COLLOQUIUM ON AFRICAN LAW, LONDON, JUNE, 1961

The Legal Status of Women in Africa; and Practice, Procedure and Evidence in the Native, African, Local or Customary Courts

At the annual African Law Colloquium, held at the School of Oriental and African Studies, London, during June, 1961, two subjects of current significance were discussed in detail: the legal status of women in Africa, and practice, procedure and evidence in African or local courts. Taking part in the Colloquium (which was under the general direction of Dr. A. N. Allott and Mr. J. S. Read) were administrative officers, advocates, anthropologists, crown counsel, magistrates, local court-holders, law teachers and research students from the United Kingdom, Ghana, Kenya, Nigeria, Northern Rhodesia, Nyasaland, Sierra Leone, Tanganyika, Uganda and the U.S.A. Members of the Colloquium were glad to welcome to special sessions Professor J. N. D. Anderson (University of London), Mrs. S. Jiagge (Ghana High Commission in London), Miss I. Bunbury (Editor, *African Women*), Mr. P. S. Spencer (Institute of Social Anthropology, Oxford), Mrs. M. Harlow (advocate, Uganda), Professor J. Paul (University of Philadelphia) and Mr. Cliff Thompson (University of Khartoum).

In addition to the general discussions, opportunity was taken for special consultations with linguists at the School of Oriental and African Studies: sessions were held with them to consider problems firstly in legal translations in Africa, and secondly in interpreting in the administration of the law.

At the Colloquium, the status of women in Africa was discussed with reference to constitutional and political factors; demographic questions; the laws relating to marriage, the family, property and succession; economic activities; education; the administration of the law. Special consideration was given to those factors in the present-day life of Africa which are contributing to changes in the status of women.

We give below the background papers (prepared by A. N. Allott) which were circulated to members of the Colloquium, and a resumé of the conclusions of the Colloquium on the questions raised. (It should be noted that the views expressed are entirely personal and unofficial, and are not to be understood as stating or reflecting any official policy.)

A. The Legal Status of Women in Africa

Before discussing the status of women in contemporary Africa, it is necessary to consider certain basic background facts, opinions and attitudes. Despite misleading ideas current in unsophisticated circles in Africa, the numbers of men and women are roughly

equal, and there is no great preponderance of females such as the existence of polygamy sometimes suggests.

How far is African treatment of women and women's rights affected by the teachings and practices of Islam in the Muslim areas?

I. Women and Political Life

(*a*) *Traditional*

Although generally public affairs were more the concern of men than of women in Africa, and women rulers, councillors, headmen, etc., are relatively rarely found, one notes exceptions to this statement:—

(i) the role of "Queen-mothers" and "Queen-sisters" in many African societies;

(ii) women rulers: *cf.* among the Mende of Sierra Leone;

(iii) women who have passed the menopause may be treated like men in some societies.

(*b*) *Contemporary*

In contemporary political systems women are gradually being admitted to a share in the processes of government; in the more advanced countries with "one man, one vote" (e.g., Ghana, Southern Nigeria), "man" includes "women". But note the absence of franchise among, e.g., the women of Northern Nigeria.

How far do contemporary constitutions grant equality of representation to women? Do entrenched provisions in constitutions forbidding discrimination on grounds of race, religion, etc., extend to discrimination on grounds of sex? To what extent are women found in contemporary central and local government bodies? Note the special representation of women in the Ghana Parliament.

II. Women and the Courts

(*a*) *Traditional*

It was the practice in many (but not all) societies that adjudicating bodies consisted of men. Apart from the judges being males, sometimes only males were allowed to attend court as spectators, or take part in judicial proceedings (*cf.* among the Southern Bantu); in such societies a woman could only initiate or defend proceedings by a male representative, who was often her father/guardian (if she was unmarried), or her husband or his successor if she was or had been married.

(*b*) *Contemporary*

How far is this the present position? What legal devices are used to permit women to participate directly in litigation? (A good example is the law of divorce; can a wife institute divorce proceedings in her own right?)

