

JOURNAL OF AFRICAN LAW

Vol. VIII

Summer 1964

No. 2

NOTES AND NEWS

INTEGRATION OF CUSTOMARY AND MODERN LEGAL SYSTEMS IN AFRICA

The Institute of African Studies, University of Ife, held a conference on "Integration of Customary and Modern Legal Systems in Africa" at the University of Ife (Ibadan Branch), Ibadan, Western Nigeria, from Monday, 24th August to Saturday, 29th August, 1964, under the directorship of Dr. Antony Allott, Professor of Law, School of Oriental and African Studies, University of London. The number of participants was limited but observers were also invited. Invitations were issued by the Working Committee, of which Dr. S. O. Biobaku, C.M.G., Pro-Vice-Chancellor of the University and Director of the Institute, was Chairman.

This conference built on the firm foundation of numerous meetings of the last several years convened to discuss theoretical aspects of African customary law. The purpose was to demonstrate how practical draftsmen, judges, and jurists can reconcile and harmonize co-existing systems of traditional and non-traditional law, with due regard to the necessity of minimizing the potentially explosive consequences of major changes in legal systems, and of maximizing opportunities for harmonious and orderly development. The papers read at the conference demonstrate how this has been or can be accomplished in a particular field of law in a particular jurisdiction. The published results of this conference should serve as a collection of models for judges, civil servants, and scholars charged with responsibility for bringing constructive order out of overlapping and often conflicting systems of law.

Background papers for the guidance of principal contributors to the conference proceedings and for the conference itself were submitted by leading practitioners and scholars from French- and English-speaking Africa. These papers summarize the potentialities and limitations of legislative action (including codification and regulation) and judicial action in the field of harmonization and integration of co-existing legal systems. In addition, a background paper submitted by the Restatement Project of the School of Oriental and African Studies, University of London, discussed the crucial necessity of and methods for determining just what the corpus of the law under consideration may be.

The papers submitted to the conference include: Dr. F. A. Ajayi: "The judicial development of customary law in Nigeria"; Prof. M. Alliot: "Les résistances traditionnelles au droit moderne dans les états d'Afrique francophone"; and "Rôle de la justice dans l'application de la loi dans les états d'Afrique noire francophone"; Prof. A. N. Allott: "The codification of the law of civil wrongs in common law African countries"; Prof. A. N. Allott and Mr. E. Cotran: "Restatement of laws in Africa (the need, value and methods of such restatement)"; Prof. X. Blanc-Jouvan: "Problems of harmonization of traditional and modern concepts in the land law of French-speaking Africa and Madagascar"; Dr. P. Contini: "Integration of legal systems in the Somali Republic"; Mr. E. Cotran: "Integration of the laws of marriage and divorce in Kenya"; Dr. W. C. E. Daniels: "Towards the integration of the laws relating to husband and wife in Ghana"; Prof. R. David: "The law of contract and of civil wrongs in French-speaking Africa"; and "Critical observations regarding the potentialities and the limitations of legislation in the independent African states"; Mr. A. B. Kasunmu: "Integration of the law of husband and wife in Western Nigeria"; Prof. J. Keuning: "Some remarks on law and courts in Africa"; Dr. H. F. Morris: "The law of succession in Uganda"; Dr. B. O. Nwabueze: "Integration of the law of contracts"; Mr. M. Odje: "Integration in the field of the law of succession in the Mid-Western region of Nigeria"; Dr. N. Okoro: "Integration of the customary and the general (English) law of succession in Eastern Nigeria"; Mr. Justice N. A. Ollennu: "The law of succession in Ghana"; Mr. J. S. Read: "The law of husband and wife in East Africa"; Mr. J. W. Salacuse: "Birth, death, and the Marriage Act: some problems in conflict of laws"; Chief F. R. A. Williams: "Integration in the field of land law".

Papers and discussions will be published shortly after the conference under the direction of a committee headed by Dr. F. A. Ajayi, Solicitor-General and Permanent Secretary, Ministry of Justice, Western Nigeria.

The Working Committee decided that the rather special field of criminal law, and the study of jurisdictions where either total abolition or total adoption of customary law is for one reason or another desired, were beyond the terms of reference of this conference.

The conference was generously supported by the Ford Foundation.

