
- Republic of Rwanda
- United Republic of Tanzania
- Republic of Uganda

and (iii) low private sector and civil society involvement in the running of the then Community. Generally, one can state that the integration process of the former Community was not systematic and progressive. Fortunately, the Mediation Agreement for the division of assets and liabilities of the former EAC signed in 1984 had a provision to explore ways to resume regional cooperation. Thus, in 1991 the Heads of State of Kenya, Tan-

zania and Uganda agreed to revive the East African Community. This led to the signing of the 1993 Agreement for the Establishment of the Permanent Tripartite Commission for East African Co-operation, further leading to the launch of the Secretariat of the East African Cooperation in March 1996 in Arusha, Tanzania. Subsequently, on 30 November 1999 the Treaty for the Establishment of the East African Community was signed by the Heads of State of Kenya, Tanzania and Uganda and entered into force on 7 July 2000. In 2007 Burundi and Rwanda joined the EAC.

The new East African Community involves cooperation in all spheres of socio-economic development, governed by the principle of people-centred and market-driven cooperation and by the principle of subsidiarity, with emphasis on multi-level participation and involvement of a wide range of stakeholders in the process of integration, among other principles. In view of the historical background of the former Community, the EAC Partner States adopted a systematic and incremental integration approach and undertook to establish a Customs Union as the first stage of integration, followed by a Common Market, subsequently a Monetary Union



and ultimately a Political Federation.

CUSTOMS UNION

In accordance with the EAC Treaty the Partner States established a Customs Union in 2005. In this phase, Partner States agreed to remove tariffs and non-tariff barriers on intra-regional trade; to establish a Common External

Tariff for goods imported from the rest of the world; and to implement a Common Customs Law. These measures created a large regional market of over 130 million people and combined GDP of USD 40 billion. The EAC attained the threshold of a fully-fledged Customs Union on 1 January 2010 and since then there is totally duty-free intra-regional trade. More importantly, the Customs Union phase has provided a solid foundation and impetus for establishing the next integration phase, the Common Market.

The remaining challenge in terms of the free movement of goods in the region is non-tariff

barriers. The EAC has taken measures to remove non-tariff barriers within the Community as well as outside, such as the establishment of National Monitoring Committees of Non-Tariff Barriers (NMC-NTBs), the review of the East African Customs Management Act 2004 to streamline customs administration, and the formulation of a legal and regulatory framework necessary to establishing One Stop Border Posts. The One Stop Border Posts policy aims at minimising costs of doing business while at the same time eliminating unnecessary bureaucracy and encumbrances at entry/exit points.

COMMON MARKET

The EAC Treaty stipulates that the Common Market is the second stage of the integration process. Negotiations on the Protocol establishing an East African common market commenced in April 2008. Ultimately the EAC Heads of State signed the Protocol on the Establishment of the East African Community Common Market in November 2009 in Arusha, Tanzania. The EAC Common Market Protocol has been officially operational from 1 July 2010.

The EAC Common Market focuses on four basic freedoms, namely

- free movement of goods
- free movement of labour
- free movement of services
- free movement of capital.

LAWS

In force since

- Treaty for the Establishment of the East African Community, 30.11.1999
Amended on 14.12.2006 and on 20.8.2007 7.7.2000
- Protocol on the Establishment of the East African Customs Union, 20.3.2004 1.1.2005
- Protocol on the Establishment of the East African Community Common Market, 20.11.2009 1.7.2010



Free Movement of Goods

The Customs Union, being a subset of the Common Market, was intended to ease the movement of goods across borders. However, as stated above, Non-Tariff Barriers (NTB) are still in existence in the Community. Therefore, in implementing the Common Market, efforts would be intensified to remove NTBs.

Free Movement of Labour

Partner States shall ensure that workers from other Partner States are not discriminated against, because of their nationality, in relation to employment, remuneration and other conditions of work. However, the provisions on the free movement of labour shall not apply to employment in the public service unless the national laws and regulations of a host Partner State so permit. Other limitations by a Partner State on the free movement of labour may be based on public policy, public security or public health. Partner States have agreed to effect the free

movement of labour progressively and in accordance with the Annex on Free Movement of Workers and Schedules which are integral parts of the EAC Common Market Protocol.

Free Movement of Services

Partner States, being focused on having a functioning and progressive Common Market, have also committed themselves to liberalising trade in services in the region. An Annex on Free Movement of Services and the Schedule identify the services that will be liberalised over time.

AREAS OF COOPERATION

The Treaty for the Establishment of the East African Community 1999 outlines several areas of cooperation in terms of Sectoral Committees established to oversee them:

- Transport, communications, meteorology
- Education, science and technology, culture and sports
- Energy
- Lake Victoria Basin
- Health
- Labour
- Social development
- Trade, industries, finance and investment
- Agriculture and food security
- Natural resources and environment
- Tourism and wildlife management

Some institutions have been established to coordinate the cooperation, such as Lake Victoria Basin Commission (LVBC), East African Health Research Commission (EAHRC), East African Kiswahili Commission, Civil Aviation Safety and Security Oversight Agency (CASSOA) and Inter-University Council of East Africa (IUCEA).



