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## NOTES AND NEWS

### PROGRESS IN AFRICAN LEGAL STUDIES

The year 1959 marks a turning point in the history of African law. In the spheres of teaching, research and reform there is significant progress to report. The rapid multiplication of interest in the subject in Europe, in Africa, and in the United States is very striking.

Typical of the new order of things is the sequence of recent events in Ghana. There an international committee of recognised experts in the field of legal education, from the United States, the United Kingdom, and Australia, was asked (as we have already noted) to report on the future pattern of development of legal education in that country. Their report, which contains much of great interest, not only for Ghana but for other countries too, has just appeared, and we hope to comment on it in detail in a subsequent number of the Journal. There is talk of setting up a West African Law Institute at Accra, this being one of the suggestions made by the committee. Professor Gower, as Commissioner examining the question of company law reform in Ghana, has recently published his interim report; this again is worthy of the closest study in a wider field. The commission set up to consider what reforms were desirable in the law of succession in Ghana, under the chairmanship of Mr. Justice Ollennu, has also reported recently. The tide of law reform is thus sweeping strongly on in Ghana, and many aspects of the legal system inherited from pre-independence times are now under consideration.

In Nigeria too there are equally significant developments. The committee established to consider the organisation of legal education in Nigeria has recently reported; as a consequence of its report a Law Faculty will soon come into existence at the University College, Ibadan. The Western Region Government has proceeded with its plans for fundamental law reform; whilst in Northern Nigeria the problems of completely recasting the criminal law and procedure, in accordance with the recommendations of the Panel of Experts who considered the whole question of Islamic law as applied in the North, are being faced and met.

On the other side of Africa this year has seen the introduction of legislation completely altering the pattern of African land tenure in Kenya, and permitting the replacement of the customary land law by a simplified tenure on the English model, coupled with consolidation and registration of individual holdings. Other aspects of Kenya law—where the position is complicated by the co-existence of Indian, English, colonial, African and Muslim laws in some matters—are ripe for examination and reform. This work is already

in hand, and substantial reforms in the Kenya general law may be expected to be proposed in the near future. Law teaching at the Royal Technical College, Nairobi, is being expanded; and soon, in accordance with the recommendations of the Lockwood report, we may expect to see one or more full-scale departments or faculties of law functioning in East Africa.

In Central Africa there is less striking progress to report; nevertheless, a start is already being made in the teaching of law at the University College of Rhodesia and Nyasaland at Salisbury; and this will probably develop fairly quickly into comprehensive instruction for a law degree. One of Central Africa's more interesting problems is the relationship between the English and the Roman-Dutch legal systems; whilst another controversial issue is that of the fusion or separation of the legal profession.

From the more general and international point of view, undoubtedly the most exciting development is the formation of an "International African Law Association", which is referred to at greater length in a note which follows. There are two other highly important events in the African legal field to report: first, the London Conference on "The Future of Law in Africa", which will meet for the fortnight from 28th December, 1959, to 8th January, 1960, in London; this will be the first opportunity to consider the whole subject of the future relationship between English law and customary law in African countries. And secondly the setting up, by the School of Oriental and African Studies, of a comprehensive research scheme for the analysis and recording of customary law in Commonwealth Africa, will further increase our knowledge of the customary law, for administrative as well as academic purposes. Both these developments are the subjects of separate notes below.

To one who has watched the growth of interest in and knowledge of African law, customary and otherwise, from the first ventures of the pioneers to the present day, the course of recent events cannot fail to be highly gratifying; and the future of African legal studies, as enriched by these developments, is full of promise.

#### THE INTERNATIONAL AFRICAN LAW ASSOCIATION

For some time various tentative efforts have been made to bring together all those, scholars, judges and administrators, who were concerned with African legal studies, to facilitate the exchange of information, views and ideas across international boundaries, and to coordinate the efforts which were going on, in one country or another, to make a systematic study of African law and African legal problems. In the past the artificial divisions of Africa between the European powers tended to erect barriers at the intellectual level also (it is notoriously difficult, for example, for continental and English lawyers to communicate with each other, trained as they are in such very different systems and endowed with a different approach to law, legal language and problems).

Two independent initiatives, one predominantly continental, the other predominantly British, which were endeavouring to work out a formula and a framework for such international collaboration, have

now come together with the happiest results. After sounding out opinion in many different countries (in Africa and elsewhere), it was concluded that the formation of an international association, uniting all those with a common interest in the law in Africa, would meet with general support and approval. Accordingly, on the occasion of the Conference at Paris of the Société Jean Bodin for the Comparative Study of Institutions (which was attended by several of those interested), a meeting was called, to which all the conference-members, and others who desired to see the formation of an international association devoted to the law of Africa, were invited. Many persons who were themselves unable to attend sent intimations of support.

