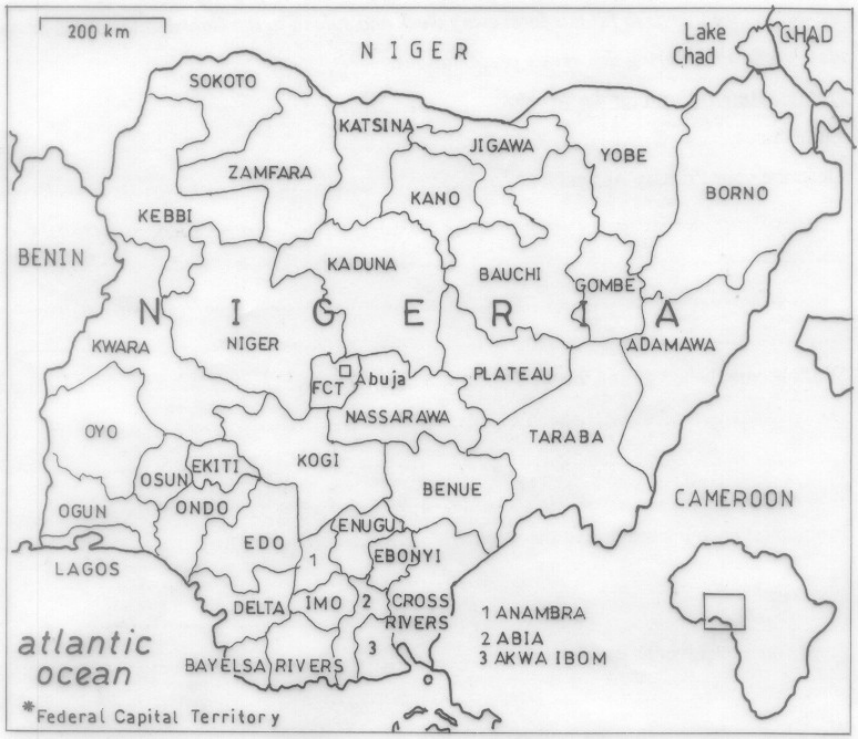
Volume I: Historical Background

PREFACE TO VOLUMES I - V

1. Sharia implementation.

Alhaji Ahmad Sani, *Yariman* Bakura,[1] was elected Governor of Zamfara State in the elections held on 9 January, 1999 – the first such elections after fifteen years of military rule in Nigeria. Zamfara State, in Nigeria's far north, has a predominantly rural population of about three million, of which perhaps 84% are Muslim.[2] Governor Sani was its first elected governor, the state only having been created (out of Sokoto State) in 1996.



Governor Sani says that during his campaign:

> In any town I went to, I first started with *kafaral*, which is chanting *Allahu Akbar* thrice. Then I always said, "I am in the race not to make money, but to improve on our religious way of worship, and introduce religious reforms that will make us get Allah's favour. And then we will have abundant resources for development."[3]

This promise was little noticed outside Zamfara during the campaign. But after his inauguration on 29 May, 1999, Governor Sani proceeded to make it good – at least as to

[1] The title *Yariman* Bakura signifies that Alhaji Ahmad Sani is a prince of the house of the Emir of Bakura. In fact he is a son of the late Emir and the junior brother of the present one.
[2] See demographic data, xix infra.
[3] Reported in *Tell*, 15 November 1999, 19.

the religious reforms – and thus began a new chapter in the history of Nigeria's Muslims and of their relations with their non-Muslim neighbours and (since 1900 or so) compatriots.

"Religious reforms that will make us get Allah's favour". By this Governor Sani did not mean reforms of the religion, of Islam. He meant reforms of the laws and institutions of Zamfara State, to bring them more into conformity with Islam – in particular with Islamic law, with Sharia. "Sharia implementation", as the reforms quickly came to be called, has been effected primarily by legislation at the State and Local Government levels, aimed at making the legislating jurisdictions, in various ways, more "Sharia compliant" than they had formerly been. After Zamfara showed the way eleven other States – Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto and Yobe – followed with similar legislative programmes. The range of matters touched on has been impressive:

- new State Sharia Courts have been established, to apply the full range of Islamic law, civil and criminal, to Muslims; appeals from the Sharia Courts in all matters have been directed to the State Sharia Courts of Appeal;
- Islamic criminal law has been reinstated, in the form of new Sharia Penal and Criminal Procedure Codes applicable in the Sharia Courts to Muslims;
- a wide range of other legislation has been directed at particular "social vices" and "unIslamic behaviour" like the consumption of alcohol, gambling, prostitution, unedifying media, and excessive mixing together of unrelated males and females;
- two States – Zamfara and Kano – uniquely among all Nigerian States – have even tackled the pan-Nigerian problem of corruption, setting up their own statutory Public Complaints and Anti-Corruption Commissions in accordance with Islamic principles;
- other institutions have been established – State Sharia Commissions and Councils of Ulama with important advisory and executive functions; boards for the collection and distribution *zakat* (alms) taxes; *hisbah* organisations to monitor and try to enforce Sharia compliance, but also to engage in mediation and conciliation within the society; and others; – all with the aim of deepening and enforcing the application of Sharia law in the lives of the Muslims of the Sharia States.

Not all twelve States have done all these things, and what has been done has been done differently from State to State, and with different degrees of enthusiasm, persistence, and effectiveness on the part of the State Governments, each with its own ethnic and religious mix of peoples to appease. Care has been taken to try and keep within the Constitution and Laws of the Nigerian Federation, whose supremacy all Sharia States have acknowledged. Subject to these variations and within these limitations, the fact remains that the Sharia States have gone quite far towards the re-establishment of Islamic law within their borders, at least for Muslims, and the implementation of traditional Islamic values as the official policies of their governments. Sharia implementation in Northern Nigeria is a highly interesting set of experiments in the

adaptation of Islam, and of large populations of Muslims, to the modern age and to modern forms of government, and of the modern age to them.

2. The Gusau launching and its aftermath.

Governor Sani's programme of Sharia implementation was brought dramatically to the attention of the rest of the country with its official "launching" on Wednesday, 27 October, 1999. This was a significant day in the history of Islam in Nigeria. A contemporary news report well conveys a sense of the occasion:

> [It was] what could better be described as "mother of all launchings". Gusau, the capital of Zamfara State, in the history of its existence witnessed for the first time a crowd that cannot easily be compared to any recent gathering in Nigeria… Three days to the D-day, people started coming into Gusau. In fact, about two million Muslim faithful from all parts of the country converged in the state capital to herald the commencement of Sharia in the state. Every available space within the capital city was converted by traders for their wares… The Gusau-Sokoto, Gusau-Zaria [and] Gusau-Kano roads had the busiest traffic ever as people came from these directions in thousands. Those who could not afford transport trekked from appreciably far distances to witness the occasion… Movement in the town was brought to a standstill as the crowd covered a radius of four kilometres…
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> The event was slated for 8:00 a.m. at the Ali Akilu Square, but interestingly enough the square came to full capacity on the eve of the launching. Around 10:30 a.m. the Governor, Ahmad Sani, made a triumphant entry into the square amidst a thunderous ovation of welcome. At the appearance of the Governor, the shouts of *Allahu Akbar* (God is Great!) filled the air while the Governor managed to squeeze his way to the high table where other dignitaries…were seated.
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> The programme…showed that the events would only take 3 to 4 hours but many items on the agenda were skipped when it became apparent that the occasion may start recording casualties… Scores of people fainted because of exhaustion and suffocation. The good however was that the members of the Islamic Aid Groups were…at hand to carry shoulder-high any casualty, not without difficulty anyway, as they would pass the victims across the wall of the square for those outside to receive them and take to the hospital…
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> [Among the speakers] was the Aare Musulimi of Yorubaland, Alhaji Abdulazeez Arisekola Alao, [who] said he was the happiest man on earth having been alive to witness the historic occasion. [He] thanked the Governor and the members of the State House of Assembly who, according to him, unanimously passed the bill on Sharia into law, thereby making it possible "for Allah's law to be operative in Zamfara State instead of man-made law forced on us by our colonial masters."[4]

[4] Fidel Agu, "The Birth of Sharia", *The Guardian*, 30th October 1999, reprinted in M.A. Musa et al., eds., *The Development of Zamfara State and the Introduction of Shariah Legal System* (Gusau: Office of the Executive Governor, 2002), 119-23 at 120-21.

To this let us add a passage from an essay to be found later in this work:

> The declaration of the implementation of Sharia in Zamfara State, done with fanfare and huge celebration at Gusau, obviously put all the other States with substantial Muslim populations on serious alert. The Gusau declaration was attended by prominent representatives of almost all Muslim organisations in Nigeria. All the leading *ulama* from all over the country were also in attendance. Speeches were delivered by the scholars and finally by the Governor, Ahmad Sani, ushering in a new era in the application of the Sharia in Nigeria. It must be appreciated that what Governor Sani did was a revolution hitherto unthinkable. What the colonial masters removed after intensive negotiations based on the reports of so many committees,[5] Governor Ahmad Sani restored by a single simple declaration. The expectations of the people were high; the support was total and absolute in the belief that Sharia would quickly bring about the much-needed security, social and economic justice and morality that have eluded the society for too long. It was also firmly believed that corruption in all facets of life including nagging delays in judicial proceedings would soon come to an end.[6]

Unfortunately, the interplay of Islam and Christianity in Nigeria has too often been seen as a zero-sum game; and the great hope and joy aroused among Muslims by the Gusau launching was matched by the fear and loathing aroused among Christians. In their view the Muslims could not possibly be motivated by sincerely held religious beliefs. Under that hypocritical cover they were actually aiming to "destabilise the country", to "create chaos", to "topple the newly elected president" (Olusegun Obasanjo, a southern Christian), to "derail Nigeria's new democratic system", to "bring back the rule of a military dominated by northern Muslims". The Muslims would never rest with implementing their programme in States where they predominated; their ultimate aim was to turn the country into "the Islamic Republic of Nigeria"; this indeed was "the Second *Jihad*" (the first being that led by Uthman dan Fodio in the early 19th century). If their programme went ahead in any State it must "result in religious war in this country". The Sharia was "a monster from the pit of hell". Governor Sani was "Ayatollah Sani"; his minions were "the Nigerian Taliban". Divine intervention must be (and was) invoked by days of fasting and prayer. A Sovereign National Conference must urgently be called to consider whether and on what terms Nigeria should even continue as one country. All of this was typical of the agitated, suspicious, polarised, apocalyptic thinking of many Nigerian Christians about religion and about politics at that time. It was as unrealistic on its side, as the inflated expectations of Muslims about the benefits that would accrue from the implementation of Sharia were on theirs.[7]

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[5] Documented extensively in Chapter 1, infra.

[6] I.N. Sada, "The Making of the Zamfara and Kano State Sharia Penal Codes", this work Vol. IV, 22-32 at 25.

[7] This paragraph and the next two are adapted from P. Ostien, "Ten Good Things about the Implementation of *Shari'a* in Some States of Northern Nigeria", *Swedish Missiological Themes*, 90 (2002), 163-74 at 172-73. The quoted phrases are from Nigerian newspapers and newsmagazines of late 1999 and early 2000. E.g., as to the motivations attributed to Governor Sani, see *The Guardian*, 7th January 2000, 48 ("derail the country's democratic system"); *The Guardian* 27th December 1999, 4 ("destabilise the Obasanjo administration and consolidate northern

Unrealistic thinking and rhetorical excess can kill, and in fact mayhem did ensue, in Kaduna State, long a locus of ethnic and religious violence – in Nigeria the two are not always easily distinguishable. Probably the majority of the people living in Kaduna State are Muslims, but no one really knows because no reliable census has asked the question since 1952.[8] In any case the Governor elected in 1999 was a Muslim, as were a majority of the members of the State House of Assembly. In December 1999, under the intense pressure resulting from the Gusau launching, the House appointed a committee to deliberate on the implementation of Sharia in the State, as Zamfara had done and as was being done elsewhere. Large demonstrations began almost at once in the state capital, Kaduna City: thousands of Muslims brought in to shout loudly that Sharia must be implemented; thousands of Christians brought in to shout equally loudly, "over our dead bodies". Despite the efforts of the authorities to keep the peace, clashes on 22 February, 2000 escalated into several days of fighting, killing and destruction in Kaduna City that spread also to other parts of the State and left hundreds, perhaps thousands, dead. When the bodies of Christians began to arrive in southern cities for burial, reprisals against Muslims there left many more dead. Sporadic outbreaks of fighting in Kaduna and elsewhere continued for several weeks afterwards before the crisis simmered down.

What happened afterwards in Kaduna State is much more typical of how Sharia implementation has also proceeded elsewhere. Outside the glare of the publicity that had attended their first deliberations, and relieved of the pressure of shouting mobs, Kaduna's politicians forged and legislated a compromise that seems to suit the situation well: a scheme of Sharia, Customary, and Civil Courts to administer the multiple systems of law that have long governed the ethnically and religiously diverse population of the State, and the devolution of limited powers on Local Government Councils to make, as bye-laws, according to the desires of their more homogeneous local populations, laws that would not be accepted throughout the state. Another political experiment in one of Nigeria's many laboratories of incipient democracy. Some predominantly Muslim Local Governments have acted on it by implementing pared-down versions of the more ambitious Sharia programmes being enacted elsewhere. As with the similar experiments underway throughout the North, how well it will work in the long run, and how satisfying it will be, will depend on the realism, the good faith, the civic-mindedness, and the hard work of officials high and low, and of ordinary citizens, all over the State.

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domination of the country"); *Tell* 15th November 1999, 15 ("Islamize Nigeria"). Predicting "religious war", "chaos" etc.: e.g. *Sunday Vanguard* 14th November 1999, 2. "Second *jihad*", "Nigerian Taliban", "Ayatollah Sani": *Guardian* 25th February 2000, 53; see also P. Marshall, *The Talibanization of Nigeria: Sharia Law and Religious Freedom* (Washington, D.C.: Freedom House, 2002). Calls for prayer and fasting: e.g. *Guardian* 15th November 1999, 4. Calls for a Sovereign National Conference: e.g. *Vanguard* 15th November 1999, 1 & 18 and for many months thereafter. A small selection of news stories about Sharia implementation, mostly from late 1999 and early 2000, is collected in Musa, *The Development of Zamfara State*, 107-44. It would be useful if someone would do for this episode of Nigeria's history what *The Great Debate* did for the making of the 1979 Constitution: collect, organise around themes, and publish a large selection of contemporaneous news and opinion. See W.I. Ofonagoro, A. Ojo, and A. Jinadu, eds., *The Great Debate: Nigerian Viewpoints on the Draft Constitution, 1976/1977* (Lagos: Daily Times Publications, 1977).

[8] See demographic data, xix infra.

3. Documenting Sharia implementation.

Sharia implementation in Northern Nigeria is a phenomenon crying out for systematic study and analysis by scholars in many fields, at many levels on the scale from empirical detail to theoretical abstraction. Up till now it has hardly gotten the attention it warrants. Nigerian scholarship has been hampered by the scarceness of the resources needed to approach so widespread and complex a phenomenon in any systematic way. Foreign scholarship – with some exceptions – has tended to rely on reports from the newspapers, which have been often conflicting, often very obviously biased or confused, and always frustratingly lacking in pertinent background and detail. I remember my own bafflement, as a quasi-foreign academic lawyer[9] specialized in the development of the laws and legal institutions of Northern Nigeria, trying to piece together from the Nigerian newspapers what the Governments of the Sharia States were actually doing – let alone why. The only solution was to get in the car and go there and find out. But as a quasi-Nigerian academic lawyer,[10] I had to face the question, where is the money coming from to undertake this investigation, across the vastness of Northern Nigeria?

Fortunately the money was provided. Two European foundations – the **Volkswagen Foundation** in Germany[11] and **Cordaid** in Holland[12] – have generously funded, first, a two-year programme of systematic information-gathering about Sharia implementation in all twelve Sharia States and elsewhere in Nigeria (2002-2004: Volkswagen); and, second, the updating, editing, and publication of the documents and other information gathered earlier (2005-2007: Cordaid).

The story of the grant from Volkswagen has been told elsewhere.[13] Suffice it to repeat here what the project accomplished in the way of information-gathering:

> The information-gathering aspect of the project, particularly in Nigeria, went very well. A "Nigeria Team" was constituted – including five Muslims, four Christians, and one "free-thinker."[14] Detailed lists of documents to be sought for, people to be interviewed, and questions to be asked, were prepared. Over thirty trips were then made, to all twelve Sharia states plus Adamawa, Benue, Enugu, Lagos, Nasarawa, Plateau, Taraba, and the Federal Capital Territory of Abuja. Interviews – of which detailed records were made – were conducted with state officials, religious leaders, and laypersons, men and women, Muslims and Christians. Thousands of pages of primary documents were collected, including the reports of several of the state Sharia Implementation Committees and Councils of Ulama on various aspects of Sharia implementation, all Sharia-related legislation enacted by the Houses of Assembly in all twelve Sharia States, many of

[9] US citizen, educated in the US, taught and practised law in the US.
[10] Born in Jos, taught in the Faculty of Law, University of Jos since 1991.
[11] See www.volkswagenstiftung.de/english.html.
[12] See www.cordaid.nl.
[13] P. Ostien, J.M. Nasir and F. Kogelmann, *Comparative Perspectives on* Shari'ah *in Nigeria* (Ibadan: Spectrum Books Limited, 2005), in the Introduction, ix-xli.
[14] "The members of the Nigeria team, besides two of the editors of this book, were Dr. Umar H.D. Danfulani, Dr. Musa Gaiya, Mr. Muhammad Daud Abubakar, Miss Rahmat Awal, Dr. J.D. Gwamna, Dr. Sati Fwatshak, Alhaji Muhammad al-Khamis Idris, and Hajiya Khadijah Abdullahi Umar. For their hard work and dedication to the project we extend our warmest thanks."