The Tanzanian-German team of the TGCL discusses the role of EAC law within the TGCL curriculum. From left to right: Prof. Wanitzek, Dean Prof. Kabudi, PD Sippel, Dr Gastorn.

ORGANS

Article 9 of the Treaty for the Establishment of the East African Community 1999 stipulates that the organs of the EAC are:

- the Summit
- the Council
- the Coordination Committee
- Sectoral Committees
- the East African Court of Justice
- the East African Legislative Assembly
- the Secretariat
- other organs as may be established by the Summit

Free Movement of Capital

The EAC Common Market aims at having an optimum allocation of capital through the removal of restrictions on the free movement of capital. An Annex and Schedule on Free Movement of Capital identify the capital components that will be liberalised. In this regard the EAC Partner States are highly committed to having a well

functioning Common Market that would boost both domestic and foreign direct investment (FDI) into the region.

LAND AND IMMIGRATION ISSUES

Besides these four freedoms, the EAC Partner States had difficult negotiations on land and immigration issues. The Partner States resolved to continue applying the existing national laws relating to land tenure/ownership as there are significant differences in land laws among the Partner States. Likewise, the Partner States resolved to use internationally recognised travel documents, particularly passports. National identity cards could be used where there are bilateral arrangements between Partner States who are willing to do so.

OUTLOOK

The ground work for the negotiations of the third stage of integration, the Monetary Union, has commenced. This will be followed by negotiations regarding the last stage of cooperation, which is a Political Federation. (Stergomena Tax) ■

INSIDE THE TGCL

New faces in the TGCL management team, from left to right: Mr Florian Gonsior, Mr Christian Kirchen and Ms Brigitte Lauth.



There have recently been several reshuffles in the management and administration of the TGCL. PD Harald Sippel, who has been TGCL Manager since July 2008, left the TGCL as he was appointed Interim Professor at the Faculty of Law, Ludwig Maximilian University, Munich. His successor from July to September 2011 was Mr Florian Gonsior, who organised the TGCL Summer University in Bayreuth during that period. From

October 2011 onwards, Mr Christian Kirchen will be in charge of the management of the TGCL on the German side. Since June 2011, the administrative staff of the TGCL in Dar es Salaam has been supported by Ms Brigitte Lauth. The TGCL family wishes to thank PD Sippel and Mr Gonsior for their contributions and their commitment, and warmly welcomes Ms Lauth and Mr Kirchen. ■

WELCOME TO THE NEW TGCL STUDENTS

We cordially welcome our new students and wish them successful studies at the TGCL.

2011 LLM STUDENTS

Kamru Habibu
Desderia Philip Haule
Amos Kiiza
Matilda Lameck
Domina Madeli
Sylvester Mathias
Betina Muhimpundu
Bethy Sanare
Stephano Seba
John Beniel Seka

2011 PhD STUDENTS

George Bakari
Hamza Ismaili
Kalekwa Kasanga
Tasco Luambano
David Nzaligo

Information on the 2011 LLM and PhD students' research projects will be available soon on the TGCL website: www.tgcl.ac.tz

TGCL STUDENTS AT THE PCCB HEADQUARTERS

The TGCL LLM students paid an official visit to the Prevention and Combating of Corruption Bureau (PCCB) Headquarters in Dar es Salaam on 14 June 2011 and were accompanied by TGCL Coordinator Dr Kennedy Gastorn and the administrative assistants Ms Violeth Machinda and Mr Mark Mboji.

We were cordially welcomed by the Director General, Dr Edward G. Hoseah, who clarified the mission and vision of the PCCB in his introductory words. After showing a video on the historical background of PCCB, the floor was open for us to ask questions on different topics, such as human resource capacities, investigations and prosecution of malpractice.

Dr Hoseah noted that at the time he was appointed Director General, his main objective was to widen the capacity of the PCCB. Today he is proud to chair the biggest anti-corruption agency in Africa in terms of human resources, having manpower available in all mainland regions of Tanzania.

In addition, Dr Hoseah explained the evolution

from the former Prevention of Corruption Bureau (PCB) to the current improved PCCB by the enactment of the Prevention and Combating of Corruption Act (PCCA), with the introduction of procedures of forfeiture, an increased number of cases due to an increase of registered corruption offences and an increase in public awareness concerning corruption. He also mentioned challenges facing the PCCB such as delay of cases, hostile witnesses, and political will.

Towards the end of his lecture, Dr Hoseah lauded the existing cooperation between PCCB and TGCL, and promised to strengthen it by offering lectures to TGCL students on his area of specialisation. (Bahati Stafu Haule) ■

WHAT IS THE PCCB?

The Prevention and Combating of Corruption Bureau (PCCB) has been established and mandated as a law enforcement institution under the Prevention and Combating of Corruption Act (PCCA, Act No. 11 of 2007), after the repeal of the Prevention of Corruption Act (PCA) (Cap 329, RE 2002). The PCCA came into force on 1 July 2007. Its goal is to prevent and eradicate corruption, to enforce the law against corruption, and to educate society on the negative effects of corruption.

