
NOTES AND NEWS

COMMISSIONS ON THE LAWS OF MARRIAGE AND SUCCESSION IN KENYA

The Kenya Government have recently set up two Commissions,¹ one to investigate the laws of marriage and divorce and the other the laws of succession. The Commission on succession was appointed on March 17, 1967, and its members are: The Hon. H. Slade, M.P. (Chairman); The Hon. Mr. Justice Chanan Singh; The Hon. C. B. Ngala-Abok, M.P.; B. M. Gecaga, Esq.; P. Le Pelley, Esq.; S. M. Akram, Esq.; G. Waddell, Esq.; T. A. Watts, Esq.; The Public Trustee; The District Commissioner, Nairobi; and E. Cotran, Esq. (Member and Secretary).

Its terms of reference are:

“To consider the existing law on succession to property on death, the making and proving of wills and the administration of estates.

To make recommendations for a new law providing a comprehensive and, so far as may be practicable, uniform code applicable to all persons in Kenya, which will replace the existing law on the subject comprising customary law, the Indian Applied Acts and the relevant Acts of Parliament including those governing Muslim and Hindu succession.

To prepare a draft of the new law in accordance with the commissioners' recommendations.”

In announcing the appointment of the Commission, the Attorney-General of Kenya made the following statement:

“The intention of comprehensively reforming the laws of succession has been in the Government's mind for some time. At present there are a variety of succession laws affecting the various communities of Kenya in different ways. The two main enactments dealing with succession are applied Indian Acts, *viz.* the Indian Succession Act, 1865, and the Probate and Administration Act, 1881. The former Act does not apply to Hindus, Muslims or Buddhists, and in practice only governs the estates of Europeans. The succession to the estate of

¹ The Commissions were appointed by the President of the Republic under the Commissions of Inquiry Act (Cap. 102), see *Kenya Gazette*, Vol. LXVIX—No. 15, Gazette Notice No. 1095 (March 17, 1967) for Succession Commission and Vol. LXVIX—No. 18, Gazette Notice No. 1261 (April 6, 1967) for Marriage Commission.

deceased Hindus is governed by the Hindu Succession Act, which applies Hindu law, and Hindus are enabled to make wills by the Hindu Wills Act 1870 of India. Muslims are governed by the Mohammedan Marriage, Divorce and Succession Act, which applies Mohammedan law to the estates of deceased Mohammedans who were married in accordance with Mohammedan law. The vast majority of the population of Kenya, on the other hand, that is to say the African population, is governed by customary law, although it is now possible under the Africans' Wills Act 1961 for Africans to make wills.

The existence within Kenya of this variety of succession laws creates numerous problems of conflict and administration. In addition the Government feels it imperative that a common law of succession should be introduced which is applicable to all persons in Kenya without distinction. A uniform law of succession is after all an essential prerequisite to sound economic development. Furthermore, in the circumstances of Kenya, the success of our land registration programme depends to a large extent upon the introduction of a uniform law of succession.

Preliminary studies in this direction have already been undertaken. Some years ago the Hon. Mr. Humphrey Slade, the Chairman of the new Commission, produced at the request of Government a draft unified Succession Bill. Mr. Cotran, a member and Secretary of the new Commission, has also made intensive studies of the various customary laws of Kenya. He was seconded to the Kenya Government by the University of London between 1961 and 1963 and with the assistance of the Kenya Law Panels produced detailed restatements of the customary laws of the various ethnic groups of Kenya. The work done by Mr. Slade and Mr. Cotran should facilitate greatly the task of the present Commission.

The Government is fully conscious that the reform of the laws of succession on such an intensive scale is a revolutionary step, but is confident that a uniform law of succession is necessary and is part of the nation-building programme of Kenya.

The Government realises that the law of succession cannot be isolated from other branches of the law, principally the law relating to marriage, divorce and the status of women. Consequently, proposals relating to these other subjects will be announced shortly."

The above statement was followed on April 6, 1967, by the appointment of the Commission on the laws of marriage, divorce and the status of women, whose members are: The Hon. Mr. Justice Spry (Chairman), Mrs. P. Asiyu, The Most Rev. J. De Reeper, Bishop of Kisumu, Mrs. S. Esmail, J. F. H. Hamilton, Esq., Dr. D. F. Heisel, The Hon. M. Jahazi, M.P., Miss M. Kenyatta, Rev. J. T. Mpaayei, The Registrar-General, G. S. Sandhu, Esq., The Hon. A. R. Tsalwa, M.P., S. Waruhiu, Esq., E. Cotran, Esq. (Member and Secretary).

Its terms of reference are:

"To consider the existing laws relating to marriage, divorce and matters relating thereto.

To make recommendations for a new law providing a comprehensive and, so far as may be practicable, uniform law of marriage and divorce applicable to all persons in Kenya, which will replace the

existing law on the subject comprising customary law, Islamic law, Hindu law and the relevant Acts of Parliament and to prepare a draft of the new law.

To pay particular attention to the status of women in relation to marriage and divorce in a free democratic society.”

The following statement was made by the Attorney-General on the appointment of this Commission:

“When I announced the appointment of a Commission on the law of succession two weeks ago, I indicated that the subject of succession is closely connected with the law relating to marriage, divorce and the status of women and that I would announce the Government’s proposals with regard to these latter questions. The Government has now decided that the establishment of a Commission on the law of marriage and divorce with the terms of reference that I have just read out, is the most effective method of ensuring that our country will have a law which will meet the people’s requirements.