> the Sharia-related bye-laws enacted by Local Government Councils, materials relating to *hisbah* groups and to the collection and distribution of *zakat*, the decisions of the courts in several important cases,[15] crime statistics covering several years before and several years after Sharia implementation, and more. A great deal of secondary literature was also collected – writings by Nigerian Muslims and Christians on Sharia implementation as they understand its purposes and its effects. We are grateful to the hundreds of people throughout the North and elsewhere in Nigeria who took the time to talk with us at length, freely answered our many questions, and unstintingly gave us the documents we sought. Only rarely in our travels did we encounter any suspiciousness or reluctance to cooperate, and this was usually quickly overcome. Our only regret is that we have not yet found the time to prepare for publication the documents (many of them already hard to find in 2003) and other information we collected. The book containing them, tentatively to be entitled *Sharia Implementation in Northern Nigeria 1999-2003*, when it comes out, will be a valuable historical record of this phase of Nigeria's history and a resource for scholars for years to come.[16]

And so the book is now at last beginning to come out, thanks to Cordaid, which over the past two years has funded further extensive travel in the Sharia States in which more documents have been collected and more interviews conducted; the translation of a number of documents originally in Hausa and/or Arabic; the typing-up and editing of over a thousand pages of primary documentary material; a significant amount of basic scholarship, including the annotation of a number of the new Sharia statutes to show their relationships to prior law and to each other, some provision of historical context, analyses of how the law in the Sharia States has changed, and the collation, analysis, and writing-up of the non-documentary information that has been gathered; and now publication of the first fruits of all this effort. Cordaid works primarily in the areas of development cooperation and humanitarian aid. This has been an unusually "academic" project for them. But the underlying focus is consistent with Cordaid's own: "the worth of every human being and the solidarity to offer everyone a dignified existence, regardless of age, gender, sexual orientation, origin, religion or political conviction." Cordaid deserves all credit for funding what adds up to a sustained effort to take seriously, on its own terms, what Northern Nigeria's Muslims are doing to try to improve the conditions under which they live. Without this no mutual understanding, dialogue, or trust can ever be possible.

The title of the work has changed slightly from what was originally contemplated. The range of years covered has been extended to *1999-2006*, to reflect incorporation of the additional information gathered under the Cordaid project. And the subtitle, *A Sourcebook*, has been added, to convey the essentially documentary nature of the work. The scientific purpose is to establish a reliable platform, first of documentary sources, then to a lesser extent of other relatively unvarnished factual information, on the basis of which further study, analysis, and debate about Sharia implementation – what it is, what it is not, and what it is actually achieving – can proceed.

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15 "Including the decisions of all the courts that decided the two controversial *zina* cases of Safiya Hussaini and Amina Lawal."

16 Ostien, Nasir and Kogelmann, *Comparative Perspectives*, xxiv-xxv.

At the time of this writing only about two-thirds of the entire work (in numbers of pages) is ready for publication. But for a variety of reasons it has been thought best to go ahead and publish now what is ready now, the rest to follow sometime in 2008. What is published now are the following:

Volume I: comprising this Preface and Chapter 1: "Historical Background". Chapter 1 documents "the Settlement of 1960", by publication for the first time of (among other things) the Reports of the Panel of Jurists which had such a large role in the legal and institutional reforms of that day. It is in many ways against the Settlement of 1960 that Northern Nigeria's modern-day Sharia-implementers are reacting.

Volume II: comprising Chapter 2: "Sharia Implementation Committee Reports and Related White Papers". Published here are (1) the "Report of the Bauchi State Sharia Implementation Committee", appointed to advise the Governor on how Sharia could and should be implemented in Bauchi State (all including memoranda submitted to the Committee by citizens of the State); (2) a paper on "The Adoption and Implementation of Sharia Legal System in Zamfara State" by the person who was Zamfara's Attorney-General at the time; (3) The Kebbi State Government's "White Paper on the Report of the Committee on the Implementation of Sharia in Kebbi State"; and (4) the "Report of the Committee for the Implementation of Sharia in Kebbi State"; this Committee was responsible for carrying out the decisions laid down in the Kebbi State White Paper.

Vol. III: comprising Chapter 3: "Sanitizing Society". Published here are the new laws enacted by all Sharia States and by some Local Governments relating to corruption, liquor, gambling, sexual immoralities, other matters relating to women, unedifying media, and some other social vices. There is also a long essay analysing how the law in the Sharia States has changed on these subjects, and an essay on "Sharia Implementation and Female Muslims in Nigeria's Sharia States".

Vol. IV: comprising Chapters 4 and 5: "The Sharia Penal Codes" and "The Sharia Criminal Procedure Codes". The centre-pieces of these two chapters are the "Harmonised" Sharia Penal and Criminal Procedure Codes prepared by the Centre for Islamic Legal Studies, Ahmadu Bello University, Zaria, annotated section by section, to show variations between the Harmonised Codes and all the actually-enacted Sharia Penal and Criminal Procedure Codes of all the Sharia States on the one hand, and between the Harmonised Codes and the Northern Region's Penal and Criminal Procedure Codes of 1960 on the other. Other pertinent materials are included in these chapters as well.

Vol. V: comprising Chapter 6: "Two Famous Cases". The centre-pieces of this chapter are translations of the records of proceedings and judgments of all the courts that heard and decided the two famous *zina* cases of Safiyatu Hussaini and Amina Lawal. Also included are a "Bibliography of Islamic Authorities Cited", a "Glossary of Islamic Legal Terms Used", "Brief Biographies of the Judges", and an essay "On Defending Safiyatu Hussaini and Amina Lawal" by one of the principal lawyers involved in the cases.

What is to follow in 2008, in two or three more volumes, are chapters on:

"Court Reorganisation", publishing Zamfara State's Sharia Courts Law, annotated to show variations between it and the Sharia Courts Laws of the other Sharia States, on the one hand, and between it and the Area Courts Law which these laws displaced, on the other; this chapter will also include other statutes enacted by the Sharia States affecting the court systems and an essay analysing the changes that have been made and how they are being implemented in practice.

"Judges of the Sharia Courts", giving information about the alkalis and kadis serving in the Sharia Courts and Sharia Courts of Appeal, including how they are educated, the processes by which they were selected, their pay, and how they are performing.

"Hisbah and the Police", publishing the statutes of the new *hisbah* organisations and some of their regulations and reports, and including an essay presenting and analysing other information about them, their work, and their interactions with the police, the people, and, in the case of the Kano *hisbah*, the Federal Government.

"Crimes and Punishments", publishing official crime statistics gathered from ten Sharia and two non-Sharia States covering 1998-2005, and including essays on "Effects of Sharia Implementation on Crime Rates" and "A Study of the Pronouncement and Execution of *Hudud* and *Qisas* Punishments Since Sharia Implementation Began".

"Councils of Ulama and Related Bodies", publishing the statutes of the new Councils of Ulama, Sharia Commissions, etc., some of their regulations and reports, and including an essay on "The Bureaucratisation of the Ulama" analysing the new official roles of the *ulama*, how they are being performed, and their effects on the *ulama* themselves.

"Zakat and Endowments", publishing the statutes of the new *zakat* boards, which in some cases are also charged with the regulation of *awqaf*, some of their regulations and reports, and including an essay presenting and analysing other information about the new bodies and their work.

Some of these chapters are in advanced stages of preparation already. There will also be a concluding chapter, in the form of a summary essay, and at the end an index to the whole work, *in Allah ya yarda.*

4. Editing the documents.

A major part of this work has been the preparation for publication of official documents produced by the Sharia States. This has made a serious fault glaringly obvious to those of us who have done the work: the carelessness with which official documents are often produced and sent out into the world in all these States – and no doubt not only in them. The problem begins with the typists, and continues upward through the hierarchies of officials who should be responsible for correcting and perfecting the texts but who because of inability or indifference or haste do not do so. The result is an abundance of mistakes and an anarchy of irrelevant and distracting variations. For instance one often finds the same word spelled three or four different ways on the same page: an extreme case is the series *sharia*, *shari'a*, *shari'a, shariah*, *shari'ah*, *shari'ah*, any of which might or might not at random be capitalised or italicised or bolded. The problem runs from

spelling, pluralisation, capitalisation and punctuation through to highly inconsistent formatting and to more serious errors such as the omission in enacted statutes as published in official gazettes of whole sections or subsections and the confusion of the entire text as a result. If, based on this work, there were one main recommendation we would make to the Governments of the Sharia States, it would be this: take more care and pride in the preparation and presentation of your official texts, especially your laws. They are after all your most solemn acts, which many must study and act on. A place to begin would be proper training for the typists and other staff of the legal drafting departments. But there is no substitute for enforcement from the top of higher standards.

One decision made early was to retype rather than to scan the documents we proposed to publish: this would permit compression into fewer pages of texts often double-spaced and printed in large fonts in the originals. This immediately raised the question what to do about all the problems in our texts. After some hesitation, we finally decided discreetly to correct most mistakes and to impose a large measure of uniformity on spellings, grammar, and formatting. For instance we have used 'Sharia' throughout, capitalised but unitalicised, in place of all the forms of this word found in our texts. Other spellings have also been standardised. Words from Arabic or Hausa have been italicised or not depending on our estimate of the extent of reception of particular words into Nigerian English. Capitalisation – used a bit more liberally in Nigeria than in some other parts of the world, has again been standardised. All of this takes away from the texts, as they appear in this work, some of their local flavour; but this loss is more than made up for by the elimination of a thousand irrelevant distractions and confusions, and the local flavour remains perceptible. The reader may not agree with every choice we have made, but at least we have tried to be consistent and unconfusing. Problems in statutes, such as missing sections, have in some cases been solved by comparative analysis or by consultation with the appropriate authorities; we are happy to think that we have contributed in some cases to the improvement of these texts. Where we have been unable to resolve difficulties we have so indicated in the appropriate places, giving what the original text has and our best guess, if any, as to what was intended.

Large parts of Chapters 2 and 6 are translations of documents originally written in Hausa with intersprinklings of Arabic. In Chapter 2 these are letters and memoranda submitted to the Bauchi State Sharia Implementation Committee in response to its calls for input from the general public, plus transcripts of certain proceedings in which the Committee or its members took part. In Chapter 6 they are the records of proceedings and judgments in the Safiyatu Hussaini and Amina Lawal cases. Most of the work of translation of the two *zina* cases was done by Barr. Aliyu Musa Yawuri, one of the lawyers involved in them; all other translations were done by Sama'ila A. Mohammed and Ahmed S. Garba, research assistants on the Cordaid project. All the translations were gone over by the editor in consultation with the translators, line by line, in an attempt to produce texts that make sense and read well in English, while remaining faithful to the sense in Hausa. The proceedings and judgments in the two *zina* cases presented particular problems that are discussed further in the introduction to Chapter 6.

All the original documents we have worked with are to be kept in an archive in the Documents Section of the University of Jos Library, where they will be available for inspection and copying by interested scholars.

5. Acknowledgements.

The indispensable support of the Volkswagen Foundation and of Cordaid have already been acknowledged, as have the contributions of those who helped to make the Volkswagen project such a success – the Nigeria Team and the many people all over the North who gave us the documents and other information we sought – without which this work would never even have gotten started.

Many of those same people helped us again during our return visits to their States in 2005-2007. Let us name just a few to whom we are especially grateful for the time they took and the generous assistance they gave.[17] In **Bauchi**, Hon. Abdullahi Y. Marafa (*Marafan* Bauchi), Grand Kadi of the Sharia Court of Appeal, Hon. Habibu Idris Shall, formerly the Solicitor-General of Bauchi State and now a Justice of the High Court, Barr. Hamidu Kunaza, Director of Public Prosecutions and for a period Ag. Solicitor-General., and Barr. Zubair Mohammed Hanbal of the Legal Aid Council. In **Birnin Kebbi**, Hon. Justice Tukur Sani Argungu, Kadi of the Sharia Court of Appeal, and Dr. Sulaiman Aliyu, Solicitor-General. In **Damaturu**, Alhaji Hassan Gana, in 2002/03 the Executive Secretary of the Religious Affairs Board, and Hon. Baba Sale Gujba, Chief Judge of the High Court. In **Dutse**, Alhaji Haruna Hashim Gumel, Chief Registrar of the Sharia Court of Appeal, and Malam Aminu Zakari, Coordinator of the Security, Justice and Growth Programme. In **Gombe**, Barr. Balarabe Paloma, Solicitor-General, and Inuwa Gombe Muhammad, Deputy Chief Registrar of the Sharia Court of Appeal. In **Gusau**, Mrs. Bilkisu Bello Aliyu, formerly the Solicitor-General, now a Justice of the Court of Appeal, Barr. Sani Nasarawa, Director of Legal Drafting in the Ministry of Justice, and Dr. Atiku Balarabe Zawiyya, Chairman of the Public Complaints Commission. In **Kaduna**, Hajiya Aisha Muhammed, Director of Social Welfare in the Ministry of Women Affairs, Abdurahamman Umar, Chief Registrar of the Sharia Court of Appeal, and Barr. G.B. Kore, Director of Public Prosecutions. In **Kano**, Sheikh Ibrahim Umar Kabo, Chairman of the Sharia Commission, the late Sheikh Jafar Mahmud, and Barr. Jamilu Shehu, Director of Legal Drafting in the House of Assembly. In **Katsina**, Hon. Sadiq Abdullahi Mahuta, Chief Judge of the High Court, Hon. Isa M. Dodo, Grand Kadi of the Sharia Court of Appeal, and Barr. Ibrahim Sabi'u Jibiya, Secretary of the Sharia Commission. In **Maiduguri**, Alhaji Abubakar Imam, Chief Registrar of the Sharia Court of Appeal, Adamu Z. Mussa, Esq. of Mussawa Chambers, and Barr. U.D. Digaji, Director of Legal Drafting in the House of Assembly. In **Minna**, Alhaji Abbas Bello, Solicitor-General, Alhaji Musa Isa Lapai, Secretary of the Sharia Commission, and Barr. Adamu Umar. In **Sokoto**, Hon. Muhammad Bello Silame, Ag. Grand Kadi of the Sharia Court of Appeal (now retired), Barr. Buhari Ahmad, Director of Public Prosecutions, and Barr. Peter Muka of the Nigeria Police, at the time he worked with us the OC Legal/Prosecutions in Sokoto. And last but by no means least, in **Zaria**, Dr. Ibrahim Na'iya Sada, from 2002-2006 the Director of the Centre for Islamic Legal Studies at Ahmadu Bello University. The lawyers have a maxim: *expressio unius est exclusio alterius*. This does not apply here. To the persons named and to so many others go our heartfelt thanks.

[17] All offices attributed are as at the times we visited and were assisted by these people.

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And the last word of course goes to my dear wife Vickie, the *Sarauniya* of Road 8, who never vexed when she called me to eat and I didn't come.

Philip Ostien
Jos, July 2007

Some Demographic Data: Nigeria's Sharia States

The following table shows, in Column 2, the populations of the twelve Sharia States according to Nigeria's 2006 census. Unfortunately information about religious affiliation was not gathered in the census; in fact the last officially accepted census in which such information was gathered was taken in 1952, when the figures were given by then-province. Percentages of Muslims according to the 1952 census are shown in Column 3. These percentages are probably in most cases too high as applied to the present day. The only other estimates of percentages of Muslims by State that we are aware of are ones made by the World Christian Database in 2002; these percentages, shown in Column 5, are probably in most cases too low. Assuming the truth lies somewhere in between, but having no basis for knowing where, we have simply averaged the 1952 census and 2002 WCD percentages (Column 7) and multiplied the averages times the current populations to get our best guesses of the numbers of Muslims in the Sharia States today (Column 8). Other columns of the table are self-explanatory. Footnotes are on the following page.

1	2	3	4	5	6	7	8	9	10	11	12	13
State	Population per 2006 census[1]	% Muslims per 1952 census[2]	Est. total Muslims using 1952 % (2 * 3)	% Muslims per WCD est. 2002[3]	Est. total Muslims using WCD % (2 * 5)	Average of 1952 and 2002 est. % Muslims ((3+5)/2)	Est. total Muslims using average % (2*7)	% children under 15 yrs.[4]	Est. total Muslim children under 15 (8 * 9)	% female[5]	Est. total female Muslims (8 * 11)	Est. total Muslim girls under 15 (10 * 11)
Kano	9,383,682	98%	9,196,008	69%	6,474,741	84%	7,835,374	44%	3,447,565	49.5%	3,878,510	1,706,545
Jigawa	4,348,649		4,261,676	70%	3,044,054	84%	3,652,865		1,607,261		1,808,168	795,594
Katsina	5,792,578	95%	5,502,949	74%	4,286,508	85%	4,894,728		2,153,681		2,422,891	1,066,072
Sokoto	3,696,999	94%	3,475,179	74%	2,735,779	84%	3,105,479		1,366,411		1,537,212	676,373
Zamfara	3,259,846		3,064,255	74%	2,412,286	84%	2,738,271		1,204,839		1,355,444	596,395
Kebbi	3,238,628		3,044,310	73%	2,364,198	84%	2,704,254		1,189,872		1,338,606	588,987
Borno	4,151,193	84%	3,487,002	49%	2,034,085	67%	2,760,543		1,214,639		1,366,469	601,246
Yobe	2,321,591		1,950,136	49%	1,137,580	67%	1,543,858		679,298		764,210	336,252
Bauchi	4,676,465	74%	3,460,584	61%	2,852,644	68%	3,156,614		1,388,910		1,562,524	687,511
Gombe	2,353,879		1,741,870	49%	1,153,401	62%	1,447,636		636,960		716,580	315,295
Kaduna	6,066,562	61%	3,700,603	51%	3,093,947	56%	3,397,275		1,494,801		1,681,651	739,926
Niger	3,950,249	44%	1,738,110	52%	2,054,129	48%	1,896,120		834,293		938,579	412,975
Totals	**53,240,321**		**44,622,682**		**33,643,352**		**39,133,017**		**17,218,530**		**19,370,844**	**8,523,171**

Notes to the demographic data:

1. http://en.wikipedia.org/wiki/Demographics_of_Nigeria, citing the preliminary results of the 2006 Nigerian census, accessed 28 June 2007.
2. J. Paden, *Religion and Political Culture in Kano* (Berkeley: University Press, 1973), 44, summarizing data from the 1952 census, given by then-province; some of the provinces have subsequently been divided into separate states as indicated in the table.
3. World Christian Database (WCD), http://www.worldchristiandatabase.org/, with details by Nigerian state, estimated as of 2002, kindly supplied in April 2006 by Dr. Todd Johnson of the Center for the Study of Global Christianity at Gordon-Conwell Theological Seminary. WCD's procedure appears to be to estimate the number of Christians by state based on data supplied to it by Christian organisations; to compute from the estimated numbers of Christians, estimated percentages of Christians, based on population figures obtained from other sources; to estimate the percentage of adherents to "ethnoreligion & other" – i.e. non-Christians/non-Muslims – put at a uniform 11% for all Nigerian states in the data we received; and then to compute the percentage of Muslims as the remainder. There are obviously many pitfalls here, but for many reasons it is not easy to do better. In this table we have shown WCD's estimated percentages of Muslims by Sharia State except in one case: WCD's estimated percentage of Muslims for Bauchi State is given as 31%. This is clearly in error; we have changed the number to 61% which is probably still too low but is closer to the truth.
4. http://en.wikipedia.org/wiki/Demographics_of_Nigeria. The percentage is for all of Nigeria, undifferentiated by state or region.
5. Ibid. Again the percentage is for all of Nigeria, undifferentiated by state or region.