The meeting took place on 29th September, 1959; and it was unanimously resolved that an "International African Law Association" should be constituted. The provisional Statutes of the Association, drawn up by the steering committee, were presented to the meeting and adopted after consideration and amendment. Officers of the Association were duly elected by the meeting; they were: as President, Dr. P. J. Idenburg, Secretary-General of the Afrika Studiecentrum, Leiden; as Vice-Presidents, the Hon. Sir A. Ademola, Chief Justice of the Federation of Nigeria, Professor J. N. D. Anderson, Director of the Institute of Advanced Legal Studies, London, and Head of the Department of Law at the School of Oriental and African Studies; M. A. Sohler, Belgium, author of the standard works on the customary law of the Belgian Congo; Governor H. Deschamps, Consultative Director of the International African Institute and Director of O.R.S.T.O.M., Paris; as joint Secretaries-General, M. J. Poirier, University of Lyon, France, and Dr. A. N. Allott, United Kingdom. The foregoing will constitute the Council of the Association. The Association will have two official languages, French and English; and its seat will be in London.

The objects of the Association are stated in the Statutes as follows:

"The objects of the Association will be to promote the study of the legal systems of Africa, with special reference to the traditional customary law, to the relations between the indigenous and non-indigenous systems of law, and to the development of the customary law. The Association will form a collection of documentation relating to these systems, and to case-law, and to the present needs of African countries in the legal field."

The Association will have power to publish material on customary law, or any other subject connected with its objects, including a periodical devoted to African law; it will also organise conferences and colloquia, and initiate research-projects where needed. It is envisaged that local sections of the Association should be formed in interested countries, for the better realisation of these objects.

As an executive organ of the Association, a permanent committee of experts is being constituted, to be termed the "African Law Committee". This will have a restricted membership chosen from leading experts in each country; its special rôle will be to integrate

the studies of customary law, collect documentation, and execute field-studies where required.

Membership of the Association (as opposed to that of the Committee just mentioned) is open to lawyers and all other persons concerned with the study of African legal systems. Already there has been a welcome response to personal invitations to adhere to the Association; it is hoped that, as the activities of the Association expand and become more widely known, every country in Africa (and in other parts of the world where there is interest in the subject) will have its own national section, where problems of particular concern to that country may be discussed. Planning of the first colloquia of the Association is already under way. It is hoped that the work of the Association will attract support, financial and other, from official bodies, such as governments and foundations.

In the short time that the Association has been formally in existence there has obviously been little opportunity to do more than establish its organisational basis; but in fact there has already been a significant interchange of information, e.g. on methods of recording customary law, between members of the Association in different countries. The establishment of an official body with worldwide membership, and uniting all those with an interest in African law, will quite certainly contribute to the recognition of this subject as one of intellectual standing and practical importance.

#### LONDON CONFERENCE ON THE FUTURE OF LAW IN AFRICA

A very successful symposium, with international membership but unfortunately restricted in numbers, was organised by the then Afrika-Instituut, Leiden, in 1955; the report of the symposium, published under the title of "The Future of Customary Law in Africa", has deservedly had a wide circulation. It became apparent, however, that the work of this symposium needed to be carried somewhat further than the restricted time and membership permitted; in particular, it was felt to be desirable for those countries in Africa having the English common law as the basis of their legal systems to meet together to discuss their problems in greater detail, without the necessity for explaining the principles of English law as such to those ignorant of them, which usually consumes an inordinate amount of the time available at international legal conferences.

The suggestion to hold such a further conference met with academic and official support in London and in the African countries; and a conference, under the heading of "The Future of Law in Africa", was therefore arranged to take place during the Christmas vacation in London. The Conference will meet at Church House, Westminster, from 28th December, 1959, to 8th January, 1960. Invitations to send representatives have been sent to all those countries in Africa having the common law as the basis of their legal systems (thus including the independent countries as well as those which are British dependencies). Leading academic authorities have also been invited to attend. Considerations of space and the need for free interchange of views have led to a

restriction on the membership of the Conference; but some 60 or so persons will be attending throughout. Several of the Chief Justices, Attorneys- and Solicitors-General, Native Courts Advisers, and other distinguished legal and administrative personnel in Africa, will be among the participants.

The Conference will be under the chairmanship of the Right Honourable Lord Denning, a member of the Board of Advisers and a good friend of this Journal, who has special personal qualifications, as a member of the Judicial Committee of the Privy Council as well as Chairman of the British Institute of International and Comparative Law, to take charge of the proceedings. There is a very full agenda, which involves (i) an examination of the conditions under which customary law is administered today and the weaknesses of the present system of ascertaining and applying the customary law, (ii) a consideration of what should be the objectives of policy in this matter (should there be a single, unified system of law; should customary law be allowed to disappear; how can the ascertainment of customary law be made easier?), and (iii) the working out of methods for carrying the principles of policy into effect.