III. Women and the Social Unit

(*a*) *Traditional*

The traditional organization of persons into social groups or units, sometimes (though not always) organized on the extended family, household, or lineage principle, was usually dominated by males.

If there was a single head of such a unit, this was usually a male; if there was some sort of council or committee of senior members in charge, they were usually males.

But in some societies (e.g., the matrilineal Akan of Ghana) women also played a part in the social organization; the Akan matrilineage, for example, usually has a female head (*obaa panin*—" old lady ") as well as a male head.

Note the special enhanced status of widows in some strongly patrilineal societies (e.g., in Ruanda).

Women are by stereotype generally cast into the subordinate role, and in some societies may be in a state of perpetual tutelage, to their fathers before marriage, to their husbands after marriage. The family might sacrifice one of its female members to meet a legal liability incurred by a male.

Is the position as stated above also true of matrilineal societies?

(*b*) *Contemporary*

With the development of education women are tending to lose this subordinate status: how far does this express itself in a change in the management of social units, or of the female's standing within the family?

IV. Women and Marriage

(*a*) *Traditional*

Sex inequalities in customary marriage were evident at many different stages of the formation or continuance of a marriage; e.g.:—

(1) *Formation of marriage.*—How far was a girl's consent necessary for her marriage, and was there any difference in the requirements of consent by bride and groom respectively? Note the institution of infant betrothal, which usually involved the promising of an infant female in marriage.

How far did the general custom of paying some sort of *quid pro quo* for a bride (" bride-price ", " dowry ", " marriage-consideration ") imply some inferiority in a woman's status or treatment of her as almost a chattel, slave, servant, or object of property?

(2) *Husband and wife in marriage.*—The respective rights of husband and wife in marriage were often unequal, not only in regard to economic matters (see V., overleaf) and control of the household (see III., above), but in regard to the husband's right to the obedience and respect of his wife, and especially in regard to the husband's right to enjoy women other than his wife without being in breach of his matrimonial obligation. This expressed itself (i) in the husband (but not the wife) being entitled to take additional partners during marriage (polygyny is universal in African societies, but polyandry is practically unknown), and (ii) in the husband being entitled to sue a man who had adulterous relations with his wife but the wife having no corresponding right of action in respect of her husband's adultery.

(3) *Divorce.*—Often there was inequality in the law of divorce. In some societies a husband could repudiate his wife without cause, whilst a wife could only divorce her husband for good cause; in

other societies only a husband had direct access to the courts, or could take the initiative in family negotiations for dissolution.

(4) *The position of widows.*—If the husband died, widows were often disposed of at the same time as the property of the deceased was distributed. Whilst it was not always the case that a widow was forced to marry the husband's successor or other relative indicated by customary law, she was often left with little choice except either to forfeit all her rights to residence, maintenance, use of property, care of her children, etc., or marry the successor.

(*b*) *Contemporary*

The picture is changing rapidly here:—

(1) consent of the girl is now usually required to any marriage;

(2) education and the growing economic independence of women is enhancing the status and role of women in marriage; and the conversion of adultery into a crime in some areas has meant that a wife may now be able to institute legal proceedings in connexion with her husband's misconduct;

(3) greater equality is now being brought into the law of divorce, in particular by the shift from private dissolution to dissolution by decree of a court; and

(4) it would be held " repugnant to justice and morality " for a widow to be compelled to marry her husband's successor.

But the greatest change has come about through the introduction of a different sort of marriage, monogamous western-type marriage under a Marriage Ordinance, which is generally available to Africans as an alternative to customary marriage. In many areas this is now considered by the educated classes as socially superior, and girls especially may seek ordinance marriage for the greater status and security it offers.

How far are the rights and duties arising from an ordinance marriage reconcilable with those traditional in an African customary marriage or with other aspects of the customary law? (Note the attempt in Ghana to unify western and African marriage in a single institution.) Christianity has, of course, had a good deal to do with this revaluation of marriage (see VI., *post*).