CHAPTER 1
HISTORICAL BACKGROUND

I.
Introduction to Chapter 1:
The Settlement of 1960 and Why It Still Matters Today

Philip Ostien and Sati Fwatshak

1. The Settlement of 1960.

"The Settlement of 1960" – agreed to by Northern Nigeria's Muslims and implemented in a spate of legislative enactments in the run-up to Independence – was one of the pivotal events in the history of the application of Islamic law in Nigeria. Before 1960 Islamic law, including Islamic criminal law – although affected in various ways by sixty years of colonial rule[1] – was still "more widely, and in some respects more rigidly, applied in Northern Nigeria than anywhere else outside Arabia".[2] In 1960 Islamic criminal law was abrogated and from then the application of Islamic civil law in the North, as in most of the rest of the Muslim world at the time, was increasingly limited to the law of personal status and family relations. Before 1960 the Northern courts in which Islamic law was administered still approximated to the *qadi*s courts of classical Islam – in the ways the judges were trained, in the procedures they followed, in the books they turned to to find the law, even in their subservience to the local emirs, who also had judicial functions. After 1960 the courts and their judges became ever less traditionally Muslim and more "Western", and the judicial powers of the emirs were first curtailed and then eliminated completely. The Settlement of 1960 brought these changes about or set them in motion. The programme of "implementation of Sharia" begun in 1999 in twelve Northern states, which it is the main purpose of this book to document, is in large part a reaction against the Settlement of 1960, and an attempt to restore, as far as possible, the *status quo ante*.

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[1] Studies of the effects of colonial rule on the application of Islamic law in Northern Nigeria include C.N. Ubah, "Islamic Legal System and the Westernization Process in the Nigerian Emirates", *Journal of Legal Pluralism*, 20 (1982), 69-93; J.M. Abun-Nasr, "The Recognition of Islamic Law in Nigeria as Customary Law: Its Justification and Consequences", in J.M. Abun-Nasr et al., eds., *Law, Society, and National Identity in Africa* (Hamburg: Helmut Buske Verlag, 1990), 31-44; A.H. Yadudu, "Colonialism and the Transformation of Islamic Law in the Northern States of Nigeria", *Journal of Legal Pluralism*, 32 (1992), 103-139; S. Kumo, "Sharia Under Colonialism – Northern Nigeria", in N. Alkali et al., eds., *Islam in Africa: Proceedings of the Islam in Africa Conference* (Ibadan: Spectrum Books Ltd., 1993), 1-22; M.S. Umar, *Islam and Colonialism: Intellectual Responses of Muslims of Northern Nigeria to British Colonial Rule* (Leiden and Boston: Brill, 2006), 40-55 and 185-208.

[2] J.N.D. Anderson, *Islamic Law in Africa* (London: Frank Cass and Co. Ltd., 1955), 219.

2. What this chapter comprises.

The need for reform of the legal and judicial systems in the North seems already to have been recognised, at the highest levels of the Regional Government, by 1957. The process by which the details of the Settlement of 1960 were then worked out, and Northern Muslims were persuaded to accept them, included sending delegations of Northerners to Libya, Pakistan, and Sudan to investigate the legal systems there (early 1958); commissioning an international Panel of Jurists to come to Northern Nigeria to study the legal and judicial systems in place here and to recommend changes (August-September 1958); and then, when the Panel of Jurists' recommendations were accepted by the Northern House of Assembly and House of Chiefs (December 1958), the extended negotiation of the details of the implementing legislation, most particularly the new Penal and Criminal Procedure Codes, with the North's leading *ulama* (1959-60). At the invitation of the Government of Northern Nigeria the Panel of Jurists returned in 1962 to review implementation of their earlier recommendations and to suggest further adjustments. In this chapter we publish, for the first time anywhere:

- the 1958 "Report of the Panel of Jurists";
- the memoranda on progress and problems with implementation of the Panel's 1958 recommendations, written by leading figures in the North's legal establishment, which were submitted to the Panel of Jurists on their return visit in 1962, along with the minutes of the interactive sessions the Panel held with Northern rulers and judges in Sokoto, Kano, Maiduguri, Makurdi and Ilorin; and
- the 1962 "Report of the Panel of Jurists: Second Session", which reviewed progress and made recommendations for further adjustments.

We also include in this chapter two documents that have previously been published but which can now be read again in fuller context:

- the 1958 White Paper on the first report of the Panel of Jurists, "Statement by the Government of the Northern Region of Nigeria on the Reorganisation of the Legal and Judicial Systems of the Northern Region", and
- the 1962 White Paper on the second report of the Panel of Jurists, "Statement made by the Government of Northern Nigeria on Additional Adjustments to the Legal and Judicial Systems of Northern Nigeria".

Finally, in order to give some further context to the documents published here, we have put together

- a brief "Who was Who" in the Settlement of 1960,

which immediately follows this introduction.

3. Why include these materials in this book?

The reader may justifiably wonder why, in a book documenting events of 1999-2005, we have included documents from 1958-62. Let us try to explain.

a. Early opinion about the Settlement of 1960. Today, Muslim opinion is largely against the Settlement of 1960, while Christian opinion is all for it. But this was not always the position. In the run-up to independence it was among Nigeria's Christians

that opposition to the Settlement of 1960 was most vocal. The North's Muslims, by contrast, seem to have been, let us say, reluctantly acquiescent and cautiously hopeful.

Their leader, Ahmadu Bello, the *Sardauna* of Sokoto and Premier of the Northern Region, persuaded Muslims that the concessions they would make – including the abrogation of Islamic criminal law – were necessary to the progress of the North in the dawning era of Northern self-government (effective 15 March, 1959) and Nigerian independence (1 October, 1960).[3] For what they conceded, the Muslims gained important perquisites in return: these included a prestigious new Sharia Court of Appeal for the Northern Region, formally on a par with the Regional High Court, whose judgments on matters within its jurisdiction were final and unappealable to any other court; and a seat for the judges of the Sharia Court of Appeal on the Native Courts Appellate Division of the High Court, giving them a voice in the development of all aspects of the law of the Northern Region.[4] Perhaps most importantly, as has already been noted, at every stage of the discussions the North's *ulama* were closely consulted, "in order that they might be satisfied that there was nothing in the [new legislation, particularly the new Penal and Criminal Procedure Codes] which was contrary to the Moslem religion and therefore unacceptable to the people of that faith."[5] A huge effort – detailed in Part V of this chapter – then went into making the new arrangements work properly; and for a time, it seems, they actually did.

Christian opposition was not widespread. The *Sardauna*'s party, the Northern People's Congress (NPC), included Christians, one of whom was on the Panel of Jurists;[6] judging from the records of the 1958-60 debates the NPC members of the Northern legislative houses seem all to have supported the Settlement of 1960. But Christian opposition existed and had its effects. Mr. J.S. Olawoyin, the leader in the Northern House of Assembly of the opposition Action Group, speaking on the occasion of the second reading of the bill for the new Penal Code Law, said the bill, and the consultations with Northern *ulama* that had led to it, showed "that serious attempts

[3] See e.g. the *Sardauna*'s speech to the Northern House of Assembly moving that "this House accepts the Government's proposals contained in the Sessional Paper on the Reorganisation of the Legal and Judicial Systems of the Northern Region", Debates of the House of Assembly (Second Legislature) Second Session, Third Meeting, 10th to 13th December, 1958, columns 937-941. This speech is reprinted in S.I. Nchi and S.A. Mohammed, eds., *Alhaji Sir Ahmadu Bello, Sardauna of Sokoto: His Thoughts and Vision in His Own Words* (Makurdi: Oracle Pub. Co. Ltd. 1999), 188-192. The Sessional or White Paper in question is reprinted as Part IV of this chapter.

[4] The perquisites gained by the Muslims in the Settlement of 1960 are discussed in greater detail in P. Ostien, "An Opportunity Missed by Nigeria's Christians: the Sharia Debate of 1976-78 Revisited", in B.F. Soares, ed., *Muslim-Christian Encounters in Africa* (Leiden and Boston: Brill, 2006), 221-55 at 229-31.

[5] The Attorney-General, speaking to the Northern House of Assembly on the second reading of the Bill for the Penal Code Law, Debates of the House of Assembly (Second Legislature) Third Session, 12th to 19th August, 1959, column 484.

[6] Peter Achimugu, who was also a member of the delegations of Northerners sent to investigate the legal systems of Sudan, Libya and Pakistan in early 1958. J.N.D. Anderson, one of the foreign members of the Panel of Jurists, was also a Christian.

are being made to Islamise the whole of the Northern Region"[7] – a refrain heard from Nigeria's Christians on many subsequent occasions as well. Mr. Olawoyin, represented by Chief Rotimi Williams of Nigeria's Western Region, was later the lead applicant in a lawsuit that temporarily derailed the Native Courts Appellate Division of the Northern High Court, by ousting the judges of the Sharia Court of Appeal from it.[8] Nigerian opponents of the Settlement of 1960 found a British ally in Mr. Justin Price, a judicial magistrate in the North, who

> published an article in the *Nigerian Citizen* attacking the Penal Code Bill as a vehicle for the imposition of Muslim law upon Northern Nigerians by the back door. He went on to assert that the Criminal Procedure Code Bill was an instrument designed to introduce trial by inquisition. Price's intervention was seen [in the North] as instigated by lawyers in the Eastern and Western Regions. The [southern] Nigerian press covered the story with the inflammatory headline, 'Where Justin is, then Justice shall be done'![9]

Price's attacks, also published in *Modern Law Review*,[10] came just at a time when the North needed support in the National Assembly from MPs from the Eastern and Western Regions, to repair legislatively the damage done by Olawoyin's lawsuit; Price's contentions were viewed as potentially damaging enough to call for responses both by the *Sardauna* himself, in the Lagos press, and by J.N.D. Anderson in *Modern Law Review*.[11] These efforts, and some political horse-trading, were eventually successful: by mid-1962 the damage had been repaired, the controversy had died down, the judges of the Sharia Court of Appeal had resumed sitting with the Native Courts Appellate Division of the Northern High Court; and the Settlement of 1960 then continued in effect until 1979.[12]

b. Christian fears quickly dispelled. Readers of this chapter will see for themselves that the fears of some Christians about the new Penal and Criminal Procedure Codes, and perhaps about other elements of the Settlement of 1960 as well, were quickly

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[7] Debates of the House of Assembly (Second Legislature) Third Session, 12th to 19th August, 1959, column 501.

[8] *J.S. Olawoyin & Six Others. v. Commissioner of Police* (1961) (Supreme Court of Nigeria) 1 All N.L.R. (Part 2) 203.

[9] S.S. Richardson, *No Weariness: The Memoir of a Generalist in Public Service in Four Continents 1919 – 2000* (Wylye, Wiltshire: Malt House Publishing, 2001), 223.

[10] J. Price, "Retrograde Legislation in Northern Nigeria?", *Modern Law Review*, 24 (1961), 604-11.

[11] A. Bello, "Reply to Mr Justin Price's Attack on the Legal Reforms in Northern Nigeria", *Lagos Magazine*, 28 October 1961, reprinted in Nchi and Mohammed, *Alhaji Sir Ahmadu Bello*, 193-99; J.N.D. Anderson, "A Major Advance", *Modern Law Review* 24 (1961), 616-25. The same issue of *Modern Law Review* also contains a response to Price by O. Odumosu, "The Northern Nigerian Codes", pp. 612-615, and Price's reply to Odumosu and Anderson, pp. 821-24.

[12] Price's articles, Olawoyin's lawsuit, and the Northern efforts to overcome the problems they caused, are discussed in the Memorandum of the Attorney-General reprinted in Part V of this chapter, ¶¶ 8 and 28. See also J.P. Mackintosh, "Federalism in Nigeria", *Political Studies*, 10 (1962), 223-47 at 228 n. 1: "A Bill to remedy [the problem created by Olawoyin's lawsuit] was defeated in the [federal] Senate [in December 1961]… It was, however, passed in the next session after Northern Senators had made some concessions on Bills which interested other Regions." Our thanks to R.T. Suberu for bringing this passage to our attention.

dispelled. The documents printed in Parts V and VI below show that already by mid-1962 the new arrangements had found wide acceptance all over the North by all elements of the population, Muslim and non-Muslim alike. In 1966 a British judge of the Northern High Court, after surveying developments related to the Criminal Procedure Code, concluded that:

> Mr. Price and others who shared his doubts, will be glad to know, that this Code does not furnish "a most efficient instrument of oppression," but is rather a Code, which, in spite of or perhaps even because of its not being an exact copy of English criminal procedure, is looked upon as their own by Northern Nigerians and which on the whole is administered with some pride and with increasing impartiality and efficiency.[13]

c. Muslim opinion changes. It took much longer for Muslim opinion, at first acquiescent, to swing against the Settlement of 1960. How long it took may be debated, but certainly by the mid-1970s it had fairly started; by the mid-1980s the idea that Muslim consent to the Settlement of 1960 had been a terrible mistake which ought if possible to be corrected was wide-spread and firmly entrenched in the North.

No doubt many factors contributed to this. Part of it was the reaction among Muslims throughout the world against "liberalism", corrupt capitalism, and Western imperialism or "world arrogance". In Nigeria, as elsewhere,

> widespread enthusiasm [grew up] for reviving Islamic law to replace the laws and legal institutions borrowed from the West since the onset of its powerful influence in the nineteenth century. Many Muslims see this revival as a form of political resistance to imperialism. Demands for the Islamisation of law dovetail with the currents of cultural nationalism that have condemned the Western influences on dress, music, education, the family, and other aspects of life. Campaigns have been launched in the Muslim world to effectuate an "Islamisation of modernity," which entails subjecting institutions borrowed from the West to Islamic critiques and reforming them along Islamic lines.[14]

The actual realisation of these ideas in Iran and to a lesser extent in Pakistan and Sudan inspired many Nigerian Muslims. But two specifically Nigerian factors also had powerful effects. One was the wreck made of the Settlement of 1960 in the constitution-making process of 1976-78, in which Nigeria's Muslims not only suffered a humiliating defeat at the hands of Christians in the battle over the Federal Sharia Court of Appeal, but also, in the resulting 1979 Constitution, lost every one of the perquisites that had made the Settlement of 1960 palatable to them in the first place.[15] The other was the progressively

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[13] T.H. Williams, "The Criminal Procedure Code of Northern Nigeria: The First Five Years", *Modern Law Review*, 29 (1966), 258-272 at 272.

[14] A.E. Mayer, "Current Muslim Thinking on Human Rights", in A.A. An-Na'im and F.M. Deng, eds., *Human Rights in Africa: Cross-Cultural Perspectives* (Washington, D.C.: Brookings Institution, 1990), 133-56 at 133. See also J. Hunwick, "An African Case Study of Political Islam: Nigeria", in C.E. Butterworth and I.W. Zartman, eds., *Political Islam* (*Annals of the American Academy of Political and Social Science*, 524 (1992)), 143-55.

[15] This "debacle of 1979" is discussed in detail in Ostien, "An Opportunity Missed", 238-43.

worsening failure of the Nigerian state: what had begun in hope for the new nation in 1960 had quickly deteriorated into political turmoil, the imposition of military rule, and civil war, and was ending in collapsing institutions and infrastructure, high levels of poverty and personal insecurity everywhere, and pervasive official corruption. Disappointment and resentment fed into the reinterpretation of Northern colonial history, by a new generation of Muslim scholars, as one long campaign by the British to "weaken", "paralyse", and finally to abrogate Islamic law.[16] The new Penal and Criminal Procedure Codes, with other elements of the Settlement of 1960, came to be seen as ill-motivated and unjustified impositions forced on an unwilling or deluded *Sardauna* by the undue influence of the British.[17] The failure of the Nigerian state was interpreted directly as a failure of the inferior and obviously defective laws and legal institutions left in place by the British.

> In Nigeria the abrogation of Islamic criminal law and the mischief of 'Repugnancy Clause' have played havoc with the law and order situation.[18]

> The Nigerian society now suffers from the application of a law and social and economic order that have failed in their homeland. The ascendancy of crime in Nigeria, the injustice, the economic exploitation and the corruption that now eats deep into the fabric of our society are the result of our slavish application of English law and English social and political and economic system. It is only the ignorant that will fail to realise this simple fact.[19]

> Obvious reasons make it necessary to turn to the Shari'ah as an effective means of reforming society, creating a disciplined people and combating the rising tide of crimes in the country. The first reason is that the secular Western means so far used in preference to the Shari'ah have undoubtedly failed.[20]

> [B]ecause certain Muslim leaders in the past had inflicted damage on the Shari'ah, [is no reason why] other Muslims should never attempt to rectify that

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[16] E.g. A.B. Mahmud, *A Brief History of Shari'ah in the Defunct Northern Nigeria* (Jos: Jos University Press, 1988), *passim*.