A Conference of this nature has not been held previously for British Africa; though the Judicial Advisers' Conferences (which were convened in 1953 and 1956 under the chairmanship of Sir Kenneth Roberts-Wray) were concerned with a similar field, mainly from the point of view of the adjectival rather than the substantive law. It is generally agreed that the Judicial Advisers' Conferences were extremely successful and have led to much re-thinking and positive action in the administration of customary law; the reports of their proceedings are in heavy demand for this reason. The report of the proceedings of the present Conference will be published in due course, and may be expected to have an even wider circulation. Never before will the problems of administering customary law side by side with the English or territorial law have been examined collectively by such an authoritative body.

#### THE RESTATEMENT OF AFRICAN LAW PROJECT

The School of Oriental and African Studies of the University of London has initiated a comprehensive scheme for the study and restatement of African customary law, as found in the English-speaking territories of Africa. The Project has received generous financial assistance from the Nuffield Foundation, who have promised a grant up to £11,000 to cover the work of the Project during the first three years of its operation.

In initiating this Project for the recording of customary law, the School is implementing the resolutions and proposals of many international conferences, commissions of enquiry, and individual academic and practical students of the subject. The First Inter-African Conference on Social Sciences at Bukavu recommended that the collecting and recording of native laws and customs should be undertaken. The Restatement Project is a step in this direction for the British territories. The economic and social problems of African countries have become increasingly urgent, more especially in the

spheres of land tenure and succession, the family, marriage, and the status of women. The East African Royal Commission, 1953-5, emphasised the paramount need for reform of the land tenure and succession systems if economic development was to proceed at full speed; whilst in West Africa also the governments are beginning to tackle these difficult and complex aspects of the law. African governments themselves are, then, keenly aware of these problems; but before any effective action can be taken full and accurate information on the customary law is a prerequisite. Such information would also be most valuable for administrative and academic purposes.

Existing sources of information are generally inadequate or difficult of access; and it was therefore decided to establish a research-project which would involve the collection and analysis of existing material on the customary law, and the preparation of a series of publications that would restate the principles of customary law as they vary from tribe to tribe or ethnic group to ethnic group within the assigned regions of study. Africa for this purpose has been divided into three regions:—West Africa; East Africa; Central-Southern Africa; and within these regions the primary emphasis will be placed on the British or Commonwealth territories. To restrict the field of investigation, the Project will be limited in the first place to the customary law relating to marriage, the family, land tenure, and succession.

The first step is the compilation of bibliographies on the chosen subjects. The bibliographies aim to include all published and unpublished sources of information relating to the customary law in the selected regions. The intention is to prepare a preliminary draft of the bibliography for a region, which will then be circulated for comments and additions to all those having special knowledge of the subject in Africa and elsewhere. On the basis of their suggestions a final bibliography in printed form, containing a short statement of the contents and value of each item, will be produced. The bibliography should disclose gaps in our existing knowledge.

On the basis of the bibliographies and other material discovered by research in the field, etc., regional restatements will then be prepared. The form of the Restatement will be somewhere between that of the American Restatements of the Law of Torts, Contracts, etc., and the Digest of Customary Law in the Punjab made by Sir William Rattigan and his successors. The Restatement will, it is hoped, reveal the extent to which local divergencies and variations in the customary law obtain, and will note modern changes and developments in the substance and administration of the customary law. (The African Marriage Survey, conducted under the direction of Dr. Arthur Phillips, was a notable forerunner in this field.)

African law has been studied at the School since 1948, and the establishment now includes two full-time lecturers in African law. This is being augmented by the appointment, in the first place, of three full-time Research Assistants and clerical staff. The Restatement Project cannot succeed, however, without the co-operation of other interested persons and bodies in Africa and elsewhere; and the fullest mutual assistance is envisaged between the Restatement and

governmental or academic agencies in Africa. International collaboration with French, Belgian and other scholars will also be of vital importance. The experience now being gained at the School in the recording and analysis of material on the customary law will, it is hoped, be of value to others; and the card-indexes and files of the Restatement will be made available to other accredited research-workers in this field. The Project will be under the particular direction of Dr. A. N. Allott.

The Restatement of African Law Project is but one of the many activities now springing into existence in the African legal field (the creation of Faculties or Departments of Law at African Universities, the increase in publications devoted to African law, the number of academics now engaged in the study of customary law, the appearance of new associations, study-groups, and conferences dealing with the subject, and the extension of governmental activity—all betoken the liveliness of the subject); but it is one of the more exciting and important of these developments for the future of the law in Africa generally.