The PCCB is divided into four Directorates, as follows:

- Investigation
- Research, Control and Statistics
- Community Education
- Administration and Human Resources

The PCCB has 24 regional offices, and district offices in all districts in Mainland Tanzania.

Director General: Dr Edward G. Hoseah

Website: www.pccb.go.tz



STUDY TRIP TO ARUSHA

The TGCL students were granted another opportunity to visit some of the renowned regional and international legal institutions in Arusha.

During this educative tour to Arusha from 17 to 21 January 2011, we first visited the East African Court of Justice (EACJ). The Deputy Registrar of the Court, Madame Geraldine Umugwaneza, together with two court clerks, gave us a presentation on the court's history, its functions, structure, jurisdiction, achievements, challenges and future plans. They also discussed with us some of the past and current cases, such as *Prof. Peter Anyang' Nyong'o and Others v. Attorney General of Kenya and Five Others*, and substantive applications handled by the court.

Later in the day, we visited the African Court on Human and Peoples' Rights (AfCHPR). We were received by Madame Egue Adote Eliane Berthe. In her opening remarks she applauded the collaboration between the Court and the TGCL, and urged the teams to continue ameliorating their cooperation. Together with her team she gave us some background information on the court. The highlight of the presentation was the session for questions, suggestions, observations, and recommendations. For us it was a little discouraging to hear that the court is only accessible by individuals from Burkina Faso, Malawi, Mali, and Tanzania, because only these states have signed the respective protocol. However, in Tanzania it is scarcely known that citizens and civil society

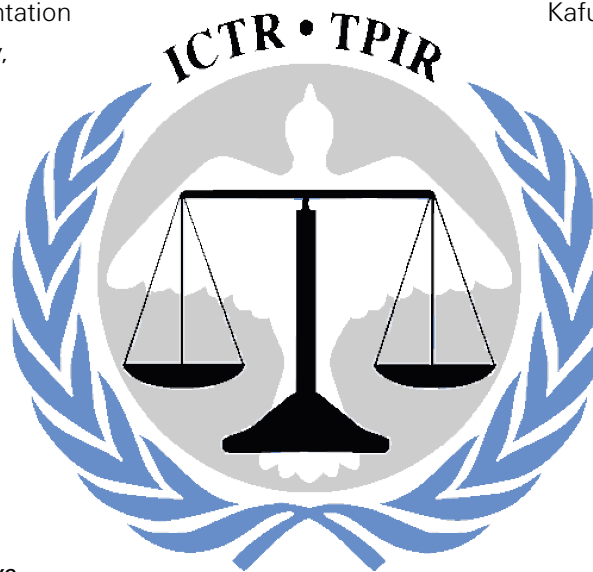
are able to access the court. Moreover local remedies have to be exhausted first.

The following day, we visited the EAC Secretariat where we met with two senior legal officers, Dr Anthony L. Kafumbe and Mr Stephen Agaba. Their talk was mainly focused on the mandate and functions of the secretariat with a specific emphasis on the legal department. They also pointed out the progress and challenges faced in the implementation of the objectives of the EAC.

At the International Criminal Tribunal for Rwanda (ICTR) we attended a live court trial of one of the genocide suspects and then watched a documentary on the history, achievements and challenges of the ICTR from its inception to date. This was later followed by a presentation by the tribunal's public relations officer who shed more light on the current activities of the tribunal, and the history and dynamics of genocide in Rwanda and other parts of the world.

We would like to thank our TGCL Student Adviser Hon. Justice Dr Bwana, the TGCL Project Manager, PD Harald Sippel, and all those who took time to organise and participate in this unforgettable tour.

(Rhoda Cherotich Rutto and Milka Wahu Kuria) ■



STUDENTS' RESEARCH WORKSHOPS

As mutual presentations of ongoing research projects allow important feedback and encourage students to successfully move on with their dissertations, three TGCL Students' Research Workshops took place in the Academic Year 2010/11, organised and chaired by then TGCL Manager, PD Harald Sippel.

On 9 October 2010, the 2009 PhD students presented their research projects to their fellow students. Only a month later, on 23 and 24 November 2010, the 2010 LLM students met with the other TGCL students to discuss their research. Finally, the 2010 PhD students made their presentations on 2 April 2011.

Besides the strengthening of key skills, the various national backgrounds of the participating students offered valuable insights into other legal systems. ■



PD Harald Sippel (right) and PhD candidate Lillian Mihayo Mongella (left) during the Research Workshop.

ADEPT NEGOTIATION WITH PROF. HAMANN AND DR UGIRASHEBUJA

The conversion of theory into practical experience forms an integral part of the TGCL curriculum. Thus workshops with experts are regularly held at the TGCL in Dar es Salaam. One of the LLM students reports from a joint workshop.