[Communication from the Institute]

INTEGRATION OF LAWS IN THE SOMALI REPUBLIC: REPORT ON THE WORK OF THE CONSULTATIVE COMMISSION FOR INTEGRATION FROM ITS INCEPTION UNTIL 31ST MARCH, 1964

Establishment and membership of the Integration Commission

When the Union was formed on 1st July, 1960, the Somali Republic inherited two different legal systems. In the Northern

Regions, formerly known as the British Somaliland Protectorate, the laws and institutions were based on the Anglo-Saxon system; in the Southern Regions, formerly known as the Trust Territory of Somalia under Italian Administration, they were based on the Italian system. It was clearly necessary for the Republic to have a single legal system. In order to assist the Somali Government in bringing this about, the Consultative Commission for Integration was created by Presidential Decree of 11th October, 1960.

The President of the Republic appointed the following persons as members of the Commission:

Paolo Contini, UN Legal Adviser	Chairman
Auod Hagi Mussa, Somali Government official	Member (until January 1961)
P. O'Donoghue, former Attorney-General of Somaliland	Member (until June 1961)
Yusuf Jama Ali, former Deputy Attorney- General	Member (until December 1963)
Mario Tucci, former State Attorney of Somalia	Member (until August 1962)
Renato Angeloni, Judge of the Italian Court of Appeals	Member
Haji N. A. Noor Muhammad, Judge of the Somali Supreme Court	Member
Giuseppe Papale, President of the Somali Supreme Court	Member
Geilani Scek Bin Scek, Somali Government official	Member
Scek Mohamed Mohamud, Somali Government official	Member
Vincenzo Mellana, State Attorney of Somalia	Member

Activities of the Commission

The scope of the Commission's work covers the whole range of legislation. All the draft laws have to be prepared in English and Italian, and are published in both languages in the Official Bulletin.

In close collaboration with the competent Ministries, the Commission prepares draft legislation for the consideration of the Council of Ministers and the National Assembly.

The Commission's work programme and order of priority are fixed periodically by the Prime Minister on the Commission's recommendations.

The bulk of the work of the Commission is done at meetings of sub-committees and working groups. The Commission also holds

formal meetings, the minutes of which are kept in English and Italian.

In some instances, members of the Integration Commission participate in special commissions appointed by the Government to prepare draft legislation. For example, the National Assembly established a Special Commission, consisting of eleven deputies and ten legal experts (including all the legal experts of the Integration Commission), responsible for the preparation of the Penal Code, the Code of Criminal Procedure, the Traffic Code and the Judiciary Law. In other cases, individual members of the Commission are requested by Ministers to prepare legislation on specific subjects.

The Commission's aim has been to prepare laws as modern as possible, expressed in simple and clear language, and suited to local conditions. In drafting legislation, it takes into account the existing laws in both parts of the Republic, as well as those of other countries on the subject under consideration.

The integrated legislation enacted by the National Assembly since independence includes such fundamental laws as the Act of Union, the Law on the Organization of the Government, the Civil Service Law, the Law on the Organization of the Judiciary, the Citizenship Law, the Finance and Accounting Procedure of the State, the Public Order Law, the Law on Local Administration and Local Council Elections, the Penal Code, the Criminal Procedure Code, the Political Elections Law.

[Extracted from report of Dr. P. Contini, Chairman, Consultative Commission for Integration, Mogadiscio, 31st March, 1964]

INTERNATIONAL AFRICAN LAW ASSOCIATION NEWS

A local group of the Association has been formed at Jos, Nigeria. The inaugural meeting was attended by eight barristers, among whom the following officers were appointed:

Chairman: J. N. I. Ezekwe, Esq.

Vice-Chairman: A. A. Ezenobi, Esq.

Secretary: Owen Okorokobiko, Esq.

Patrons: (1) The Senior Puisne Judge

(2) The President of the Provincial Court.

Discussions at the meeting were exploratory, but the aim is to foster a better understanding of African law. To achieve this end it was unanimously agreed that members should be encouraged and assisted to conduct individual research into particular aspects of Nigerian law.

Membership is open to anyone interested in law, and Alkalai will be invited to deliver lectures on native law and custom. Frequent discussions on African law will also be encouraged.

[Reported by Owen Okorokobiko]