V. Women and Property and Succession

(*a*) *Traditional*

Women generally were under economic disabilities in most African customary laws; they could not in many societies acquire land (or some other special forms of property, e.g. cattle) outright in their own names, but could at best only acquire a limited interest by allocation from their husband or other head of the social unit to which they belonged. In some societies (e.g., Akan) women were not under a legal disability in this respect, though handicapped by physical limitations and the principle that they should contribute agricultural labour to the maintenance of their husband and their children.

Often these inequalities extended to the law of succession, and women either were ineligible to share in a succession (except

perhaps to the estate of a woman) or received smaller shares than those of male successors.

The principle of division of labour by sexes is common in Africa, with the main burden of crop-growing often falling on females. As a result, agriculture was often carried on by women, even though the land they farmed " belonged " to a male rather than to themselves.

Inequality in economic relations between husband and wife is especially common: in some societies all a wife's post-nuptial acquisitions went to her husband; in some others, the husband and wife had a sort of economic partnership, though with the husband as dominant partner (e.g., Shona); whilst in others there was separation of goods between husband and wife (e.g., Akan). How far could a wife acquire separate property?

Conversely a husband was often liable for his wife's debts and torts.

Women (especially in West Africa) might have separate economic possibilities, especially by trading or carrying on a specialized occupation (e.g., potter, midwife).

(*b*) *Contemporary*

Many of these economic disabilities are now diminishing, though not yet disappearing. An interesting study could be made of the consequences of land consolidation in Kenya and its effect on women's rights and functions in agriculture. To what extent are women now sharing in the inheritance of land or other property; can they acquire land or other property in their own right?

The movement towards economic equality of man and wife in England was reflected in Africa by the passing, or adoption, of married women's property enactments—how far do these apply to (i) the wife of an ordinance marriage; (ii) the wife of a customary marriage?

VI. Modern Factors of Change in the Status of Women

(*a*) *Education*

To what extent do girls now receive education in comparable numbers and to a comparable level, as compared with boys? What is the effect of new employment possibilities, especially those created by the emergence of an urban and industrial society?

(*b*) *Religion*

(1) *Christianity*.—This has undoubtedly been one of the most potent agents of change. Note the early attempts of missionaries to establish a new pattern of family life, supported by new, western-type law (an attempt especially pronounced in the Portuguese territories). It is difficult sociologically to assess the resulting impact of Christianity on customary institutions and rules; often adherents have failed in practice (*cf.* polygamy) to observe the precepts of their religion (understandably!).

(2) *Islam*.—The modernist movement in Islam, which has been very active in the Near East and North Africa, has barely reached the rest of Africa as yet. Its general result is to enhance the low status

of women in Islamic society, especially by giving a wife protection against arbitrary divorce.

(*c*) *Women's organizations*

These are very active in many areas (e.g., Ghana, Nigeria, Uganda), in some of which they are a political force and in the forefront of those calling for change in the social system.

(*d*) *International organizations*

The United Nations, through its specialist agencies concerned with human rights and the protection of minorities in particular, takes an increasing interest in the status of women in Africa.

(*e*) *Modern economic developments*

These have already been referred to at other places in this paper.

A. N. ALLOTT

Conclusions of the Colloquium

The unification of marriage laws

1. It is accepted as desirable in principle that the law of a territory relating to a particular topic should, as far as possible, be unified, and that the existing dualism, not only between " English " and customary laws, but between the courts administering these laws, is likely to lead to inconvenient or unjust results, especially where a single relationship or transaction may come before two different courts for different purposes (e.g., where the High Court has exclusive jurisdiction to dissolve an Ordinance marriage, but has no jurisdiction to make orders relating to repayment of marriage-consideration/bride price).

2. It is recognized, however, that this objective is unlikely to be achieved in regard to the law of marriage for a long time to come, as the substantive content and religious and social implications of marriage by customary law, by " Christian " or monogamous form, by Islamic law, and by Hindu law respectively differ fundamentally in respect to such matters as:—

(a) the obligation of monogamy;

(b) criminal and civil sanctions for adultery;

(c) the rights and duties of husband and wife *inter se;*

(d) the involvement of the families of the spouses in the union, and the payment of bride price, etc.,

(e) the modes and grounds of dissolution of the marriage.