[17] To quote one prominent scholar: the British used "ingenious devices" and "smokescreens" to oust the application of Islamic criminal law and "smuggled" new doctrines "rather surreptitiously" into its civil side; their "ostensible" purposes covered up an "undisclosed" objective to transform the pre-existing regime; what they did "was not entirely in good faith"; up to today they still tame and subjugate Islamic law "by remote control" through the entrenched legal institutions they set up before they left. Yadudu, "Colonialism and the Transformation of Islamic Law", 114-16, 131, 124, 128, 118. See also M.A. Ajetunmobi, "Reorganisation of Legal System in Northern Nigeria – Appraisal of 1958 Recommendations", *Islamic and Comparative Law Quarterly*, 10 (1990), 96. Continuing discussion of these themes is illustrated by D. Ahmed, "The Sardauna Was Deceived", *Weekly Trust* for 15-21 September 2001.

[18] S.K. Rashid, "On the Teaching of Islamic Law in Nigeria", in S.K. Rashid, ed., *Islamic Law in Nigeria: Application and Teaching* (Sokoto: University of Sokoto Press, 1988), 88-104 at 90.

[19] I.K.R. Sulaiman, "The Sharia and the 1979 Constitution", in Rashid, ed., *Islamic Law in Nigeria*, 52-74 at 68.

[20] M. Tabi'u, "Controlling the Crime Rate in Nigeria: The Relevance of Shari'ah", in S.K. Rashid, ed., *Shari'a, Social Change & Indiscipline in Nigeria* (Sokoto: University of Sokoto Press, 1987), 183-91 at 187.

> damage. The proposition is itself absurd and lacking in any sense whatever. For the most sensible course of action available to Muslims in a situation like this is to try and correct the damage caused by their brothers…and not to let it continue.[21]

These ideas, still very much alive today, contributed directly, in 1999-2000, to the abrogation of the Settlement of 1960 in twelve Northern states and to the programme of re-implementation of Sharia which it is the main purpose of book to document.

d. Why this chapter? Let us return, then, to the question why, in a book documenting events of 1999-2005, we have included in this chapter documents from 1958-1962.

The rejectionist Muslim view of the Settlement of 1960 rests on a cluster of claims about matters of historical and causal fact – about things that did or did not happen at definite times in the past, and about how and why they did or did not happen. How accurate are these claims? Or, for that matter, how accurate are their contraries?

Answer: nobody really knows. To speak just of the Settlement of 1960: No one has ever documented and studied the development of the *Sardauna*'s thinking on the cluster of problems it addressed; the thinking of the members of his inner circle; the options available to them; the various pressures put on them; or their calculations of the gains and losses to the Northern Region, to its Muslims, or to Islam, that would result from the pursuit of one option or another. The ideas and actions of the British colonial officials who were involved, and of the leaders of the then-Eastern and Western Regions, all equally important to understanding the Settlement of 1960, are equally obscure. The reports of the delegations sent to Libya, Pakistan, and Sudan, although circulated at the time in the North, have never been published and are essentially unavailable to researchers today. The same – up to now – is true of the reports and recommendations of the Panel of Jurists and of the records of their interactions with Northern leaders. The same is true of the records relating to the drafting of the new Penal and Criminal Procedure Codes, including the details of the negotiations between the drafters and the *ulama*. Whatever information still exists about the attitudes and opinions of the wider Muslim community of the time is scattered far and wide in documents written in at least three languages, now resting in dusty archives, private collections, the crumbling pages of old newspapers, the memoirs of public officials and private persons, published or unpublished, hardly known to us today.

In short, today all of us are almost totally in the dark about this vital and controversial event in Nigeria's history – about what actually happened and how and why – because almost all the information needed to form well-founded opinions is missing. Result: all present opinions necessarily derive primarily from ideological presuppositions, not from knowledge of the facts. All therefore are equally simplistic and unsupported; debates about them go nowhere; nothing is ever resolved; and conflict continues.

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[21] I. Sulaiman, "Victor Takes All: The Shari'ah in Secular Nigeria", in Rashid, ed., *Shari'a, Social Change & Indiscipline in Nigeria*, 55-64 at 56.

And so this chapter, whose purpose is to begin to remedy our ignorance about the Settlement of 1960, just as the wider purpose of the book is to begin to remedy ignorance about the programme of Sharia implementation begun in 1999-2000. The documents published in this chapter, most of them for the first time, add materially to our knowledge of the circumstances surrounding the Settlement of 1960; they will also, therefore, help to inform the debate about the current Sharia implementation programme, intimately related as it is to the Settlement of 1960. Beyond such immediate concerns, the documents will also be found to be of much wider and more permanent interest, touching as they do on many aspects of the past that scholars and historians will find significant in ways impossible now to predict.

But of course the beginning made in this chapter is a small one, so let us end this introduction with a plea for more scholars and more scholarship in this fascinating field of Nigerian legal history. This and every other chapter of this work throw up questions to which we do not have answers; there are topics here for a thousand PG theses. Only patient investigation and analysis, using all the tools of historical and legal scholarship, can produce the deeper and more nuanced understanding of the Nigerian past so essential to resolution of contentious issues in the present. The fields are ready for harvest, but the labourers are few.

Chapter 1 Part II

The Settlement of 1960: Who was Who

Compiled by Sati Fwatshak and Philip Ostien

Section **a** gives lists of people who held various positions in the Government of Northern Nigeria in the years 1958-62, and of those who served on various committees related to the Settlement of 1960. Section **b** gives brief biographies of the people whose names in section **a** have asterisks beside them. Section **c** gives bibliographical information about the published sources listed in shorthand in section **b**. Besides those published sources we have relied as indicted in section **b** on information supplied by various individuals, to all of whom we are grateful for their kind cooperation. The reader will see that we have not always been able to get very complete information about the persons whose brief biographies we have attempted. As with so many other matters touched on in this book, we can only hope that other scholars will find it worthwhile to come and do a better work than we have managed here. We note that two other authors have also found it useful to include biographical information about various Northern leaders in their works: consult the entries on Paden and Whitaker in section **c**.

a. Who held what positions

1. The Governor:

Sir Gawain Westray Bell* served as Governor of the Northern Region beginning in 1957. He was asked by Government to stay on in this position for some time after Independence, finally retiring in mid-1962, when he was replaced by Sir Kashim Ibrahim*.

2. The Premier:

Alhaji Sir Ahmadu Bello, *Sardauna* of Sokoto*, was elected president of the Northern People's Congress (NPC) in April 1954 and, following general elections later that year, became Premier of Northern Region, a position he still held when he was assassinated in the coup of 15 January 1966.

3. The Executive Council:

(Designations as in the sources cited, omitting "The Honourable"):

1958[22]	**1962**[23]
Ministers with portfolio	
Agriculture: Mustafa Monguno	Agriculture: Alhaji Mustapha Munguno
Animal Health and Forestry, and Northern Cameroons Affairs: Abdullahi Danburam Jada	Animal and Forest Resources: Malam Mu'azu Lamido
	Attorney-General: Hedley H. Marshall*

[22] Source: Northern Regional Legislature: House of Chiefs Debates, Official Report (Second Legislature) Second Session, Third Meeting, covering 17th to 18th December, 1958 (Kaduna: Government Printer, 1958), x.

[23] Source: Northern Regional Legislature: Parliamentary Debates (Hansard): House of Assembly, Official Report (Third Legislature) First Session covering 14th to 26th March 1962 (Kaduna: Government Printer, 1962), vi.

1958	1962
Attorney-General: Hedley H. Marshall*	Economic Planning: Alhaji Muhammadu Bashar, *Wamba* of Daura
Education: Isa Kaita, *Madawaki* of Katsina*	Education: Alhaji Isa Kaita, *Waziri* of Katsina*
Finance: Alhaji Aliyu, *Makama* of Bida*	Establishments and Training: Alhaji Umaru, *Sarkin Filanin* Ja'idanawa
Health: Alhaji Ahman, *Galadima* of Pategi	Finance: Alhaji Aliyu, *Makama* of Bida*
Internal Affairs: Malam Shehu Usman, *Galadima* of Maska	Health: Alhaji Ahman, *Galadima* of Pategi
Land and Survey: Ibrahim Musa Gashash	Information: Alhaji Ibrahim Biu
Local Government: Abdullahi Maikano Dutse	Internal Affairs: Alhaji Muhammadu Kabir, *Ciroma* of Katagum
Social Welfare and Co-operatives: Michael Audu Buba, *Waziri* of Shendam	Justice: Alhaji Mamman Nasir*
Trade and Industry: Abba M. Habib	Land and Survey: Alhaji Ibrahim Musa Gashash
Works: George U. Ohikere	Local Government: Alhaji Sule Gaya*
	Social Welfare and Cooperatives: Alhaji Ahmadu, *Sarkin Fadan* Zazzau
	Trade and Industry: Malam Michael Audu Buba
	Works: Alhaji Shehu Usman, *Galadima* of Maska

Ministers of State

Mu'azu Lamido, *Magatakarda*	Mr. Samuel Aliyu Ajayi
Muhammadu Kabir, *Ciroma* of Katagum	Alhaji Aliyu, *Turaki* of Zazzau
D.A. Ogbadu	M. Umaru Abba Karim, *Wali* of Muri
A. Obekpa	Mr. Abutu Obekpa

Ministers without portfolio

Sir Abubakar, Sultan of Sokoto	Sir Abubakar III, Sultan of Sokoto
Sir Muhammadu Sanusi, Emir of Kano	Sir Alhaji Muhammadu Sanusi, Emir of Kano
Alhaji Usman Nagogo, Emir of Katsina	Alhaji Usman Sir Nagogo, Emir of Katsina
Atoshi Agbamanu, Chief of Wukari	Malam Sulu Gambari, Emir of Ilorin
	Malam Ali Obaje, *Atta* of Igala

4. The House of Assembly and House of Chiefs:

1958:

- The House of Assembly sitting in 1958 was returned at the general election held in October-November, 1956. It consisted of 134 elected members and 1

ex officio member (H.H. Marshall, the Attorney-General). A list of the members is given in the source cited.[24]

- The records of the 1958 debates of the House of Chiefs do not list the members of the House. One of them does however list the members of the various committees of the House. If every member was assigned to at least one committee, then the House of Chiefs consisted of 49 chiefs and the Attorney-General.[25]
- Students of the Northern legislatures of the late 1950s and early 1960s will want to consult *Who's Who: Northern Nigeria Legislature, 1960*, issued by the Information Division of the Northern Nigerian Ministry of Internal Affairs, Kaduna, 1960. Whitaker, *The Politics of Tradition* (see bibliography, section **c** below) has biographical information on all members of the Northern Houses of Assembly in 1956-61 and 1961-65 from constituencies lying within the Northern emirates.

1962:

- The House of Assembly sitting in 1962 was returned at the general election held 4th May, 1961. It consisted of 163 elected members and 1 official member (the Attorney-General).[26]
- The House of Chiefs sitting in 1962 consisted of 88 chiefs and the Attorney-General. Malam Junaidu, *Waziri* of Sokoto, was the House's Adviser on Moslem Law. The members are listed in the source cited.[27]

5. The delegation to Sudan, 1958:

Kashim Ibrahim, Chairman*
Muhammadu Junaidu, *Waziri* of Sokoto*
Muhammad Isa Ngileruma, *Wali* of Borno*
Peter Achimugu*
Mamman Nasir, Secretary*

6. The delegation to Libya and Pakistan, 1958:

Muhammadu Kobo, Emir of Lapai, Chairman*
Muhammad Sani, Chief Alkali of Kano*
Malam Haliru Binji*
Peter Achimugu*
S.S. Richardson, Administrative Secretary*

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[24] Source: Northern Regional Legislature: House of Assembly Debates, Official Report (Second Legislature) Second Session, First Meeting, covering 19th February to 7th March, 1958 (Kaduna: Government Printer, 1958), i-iii (listing all the members).
[25] Source: as in n. 22, xi, giving committee memberships by office held only, not by the name of the person holding the office at that time.
[26] Source: as in n. 23, ii-iii (listing all the members).
[27] Source: Northern Nigeria Legislature: Parliamentary Debates (Hansard): House of Chiefs Official Report (Third Legislature) Session 1962-63, Second Meeting, covering 4th to 11th April, 1962, i-ii (listing all the members).

7. The Panel of Jurists:

1958	1962
Sayyed Mohammed Abu Rannat, Chairman*	Senator Shettima Kashim, *Waziri* of Borno, Chairman*
Mr. Justice Mohammed Sharif*	Mr. Justice Mohammed Sharif*
Professor J.N.D. Anderson*	Professor J.N.D. Anderson*
Shettima Kashim*	Mr. Peter Achimugu*
Mr. Peter Achimugu*	Alkali Musa, Chief Alkali of Bida*
Alkali Musa, Chief Alkali of Bida*	Mr. J.W. Burnett, Secretary
Mr. S.S. Richardson, Secretary*	

8. The committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60:

Muhammadu Junaidu, *Waziri* of Sokoto*
Alhaji Muhammadu Bello, *Wali* of Katsina*
Malam Musa, Chief Alkali of Bida*
Malam Jibir Daura, *Magatakarda* of Kano*
Malam Muhammadu Sani, Junior Alkali of Kano*
Alhaji Muhammadu Dodo, Junior Alkali of Katsina*
Alkali Babba Kura Imam*
Malam Haliru Binji*

9. The Sharia Court of Appeal of the Northern Region:

1960[28]	1962[28]
Sheikh Sir Muhammad Ahmed Awad, Grand Kadi*	Abubakar Gumi, Grand Kadi*
Abubakar Gumi, Deputy Grand Kadi*	Haliru Binji, Deputy Grand Kadi*
Abubakar Sadik	Abubakar Zaki
Abubakar Zaki	Abubakar Mahmud

10. The High Court of the Northern Region:

1958[29]	1962[30]
Sir Thomas Algernon Brown, Chief Justice*	Mr. Justice Hurley, Chief Justice
Mr. Justice Hurley, Senior Puisne Judge	Mr. Justice J.A. Smith, Senior Puisne Judge
Mr. Justice Smith, Judge	Mr. Justice Reed, Judge
Mr. Justice Reed, Judge	Mr. Justice Bate, Judge
Mr. Justice Bate, Judge	Mr. Justice Skinner, Judge
	Mr. Justice Holden, Judge

[28] Source: Y. Mahmood, ed., *Sharia Law Reports of Nigeria, Volume 1 (1961-1989)* (Ibadan: Spectrum Books Limited, 1993), gleaned from various cases from the years in question.
[29] Source: 1958 *Northern Region of Nigeria Law Reports*, unnumbered page following title page.
[30] Source: 1962 *Northern Nigeria Law Reports*, unnumbered page following title page.

1958	1962
	Mr. Justice J.P. Smith, Judge
	Mr. Justice Ahmad, Judge

11. The Institute of Administration, Zaria:

Sam Scruton Richardson, Principal, 1961-67*
Ian McClean, Head of Law Department 1959-62*

b. Brief Biographies

Abu Rannat, Sayyed Mohammed (1905-??), Chairman of the Panel of Jurists in 1958. Was at that time the Chief Justice of the Sudan. Educated at Gordon College and the School of Law (Khartoum). Served in various legal and judicial posts in the Sudan, becoming a judge of the High Court 1950-55 and then Chief Justice 1955-64. Besides his service on the Northern Region of Nigeria's Panel of Jurists in 1958, also visited the Region for the Self-Government celebrations in May 1959 and facilitated work on the Penal Code. In Sudan, had influence during the regime of Ibrahim Abboud, devising the legal system, and was important in the legal transition involved in the 1964 revolution. Lost his job with the end of Abboud's regime; subsequently served on a number of international legal bodies, including International Commission of Jurists and the Sub-Commission on the Promotion and Protection of Human Rights of the UN Commission on Human Rights. Principal source: Fluehr-Lobban et al.

Achimugu, Peter S. (1902-1968), minister in the Government of Northern Nigeria, 1950s; member of the delegation that visited Libya and Pakistan, 1958; member of the Panel of Jurists, 1958 and 1962, President of the Provincial Court, Kabba from 1960. Born in Igala, Idah Division, Kabba Province. Educated at Government School, Idah and CMS School, Onitsha. Started career in the judiciary as customary court judge in Kabba before joining politics. In politics was a key personality in the NPC, representing non-Muslim Middle Belt in Government of Northern Region, in which he served as Minister of Natural Resources in mid-1950s. Resigned in 1957 to become Local Government Chairman in Igala NA. Appointed to delegation that visited Libya and Pakistan to investigate their legal and judicial systems in early 1958, and then to Panel of Jurists, "to assure fair representation of minority non-Moslem interests in the reform of the law" (Richardson). Returned to the judiciary as President, Provincial Court, Kabba in October 1960. Given national merit award OFR on first anniversary of Nigeria's independence. Sources: Paden various places; Clark various places; Richardson 199.

Aliyu, Alhaji, *Makama* of Bida (c. 1906-1980), minister in the Government of Northern Nigeria, 1950s and 60s. Born in Doko, Niger Province of humble parentage; assisted by the then *ma'aji* (treasurer) of the Etsu Nupe in whose compound his family lived. Went to Provincial Middle School, Bida and Katsina College. After education, returned to teach at Bida Provincial Middle School, eventually becoming headmaster. Turbaned *Makama* of Bida in 1938. Between 1942 and 1951 was in charge of District Administration and Education in the Bida NA. Also served in the Niger Province Development Committee in 1945. Attended local government training

course 1945-46. Joined NPC when it was formed and became one of its leading members. Elected into Northern Legislative Council in 1947 and later into Federal House of Representatives, Lagos. Elected into House of Assembly of Northern Region 1951; served as Northern Minister of Education 1952-56, Minister for Trade and Industry 1957, and as first indigenous Minister of Finance from 1958. Attended the series of constitutional conferences that started in 1953 which eventually resulted in Nigeria's Independence; was member of the Northern team at the Lancaster Conference, London in 1957. As Treasurer of the NPC and member of the Northern Regional Executive Council, was liaison officer between the NPC Secretariat and the Regional Government until its fall in 1966 coup. Was expected to play prominent role in reviving civilian party politics during and after transition to civilian rule of late 1970s, and was a patron in National Party of Nigeria, formed in 1978, which eventually produced President Shagari; but died in Kaduna in March 1980. Sources: Alhaji Umar Alfa, Bida; Alhaji Usman Minin, Minna; Clark, Kwande, Muffett, Paden, Uwechue, various places.