In April 2011, Prof. Hartmut Hamann of the CMS Hasche Sigle law firm visited the TGCL together with the Dean of the Faculty of Law, National University of Rwanda, Dr Emmanuel Ugirashebuja, and Mr Jörg Kleis, a doctoral student from Berlin. They conducted a workshop in which we jointly explored the fundamental elements of regional integration, our role as lawyers in the East African Community, and its potential benefits to the citizens. At the apex of the workshop, we had a session about skillful negotiation in which Prof. Hamann metaphorically implored us to "Avoid the Tower of Babel" through a presentation on "Successful Collaboration: Planning and Structuring a Joint Venture Abroad". He underscored the duty of a legal advisor in any international joint venture to clearly understand the facts, to establish and

allocate the risks, to know the project language, the network of contracts and parties involved, and the essence of the joint venture. Further, he urged us always to establish the choice of law, as well as a dispute resolution forum and mechanisms. These insights were particularly relevant to us, given the magnitude and complexity of cross border transactions likely to arise with the growth of the East African Community. Lastly, to practise the theoretical skills learned, the class divided into two groups and simulated a negotiation between the government and a private party for the production of electricity. It was a fruitful negotiation, as it ended in the commencement of a public private partnership. So, to Prof. Hamann and the team, we are truly grateful for honing our negotiation and business acumen. (Sheillah Nyanzi) ■

TGCL STUDENTS AT THE 3RD AFRICAN EXCELLENCE NETWORK MEETING

Two PhD students from the TGCL were given an opportunity to attend the third African Excellence Network Meeting organised by the DAAD from 25 to 29 January 2011 at the University of the Western Cape in Cape Town, South Africa.



Attended the African Excellence Network Meeting in Cape Town: The TGCL PhD candidates Lillian Mihayo Mongella (right) and Anatole Nahayo (left).

During the workshop we gathered with other PhD students, their lecturers and supervisors from the four other DAAD-funded Centres of Excellence in Africa which are based in Ghana, Namibia, D.R. Congo and South Africa.

In the first session we presented our research topics, which are: "The Right to Compensation for Victims of Internal Conflicts in East Africa: A Case Study of Rwanda" (Lillian Mongella) and "The Harmonisation of Income Tax Regimes within the East African Community Common Market. An Assessment of Viability" (Anatole Nahayo). Our presentations covered the research proposal and an overview of the chapters already concluded. After the fruitful discussion, we were able to establish contacts with students and lecturers interested in our research areas. These were strengthened during an informal welcoming session and a visit to the Waterfront area.

In the course of the opening ceremony at the University of Western Cape, various personalities from the academic, political and diplomatic fields gave brief lectures on the challenges that education and research face as the conduit for development in Africa.

On our last day we attended presentations on the Gacaca tribunals in Rwanda, Microfinance in D.R. Congo, and the challenges of conducting common research by doctoral students from Africa and Europe. Finally the five centres presented their activities in terms of development and better network opportunities.

The high quality of these presentations and discussions left us with useful insights for improving our own research skills as well as playing a lead role in the development of Africa. We thank the TGCL and DAAD for this eye-opening opportunity. (Lillian Mihayo Mongella and Anatole Nahayo) ■

THIRD NETWORK MEETING OF DAAD AFRICAN CENTRES OF EXCELLENCE IN CAPE TOWN



Participants at the 3rd Network Meeting at the University of the Western Cape, Cape Town.

The South African-German Centre for Development Research and Criminal Justice hosted the third network meeting of all the DAAD African centres of excellence on 27 to 29 January 2011 at the University of the Western Cape (UWC) in Bellville, Cape Town. While the very first network meeting took place in Bonn, Germany, in January 2008, the second network meeting of January 2009 was hosted by the Congolese-German Centre for Microfinance in Kinshasa, D. R. Congo.

The Co-director of the South African-German Centre, Prof. Lovell Fernandez, moderated the splendid opening ceremony at the School of Government of UWC. Keynote speeches by DAAD President Prof. Sabine Kunst, UWC Vice-Chancellor Prof. Brian O'Connell, and South African Minister of Science and Technology, Ms Naledi Grace Mandisa Pandor, provided food

for thought on the topic of "Higher Education – A Locomotive for Development in Africa?". The representatives of the five African centres of excellence continued the programme with a scientific network meeting during which each centre presented their research areas. Prof. Palamagamba J. Kabudi, Dean of the University of Dar es Salaam School of Law, presented a paper on behalf of the TGCL under the title "Development through Regional Integration: The Draft Tripartite Agreement for the Convergence of EAC, COMESA and SADC". A Panel Discussion dealt with the question: "What Are the Contributions of the Centres to Development in Sub-Saharan Africa?". In the business network meeting, chaired by Dr Dorothee Weyler (DAAD), the representatives developed an alumni concept and prepared the evaluation of all centres of excellence to take place in 2011/12. ■

LIVING REALITIES OF LEGAL PLURALISM

A Course and Conference in Cape Town: The TGCL and the DAAD attach great importance to international scientific discourse and networking. Thus two TGCL PhD candidates were invited through special mobility funds to join a course and conference on living realities of legal pluralism that was held at the University of Cape Town (UCT) from 4 to 10 September 2011 and to stay on for another week to do research. Both participants presented papers at the conference, and one of them reports about their stay in South Africa.



A piece of art in the entrance hall of the University of the Western Cape (UWC).