3. There are three possibilities at this stage:—

(a) abolish the polygamous and customary aspects of existing laws, thus producing a unified marriage law based on English or western notions;

(b) abolish the existing special facilities for, and protection of, monogamous marriage;

(c) retain the existing dual system, but secure the greatest possible uniformity in the celebration and dissolution of marriage, and the trial of matrimonial proceedings, e.g., by the universal

registration of marriage and by the enhancement of rights of wives in regard to residence, maintenance, etc., in customary marriages, so as to bring them into line with the English law.

4. The Colloquium recognized the special difficulties in Africa of enforcing the statute law relating to bigamy and kindred offences, but it did not recommend the removal of all sanctions in so far as they protect persons who have entered into a legally-binding monogamous marriage; though it is for consideration whether they can or should be strictly enforced at the present level of social development.

The wife in an Ordinance marriage may be reluctant to institute criminal proceedings against the husband if he commits bigamy or a kindred offence, and there is no civil remedy, other than a suit for divorce, available to her in regard to her husband's adultery. It is for consideration whether a right of action should be given to an Ordinance wife who is aggrieved by her husband's misconduct with another woman, against the adulteress involved. (This might be a suit for alienation of affections rather than for adultery as such.) If the husband of an Ordinance marriage purported to marry a second wife by customary law, the family of this " wife " might be made liable in law for conducing to such alienation.

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B. Practice, Procedure and Evidence in the Native, African, Local or Customary Courts

I. Traditional Practice and Procedure

(1) *Introduction and historical background*

At the time when the British established colonial rule over the African territories, indigenous tribunals of various sorts were everywhere administering justice in accordance with the customary laws of the different ethnic groups affected (in areas where Islam was of importance, the Islamic law of procedure was followed to a greater or lesser extent in Islamic courts). The effect of the establishment of British rule was usually not to destroy, but to recognize, these indigenous tribunals, though now they generally came under the supervision of either administrative officers or the superior courts, or both. Later this policy was institutionalized as that of " indirect rule ". In some territories the recognition of native courts was somewhat belated (e.g., Northern Rhodesia), whilst in others, where direct rule was imposed, the native tribunals were not recognized at all.

At first (apart from the outlawing of barbarous or inhumane punishments or practices, e.g., mutilation, slavery) few changes were made in the procedure followed by the native courts, which usually continued in accordance with that laid down by customary law. Gradually, as reforms were initiated in the native court structure, attempts were made by legislation to alter or improve this procedure, e.g., by requiring written records to be kept, by regulating

the imposition and mode of payments of fees or fines. Thereafter the history of the native courts has been one of ever more radical interference with their composition and functions, and much of this interference has been on the procedural rather than the substantive side of the law (it is noteworthy that the Judicial Advisers' Conferences were principally concerned with procedure, rather than with the substantive law administered in native courts).

The trend of development in procedural reform has always been in the direction of *anglicisation* of procedure; this has now reached the stage in some areas (e.g., Western Nigeria) at which a code of procedure superseding customary practice is officially to be observed by the courts; elsewhere a sort of half-way house has been reached whereby the native courts are to be " guided ", but not strictly bound, by a code of procedure (*cf.* Northern Nigeria and Uganda).

The big questions which we face today are: How should developments proceed in the future? What is the ultimate goal towards which the judicial systems are evolving? If the customary procedures have merit, how can these beneficial features of traditional practice be taken over and incorporated in the new (presumably unified) system of procedure?

To discuss these questions we need to assess :

(i) the beneficial and harmful features of customary practice and procedure when observed *in a contemporary setting*;

(ii) the extent to which customary practice has already been changed;

(iii) the goals to which judicial reforms should tend;

(iv) the techniques by which the desired changes may be brought about.

(2) *The mode of trial*

We turn now to a review of the major stages in, and features of, trial of disputes, (a) in traditional customary law; (b) in contemporary native courts.