Anderson, James Norman Dalrymple (1908-1994), member of the Panel of Jurists in 1958 and 1962. Educated at St. Lawrence College, Ramsgate; Trinity College, and Cantab where he obtained his LL.D. in 1955. Was an active Christian throughout his life, starting off as a missionary with the Egypt General Mission in 1932 and later authoring books on Christianity and world religions. During WWII served as Arab Liaison Officer, Libyan Arab Force 1940 (Capt.); Civil Aviation Branch, GHQ 1941 (Major); Secretary for Sanusi Affairs, Secretary for Arab Affairs, and Political Secretary 1943; and Chief Secretary 1944. Had distinguished academic career after the war at the School of Oriental and African Studies, University of London, where he was Lecturer, Islamic Law 1947-51, Reader, Oriental Laws 1951-53, and Professor, Oriental Laws 1954-75; also served variously as Head of Department of Laws 1953- 71, Dean of Law 1965-69, and Director, Institute of Advanced Legal Studies 1959-76. Was also at various times President, Society of Public Teaching of Law; Chairman, UK National Committee of Comparative Law; Vice Chairman, International African Law Association; visiting professor of law to US colleges Princeton, NYU and Harvard; member, Denning Committee on Legal Education for Students from Africa. Conducted a survey on the application of Islamic law in British African colonies for the Colonial Office 1950-51, which resulted in his *Islamic Law in Africa* (1955). Other publications in the area of Islamic law: *Islamic Law in the Modern World* (1959), *Law Reform in the Muslim World* (1976), *Liberty, Law and Justice* (1978), *Changing Law in Developing Countries* (1963), *Family Law in Asia and Afr*ica (1968). Also produced a volume of autobiography, *An Adopted Son: The Story of My Life* (1985). Principal source: *Who is Who*.

Awad, Sheikh Sir Muhammad Ahmed (????-??), Grand Kadi, Sharia Court of Appeal, 1960-62. Sudanese judge and scholar who came to teach in the Kano Law School in 1941.[31] This became the School of Arabic Studies in 1947; Sheikh Awad

[31] Cf. *Report of the Native Courts (Northern Provinces) Commission of Inquiry* (Lagos: Government Printer, 1951), ¶507: evidently beginning in the 1930s, "Teachers able to give instruction in the Maliki school were introduced from the Sudan to raise the standard of Arabic and increase learning."

became Headmaster in the late 1940s then Principal 1953-1960. Co-authored, with Mervyn Hiskett, *The Story of the Arabs* (1957). Advised the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes 1959-60. Appointed as first Grand Kadi of the Sharia Court of Appeal of Northern Nigeria 1960; retired and was replaced as Grand Kadi by Abubakar Gumi in 1962. Anderson calls him "a man of character and erudition".[32]

Bell, Sir Gawain Westray (1909-95), Governor of Northern Nigeria, 1957-1962. Born in South Africa; educated at the Dragon School, Oxford and Winchester and Hartford College, Oxford. Took a course in Arabic for one year after graduation. Career as administrator and diplomat included, besides the governorship of Northern Nigeria: work in the Sudan 1931, 1945-49, and 1951-53, Palestine late 1930s, Cairo, 1941-51, and the Middle-East: Kuwait 1955, and Oman 1966 and 1974. In WWII commanded a squadron of Druze cavalry in the Syrian campaign 1941 and then the 3rd Mechanised (Armored Car) Regiment 1943-45. Helped to devise new constitution for Federation of South Arabia in 1965. Subsequently served on governing body of the School of Oriental and African Studies and was active in the Anglo-Jordanian Society. Produced two volumes of memoirs, *Shadows on the Sand* (1983) and *An Imperial Twilight* (1989). Source: *Oxford Dictionary of National Biography*.

Bello, Sir Ahmadu (1910-1966), *Sardauna* of Sokoto, Premier of Northern Nigeria 1954-1966. Born at Rabah, near Sokoto. Father was district head; paternal grandfather was Abubakar Atiku, 7th Sultan of Sokoto (r. 1873–7). Learned Arabic and the Qur'an from local *malam*. Educated at Sokoto provincial school and then Katsina College 1926-31. Appointed teacher in new Sokoto middle school 1931. Made district head of Rabah 1934. Given title of *Sardauna*[33] in 1938; later that year posted to Gusau to supervise work of subordinate district heads. Work during WWII included grain purchases, recruitment of labour, and organisation of patrols on frontier with Dahomey. Following war became Sultan's councillor for police and prisons. In 1949 elected member of Northern Region House of Assembly for Sokoto. Following 1951 elections was appointed Minister of Works for Northern Region; soon added portfolios for Community Development and Local Government. Elected president of NPC in April 1954 and, following general elections later that year, became premier of Northern Region. Among other things instituted vigorous programme of northernisation of the regional bureaucracy which was implemented through crash programmes to train Northerners for the civil service; led campaign to convert Northern animists to Islam; oversaw legal and judicial reforms in Northern Region 1958-1962 and the transitions Northern self-rule and Nigerian independence. In 1963 became founding chancellor of Ahmadu Bello University. Produced volume of autobiography *My Life* (1962). Murdered in military coup of 15 January 1966. Principal sources: *Oxford Dictionary of National Biography*; *My Life*.

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[32] J.N.D. Anderson, *Islamic Law in Africa* (London: Frank Cass, 1955), 183.

[33] On the meaning of '*sardauna*', see the *Sardauna*'s book *My Life*, 49: "It is peculiar to Sokoto and restricted to men of the ruling house…. It is difficult to describe its exact significance nowadays: titles such as *Waziri*, which is 'Prime Minister', or *Madaki*, 'Master of the Horse', are easy to understand; the title *Sardauna* is not so simple, but its original meaning was probably 'Captain of the Bodyguard'."

Bello, Muhammadu, *Wali* of Katsina (1889-1971), member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60. Born in Kagara in what is now Niger State. Son of Malam Shehu Usman, Chief Alkali of Kagara under the rule of Nagwamatse, then ruler of Katsina. Trained as Islamic jurist, initially under his father, later under Chief Alkali Ibrahim Nakaita and other Islamic teachers. Travelled widely to learn. Taught in the Makarantar Dan Hausa in Kano (first colonial school in the North) and then in Kaduna College. Retired from teaching in 1949. Became Alkali and Chief Alkali in Katsina, and finally *Wali* of Katsina. Author of (1) *Gandoki* and (2) *Emir of Katsina, Muhammad Dikko*, *CBE (1865-1941)*. Was also a poet. Source: Justice Mamman Nasir.

Binji, Haliru (1922-1993), member of the delegation to Libya and Pakistan 1958; member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60; Kadi of the Sharia Court of Appeal from 1962. Born in Binji village in what is now Zamfara State. Educated at Sokoto Middle School 1936-41; Kadi School, Sokoto 1941-42; Northern Provinces Law School (later School of Arabic Studies) Kano 1942-46 and 1953-54; Bakhter-Ruda College (in Sudan) 1954-55. Worked as teacher of Arabic, Islamic Studies, and Hausa in School of Arabic Studies 1946-47, Kaduna College 1947-49, Government Secondary School Zaria 1949-52 and 1956-1960. Served as member of the delegation sent to investigate legal and judicial systems of Libya and Pakistan 1958; as member of committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes 1959-1960; as organiser for Arabic Studies in the Northern Region Ministry of Education Kaduna 1960-61; as Inspector of Native Courts/Islamic Law 1962; as Acting Judge and later Deputy Grand Kadi, Sharia Court of Appeal of the Northern Region 1962-75; and finally as Grand Kadi of the Sharia Court of Appeal of North Western State and subsequently Sokoto State from 1975. Principal source: Paden pp. 211 and 213 n. 45.

Brown, Sir Thomas Algernon (1900-1960), Chief Justice of Northern Nigeria 1953-60. Son of James Algernon Brown, of Wheatley, near Oxford. Preparatory education at Marlborough College, university at Oriel College, Oxford. Commissioned an officer in the Indian cavalry in 1920; participated in the *Wazir*istan campaign (North West Frontier of what was then India, now Pakistan) 1920-22. Called to the bar (Inner Temple) 1926. Practised law in England until 1933, then began a career of service in the colonies, becoming a Crown Counsel in the Gold Coast 1933, Solicitor-General in Kenya 1940, a judge of the Supreme Court Singapore 1946, and finally Chief Justice of Northern Nigeria 1953-60. Created KCMG 1956. Role in the legal and judicial reforms in the Northern Region in 1958-60 discussed in S.S. Richardson, *No Weariness*, pp. 222-24. Died in Kaduna 5 October 1960. Principal source: Professor Anthony Kirk-Greene.

Daura, Malam Jibir (1909-??), member of the House of Assembly of the Northern Region 1956-1960; member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60. Born in Daura in what is now Katsina State. Received thorough training in Islamic law from his father, who was a teacher of Arabic, among others; also trained in Katsina College. Began as a Middle School teacher; became a Native Authority Scribe; during reign of Abdullahi Bayero was Chief Registrar of the Emir's Court, Kano. Was *Magatakarda* of Kano in 1959-60

era. Whitaker says of him: "An influential advocate of religious orthodoxy in legal matters in Kano emirate and in the Northern Region generally." Sources: Justice Mamman Nasir; Whitaker p. 480.

Dodo, Muhammadu (c. 1917-2002), member of the House of Assembly of the Northern Region 1951-1960; **member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60**. Born in Katsina into a family of Islamic jurists, teachers, and *qadis*. Father was Chief Alkali of Katsina. Trained as Islamic jurist and teacher in Katsina. Served the Native Courts as Scribe, Registrar, and Inspector before being appointed Junior Alkali of Katsina after the death of his father in 1949. Elected to the House of Assembly, Northern Region, in 1951, and to a second term in 1956. Seved as member of the Panel of Alkalis from which the Moslem Court of Appeal was from time to time constituted 1956-60 and as member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes 1959-60. Appointed judge of the new Provincial Court in 1960, serving in Sardauna Province 1960-61, Zaria 1961-62, Kano 1963-66, Jos 1966-67, Ilorin 1967-68, and finally Katsina 1968-70. Served as judge of the Sharia Court of Appeal of North Central State 1970-75, and as Grand Kadi of the Sharia Court of Appeal of North Central and subsequently Katsina State 1975-86. Is the father of Justice Isa Muhammadu Dodo, the present Grand Kadi of the Sharia Court of Appeal of Katsina State. Source: Justice I.M. Dodo; Justice Mamman Nasir; Saratu Igomu; Whitaker p. 480.

Gaya, Sule (1925-??), minister in the Government of Northern Nigeria, 1950s and 60s. Father was village head of Gaya in Kano Province. Educated at Gaya Primary School 1934-38 and Kano Middle School 1938-43, where he continued as pupil-teacher 1943-47. Received further training as a teacher 1947-51, and continued as teacher in Gaya 1948, Kano Middle School 1951, and as Principal, Birnin Kudu Senior Primary School, 1952-57. Elected from Gaya to Northern Region House of Assembly 1956. Appointed Parliamentary Secretary Minister of Internal Affairs in 1957; Minister of State and Acting Minister of Local Government in 1960. Re-elected 1961; appointed Minister of Works (briefly) and then Minister for Local Government 1961-66. Awarded national honour OFR 1964 and made *Sarkin Fada*, Kano 1965. After 1966 coup employed by Kano NA, holding at various times portfolios of Establishment and Training, Education, and Works. Served as member, Constitution Drafting Committee 1975-76. Sources: Paden p. 146 n. 21, Clark p. 681.

Gumi, Abubakar (1924-1992), Deputy Grand Kadi, Sharia Court of Appeal, 1960-62; Grand Kadi, 1962-75; Consulting Grand Kadi, 1975-1985. Born in Gumi town in what is now Sokoto State. Father was a widely known Islamic scholar, teacher and later alkali, who taught him Arabic. Went to primary school at Dogon Daji, where he was religion prefect; middle school in Sokoto 1936-42 where he became school imam; Kadi School, Sokoto 1942-43; Law School, Kano 1943-47; two-year course 1954-55 at Bakhter-Ruda in Duwiem, Sudan; finally in 1961 went to the UK to study the British and particularly the Scottish legal system. Career of public service included: chief scribe in Sokoto alkali's office; teacher of Arabic in Kano 1948; 1949-53 and in Maru, Sokoto 1949; Pilgrimage Officer in Jidda, Saudi Arabia in 1957. Became Deputy Grand Kadi of the Sharia Court of Appeal of the Northern Region in 1960 at the age of 36,

and continued to serve that court and its successors in the states, as Grand Kadi from 1962 and then as Consulting Grand Kadi from 1975 until 1985. Was also active as a religious teacher and reformer, playing important parts in the founding and activities both of *Jama'atu Nasril Islam* (JNI) (founded 1962 with aim of encouraging the publication of Islamic literature in Nigerian languages, building mosques, and encouraging Islamic centers of learning), and of *Jama'at Izalat al-Bid'a wa Iqamat as-Sunnnah* ('Yan Izala) (Association for the Eradication of Innovations and the Establishment of the Sunnah, founded in 1978). Wrote autobiography (with Ismaila A. Tsiga) *Where I Stand* (1992). Sources: Paden 210 n. 43; *Where I Stand*.

Ibrahim, Sir Kashim (1910–1990), chairman of the delegation to Sudan 1958; member of Panel of Jurists in 1958; its chairman in 1962; Governor of Northern Nigeria 1962-66. Born in Gargar ward, Yerwa, in Borno province, youngest son of Malam Ibrahim Lakanmi, a Kanuri aristocrat. Received thorough Qur'anic education before entering Borno provincial school in 1922. Admitted to Katsina College 1925, graduated as a teacher in 1929. Taught at Borno middle school until 1933, then moved to NA education inspectorate. Conferred with title of *Shettima* in 1935; known for many years thereafter as Shettima Kashim. In 1947 promoted to provincial education assistant; two years later became one of the first Northern education officers. Made Special Member for Education of Northern House of Assembly in 1946. In 1952, as founding Borno member of NPC, was elected Member of the Federal Parliament. Was among four Northerners nominated to ministerial office in Lagos, taking portfolio of Welfare and Social Services, then of Education. Did not contest 1954 federal election, instead returning to North. In 1955 made Minister of Development and Surveys in Government of Northern Region. Turbanned *Waziri* of Borno in 1956. Was among Northern regional ministers who attended constitutional conference in London 1957. Served on Panel of Jurists in 1958 and on the Ashby Commission, set up in 1959 to consider the future of higher education in Nigeria. Was appointed Senator in 1959. Served again on the Panel of Jurists in 1962, this time as chairman, just when his appointment as the first indigenous governor of Northern Nigeria was announced. Was detained in coup of 1966; on release became civilian adviser to the military governor of Northern Region, Hassan Katsina. Retired to Maiduguri in 1968, leaving only occasionally to attend to his duties as chancellor first of University of Ibadan and then University of Lagos. Received many honours including CBE, KCMG, GCON, and three honourary doctorates. Source: *Oxford Dictionary of National Biography*.

Imam, Baba Kura (1921-), member of the House of Assembly of the Northern Region 1958-1960; member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60. Born in Maiduguri, son of Chief Alkali Imam Mashidima and Hajiya Fatimatu. After Qur'anic education attended Mafoni Primary School 1935-40 and subsequently School of Arabic Studies, Kano 1947-51. Alkali of Geidam District (Borno) in early 1950s. Entered politics 1954 as member of NPC and served in Northern House of Assembly up to 1960. Served on the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60. Appointed President of the Provincial Court in Maiduguri 1962-66; to the Sharia Court of Appeal of Northern Region 1966-70; to the Sharia Court of Appeal of North Eastern State 1970-75; and as Grand Kadi, Sharia Court of Appeal of North

Eastern and subsequently Borno State 1975-86. Sources: Paden p. 343 n. 69; Saratu Igomu.

Junaidu, Muhammadu, *Waziri* of Sokoto (1906-97), member of delegation to Sudan 1958; member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60. Born into a family holding the office of *Waziri* of Sokoto since the time of Sultan Bello; his father, uncle, and two brothers held the office before him. Began studies at an early age of the Qur'an and Hadith, the Islamic sciences, and Arabic language and literature. Became teacher in 1930s, at Sokoto Middle School and Women's Training Centre, Sokoto. Appointed Principal of Kadi School, Sokoto in 1940, then in 1943 to Sultan's council as legal advisor on religious affairs. Became *Waziri* in 1948 on death of his brother. A prolific scholar, wrote on the history of the Sokoto Caliphate among other things. Was a loyalist and lifetime companion to the *Sardauna*; undertook various assignments for him, including trip to Sudan in 1958 to investigate legal and judicial systems there, and service on committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60; also facilitated communication between the Sultan and the *Sardauna* for many years. Principal source: Paden p. 105 n. 5.

Kaita, Isa, (1912-??), *Waziri* of Katsina, minister in the Government of the Northern Region 1954-66. Father was an Islamic scholar and *Waziri* of Katsina. Educated at Katsina College, graduating in 1932. Taught at Katsina Middle School 1932-41. During World War II broadcasted to West Africa in Hausa from Accra; also escorted Emir of Katsina to Burma and India to inspect Nigerian troops. Served as Emir's private secretary and then as Chief Scribe to Katsina NA through 1948. Did Diploma in Public Administration at Exeter College in UK 1948-50. Became Development Secretary for Katsina 1951-53. Started political career with foundation of NPC, of which he was financial secretary in 1951; was also elected to House of Assembly in 1951, and helped establish NPC branch offices around the North 1951-54. Appointed Minister of Works 1954-56, of Natural Resources 1956-57, and of Education 1957-66. Appointed *Waziri* of Katsina after his father's death in late 1950s. Source: Paden p. 143 n. 15.