The lectures during the course, which was arranged for by the Commission on Legal Pluralism, ranged from land and other property rights, especially for women, to regulation of the fishing industry in Asian countries, dispute settlement and other customary rules vis-à-vis state laws. At the end of each lecture, the participants were divided into groups where we discussed questions regarding the covered issues. At the end we had to present our results. The course was thus relevant in helping me to understand how the two systems can be applied in a single legal system. Last but not least, the interactions my TGCL colleague Goodluck Peter Chuwa and I had with different students and professors helped us to gain new ideas regarding our research studies.

The subsequent conference of the Commis-

sion on Legal Pluralism lasted for three days from 8 to 10 September 2011. The conference consisted of papers presented by professors, researchers and PhD students from various universities. I presented a paper entitled "The Interaction of Laws and Regulation of Inheritance in Tanzania." This paper was written in collaboration with my fellow TGCL PhD student, Grace Kamugisha.

Both the course and the conference expanded my knowledge on the plurality of laws and how to deal with them while resolving legal problems. They were particularly beneficial to my studies on compensation to victims of conflict in East Africa. Some of the countries in East Africa, such as Rwanda, use traditional (Gacaca) and national courts in prosecuting genocide cases as well as compensation claims.

Hosted by Prof. Chuma Himonga of UCT, holder of the new Chair in Customary Law of the South African National Research Foundation, Goodluck Chuwa and I had an additional one week stay where we were able to access the UCT library. I also had an opportunity to visit Prof. Lovell Fernandez at the University of the Western Cape (UWC), with whom I had useful discussions regarding my PhD study. Prof. Fernandez also helped me to visit

the Institute of Justice and Reconciliation (IJR) in Cape Town, where I had another useful discussion with some officials, as well as having access to their library. The visit to IJR was very beneficial to my work because they have conducted a lot of research in Africa regarding reparations, particularly in Uganda, which features in my study. I thank the DAAD and the TGCL for this mind-opening opportunity. (Lillian Mihayo Mongella) ■



Wall painting in the streets of Cape Town.

LEGAL PLURALISM

The Commission on Legal Pluralism, founded in 1978 and currently with a total of more than 350 members, held its jubilee congress (1981-2011) on 'Living Realities of Legal Pluralism' in Cape Town in September 2011. For further information on the Commission see www.commission-on-legal-pluralism.com.

Legal pluralism is a topic relevant for many fields of research on law in Africa. One of the founding members of the Commission on Legal Pluralism and editor of the *Journal of Legal Pluralism*, Prof. Gordon R. Woodman of the University of Birmingham School of Law, UK, taught the TGCL students in his course on "Customary Laws and Legal Pluralism: Past, Present and Future", held at the TGCL in Dar es Salaam in October 2010. The course focused on the multiplicity of bodies of law within one and the same state, which are not only different in content, but also differ from each other in the sources of their claims to authority. The course intended to raise consciousness of the concept of legal pluralism, resulting from the existence of customary laws and the reception of English, French and other laws in Africa.

TGCL SUMMER UNIVERSITY IN BAYREUTH 2011

Due to the success of last year's first TGCL Summer University, the second edition was held between 6 August and 2 September 2011 at the University of Bayreuth. Like in the previous year, the Bayreuth Institute for Intercultural German Studies (IIG), the Institute of African Studies (IAS) and the Faculty of Law, Business Administration and Economics acted as co-operation partners.

The participants at the TGCL Summer University in Bayreuth were warmly welcomed by the Dean of the Faculty of Law, Business Administration and Economics, Prof. Markus Möstl (centre).



CURRICULUM OF THE TGCL SUMMER UNIVERSITY

Ten LL.M. students and four Ph.D. students of the years 2009 and 2010 were invited to attend the TGCL Summer University in Bayreuth. A daily, intensive German language course was accompanied by a legal programme, covering lectures on European Union law and German law: "Institutions of the European Union" by Dr Johannes Saurer, "Economic Constitution of the European Union" by Dr Claas Friedrich GERMELMANN, "European Legislation" by Prof. Jörg GUNDEL, "European Union: Integration through Harmonisation" by Jana HÄRTLING, "European Union: Draft Common Frame of Reference" by Doris LEITNER, "Implementation of Human Rights in Germany" by Prof. Stephan RIXEN, "The German Constitution and Its Openness to International Law" by Martin R. OTTO, "Economic Crimes and Globalisation" by PD Joerg BRAMMSEN, "From Individualism to Balancing of Interests in German

Law" by Prof. Ulrich SP Ellenberg. The classes were supplemented by tutorials chaired by then TGCL Manager Florian GONSIOR.

Additionally an interdisciplinary programme covering economical, sociological and historical subjects was offered:

"Leadership: An Intercultural Perspective" by Prof. Torsten KÜHLMANN, "Case Studies in Management" by Prof. Andreas REMER, "Competing Models of Socio-Political Order in East Africa" by Prof. Dieter NEUBERT, "Where is East Africa? Historical Dimensions of Regional Unity and Difference" by Prof. Achim von OPPEN.