We are fortunate to have secured the services of Mr. Justice Spry of the Court of Appeal for Eastern Africa to be the Chairman of this all-important Commission. As you can see, the other members were carefully selected to represent the various religious and ethnic groups of Kenya and other interested sections of the community.

Mr. Cotran, a member and Secretary of this Commission, is also a member and Secretary of the Commission on the law of succession, and will carry out the necessary liaison and co-ordinate the work of the two related Commissions.

At present there are a variety of marriage laws affecting the various communities of Kenya in different ways. Marriage under the Marriage Act, the principal enactment dealing with marriage, is open to all persons irrespective of race or religion. The African Christian Marriage and Divorce Act provides a simple procedure for the marriage of Christian Africans and for the conversion of a customary marriage into a statutory monogamous marriage. The law of divorce and matrimonial causes relating to persons who marry under these two Acts is contained in the Matrimonial Causes Act, which is generally based on English law. The law of marriage and divorce governing Hindus is contained in the Hindu Marriage and Divorce Act and Muslims are governed by the Islamic law of marriage and divorce by virtue of the Mohammedan Marriage, Divorce and Succession Act. In addition there are the customary laws of marriage and divorce which govern a large part of the African population who do not get married under the statutory law.

The different statutes and laws make different provisions with regard to such vital matters as age requirements, the giving of consent, registration of marriages and the grounds for divorce. And when one considers the different customary laws, there are even more variations and no system of registration.

The existence within Kenya of this variety of marriage laws creates numerous problems of conflict and administration. Whilst our Constitution permits differentiation in treatment of sections of the community in regard to legislation dealing with marriage, divorce, and other matters of personal law, that is not to say that such radical distinctions as exist at the present time in Kenya are desirable if we are to integrate the various communities in the interests of building one nation. Uniformity in marriage legislation, is, moreover, becom-

ing more pressing at a time when marriages between the various communities are taking place with increasing frequency.

The law of marriage is a subject which touches the everyday life of all our people. In order that the Commissioners may produce recommendations acceptable to all, it is essential that they should receive the views of all sections of the community. I would therefore make a special appeal to all those individuals and organisations who wish to air their views to come forward and give evidence to the Commission or to submit their views in writing."

Memoranda regarding these subjects should be addressed to:

The Secretary,
Commission on the Law of Succession/Marriage,
State Law Office,
P.O. Box 112,
Nairobi,
Kenya.

DICTIONNAIRE D'ANTHROPOLOGIE JURIDIQUE (I—Afrique Noire)

Le Laboratoire d'Anthropologie Juridique de la Faculté de Droit de Paris entreprend l'inventaire, par populations, des termes africains utilisés dans tous les domaines où le droit est concerné; il s'agit essentiellement d'analyser les termes et leurs diverses significations, en s'efforçant d'éviter toute référence explicite ou implicite aux catégories occidentales, et de décrire, avec précision et concision, les réalités qu'ils recouvrent. A côté du sens proprement juridique de chaque terme, il sera fait mention de toutes ses connotations sociologiques, politiques, économiques, religieuses; en outre, on prendra soin de suivre l'évolution des mots et des faits qui s'y rapportent, durant la colonisation et depuis l'indépendance, en précisant leurs facultés de résistance et d'adaptation.

La constitution de ce fichier, qui servira de base à une étude scientifique des systèmes de droit africain traditionnels et actuels et la publication de dictionnaires, requiert le concours des juristes, anthropologues, linguistes et sociologues; dans toute la mesure du possible, un ou plusieurs chercheurs africains sont invités à participer à l'élaboration du dictionnaire relatif au droit de leur population.

Le Laboratoire établit des fiches à partir d'ouvrages et articles publiés et des exposés faits par les collaborateurs au cours des séances de travail hebdomadaires et des séminaires semestriels qu'il organise. Les autres fiches sont rédigées directement par les chercheurs qui apportent leur concours au Dictionnaire.

L'entreprise étant collective, le fichier central est à la disposition de tous les participants; chaque année, une liste des fiches établies sera dressée et chacun, s'il en manifeste le désir, recevra les fiches relatives aux langues et ethnies auxquelles il s'intéresse particulièrement. Toutefois, aucun renseignement inédit ne pourra être utilisé sans l'autorisation de l'auteur.

Pour chaque langue et ethnie, les fiches seront classées selon les rubriques suivantes:

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| | (B) Représentations et classifications |
| | (C) Violations et restaurations |
| | (D) Procédures et modes de preuve |
| II—DROIT ET SOCIÉTÉ | (E) Le Pouvoir |
| | (F) Groupes de parenté et localité |
| | (G) Groupes d'activité |
| III—DROIT ET PERSONNE | (H) Signes de la personne |
| | (I) Parenté et Alliance |
| | (J) Mariage |
| | (K) Succession |
| IV—DROIT ET RICHESSES | (L) Facteurs de production |
| | (M) Produits |

Nous remercions tous ceux qui voudront bien contribuer à la réussite de ce travail d'équipe par l'envoi de fiches ou de tirés à part de leurs articles ou par leur participation aux séminaires.

Raymond Verdier,
CNRS, Paris
12 rue Roger Verlomme, Paris, III.