Kashim, Shettima: see Ibrahim, Sir Kashim.

Kobo, Muhammadu (1910-2002), Emir of Lapai from 1954; chairman of delegation to Libya and Pakistan in 1958. Born in Lapai. Attended Higher Provincial Middle School (now Government College Bida) 1920-27 and Teachers' Training College, Katsina 1927-33. Taught in Niger Provincial Middle School, Bida 1932-33 and 1950-52 and Kabba Provincial Middle School 1933-47; was also headmaster of Benue Provincial Middle School, Katsina-Ala 1947-48 and of Zaria Provincial Middle School 1948-50. Entered politics in 1951, serving as member, federal House of Representatives 1951-53, Councilor in charge of Central District Administration, Education and Public Enlightenment in Bida Native Authority 1952-54, and member Niger Provincial Council 1952-64. Went for course on Local Government in UK in 1952. Appointed Emir of Lapai in 1954; served in Northern House of Chiefs 1954-66. Was chairman of Northern delegation to Libya and Pakistan in 1958. Subsequently served on many committees and boards, including Chairman, State Committee on

Total War Against Indiscipline and a Life Member, Niger State Council of Chiefs. Sources: *This is Lapai*; *Royal Roots: Foundation History of Emirate Councils in Niger State Nigeria.*

Marshall, Hedley Herbert (1909-82), Attorney-General of Northern Nigeria, 1954-62. Educated at Dulwich College Prep School, Dulwich College, and London University. Admitted Solicitor of the Supreme Court of England in 1931. Served in the military during WWII; thereafter joined the Colonial Service. Assistant Administrator of Nigeria 1946. Called to the bar in 1949; returned to serve in Northern Nigeria variously as Crown Counsel 1950, Senior Crown Counsel 1951, Legal Secretary 1952, Attorney-General and Minister of Government 1954-62, Director of Public Prosecutions 1959-62; member House of Assembly, House of Chiefs and Executive Council 1951-62, member Privy Council 1954-59, and adviser to the Government of Northern Nigeria at Nigerian Constitutional Conferences 1957 and 1958. Served along with Mr. I. M. Lewis on Minorities (Willinck) Commission 1957-58 and took evidence around the North. Was member of Provisional Council of Ahmadu Bello University 1961. Retired as A-G late 1962, but still served the North as Commissioner for the Revision of the Laws of Northern Nigeria 1963-68. After return to Britain was Assistant Director (Commonwealth) British Institute of International and Comparative Law and a founding member, council member, and later Chairman of the Statute Law Society, for whose journal he wrote "The Drafting of Statutes: The Commonwealth Experience", 1980 *Statute Law Review* 135. Also authored several law texts including *Natural Justice* (1959), and produced a volume of autobiography, *Like Father Like Son* (1980). Principal source: *Who is Who.*

McLean, Ian Graeme (1928-), founding Head of Law Department, Institute of Administration, Zaria, 1959-1962. Educated at Aldenham School and Christ's College, London; called to the bar (Middle Temple) 1951. Practised law in UK before coming to Northern Nigeria where he started as Crown Counsel, 1955-59. Besides serving as founding Head of the Law Department at Institute of Administration was adviser, Native Courts, 1959-62. Returned to England 1962; continued with law practice and became Metropolitan Stipendiary Magistrate 1970-80. Published scholarly books and articles in field of criminal law and procedure, including *The Maliki Law of Homicide*, 1959, co-authored with Abubakar Sadiq, who was himself appointed Kadi of the Sharia Court of Appeal in 1960. Principal source: *Who is Who.*

Musa, Malam (1914-1999), member of the Panel of Jurists in 1958 and 1962; member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60. Born in Bida. His father, Alkali Usman, was a renowned scholar and judge. Received basic Islamic education from his father; subsequently attended Gidan Kyari Primary School, Bida 1923-27 and Middle School (now Government College) Bida 1927-31. Became teacher under Bida Native Authority 1931-34. Left to study Arabic and Islamic law at College of Arabic Studies, Kano 1934-37. Resumed teaching in Bida NA but now as teacher of Arabic. Appointed Alkali in Kutigi 1943-45 then Chief Alkali of Bida 1945-62; also served as member of the Panel of Alkalis from which the Moslem Court of Appeal was from time to time constituted 1956-60 and as Inspector of Native Courts for Northern Region for some period in late 50s/early 60s. Completed judicial service as judge of

Provincial Courts in Zaria, Ilorin and Makurdi, finally retiring in 1975. Served on the Panel of Jurists in 1958 and 1962 and on the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60. Returned to Bida 1975 where he became a member of the Traditional Council as an Adviser on Islamic matters and head of the Bida Emirate *ulama*. Sources: Alhaji Aliyu Musa (son); Alhaji Usman Minin (cousin); Malam Abdulkadir Katun Aliyu of Radio Niger Minna.

Nasir, Mamman (1929-), Crown Counsel/Senior Crown Counsel in Northern Region 1956-61; member of delegation to Sudan in 1958; Minister of Justice 1961-66. Born in what is now Katsina State, educated at Kaduna College 1943-47, Public Works Department Engineering School, Kaduna 1947-50, University College, Ibadan 1951-53, Council of Legal Education, London 1953-56. Called to the bar (Lincoln's Inn) 1955. Thereafter had a distinguished legal career serving in the following capacities: Crown Counsel then Senior Crown Counsel at various posts in the Northern Region 1956-61; Minister of Justice, Northern Region 1961-66; Director of Public Prosecution, Northern Region 1967; Solicitor General, North Central State 1967; Attorney-General, North Central State 1968-75; Supreme Court Justice 1975-76; President, Federal Court of Appeal 1978-92. Also served as legal adviser to the Northern Peoples' Congress 1961-66. Appointed *Galadima* of Katsina 19??; recipient of many honours including GCON. Principal source: *Africa's Who's Who*.

Ngileruma, Muhammad Isa (1908-68), member of delegation to Sudan in 1958. Aka Malam Kyari. Born in Maiduguri, in Yerwa District. Father was Alkali Zarami, a respected Islamic scholar and jurist. Attended school in Borno Province and then Katsina College, where he was a classmate of the *Sardauna*. Taught at Yerwa Provincial School; worked as scribe in Chief Alkali's office. In 1934 appointed Chief Scribe at the Central Office Maiduguri. Appointed *Wali* of Borno in 1942. Joined House of Assembly in Kaduna 1947; subsequently appointed first Minister of Natural Resources for the Northern Region. Appointed *Waziri* of Borno in the 50's. Served as Nigeria's envoy to the Sudan and Saudi Arabia and later to the United Nations and Egypt. Published a book entitled *Kitabu Kanuribe: Book u Kitabu Gargam Kanem wa Borno Wabe Kasargata*, i.e. *The Book of Kanuri: A Book on the History of Kanem Borno in Summary*, published in 1951 by Gaskiya Corporation Zaria. Sources: Saratu Igomu; *Katsina College*.

Nunan, Manus (1926-), Northern Region Crown Counsel and Legal Draftsman 1958-62; Solicitor-General, 1962-64. Educated at St. Mary's College, Dublin and Trinity College, Dublin. Called to Irish bar (King George's Inn) and English bar (Gray's Inn). Was Crown Counsel in Northern Nigeria 1953-62 and the principal draftsman of the legislation that implemented the Panel of Jurists' 1958 recommendations. Subsequently appointed Solicitor-General and a minister in the Government of the Northern Region 1962-64. Continued in law practice upon return to the UK and became recorder of the Crown Court in 1978. Principal source: *Who is Who*.

Olawoyin, J.S. (1925-2000), member of Northern House of Assembly from Offa in Ilorin Province 1956-61; lead plaintiff in case of *J.S. Olawoyin and six others v. Commissioner of Police*, 1961. Born in Offa; attended Offa Grammar School. Joined

Zikist Movement 1948. Became Organising Secretary of Action Group for Ilorin Province in 1953, and General Secretary for Northern Region 1954. Elected Action Group member of Northern House of Assembly 1956-61; was also active in Middle Belt People's Party and United Middle Belt Congress. Attended constitutional conferences in London in 1957 and 1958 and in Lagos in 1960. Opposed the Bill for the new Penal Code Law 1959; derailed Native Courts Appellate Division of Northern High Court 1961-62 through lawsuit ultimately decided by Nigerian Supreme Court, *J.S. Olawoyin & Six Others. v. Commissioner of Police* (1961) 1 All N.L.R. (Part 2) 203. Was among those charged with treason in 1962 along with Obafemi Awolowo; 1963 conviction overturned in 1964. Also detained in Sokoto prison 1969-70 for his part in Offa community's agitation for reinstatement of deposed *Olofa* of Offa. Active in Offa affairs for many years, including serving as Councillor 1955-79. Installed as first *Asiwaju* of Offa 1982, and as *Asoju Oba* of Ede 1984. Produced volume of autobiography, *My Political Reminiscences 1948-1983* (1993). Source: *My Political Reminiscences*.

Price, Justin (????-??), Senior Magistrate in the Northern Region in the late 1950s and possibly early 1960s. Had served as a magistrate in Nyasaland before coming to Nigeria. In 1961, after leaving the service of the Northern Region, published articles in the Nigerian press and in *Modern Law Review* attacking the Region's new Penal and Criminal Procedure Codes; these views came as a surprise to the North and fed anti-Northern sentiment in the West. Sources: *No Weariness*; Justice Mamman Nasir;. [Beyond this we have not been able to trace Mr. Price.]

Richardson, Sam Scruton (1919-2004), member of the delegation to Libya and Pakistan 1958; Secretary to the Panel of Jurists 1958; Commissioner for Native Courts 1958-61; Principal of the Institute of Administration, Zaria, 1961-67. Born at Gosport, near Southampton, England; educated at Magnus College, Newark and Trinity College, Oxford where he graduated 1940. Served in WWII as Major in Royal Marine Commandos in North Africa, India, Burma and Hong Hong. After the war worked in colonial administration, first as district commissioner in Sudan 1947-54 and in Northern Nigeria 1954-58, then as creator/developer of public administration teaching institutions in Nigeria 1961-67 and Mauritius 1968, both of which became nuclei of new universities. Became proficient in Arabic and, gaining legal qualification in 1959 through study at Lincoln's Inn in London, played important role in legal and judicial reforms in Northern Nigeria 1958-61. Moved to Australia 1969, becoming founding Principal of the Canberra College of Advanced Education. Retired from that position in 1984 and moved back to England. In retirement served as the Law Reform Commissioner for many of the Northern states of Nigeria, overseeing production of updated and revised volumes of their statutes. Was the author of *Notes on the Penal Code Law* (1960) and co-author (with T.H. Williams) of *The Criminal Procedure Code of Northern Nigeria* (1963), which became essential texts in Northern Nigerian law schools and courts, and co-author (with E.A. Keay) of *The Native and Customary Courts of Nigeria* (1966), an indispensable history of the development of Nigerian court systems under British rule. Also published a volume of autobiography, *No Weariness: The Memoir of a Generalist in Public Service in Four Continents* (2001). Sources: www.canberra.edu.au/centres/crpsm/activities/ipa-uc-trust/richardson; *No Weariness*.

Sani, Malam Muhammadu (????-??), member of the delegation to Libya and Pakistan in 1958; member of the committee of Muslim jurists who vetted the Penal and Criminal Procedure Codes in 1959-60. Was Junior Alkali of Kano during the period in question. [Beyond this we have not been able to trace Malam Sani.]

Sharif, Mr. Justice Mohammed (1893-??), member of the Panel of Jurists in 1958 and 1962. Born in Jalandhar (India). Obtained BA degree from Ilahabad University in 1913, and LLB from Law College in Lahore in 1916. Began law practice in Jalandhar in 1917. Moved to Lahore in 1935 and began practising there. Was appointed Judge in Lahore High Court in 1945 and Judge of Federal Court in 1954. Retired as Judge of Supreme Court in 1958. Subsequently served as Chairman of the Pakistan Law Commission and as President of the tribunal established in 1960 to examine the cases of West Pakistan politicians; also held post of Vice-Chancellor of Punjab University, Lahore for a few years. Source: *Urdu Encyclopedia*, courtesy of Dr. Muhammad Khalid Masud, Chairman, Council of Islamic Ideology, Islamabad.

Smith, James Alfred (1913-??), Judge of High Court of Northern Nigeria, 1958-65; Ag. Chief Justice 1962. Educated at Christ's College, Brecon. Served in the military in WWII, then took up career in Colonial Legal Service as follows: Resident Magistrate in Nigeria 1946-51; Chief Magistrate 1951-53; Chief Registrar, Supreme Court of Nigeria 1953-55; Puisne Judge in Nigeria 1955-58; Judge, High Court of Northern Nigeria 1958-66; Senior Judge then Puisne Judge, Supreme Court of Bahamas 1966-75; Senior Justice, Bahamas 1975-78; Chief Justice of the Bahamas 1978-80. He was also member, of the Court of Appeal for the Bermuda Service 1980 and the Court of Appeal for Bahamas and Belize 1981. Source: *Who is Who*.

Williams, Frederick Rotimi Alade (1920-2005), Attorney-General and Minister of Justice of the Western Region in 1950s; attorney for the applicants in case of *J.S. Olawoyin and six others v. Commissioner of Police*, 1961. Born in Lagos. Educated at CMS Grammar School, Lagos, University of Cambridge, UK, 1939-42. Called to English bar (Grey's Inn) 1943. Founded chambers in Lagos 1943, practised law there for rest of his life. Was Nigeria's first Queen's Counsel (1958) and first Senior Advocate of Nigeria (1975). Public service included: Chairman of Lagos Town Council 1953-54; Attorney-General, Minister of Justice, and Minister of Local Government of Western Region of Nigeria in 1950s; Acting Prime Minister of the Western Region in 1960; member, Western Region House of Chiefs and Committee for New Regional Legislation; President, Nigeria Bar Association 1959-68; member, Council of Legal Education 1962-68; Chairman, National Universities Commission 1968; Chairman, Constitution Drafting Committee 1976-77; Member, Consituent Assembly 1977-78; Chancellor, University of Nigeria, Nsukka; Chairman, Provisional Council, University of Ife. At international level was member of various organisations including British Institute of Comparative Law. Principal source: *Africa's Who's Who*.

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Whitaker, C.S. Jr., *The Politics of Tradition: Continuity and Change in Northern Nigeria 1946-1966* (Princeton: Princeton University Press, 1970), 471-97: these pages are "A Selected Biographical Directory of Northern Nigerian Political Leaders: 1946-1966", and include brief entries on Ministers of the Government of the Northern Region; Ministers of the Government of the Federation from the Northern Region; and all members of the Northern House of Assembly in 1956-61 and 1961-65 from constituencies lying within the Northern emirates.

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Chapter 1 Part III

Report of the Panel of Jurists Appointed by the Northern Region Government to Examine the Legal and Judicial Systems of the Region

Submitted to the Governor of the Northern Region of Nigeria
on 10th September, 1958[34]

Contents:

[34] Source: National Archives Kaduna: S.MOJ/12/S.1 Vol. 1, 1-33.

1.

Letter from Panel of Jurists submitting Report to Governor

His Excellency Sir Gawain Westray Bell, K.C.M.G., C.B.E.
Governor of the Northern Region of Nigeria

Your Excellency,

We were appointed by your Government on the 29th July, 1958 as a Panel of Jurists with the following terms of reference:

> "In the light of the legal and judicial systems obtaining in other parts of the world where Moslem and non-Moslem live side by side, and with particular reference to the systems obtaining in Libya, Pakistan and the Sudan, to consider: -
>
> a) the systems of law at present in force in the Northern Region, that is, English law as modified by Nigerian legislation, Moslem law and customary law, and the organisation of the courts and the judiciary enforcing the systems and
>
> b) whether it is possible and how far is it desirable to avoid any conflict which may exist between the present systems of law and
>
> to make recommendations as to the means by which this object may be accomplished and as to the reorganisation of the courts and the judiciary, in so far as this may be desirable."

We assembled in Kaduna on the 28th August, 1958, and between that date and the 10th September, 1958, we held nine formal sittings and had numerous discussions both formal and informal with prominent Chiefs, political leaders, representatives of the Judiciary and Legal Departments and members of the public.[35] We have also studied a number of memoranda and other documents including the Report of the Minorities Commission[36] and the reports of the Delegations which your Government recently sent to Pakistan, Libya and the Sudan.

Our recommendations are embodied in our report which we now have the honour to submit. We have found it necessary to recommend considerable reforms. We have been greatly encouraged in our task by the excellent response with which our proposals have been met by the many distinguished leaders of Northern Nigerian opinion with whom we have discussed them. With such strong support the execution of our proposals

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[35] For a vivid account of the successful effort of persuasion which was perhaps the chief accomplishment of the Panel of Jurists, see J.N.D. Anderson, "Conflict of Laws in Northern Nigeria: A New Start", *International and Comparative Law Quarterly*, 8 (1959), 442-56 at 451-53.

[36] *Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them* (London: Her Majesty's Stationary Office, 1958). This report was serialised in 2002 by one of Nigeria's newspapers, and has recently also been republished in book form under the title *Sir Henry Willink's Report of the Commission appointed to enquire into the Fears of Minorities*, (Jos: Nigerian League for Human Rights, n.d.).

will, we feel sure, make a vital contribution towards the successful evolution of a self-governing Northern Nigeria.

If your Government accepts our proposals, we consider that it would be of advantage if the situation were reviewed after a period of three years. Such a review would reveal what progress had been made and what adjustments might be necessary after experience of self-government.

Finally we wish to take this opportunity to thank you, Your Excellency, and your Government for the facilities which have been placed at our disposal. We are especially grateful to all those who have entertained us on so many occasions.

We also wish to record our warm appreciation of the efficiency and helpfulness of our Secretary, Mr. S.S. Richardson and to express our thanks to Mrs. Enright who acted as Personal Assistant to the Panel.