The programme of the TGCL Summer University also comprised a workshop, an excursion to the memorial of the Nuremberg Trials and a study trip to the German Foreign Office, the Bundestag and a lawyer's office in Berlin. TGCL students report on their experiences in Germany. ■

JOINT WORKSHOP IN BAYREUTH

In addition to the curriculum of the TGCL Summer University a joint workshop that consisted of presentations of research work by PhD students from the TGCL, the South African-German Centre for Criminal Justice (SAGCCJ) and the Bayreuth International Graduate School of African Studies (BIGSAS) was held in Bayreuth.

This was the first workshop involving students from the three institutions researching on legal matters. The workshop was also attended by TGCL Masters students and some members of staff from the said institutions.

A total of eight papers grouped into three categories (East African Community, Human Rights and International Criminal Law) were presented as follows:

PhD candidate Anatole Nahayo (TGCL) started with his paper on the "Harmonisation of Income Tax Regimes within the EAC Common Market: An Assessment of Viability." His paper highlighted the EAC legal framework for harmonisation of income tax regimes within EAC Partner States. Eugene Ochieng Nyamunga's (TGCL) paper on the "EAC Common Market: Conceptualising Effective Rights Based on the EU Experience" underlined the individual economic rights guaranteed by the EAC Treaty in light of the EU experience, especially the principle of direct effect developed by the European Court of Justice. The following paper on "Environmental Law of East Africa: A Critical Study towards Common Policies, Strategies and Harmonisation under the EAC with Legislative Experience from the EU" was presented by Robert Omondi Owino (BIGSAS). His paper gave an overview of the development and harmonisation of environmental laws within the European Union.

The Human Rights section was started by Lillian Mihayo Mongella (TGCL) with her paper on "The Right to Compensation for Victims of International Conflict: A Case Study of Rwanda". She illustrated the shortcomings of the current legal framework for victim compensation. Sakinatou



Juliet Okoth (right) during her presentation. Left: Dr Moritz Vormbaum, SAGCCJ Coordinator.

Bello (BIGSAS) discussed the role of the Constitutional Court in the protection of children's rights in Benin in her paper on "The Benin Judge and the Implementation of the International Convention on the Rights of the Child." The second section was closed by Jean Bosco Ngendahimana (TGCL) with a paper on "The Impact of Regional Integration on Human Rights Protection in Africa." He analysed how international courts established within regional economic communities in Africa protect human rights.

"The Prosecution of International Crimes in Relation to Post-Election Violence in Kenya" was in the focus of Sosteness Materu (SAGCCJ). His opening paper in the third section examined the 2007 post-election violence in Kenya and the prosecution of perpetrators of the same in the International Criminal Court (ICC). "The Crime of Conspiracy in International Criminal Law" presented by Juliet Okoth (SAGCCJ) discussed the crime of conspiracy under international law as applied and interpreted by international criminal tribunals. (Lillian Mihayo Mongella) ■

TOUCHING BASE WITH NUREMBERG

Nuremberg as a site of particular legal interest with respect to the Nuremberg Trials was chosen as destination for the first TGCL Summer University study trip.

The 13th of August 2011 saw us heading to Nuremberg: a city famous for its music, sports, stunning architecture, the Christmas Market, and its history as the central location of the National Socialist Party activities before the Second World War.

The excursion was like a splendid three-course meal. For a starter, we had two presentations the evening before, to help us formulate our expectations. Our former Project Manager, PD Harald Sippel, presented to us, by way of literature and a film, the key events which led to the Holocaust and Nuremberg Trials. In addition, the Coordinator of our partner centre of excellence, the South African-German Centre of Criminal Justice, Dr Moritz Vormbaum, briefed us about the Nuremberg Trials of the main war criminals and the subsequent trials between 1945 and 1949. Of exceptional interest was his illumination of the novelties ushered into international criminal law by the Nuremberg judgments. Currently, these principles are enshrined in the Rome Statute and inspire the decisions of the International Criminal Court at The Hague, as well as the tribunals of Rwanda and Yugoslavia. After this prelude to the trip, we were ready to visit Nuremberg.

The main course was the session at the Documentation Centre Nazi Party Rally Grounds. We had a guided tour of the centre founded on the theme "Fascination and Terror" of the then National Socialist regime. This was embodied in the history of the party rallies, the Nuremberg Racial Laws of 1935, and the trials of the main perpetrators of the Nazi crimes. Afterwards we were guided through the megalomaniac buildings at the Nazi Party Rally Grounds. The largest of them all is the Congress Hall, constructed from 1935, with a sitting capacity of 50,000 participants, for their meetings. Its gigantic size was meant to be a symbol of the power and significance of the Nazi Party. However, its construction stopped during the Second World

War and to date, it remains incomplete. The other construction works we visited included the "Great Road", the Municipal Stadium, the Zeppelin Field, able to accommodate 100,000 spectators, and Hitler's Grandstand. The facilities were used for party parades, military games, and roll calls for the Hitler Youth. The experience was both enlightening and thought-provoking. It was troubling to hear how a single individual had wielded so much power and had an unprecedented followership that willingly participated in massive atrocities and human rights abuses.

It was then time for the lunch break, and we gladly dispersed to try out the city's delicacies. The roast sausages and Döner Kebabs proved a choice meal for many.