English procedure for the trial of disputes, whether proceedings are civil or criminal, is often characterized as being of the " adversary " type, with the court (judge) as umpire presiding impartially over the forensic contest between the two sides to the case, and comparison is usually made with the continental (and Indian) type of procedure, in which (at least in criminal cases) the judges take an active part in the pursuit of the facts and justice of the case—this is often called the " inquisitorial " method of proceeding.

This is, of course, an over-simplification. It may well be true of English civil proceedings; but in English criminal proceedings we may say that judges are actively concerned to see that justice is done, and have the necessary powers (e.g., by exclusion of testimony, directions to the jury, court's examination of witnesses) for this purpose.

African modes of trial vary greatly in character from the least formal to the completely stereotyped, according to the kind of

society and case involved. But often they possessed the following characteristics:—

(i) trial was inquisitorial, in that the members of the court took positive steps to seek out the truth and determine what would be the justest decision;

(ii) the arbitral element was often pronounced, especially in societies without chiefs. Often in societies with chiefs a court would try, not merely to decide a case on the narrow issues which might have been the immediate cause of a complaint, but to seek a solution that might prove acceptable to the parties and would diminish or remove the possibility of future quarrels between them;

(iii) arbitral proceedings as such were also an essential feature of the African pattern of dispute-settling;

(iv) trial by a single judge was rare or unknown, multiple benches being the rule, though often the judges did not have an equal status or voice in the decision;

(v) in many places the ordinary people participated in the work of hearing and deciding a dispute.

(3) *The distinction between civil and criminal proceedings*

Most African societies, other than the simplest, made some distinction between " criminal " proceedings, the primary object of which was to punish a wrongdoer, and " civil " proceedings, where the primary aim was to compensate a person injured by another's misconduct; but frequently both these aims might be realized concurrently in a single hearing.

It is sometimes alleged that the distinction between civil and criminal proceedings is unfamiliar to Africans and the muddles into which African courts sometimes get tend to prove this contention; but the explanation usually is that, whilst the distinction was recognized in customary law, it was not necessarily recognized in identically the same terms as in English law, i.e., what is a tort with us might be a crime in some customary laws, and vice versa.

(4) *Evidence*

It is often stated that rules of evidence do not form part of customary law, and that there are no concepts of relevancy or admissibility. This view is grossly exaggerated, as is the view that African tribunals needed no means of ascertaining the facts of a case judicially, as—so it is said—the facts would already be well known to all the members of the court. What is true is that some of the more irrational and arbitrary rules of the English law of evidence (traceable to crude attempts to protect the accused from a jury's failings) are not part of African law.

Thus, while African law generally distinguishes between the credibility of direct and hearsay evidence respectively, hearsay and traditional testimony is usually admitted, though less weight will be given to it.

Similarly juries in traditional courts would see no need to exclude evidence of an accused's misdeeds (which is relevant as establishing

his propensity to misbehave), or fictionally to forget information about the dispute before them which they had already acquired in another capacity. The typical African procedure of a long continuous statement by a witness, who may then be challenged on the details of his story and credibility generally by means of hostile cross-examination, is intrinsically likelier to get to the truth of the case than the question-and-answer method of British jurisprudence.

African law had other means than oral testimony for finding out the truth, e.g., by means of judicial oaths, ordeals, divination; and there is no evidence to show that such means are a fundamentally less reliable way of ascertaining the truth than the verdict of an English jury.

African law resembles continental European law in having practically no rigid rules for the exclusion of certain types of testimony, and in preferring to evaluate evidence by reference to credibility rather than admissibility.

(5) *Mode of decision*

The way in which a traditional court arrived at its decision varied from place to place, but often court members might review the facts and justice of the case in a private " committee " meeting before announcing their decision in open court. In such a meeting the principle might be either to achieve a unanimous generally accepted decision, or—in some centralized societies—for the ruler whose court it was to have the sole power of decision, though being influenced in his verdict by the views of his councillors and officials.