We have the honour to be,

Your Excellency's
Most Obedient Servants,

[Sayyed Mohammed Abu Rannat] Chairman (Sgd)[37]

Mr. Justice Mohammed Sharif (Sgd)

Professor J.N.D. Anderson, O.B.E. (Sgd)

Shettima Kashim M.B.E. (Sgd)

Mr. Peter Achimugu. O.B.E. (Sgd)

Alkali Musa, Alkalin Bida (Sgd)

Kaduna, 10th September, 1958.

[37] In the copy of this letter found in NAK S.MOJ/12/S.1 Vol. I, no signatures appear; the names are typed, followed by "(Sgd)", as here, except that in the case of the chairman there is typed "…..?...?...?..... Chairman (Sgd)"; we do not know the reason for this.

2.

Report of the Panel of Jurists Appointed by the Northern Region Government to Examine the Legal and Judicial Systems of the Northern Region

THE PRESENT POSITION

The Courts

1. Our Terms of Reference direct us to consider the systems of law at present in force in the Region, the organisation of the courts and the judiciary which enforce these systems, and the possibility and desirability of avoiding any conflict which may exist between them; and to make recommendations as to the means by which this object may be accomplished. It is essential, therefore, to begin by setting out the present position, although no attempt will be made to do this in more than broad outline.

2. Alongside the High Court and the Magistrates' Courts there exists in the Northern Region, an elaborate system of Native Courts. These are graded A, A (limited), B, C, and D, according to their respective competence. The grade A courts are those of the major Emirs whose courts are authorised to try even capital offences; grade A (limited) courts are those of lesser Emirs and of the leading Alkalai (Moslem judges); and the grade B, C and D courts represent those of lesser Alkalai, in the Moslem areas, and of other personnel (usually sitting not alone, like the Alkali, but as panels of members) in the non-Moslem areas. In addition there are "Mixed" courts to meet the needs of the exceedingly cosmopolitan population of some of the major towns. The system of appeals from these various courts has recently been simplified, but is still somewhat unsatisfactory, and while the wide powers of review previously exercised over all these courts by administrative officers have recently been restricted, these powers still exist. Another recent innovation was the creation of the Moslem Court of Appeal to exercise appellate jurisdiction, immediately below the High Court, in all cases properly governed by Moslem Law.

Conflict of Laws

3. It is not, however, in the system of the courts, but in the law they apply, that conflict and confusion at present exist. This does not refer to the law of personal status and family relations, for it is natural that in a Region in which Moslems, pagans and Christians live side by side, each should be governed by their own laws in such matters; and this causes few problems. This is also true, in large measure, of the civil law in general; for little difficulty is found in practice in applying legislative enactments in commercial and company law, English law where the parties intended a contract to be so governed, and native law and custom (in its various forms) when that represents the law under which the contract was concluded. And much the same may be said of the law of tort.

4. The situation is very different, however, in regard to the criminal law, for in this sphere the present conflict and confusion are inescapable. Here two mutually contradictory systems of law exist side by side in this Region. In the High Court, the Magistrates' courts and some of the non-Moslem Native Courts, the Nigerian Criminal

Code, based on the principles of English Law, is applied; while, in the courts of the Emirs and Alkalai, native law and custom (which often means, in fact, a close approximation to the Islamic law of the classical Maliki texts) reigns supreme.

5. The resulting conflict is thrown into the boldest relief in regard to homicide cases; for on the largely fortuitous circumstance of whether the case concerned is tried in the High Court or the court of one of the leading Emirs will depend, at once, the definition of the offence, the method of proof and a variety of alternatives in regard to sentence. Under the Maliki law, for example, the death penalty is applicable, on the demand of the heirs of blood, where the accused caused the death of the deceased by any hostile assault, however intrinsically unlikely to kill or wound; even the most extreme provocation is irrelevant; proof of the offence will in certain circumstances be largely dependent on whether the heirs of blood will swear fifty oaths to his guilt; the death sentence for even the most brutal murder (unless it be committed as an act of highway robbery, or in order to facilitate some other crime) may be waived at the discretion of the heirs of blood; and no Moslem can ever (with the same two exceptions) be executed for the murder of a Christian or pagan.

6. That the Criminal Code could co-exist for so many years with a system such as this, is amazing. In no other country can two contradictory systems of criminal law, extending even to matters of homicide be found side by side. Until comparatively recently, moreover, no attempt was made to reconcile these systems; and inequities were only averted, in some cases, by the exercise of those powers of transfer and review which were vested in administrative officers. Since 1948, however, various attempts have been made by the legislature to effect some measure of reconciliation; and the present position (under sections 22 and 67 of the Native Courts Law, 1956 and section 61 of the High Court Law, 1955) is that, where an act or omission constitutes an offence under both the Criminal Code and native law and custom, Native Courts may try the offence under the latter, but with the provision that they must not impose any punishment in excess of the maximum penalty provided for such act or omission under the Code. This means, in effect, that the Native Court, after trying the accused under native law and custom, should review the whole case in the light of the Criminal Code, and then adjust its sentence accordingly. This attempt to reconcile the conflict should, in theory, ensure a certain uniformity of sentence, but at the expense of a feat of juristic abstraction quite beyond the powers of the majority of the courts concerned. In practice, therefore, it is only in the case of an appeal to the High Court that this provision comes into effect, for the High Court is then empowered (inter alia) to substitute for the punishment imposed by the lower court any other punishment which that court could have imposed, and to do this "notwithstanding that the decision of the Native Court was correct under native law and custom". Even so, however, evidence of important factors in the case, such as the presence of strong provocation, will, in all probability, have been ignored in the lower court. Before justice can be done, therefore, a retrial may well be essential.

Other Problems

7. This illustration of the conflict and confusion, which at present exist must suffice. Three other problems presented by the criminal law as it is applied today in the Northern Region must, however, be mentioned:

a) The classical texts of Maliki law are chiefly concerned in [sic: with] offences (illicit sex relations, slander of a chaste Moslem's chastity, theft, brigandage, drinking alcohol and apostasy) for which the penalties are exactly prescribed. For the rest, they content themselves with stating that all other wrong-doings should be suitably punished at the discretion of the court or the wider (and "political") discretion of the Ruler. Since, moreover, those (*hadd*) offences for which these punishments are exactly prescribed can only be proved by a sustained confession or by a degree of evidence which is in most cases virtually unobtainable – and since several of the punishments so prescribed are of such severity (e.g. stoning and mutilation) as to have been forbidden by Ordinance from the inception of the Protectorate – the overwhelming majority of the criminal law administered by the Moslem Courts comes under the category of this discretionary jurisdiction. Plainly, then, no certainty or uniformity – two of the major requirements in the criminal law of any civilised state in the modern world – can be expected. Add to this the fact that most of the Alkalai owe their position and pin their prospects of advancement to the favour of the Native Authority in whose courts they serve, and it can be understood that political opponents of the regime in power sometimes complain of apprehension that they may be treated with something less than justice – particularly when they are accused, in broad terms, of what amounts to insubordination.

b) A further problem was emphasised, rather than solved, by the promulgation of the Moslem Court of Appeal Law and Native Courts Law in 1956. Before that date virtually no mention had been made of "Moslem Law" in any legislative enactment in Nigeria; and the law enforced in all Native Courts (in addition, that is, to Native Authority Orders and to such Ordinances as they are authorised to apply) was covered by the comprehensive term "native law and custom". This would, of course, approximate to the Maliki law in the more strictly Moslem areas; would represent pagan customary law in solidly pagan districts; and would represent a heterogeneous amalgam of the two in places which fall between these two extremes. The legislation of 1956, however, introduced the concept of cases "governed by Moslem law" (i.e. those to which the principles of Moslem law should be applied to the exclusion of the principles of any other system of law or of native law or custom), and all such cases, and these alone, were to go, on appeal, to the newly formed Moslem Court of Appeal. But it is often a matter of extreme difficulty, in Northern Nigeria, to determine what cases, precisely, should be regarded as exclusively governed by Moslem law. Similarly, criminal cases were to be determined by the system of criminal law prevailing in the area of the court's jurisdiction, and this, too, sometimes occasions a degree of conflict and uncertainty.

c) The third problem – and this is a major one – concerns the procedure and rules of evidence governing criminal prosecutions in the Native Courts. According to the strict Maliki view the evidence of anyone other than adult, male Moslems, who are not "interested" parties, is totally inadmissible in such cases, while the testimony of the requisite number of eligible witnesses is virtually conclusive, without any adequate opportunity being given to the accused to call his own witness in his defence. Not only so, but in homicide cases in which the testimony of the necessary two adult, male Moslems is not forthcoming, a lesser degree of evidence may be made complete and conclusive by the heirs of blood swearing oaths to the guilt of the accused – except that, where several persons are so convicted of participating in a single murder, the heirs of

blood may select one, only, for execution, while the others receive an almost negligible sentence. Much of this appears clearly contrary to any system of natural justice.

Summary of Present Position

8. Such then is the position as we found it. A major conflict prevails between the Nigerian Criminal Code, on one hand, and "native law and custom", on the other – and the legislative devices which have been introduced to remedy this conflict are far from satisfactory. In addition, a number of anomalies exist, some of which seem contrary to natural justice and to those fundamental rights which will, it is hoped, be entrenched in the new Constitution (as agreed at the Constitutional Conference held in London in 1957). It may be observed, in this context, that the unsatisfactory features in the present position can only be explained as a perpetuation, long beyond their time, of the traditional concepts and procedures for the application of Maliki law which existed at the inception of the Protectorate; while the subsequent stagnation must be attributed to a meticulous if exaggerated loyalty, on the part of the British Administration, to the promises of Lord Lugard that there would be no interference in the religion of the people, and to the fact that the Nigerians, on their part – cut off, as they were, from the currents of thought which have had such influence elsewhere in the Moslem world – could scarcely be expected to urge the Administration to initiate reforms. But the Panel considers it essential that this situation should be remedied before the advent of Independence brings new responsibilities, additional contacts with the outside world, and an increasing need to attract foreign capital. It is, moreover, strengthened in this conviction by the fact that many other countries have taken advantage of their new-found independence, or imminent prospect of independence, to put their own house in order in a way in which a non-indigenous Administration had hesitated to do.

OUR MAJOR RECOMMENDATION

The Principle Involved

9. Our Terms of Reference direct us to consider this position "in the light of the legal and judicial systems obtaining in other parts of the world where Moslem and non-Moslem live side by side, and with particular reference to the systems obtaining in Libya, Pakistan and the Sudan". We took note, therefore, that in each of these countries – and, indeed, in all parts of the world where Moslem and non-Moslem live side by side – the conflict which prevails in this Region is precluded by the fact that the Islamic law, as such, is confined to the law of personal status and family relations (that is, questions of marriage, divorce, paternity, guardianship of minors, interdiction, guardianship of interdicted persons, wakfs, gifts, wills, and succession – with the exception of claims to immovable property) in respect of Moslem litigants; other civil litigation (that is, questions of Company and Commercial law, claims to the ownership of immovable or moveable property, and questions of tort) are dealt with, respectively, under statute law, customary law, or the law under which the parties concluded their contract; while all that concerns criminal law is governed by a Penal Code which ensures certainty and uniformity. It seems clear to the Panel, therefore, that their first major recommendation must be that the same principle should be accepted in this Region.

A Suitable Code

10. The Panel is of the opinion, moreover, that the Sudan Panel Code (which is virtually identical with Code in force in Pakistan) is much better suited to the circumstances of the Northern Region than is the Nigerian Criminal Code at present in force. This is in part because the Sudan Code is much simpler, and, therefore, falls more within the competence of courts which have not enjoyed any professional training; and in part because it has proved acceptable to millions of Moslems in the sister country of the Sudan and to millions more in Pakistan, Malaya and elsewhere. It was, indeed, explained by members of the Panel that this Code might well be regarded as a codification of the way in which the overwhelmingly greater part of the Islamic criminal law (that is, the duty of courts and Rulers suitably to punish, at their discretion, all wrong-doing which falls outside the scope of those few highly technical – and virtually improvable – *hadd* offences to which reference has already been made) should be exercised by the courts; for only in this way can this discretionary jurisdiction attain the necessary certainty and uniformity. It was stated, moreover, that there is nothing in this Penal Code which is contrary to the principles of Islam when properly understood; and that there is virtually no wrong-doing known to Islam (with the exception of the law of apostasy as this has been developed by the jurists) which is not punishable under its provisions.

The Action Proposed

11. The Panel recommends, therefore, that the Sudan Penal Code and its accompanying Code of Criminal Procedure should be introduced, as soon as possible, as the criminal law of the Northern Region, after such minor amendments have been made therein as the circumstances of this Region may require – except that those few subjects which are reserved to the Federation must, presumably continue to be governed, for the present at least, by the existing Criminal Code. After promulgation, these Codes would be fully applicable, forthwith, in the High Court and the Magistrates' Courts, and should be followed as closely as possible by every Native Court throughout the Region – for one of the major purposes of our proposal is to preclude the present conflict and uncertainty by means of a law which is uniform and certain. The Panel is of the opinion, however, that it would be premature, at this juncture, to provide that the Native Courts must be bound by these Codes in all particulars, and that it would be preferable to prescribe that all such courts should for an initial or interim period, be "guided" by them. This expression is not intended to imply that any other law prevails in the Region, or can properly be applied by Native Courts, in any criminal matter; it merely recognises the fact that at first – and until the schemes for training recommended in another part of this Report can not only be implemented but have had their cumulative effect – a broad and sympathetic view must be taken of courts which are in process of learning a wholly new technique.

The Meaning of "Guided" – (a) in Procedure

12. In matters of procedure, for example, the Native Courts cannot be expected to observe the details of the Code of Criminal Procedure for many years to come. Instead, it should be regarded as sufficient if they inform the accused of the offence of which he is alleged to be guilty (without, that is, framing any formal charge under a specified section of the Penal Code) and if they ask him, after the witnesses for the prosecution

have been heard, what he has to say in his defence and what witnesses, if any, he has to call. All witnesses, without discrimination, must be heard. They would not, normally, be put on oath before beginning their testimony, but only regarding the truth of that part of their evidence which is material to the determination of the case. Even so, however, their testimony should not be accepted without the court doing its best to test its reliability by questioning them and by inviting the accused to suggest such questions as he would wish the court to put on his behalf. The case would then be decided, not by some self-operating rule regarding what witnesses are, or are not, admissible, but on the basis of the court's considered opinion regarding the credibility of these witnesses and the conclusion to which all the available evidence leads. An oath proffered to the accused would, in suitable circumstances, constitute one factor in this evidence. That for a court thus to ascertain the truth by every suitable means in order to effect impartial justice is in no way contrary to the Principles of Islam was emphasised by members of the Panel.

The Meaning of "Guided" – (b) in Substantive Law

13. In regard to the substantive law, on the other hand, it is expected that the Native Courts will be able to approximate much more closely to a proper application of the provisions of the new Code. The Panel earnestly hopes, however, that legislation can be drafted which will give full scope to the Judges, when dealing with such cases on appeal, to take a broad and understanding view of the difficulties facing courts, which have always been accustomed to apply a different system, in learning an entirely new technique. It would be fatal to the success of this proposal – on which the future progress of this Region as part of an independent Federation of Nigeria must in large part depend – if cases tried by Native Courts, during the period when they are "guided" by this Code, should be quashed on appeal because of some minor defect, while it would assist these courts greatly if the appellate court would seek to remedy such defects either by itself revising the judgment or sentence concerned or by sending the case back, where necessary, to the Native Court for further evidence. Only so will it be possible to help these courts to eliminate these defects in the future, and, at the same time, to avoid the sacrifice of justice on the altar of ignorance or mistake. The Panel is fully aware that it may not be easy to give legislative expression to these proposals in any way which leaves no loophole for misunderstandings, and that much will depend on the way in which the discretion is exercised which must necessarily rest in the Judges of the Appellate Court; but we do not believe that it will be beyond their good sense and ingenuity to find a variety of ways in which they can assist the Native Courts in their difficult task throughout the period during which these courts are both to be guided by the provisions of this Code and also guided towards its proper application. It is hoped that the relevant legislation will be so phrased as clearly to exclude the applicability of past precedents in this matter and thus allow the appellate court to approach the problems of this interim period unshackled by any decisions of the past.

Blood Money

14. In regard to questions of blood-money, the Panel recommends that the practice prevailing in the Sudan should be adopted. Thus, in cases of murder there would not, normally, be any question of such payments; only in those circumstances in which the exercise of the prerogative of mercy is contemplated might the payment of *diyah* be made a condition of clemency. In cases of homicide not amounting to murder, on the other

hand, acceptance of blood money by the relatives of the deceased might be taken into account as a factor which might justify a reduction of sentence. Such payments should never be regarded as a substitute for the punishment of the offender, but rather as a means for readjusting the social equilibrium at the conclusion of a case. If, moreover, such payments are continued in Nigeria, it will be necessary to ensure that the discrimination against non-Moslems in this matter mentioned in the report of the Minorities Commission is excluded.

A Temporary Option Clause

15. During this interim period, moreover, the Panel recommends that non-Moslems should be permitted to "opt-out" of trial by a Moslem court, if they still fear they will not receive a fair hearing, in favour of trial before a Magistrate's Court; and a similar option would be allowed to a Moslem who objects to trial by a non-Moslem Native Court. This proposal is based on one of the recommendations of the Report of the Minorities Commission and is designed both to assuage the anxieties of those who point to certain inequities in the past and to encourage a mutual re-establishment of confidence. But the Panel considers that a perpetuation of such options on a long-term basis would only serve to deepen the existing divisions in the Region and to retard the unification of the judicial system. It recommends, therefore, that as soon as the Regional Government is satisfied that the Native Courts have acquired adequate training and experience, and is prepared to make the new Codes binding on all courts without exception, all such options should cease. The personal and family law would still, of course, be separate and distinct for the followers of each religion, but in all other cases the civil and criminal law would be applied, on a Regional basis, by each court according to its competence, without any distinction of religion.

