

JOURNAL OF AFRICAN LAW

Vol. X

Spring 1966

No. 1

NOTES AND NEWS

INTERNATIONAL AFRICAN SEMINAR ON CONCEPTS AND PROCEDURES IN AFRICAN LAW

The eighth of the international African seminars organized by the International African Institute was held at the Faculty of Law, Haile Selassie I University, Addis Ababa, Ethiopia, from January 3-13th, 1966. The seminar, which was under the chairmanship of Professor M. Gluckman and was supported by a grant from the Ford Foundation, was attended by thirteen participants and a number of observers, coming from a number of African countries and from overseas. Participation was more or less divided between social anthropologists who had made a special study of African customary laws, and lawyers, both academic and practising; and one of the more interesting features of the seminar was the opportunity which it provided for both sides to compare their research objectives, techniques of enquiry, and modes of description and analysis of the data.

Papers discussed at the seminar (those by actual participants indicated by a *) were:—P. J. Nkambo Mugerwa, "Status, responsibility and liability: a comparison of two types of society in Uganda"; *J. Poirier, "L'analyse des espèces juridiques et l'étude des droits coutumiers africains"; M. G. Smith, "Idda and secondary marriage among the Northern Kadara"; *W. A. Shack, "Guilt and innocence: problem and method in the Gurage judicial system"; I. Schapera, "Contract in Tswana law"; *A. N. Allott, "Legal personality in African law: a comparative study with special reference to Ghana"; J. O. Ibik, "The customary law of wrongs and injuries in Malawi"; *A. L. Epstein, "Injury and liability in African customary law in Zambia"; *H. Deschamps, "La première codification africaine: Madagascar 1828-81"; *J. van Velsen, "Procedural informality, reconciliation and false comparisons"; *Y. P. Ghai, "Customary contracts and transactions in Kenya"; *Mr. Justice N. A. Ollennu, "The structure of African judicial authority and problems of evidence and proof in traditional courts"; *J. Pauwels, "The legitimation of illegitimate children according to the customary law as applied in Leopoldville"; *J. Vanderlinden, "Reflexions sur l'existence du concept de propriété foncière individuelle dans les droits africains traditionnels"; S. S. Richardson, "Whither lay justice in Africa?"; *C. M. McDowell, "The breakdown of traditional land tenure in Northern Nigeria"; *A. M. R.

Ramolefe, "The Sesotho customary law heir"; *M. Gluckman, "Property rights and status in African traditional law".

The papers presented to the seminar are to be edited by Professors M. Gluckman and A. N. Allott and published by the International African Institute.

CUSTOMARY LAW AT THE LAW FACULTY OF LOVANUM UNIVERSITY,
LEOPOLDVILLE

1.—Law studies in the Congo

The Congolese student who desires to study law at the university level first enrolls for the *baccalauréat en droit* (one year), followed by the programme of the *licence en droit* (three years). If he wishes to continue his legal studies, he can take the courses leading to the *diplôme d'études spéciales* in law (one year of theoretical courses), and obtain subsequently the *doctorat en droit* upon successful submission of a thesis. Finally, Congolese legislation creates the *agrégation de l'enseignement supérieur* in law, a post-doctoral study.

The *baccalauréat* and the *licence* are the only law studies organized at present in the Congo.

Due to the circumstances of the colonization, the programme of the *licence* reflects the historical duality of the law in the Congo (a European element consisting of law based on French models and an African element consisting of the customary law systems); written law and customary law are taught in separate courses.

2.—Courses in customary law

The programme of the *licence* includes a course of customary law of 120 hours and a seminar of 30 hours on the same subject. The instructors follow at present the following programme:

- J. Pauwels—Introduction to customary law
(The Congolese judicial system—definition and characteristics of customary law—scientific research in customary law—analysis of the *décret* on customary law courts)
- J. Pauwels—Law of Persons
(Kinship—marriage and the family—status)
- J. Pauwels—Law of Succession
(Traditional systems—the acculturated law—legislative dispositions)
- J. Herbots—Land law
(Congolese land law—traditional customs—the land law of the urban centres)
- J. Herbots—Law of "Obligations"
(Contracts and torts)
- J. Pauwels—Seminar of customary law
(In 1965-66: juridical effects of the attitude of the Churches with respect to bride-price).

The programme of the *diplôme d'études spéciales* in customary law will include

- (a) two compulsory subjects:
 - special questions of customary law;
 - introduction to Islamic law;
- (b) two optional subjects.

3.—Research and other activities

Several members of the Faculty are preparing studies on the Congolese customary law:

- J. Pauwels, conflict of tribal laws and formation of a uniform urban custom in Leopoldville, 1926-1940 (to be published in 1966);
- J. Herbots, appeal and reversal of customary law judgments in the Congo;
- C. Mafema, study of property in Congolese marriage.

During the summer holidays, 1965, fifteen students of the Law Faculty carried out research in the customary law courts of the Congo. They studied Lunda law (under the direction of C. Mafema) the annulment of customary decisions (under the direction of J. Herbots) and the urban custom of Leopoldville (under the direction of J. Pauwels). It is hoped that several publications will result from these investigations.

In 1966, several members and students of the Law Faculty will present a cycle of courses and lectures directed towards the judges and the personnel of the customary law courts of Leopoldville. The programme of this cycle will be as follows: introduction to law—analysis of the *décret* on customary law courts—survey of customary law—the customary law applied in Leopoldville—the judicial function—deontology—the drafting of judicial decisions.

CONTRIBUTED BY J. M. PAUWELS

UGANDA: REPORT OF THE COMMISSION ON MARRIAGE, DIVORCE AND THE STATUS OF WOMEN

It has long been recognized that the law governing marriage, divorce and succession in Uganda is in serious need of reform. During the colonial period, though this was fully acknowledged, the problem of reconciling conflicting views and interests—of the churches, the traditionalists and the feminists—proved too formidable a task, and, after the ambitious scheme of survey and reform initiated by Sir Philip Mitchell in the late nineteen-thirties had been abandoned on the outbreak of war, no further serious attempt was made by the Government to tackle the problem. Widespread interest was, therefore, aroused when in 1964 a Commission was appointed:

“to consider the laws and customs regulating marriage, divorce and the status of women in Uganda, bearing in mind the need to ensure that those laws and customs while preserving existing traditions and practices, as far as possible, should be consonant with justice and morality and appropriate to the position of Uganda as an independent nation and to make recommendations.”