(6) *Review; appeal*

In the more hierarchically organized societies some sort of appeal might be possible, e.g., to a chief's court against the decision of one of his local headmen. Often there was no time-limit set for such an appeal, nor any idea of a restricted appeal " on a point of law ", as usually the appeal would re-open the whole matter, and would be dealt with by a complete re-hearing of the case.

The general absence of finality in litigation in Africa is relevant here.

(7) *Execution of court's judgment*

Again there are wide tribal variations. In some of the acephalous societies (where proceedings may tend to the arbitral type) there may be little or no assistance to a successful litigant in carrying out a court's award, and he will have to seek the assistance of his social group in enforcement. Even in some chiefly societies, in the absence of a proper system of police or court bailiffs, execution and enforcement may be imperfect and largely dependent on the litigant's personal efforts.

II. Contemporary Problems in Procedural Law

(1) *The use of writing*

Traditional practice was completely oral (though real evidence of

transactions might be tendered). What have been the effects of the introduction of writing on:—

(a) the framing of claims and charges;

(b) the maintenance of court records, especially the recording of evidence;

(c) the issue of warrants, execution, etc.?

Note especially the need of appeal courts for adequate records of what occurred in the courts below, and the demand for new kinds of court members and officials who are literate and capable of handling written law and records.

(2) *The language of the courts*

In what language are records kept? How does this affect the task of supervising or appellate authorities? Is this language the same as that used by the court? What is the position of persons who do not share the language of the court (e.g., Africans from a different ethnic group)?

(3) *Evidence*

How far are the traditional rules of evidence acceptable today? What about the position of (a) non-African witnesses, (b) expert witnesses, in African courts?

(4) *Deficiencies in the judges and officials*

(a) Literacy (see above).

(b) Training of court members, clerks, etc. (This can usefully be discussed below at " III. The techniques of change ".)

(c) Bribery and corruption.

(d) Breaches of natural justice: e.g., judges sitting in a case in which they are personally or politically interested; absentee judges.

(5) *Delay in proceedings*

Examples are:—

(a) part-heard cases repeatedly adjourned;

(b) failure to bring a case to trial.

6. *Excess of jurisdiction*

Courts acting in excess of jurisdiction.

(7) *Related arbitral proceedings*

The relation of arbitral proceedings (preceding or contemporaneous) to proceedings in the regular courts.

(8) *Sentencing policy of the judges*

It is often alleged that African courts follow a " wooden " sentencing policy, e.g., sentencing offenders to the maximum punishment allowable without regard to mitigating circumstances or the effect of the punishment on the offender. How far is this due

to the introduction of new types of punishment which formed no part of the traditional law (e.g., imprisonment)?

(9) *The problem of juvenile and family proceedings*

(10) *The role of the probation officer*

III. The Techniques of Change

How are desirable changes to be brought about in the practice, procedure, and evidence observed by African courts? To what goal should reforms be directed:—

(a) assimilation to the general law;

(b) production of a new, simplified procedure code, representing a fusion of English and customary principles?

(1) *Undirected evolution*

The first method by which changes are brought about is through the largely undirected influence of *ad hoc* decisions made by individual judges or administrative officers in hearing appeals from, or reviewing cases in, African courts. The influence of the superior courts in West Africa, using the " repugnancy-clause " to control the application of customary law, is especially notable.

(2) *Directed evolution: gradualism*

More recently a coherent policy and philosophy have been applied to the evolution of African courts. Although there are great differences as to the pace or methods of change thought desirable in various territories, generally the ultimate aim is to procure the gradual assimilation of the indigenous courts and law into the general law and judicial system of the territory.

In this the appointment of Judicial or Native Courts Advisers, their meetings at Kampala and Jos, the institution of regular training programmes for African court staff, the gradual handing over of the supervision of African courts to the higher judiciary, the London Conference on the Future of Law in Africa, have all played their part.

What is to be the role of administrative officers, or of those who may take their place (i.e., as " local court inspectors "), in directing the evolution on the procedural side? The solution of most of the contemporary problems turns on the competence of the court members and staff: and it is here that supervisory officers can contribute most.