For dessert, we visited the Memorium Nuremberg Trials in the Palace of Justice. Once again, we were treated to a guided tour of the museum which exhibits the background, the development, the proceedings and the implications of the Nuremberg Trials. For instance, we saw the profiles of the main war criminals, the prison where they were detained, the courtroom lay out, the original dock, the seats of the accused, and the case which was used to transport the trial documents. Moreover, stepping into Courtroom 600, which is the venue where the accused were actually tried and sentenced, allowed us walk back in time and visualise the making of some present day international criminal law principles. It remains an active courtroom today, delivering justice as it did in the last century.

The Nuremberg visit was a deeply empowering experience, which breathed more life into our understanding of German history and laws. We wish to express our heartfelt gratitude to both the TGCL and SAGCCJ management and staff for enabling us to touch base with the historically and legally legendary Nuremberg. (Sheillah Nyanzi) ■

STUDY TRIP TO BERLIN

The four-day trip to Berlin saw the TGCL students interacting with officials from the Ministry of Foreign Affairs, and visiting a law firm, the German Bundestag, an exhibition on the development of parliamentary democracy in Germany and other famous sights of Berlin.

At the Ministry of Foreign Affairs, we were received by Mr Felix Kroll, who is responsible for academic cooperation between Germany, Africa and Asia, and by Ms Elke Tiedt, in charge of cultural relations including the centres of excellence programme. After an introduction on the TGCL by Prof. Wanitzek and Dr Gastorn, PhD candidate Jean Bosco Ngendahimana gave us a presentation on his thesis, while LLM students Rhoda Rutto and Sheillah Nyanzi concluded by giving insights into the TGCL curriculum and the Summer University programme.

Afterwards we watched a short video documentary on Germany's foreign policy, followed by a presentation on Germany's areas of interest in Africa by Mr Holger Krämer, the Deputy Head of the Department that deals with East Africa and the Horn of Africa. A second presentation on the European Union system was given by Dr Oliver Meinecke. These presentations were followed by critical and controversial questions from TGCL students, such as why the international community, and Germany specifically, had abandoned attempts to deal with the unrest in Somalia. Mr Krämer stressed that the international community, including Germany, had been dealing with the situation in Somalia and supporting the country for many years on a very significant scale, and continued to do so. In his eyes the engagement shown by Uganda and Burundi as AMISOM troop contributors was particularly remarkable. He added that a solution to the unrest in Somalia had to be found from within and not from outside. On that same day, we visited Prof. Hartmut Hamann of the CMS Hasche Sigle law firm. He presented a thought-provoking paper on the economic aspects of public international law and concluded by asking us what Europe, and



Germany in particular, should do to change the situation in Africa with regard to accountability. The major response from the group was that Germany and other European countries should stop being destinations for illicit money hoarded by bad African leaders. Instead they should seize that money and send it back to Africa. However, this response was counteracted by a question asking if money would be safe when returned to the same corrupt government.

The Berlin trip was concluded by a visit to the Democracy Exhibition of the German Parliament in Deutscher Dom, Gendarmenmarkt, containing photos and speeches relating to landmark events in the political history of Germany. Lastly, we visited the German Parliament (Bundestag) before we went for a boat tour on the river Spree.

(Stephen Wilbard Msechu) ■

A visit to the Bundestag was part of the programme in Berlin.

AN INTERNSHIP AT THE TGCL

A German law student from the University of Bayreuth and a Tanzanian law student from the East African Uongozi Institute, Dar es Salaam, report on their experiences as interns at the TGCL.

“EXTRAORDINARY OPPORTUNITY”

In March and April 2011 I had the extraordinary opportunity to serve a five weeks internship at the TGCL in Dar es Salaam. My first contact with law in Africa was in the third year of my law studies at the University of Bayreuth, when I was preparing a seminar paper on the effects of human rights in South African family law. Fascinated, I inquired into possibilities for including a stay in Africa in my curriculum, and found myself in Dar es Salaam half a year later.

A huge portion of my time there was taken up by the library where I was able to support Mark Mboyi in further increasing its usability. Preparation for the students' upcoming stay in Bayreuth, both as an assistant in Ms Spohr's German class and in discussing cultural and practical aspects of life in Germany, greatly enhanced my knowledge and my perspective, as did the courses I attended together with the students: not only did I gain insights into their rich legal experiences and highly interesting fields of research, but also into their culture and society.

Paying a visit to the TGCL student adviser, Hon. Justice Bwana, in his office at the Court of Appeal, and attending sessions both there and in the High Court, gave me further insights into Tanzania's legal system.

I feel very grateful for this outstanding experience which will be a permanent enrichment not only of my curriculum vitae, but even more of my personal thinking. (Kevin Grimmeiss) ■



“ASSISTING THE MANAGEMENT IN ALL FIELDS”



The first opportunity I had after completing my studies in law at the University of Dar es Salaam was to do an internship at TGCL between August and October 2011. Before I got this opportunity, I had already been involved

in several activities of the centre as a volunteer. As part of my duties, I am assisting the management of TGCL in all fields of activity that are necessary to keep the centre running. Furthermore I am doing some legal researches which are relevant to centre activities. Additionally I am currently helping in re-arranging the library style and changing the system of class marks. I am assisting the centre in the follow-up of the printing of a new book on Processes of Legal Integration in the East African Community at Dar es Salaam University Press. By reading various current law books available here at the centre, I also used my internship to enhance my legal knowledge. As a side-effect, I can now greet people in the German language, as I work with some Germans, as well as students who have taken classes in German.