(3) " *Guiding* " *provisions*

In some territories direct guidance, of one sort or another, is now being given to African or native courts, this guidance implying that the courts should be steered as rapidly as possible in the general direction of English law. *Cf.* guidance by training in English law (as with Buganda judges, who have been given systematic instruction in English law by the Judicial Advisers); and guidance by

legislation, as with Northern Nigeria and Uganda (African Courts Ordinance), which requires the African or native courts to " guide " themselves in procedure and evidence in criminal cases by the appropriate code (based on " western " law).

(4) *Codification*

The enactment of codes specifically for African courts, especially the preparation of comprehensive procedure regulations (as with the Ghana native courts, now superseded) goes further than mere " guidance ". This method has been little tried, except at an elementary level.

(5) *Replacement of the African, etc., courts*

An alternative solution is to abolish the African courts. This has been done in Ghana, where they have been replaced by " local courts "; but this solution may not be workable everywhere at the present stage of development.

A. N. ALLOTT

Conclusions of the Colloquium

During discussions of *practice, procedure and evidence* in the " African " or " local " courts, certain recommendations received general support, although members of the Colloquium recognized that circumstances vary widely in different territories, local variations in the law being therefore inevitable. Recommendations most widely supported included the following.

1. The status of interpreters in all courts (including the superior courts) should be improved as a matter of urgency, especially in respect of their training and pay.

2. The wholesale introduction of English rules of evidence was not favoured: rather should there be careful research with a view to preserving what is best in customary procedure by careful synthesis with the essential rules of English law.

3. Arbitral proceedings serve a useful purpose if kept within limits, in particular being confined to civil matters. The law relating to such proceedings might well be re-examined in most territories with a view to the clarification of the law in certain respects, e.g., should the fact and result of previous customary arbitration be relevant evidence in a later court action; should statements made in the course of arbitration be privileged from admission as evidence in any later court action, etc.?

4. It is difficult to improve the standards of the " African " courts unless courts hearing appeals from them are so constituted as to include some members specially qualified in the system of law applicable: e.g., it was felt that in some territories the introduction of a Sharia division of the High Court might be advisable for appeals involving Islamic law.

5. It was felt that some limitation period for the commencement of actions in customary law was needed; this might be introduced

by legislation, although in some territories at an early stage the development of equitable principles might suffice.

6. It could be made a requirement that persons exercising powers of revision should record reasons in writing when reversing a court's decision. It should be unlawful to revise a sentence to the detriment of a convicted person without that person having an opportunity of being heard.

7. Problems arising in the execution of court judgments were commonly found (e.g., the rapid transfer of property following judgment by the debtor to his kin or friends). Courts might be given power to take an inventory of a defendant's property at the commencement of an action, where it was deemed necessary.

8. It is desirable that court records should as far as possible be kept in a language understood by the members of the court, or at least by the court president, who should authenticate the record by his signature. It is desirable that court members should be trained in a common lingua franca to avoid difficulties arising on appeal when translation may be necessary.

9. It is desirable to train both court members and court clerks or registrars, but undesirable consequences may ensue if the clerk is more highly trained than the members of his court. Improving the status of court members and clerks will be an important development. An integrated system of promotion covering both court members and clerks is desirable; as also is integration of the personnel involved in the administration of the different systems of courts within a territory, with provision for the interchange of career opportunities.

10. Further directions or instruction are often required by members of " African " courts concerning the principles of sentencing convicts.

11. Considerable development is needed to improve, develop and extend probation services in most areas.

12. Development of special provisions for the trial of juveniles is of particular urgency. Where circumstances permit, special juvenile courts should be set up; elsewhere, specially constituted local courts should act. Special training for court members is needed; special rules of procedure should provide for greater flexibility; probation services should be fully informed and employed. In urban areas these recommendations are specially urgent.

13. In most territories at the present stage of development lawyers should not be permitted to act or appear for parties in proceedings before " African " courts. Wider restrictions on the activities of lawyers are not justifiable. The gradual admission of lawyers (e.g., individually licensed by the Chief Justice for such practice, possibly following a special examination in customary law) should be considered.

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