I am very glad to see that I can successfully assist the daily activities of the centre, while getting necessary experience at the same time – thanks very much! I would like to extend my appreciation to the East African Uongozi Institute of the University of Dar es Salaam for their moral and material support for my internship under the programme conducted in 2009/2010 with the theme of Leadership and Empowerment.

(Goodluck A. Mwangomango) ■

BOOK LAUNCH OF TGCL SERIES

Together with 70 invited guests the Hon. Deputy Minister for East African Cooperation, Dr Abdallah Juma Abdallah, and H. E. Ambassador of the Federal Republic of Germany, Klaus-Peter Brandes, launched the second volume of the TGCL Series entitled: "Processes of Legal Integration in the East African Community" on 29 September 2011.

The second volume of the TGCL Series, "Processes of Legal Integration in the East African Community", edited by Kennedy Gastorn, Harald Sippel and Ulrike Wanitzek, and published by Dar es Salaam University Press, was launched on 29 September 2011 at Umoja House, hosted by the German Embassy in Dar es Salaam. The book contains eight articles by renowned international legal specialists in Africa, and especially in the East African Community, under the section headings "Multiple Sources of Law in Africa", "Towards East African Integration" and "The East African Court of Justice". The texts of the EAC Treaty and Protocols are added in the annex.

In his speech, H. E. Ambassador Klaus-Peter Brandes emphasised the good relations between Germany and the EAC and commended the ongoing integration process, saying: "The East African Community has the vision of a prosperous, competitive, secure and politically united East Africa – a vision which Germany shares and will continue to support."

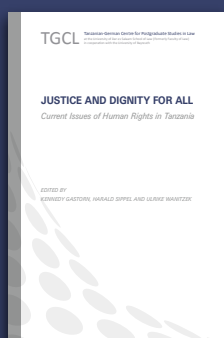
The Hon. Deputy Minister for East African Cooperation, Dr Abdallah Juma Abdallah, stressed the importance of research-based information on the EAC to address challenges and to overcome divergences within the EAC: "A large per cent of Tanzanians fear the EAC simply because they are not informed, as we lack research-based information. My



ministry is aware of this and this is why we are gravely encouraging these researches."

Research Director Prof. J. V. Tesha represented the University of Dar es Salaam during the book launch. The TGCL was represented by Project Leader Prof. Ulrike Wanitzek and Coordinator Dr Kennedy Gastorn.

Prof. Wanitzek, Hon. Deputy Minister Dr Abdallah, H.E. Ambassador Brandes and Prof. Tesha (from left to right) proudly present the second volume of TGCL Series at Umoja House in Dar es Salaam.



ISBN (Dar es Salaam University Press)
978-9-97660-517-4
ISBN (Rüdiger Köppe Publishers)
978-3-89645-166-8

VOLUME 1

JUSTICE AND DIGNITY FOR ALL. CURRENT ISSUES OF HUMAN RIGHTS IN TANZANIA

Edited by Kennedy Gastorn, Harald Sippel and Ulrike Wanitzek

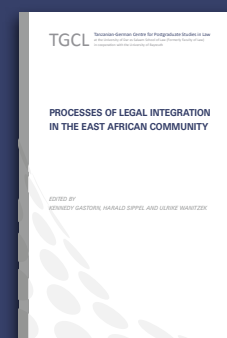
Dar es Salaam: Dar es Salaam University Press 2010

VOLUME 2

PROCESSES OF LEGAL INTEGRATION IN THE EAST AFRICAN COMMUNITY

Edited by Kennedy Gastorn, Harald Sippel and Ulrike Wanitzek

Dar es Salaam: Dar es Salaam University Press 2011



ISBN (Dar es Salaam University Press)
978-9-97660-529-7
ISBN (Rüdiger Köppe Publishers)
978-3-89645-167-5



UNIVERSITY OF
DAR ES SALAAM

The Tanzanian-German Centre for Postgraduate Studies in Law (TGCL) or, in German, the “Tansanisch-deutsches Fachzentrum für Rechtswissenschaft”, offers aspiring lawyers and law students a structured LLM and PhD study programme. TGCL’s goal is to qualify them for leading positions in East Africa.

The programme is conducted at the University of Dar es Salaam School of Law (Formerly Faculty of Law), in close cooperation with the Institute of African Studies and the Faculty of Law, Business Administration and Economics, University of Bayreuth.

TGCL is one among five centres established in Africa within the programme “African Excellence – Fachzentren zur Eliteförderung” which is funded by the German Foreign Office (“Aktion Afrika”) and the German Academic Exchange Service (DAAD).

The academic committee heading the TGCL consists of two academics from the University of Dar es Salaam and two from the University of Bayreuth, together with representatives of the LLM and the PhD students.

www.tgcl.ac.tz



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