Summary

16. Our proposal is, therefore, that:

a) Matters of personal status and family law should continue to be governed, as at present, by the personal law of the parties, according to their religion. In the case of Moslem litigants such cases would go first to the Alkalai and then to the Sharia Court of Appeal (see below) which will be exclusively concerned with such questions. This suggestion accords with current practice throughout the entire Moslem world, except for parts of the Arabian peninsula and Afghanistan; for everywhere else the Islamic law, as such, is now confined to the law of personal status. In the case of pagan and Christian litigants such cases would continue, as at present, to be handled by the suitable Native Courts or the Magistrates' Courts, with an appeal, in the first place, to the Native Courts Appellate Division of the High Court (see below) and, in the second, to the High Courts as at present constituted.

b) Other civil causes should be governed, as at present, by Ordinance and English law, before the Magistrates' Courts and High Court, in questions of Company and Commercial law; by customary law, before the suitable Native Courts (e.g. the Emirs' Courts), with an appeal to the Native Courts Appellate Division of the High Court, in questions involving land tenure; by the law under which the contract was concluded, before Native Courts (with an appeal to the Native Courts Division of the High Court)

or the Magistrates' Courts (with an appeal to the High Court as at present constituted), in litigation regarding contracts; and under the law of tort applicable to the parties, before the same courts and with a corresponding chain of appeal, in questions of civil wrong.

c) All criminal causes would be justiciable under the new Northern Nigerian Criminal Code and Code of Criminal Procedure. In the Magistrates' and High Court these would be fully binding from the date of their promulgation, while the Native Courts must be "guided" by them as explained above. Appeals to Native Courts would lie to the Native Courts Appellate Division of the High Court, and from the Magistrates' Courts to the High Court as at present constituted.

Our more detailed proposals regarding the organisation of the Judiciary demand, however, separate treatment in the next chapter of this Report.

ORGANISATION OF THE JUDICIARY

Existing System

17. It is at once apparent from a study of the judicial organisation of the Northern Region that by far the greater part of the day to day burden of administering justice lies with Native Courts organised under the Native Courts Law, 1956. There are only seven professional magistrates serving in the territory. It does not appear that the District Officers who are generally gazetted with magisterial powers in fact exercise them at all extensively; instead they seem to confine themselves largely to supervising the work of the Native Courts within their Divisions, using the powers of review and transfer which the law vests in them. The High Court under the Chief Justice, at first instance and in the exercise of its appellate powers, exercises an over-all function of controlling the administration of justice – sitting with two assessors when dealing with cases involving Moslem law. The 1956 legislation has established the Moslem Court of Appeal, the jurisdiction of which is restricted to appeals in cases governed by Moslem law. This court consists of an Alkali and two or more assessors selected respectively from panels of Alkalai and assessors, which are appointed by the Governor.

18. Members of the Native Courts are appointed by the Resident of a Province with the exception that an Alkali is appointed by the Native Authority subject to the Resident's approval. The Chief Justice and the Judges of the High Court are appointed by the Queen, and adequate constitutional safeguards are provided to ensure that they are free from political interference.

The Native Courts are of several types:

(a) The Alkali's Court, administering Moslem law, Native Authority Rules, and some Nigerian Statute law, and presided over by a single judge.

(b) The Customary Courts established in non-Moslem areas; hearing cases under local law and custom and also applying Native Authority Rules, the Nigerian Criminal Code and the Statute law. These courts are usually constituted of a President and a panel of members, and some of the panels are excessively large.

(c) The Mixed Courts, which are special courts established to deal with the large strangers' wards in a few towns.

(d) The Emirs' Courts (or Chiefs' Courts), known generally as "siyasa" courts, which administer Moslem law and native law and custom as requisite within their jurisdiction. These courts have wide powers, extending in some instances to hearing homicide cases.

19. In Libya and Pakistan, Native Courts as they are found in the Northern Region are unknown, but the Sudan places great reliance on an efficient system of Native Courts, although there the Native Courts are closely controlled by District Commissioners who themselves undertake much magisterial work. Native Courts are not permitted in the Sudan to dispose of homicide cases or other serious offences.

20. The Native Court undoubtedly provides a cheap and accessible form for dispensing justice in a country where the population is so widely dispersed. The local knowledge of law and custom and proximity to the people which are salient features of the Native Court could never be provided as efficiently by professional magistrates. Nevertheless, it must be recognised that the system is open to abuse unless a satisfactory system of supervision is established. The Panel has therefore paid particular attention to the powers of review by Administrative Officers and the appellate powers of the High Court in order to see whether adequate safeguards are provided in the present arrangements. It must be recognised that in the Northern Region there is no alternative to an attempt to strengthen and improve the efficiency of the Native Courts. Handling as they do over 90% of the litigation of the Region, the peasant must have confidence in these Courts if the administration of justice is not to break down in the rural areas.

Admission of Advocates to Native Courts

21. Clearly, from what has been said to the Panel and from the evidence contained in the various memoranda before us, there is in the mind of the unsophisticated peasant a profound distrust of the professional advocate, and it is our firm opinion that no advocate should be permitted to appear before any Native Court. Only a professional court can be expected to admit advocates and ensure that both parties to a dispute have a fair chance to present their case with legal representation. Advocates are already permitted to appear before the High Court on appeal from Native Courts.

22. The Report of the Minorities Commission has made a recommendation that a type of legal representation in the form of the "Prisoner's friend" should be permitted, if it is the Government's intention to remove the present safeguards afforded by the powers of review and transfer vested in Administrative Officers. The Panel is of the opinion that it is most important, at least for the period during which the reforms proposed in this report are developing, that Administrative Officers retain these powers. Review and transfer will continue to be required if Administrative Officers are to play their part in guiding the Native Courts into the new technique of administering criminal law which is the Panel's salient recommendation. Apart from this consideration, the introduction of the "Prisoner's friend' would make litigation more expensive to the peasant, and possibly make it more difficult for the Court to arrive at the truth.

Regionalisation of Native Courts

23. Another recommendation of the Minorities Commission to which we have given careful thought is that of the regionalisation of the Native Courts system. There is weight

in the criticism that the present system is too closely associated with, and dependent upon, the executive in the shape of the Native Authorities. However, there is no doubt that the locally appointed Alkali is more likely to be acceptable to a rural community than a stranger, and is more likely to have the local knowledge of law and custom which is essential for the efficient performance of his duties. Moreover, many of the existing Alkalai and court members lack qualifications on which the Government would have to insist if a policy was accepted of admitting such staff to the Regional Public Service. The Panel is therefore of the opinion that it would be premature to proceed with Regionalisation beyond the limits of the two proposals which now follow.

24. Criticism of the dependence of Native Courts upon the appointing Native Authority in the Report of the Minorities Commission also makes reference to the provision in section 62(c) of the Native Courts Law, 1956, which prevents a further appeal from a Native Court of Appeal in cases in which a fine of £25 or less or a term of imprisonment of six months or less has been ordered. The intention of this sub-section was clearly to put a limit to the number of appeals in petty cases, but there is undoubtedly a widespread desire that there should be at least the possibility of an appeal to an independent court in such cases. Occasions also arise in Provinces where it would be desirable, for political and other local reasons, that an independent court should hear specific cases at first instance. For these reasons the Panel recommends the setting up of a new type of Native Court in each Provincial Headquarters. The staff of these Courts must be Regional Public Servants appointed by the Judicial Service Commission. These Courts would hear all appeals from Grade 'B', 'C' and 'D' Courts in the Province, and the present appellate powers of Chief Alkalai and other Native Courts of Appeal would be abolished. The new Courts would also have first instance powers to dispose of the type of cases mentioned above. It is recommended that in the predominantly Moslem Provinces, these Courts should consist of an Alkali, who would exercise his powers both in respect of criminal and civil matters and also cases involving personal status. The Alkali would be able to call upon assessors in cases involving native law and custom with which he was not personally acquainted.

25. In the three Provinces of the Plateau, Benue and Kabba, a variant of this Court would be required to meet the needs of a population where the prevailing law and custom is of non-Moslem origin. It is recommended that in these Provinces the Provincial Court should be composed of a President and two permanent members, one of whom should be an Alkali. The Alkali would be responsible for disposing of all cases of personal status involving Moslems and, in these matters, he would sit alone. In all other matters, he would sit as a member of the Court. The powers of these Provincial Courts would otherwise be identical with those of the Province Alkali in the Moslem Provinces.

26. A second step towards Regionalisation might reasonably be taken by the Government. The Panel has made detailed recommendations on the training of judicial staff which will be necessary if this report is to be implemented. It is considered that Alkalai and Court Members who obtain the necessary qualifications in various training institutions should be offered the choice either of entering the service of their Native Authorities direct or of joining the Regional Service and accepting secondment on agreed terms to a Native Authority willing to employ them. In this way a new entrant

would enjoy the advantages of Regional conditions of service, while the essential local character of the Native Courts system would be safeguarded. Furthermore, the Government would slowly build up a nucleus of trained and experienced staff in the Provinces upon which it could base a policy of Regionalisation if such was considered desirable in the future.

Appeals

27. The present system is that appeals from the Magistrates' Courts are dealt with by the High Court under the High Court Law of 1956.

28. A more complicated system has been necessary for Native Courts, since it has been necessary to provide a channel of appeal to resolve the conflicts which have arisen between the various systems of criminal law which at present prevail in the Region. Thus the Moslem Court of Appeal set up by the law of 1956 was intended to serve as a bridge between those courts applying Moslem law and the High Court; and appeals from Native Courts Grade 'A' and 'A' Limited (and some 'B' Courts), together with appeals from Native Courts of Appeal, go to the Moslem Court of Appeal in all cases governed by Moslem Law. A further appeal lies to the High Court in all cases coming before the Moslem Court of Appeal.

29. In dealing with Regionalisation, a recommendation has been made to establish Provincial Native Courts to handle appeals from 'B', 'C', and 'D' Courts in the Provinces. The effect of this proposal is that all appeals from Native Courts will in future be heard in the Regional Courts, thus avoiding the weighty criticism that section 62(c) of the Native Courts Law has prevented appeals outside the Native Authority system in over ninety percent of the cases heard by Native Courts.

The Moslem Court of Appeal

30. This Court should be renamed the Sharia Court of Appeal. Sharia is the appropriate word to use in describing a Court administering Moslem Law, and the role of this Court will be more likely to be understood by the minorities if this change of name is accepted.

31. The present system of selecting Presidents and assessors for this Court from panels approved by the Governor has proved unsatisfactory in practice. Presidents selected by this method have been of varying calibre and their judgements have not been consistent. The selection of Presidents and assessors from all parts of the country ad hoc for separate cases has been necessary to ensure that the Court has been constituted in such a way that an Alkali or assessor is not placed in a situation where he has to judge a cause coming from his own Native Authority Courts. It has been said that judgements arrived at in this way have caused resentment and aggravated traditional inter-Provincial rivalries. Finally, the present system seems to be wasteful in time and staff, and consequently expensive.

32. The Panel is of the opinion that the Sharia Court of Appeal should be given the prestige of a permanent bench of Judges, and strongly recommends that the posts of Grand Kadi, Deputy Grand Kadi, and two Sharia Judges should be created as early as possible. These posts must be filled by men of learning and experience who command the respect of the community, and should carry suitable salaries and rank. It is further proposed that the Panel of Assessors be abolished and that the Sharia Court of Appeal

should sit as a bench of three judges, each with an equal voice in the judgment. Tradition in this country has been in favour of an Alkali and assessors rather than a bench of judges. It is pointed out, however, that every Moslem country in the world (including Saudi Arabia) has recognised that in an appeal court the judgment of an Alkali sitting in a lower court should not be reversed by a single judge sitting alone. A quorum of three judges will ensure a decision and add weight to its finality.

33. With the introduction of a Penal Code, the Sharia Court of Appeal will confine itself to hearing appeals in all cases involving the personal status of Moslems in the Region. The decision of the Court should be final and there should be no further appeal to the High Court in such matters. In the provisions detailed below for the disposal of appeals in criminal and civil matters, it will be seen that the Judges of the Sharia Court of Appeal will also have an important role to play.

The Native Courts' Appellate Division of the High Court

34. To meet the situation arising from the introduction of a Penal Code, the Panel recommends that an Appellate Division of the High Court is set up to hear all appeals in criminal and civil matters coming up from the 'A', 'A' Limited, and Provincial Native Courts. The Court should be constituted by a panel of three judges – two of whom should be Judges of the High Court, while the third is the Grand Kadi or another Judge of the Sharia Court of Appeal. All three members should have an equal voice in the decision of the Court, and the Judge considered to have the greatest knowledge of the law to be administered should preside.

35. It is proposed that a Sharia Court Judge should sit in this Court for two reasons. Firstly, it is important that there should be African representation in this Court at once to ensure that it will gain the respect and confidence of the public. In course of time, when Northern Nigerians take their place on the High Court bench, it may be possible to dispense with the presence of the Sharia Court Judge in criminal cases. Secondly, the Panel has recommended that there should be no changes in the law regarding civil matters, and civil cases governed by Moslem Law will continue to come before this Court. In such cases, the Sharia Judge would presumably be regarded as the judge with the greatest knowledge of the law to be administered. As long as cases of this nature are appearing before the Court, it will be necessary to have representation from the Sharia Court of Appeal. It is suggested that powers be given enabling this Division to sit in two or more panels, so that appeals can be heard on circuit in the Provinces.

Conflicts of Jurisdiction

36. It will be necessary to provide a machinery to resolve any conflict of jurisdiction which may arise between the Sharia Court of Appeal and the Native Courts Appellate Division of the High Court. In the Sudan, such disputes are resolved by a court presided over by the Chief Justice with the Grand Kadi, one Sharia Court Judge and two High Court Judges sitting as members. It is recommended that similar action be taken in this Region.

Appeal in Homicide Cases

37. Cases were brought to the notice of the Panel in which accused persons sentenced to death in Native Courts had not filed appeals. A person under sentence of death should

be given every opportunity to have his case fully considered by the Appeal Court. Since he has not had the opportunity in the Native Courts of obtaining the services of a legal adviser, it is strongly recommended that appeal to the Native Courts Appellate Division should be regarded as automatic in all these cases in which a sentence of death has been passed, and that the condemned person should have the right to free legal aid.

Salaries of Alkalai, etc.

38. The Panel considers that this subject is not strictly within its terms of reference, but has agreed that comments on the Proposals made by the Native Authority Staff Committee will be made under separate cover, as the question would appear to require decisions independently of this report. Here it will suffice to say that the Panel heard evidence that the staff of the Native Courts, especially in the lower grades of courts, are very poorly paid. Such a situation must be rectified speedily, for the administration of justice requires that salaries should be paid which are adequate to minimise temptation to corruption. It is not considered that the suggested minimum salary of £189 per annum as the entry point into the service of a Kano trained Alkali is adequate for this purpose. A further attempt should be made to agree upon a grading system which will take into account qualifications, length of service, and experience. The volume of work undertaken by the court should indicate the grade of Alkali, or other person, required to fill the post. Those with training and experience should not necessarily be compelled to seek their futures in the smaller Native Authorities, and a system of interchange and transfer between Native Authorities might offer a solution to this problem.

Language of the Courts

39. The Panel was informed that there was widespread criticism in the Region that Judges and Magistrates were not required to pass a prescribed examination in a native language and did all their work through interpreters, who were frequently of Southern extraction and commonly thought to be corrupt. Both in the Sudan and Pakistan the Judiciary have always been expected to acquire a proficiency in the local language. The Panel considers that this factor may well have contributed to the belief in the minds of the people that the High Court and Magistrates' Courts are the "English" or foreign courts. It is most desirable that the people should now realise that these courts are the courts of a self-governing Northern Region. With this in mind, the Panel recommends that all Magistrates and Crown Counsel should be required to pass a prescribed examination. It may be that conditions of service of officers already in the Region cannot be altered, but the condition should be inserted into all future contracts. Officers already in the Service should at least be given every encouragement to acquire a knowledge of a local language.

The Future Development of a Northern Nigerian Judiciary

40. It does not appear to the Panel that any long term plan has yet been settled to produce the Northern Nigerian Judges and Magistrates who will be required in the future. No one can foresee for how long it will be possible for the Region to retain the services of expatriate Judges and Magistrates, and it is an urgent necessity that a training policy is evolved which will aim at producing Northern Nigerians adequately qualified and trained to take up these responsible posts in due course. The Panel's views on

training appear later in the Report. It will also be necessary to make provision in the Constitution for the Grand Kadi or his representative to be a member of the proposed Judicial Service Commission.

41. With experience of the Sudan in mind, the Panel is of the opinion that it is essential to retain expatriate Judges and Magistrates until such time as the local product will find acceptance internationally. But it is of paramount importance that suitable men are given adequate academic training and posts of responsibility in the Judicial service at an early date to equip them for higher posts. For this reason consideration should be given to reducing the period to be spent in practice at the Bar before admission to the Magistracy. A more positive policy in this direction will help to obviate political criticism which will inevitably be heard in the future if adequate steps are not taken to open up to Northerners the opportunity of a career reaching to the highest posts in the Judiciary.

Training

42. If these proposals are to be implemented, the provision of adequate training becomes a matter of particular importance. It is on such training that the success, and relatively short duration, of the interim period will principally depend, and it is on this alone that any solid foundations for the future can be laid. Planning must, therefore, be directed, from the very first, towards two distinct objectives; first to make provision for an application of the new policy, during the interim period, which is as smooth and efficient as possible, and which will enable the Government to terminate this period with the minimum practicable delay; and secondly to lay foundations for a legal service, Magistracy and Bench which can be staffed by Northern Nigerians.

43. The first essential is the appointment of a suitable Commissioner of Native Courts. This officer must have legal qualifications, but he must also have a wide experience of guiding the work of Native Courts. It is essential, moreover, that he should be a man of drive and initiative who is thoroughly convinced of the importance of his task. A suitable assistant should also be appointed from the first; and his post should be filled by a Nigerian at the earliest possible moment.

44. The next essential is to create a team of Officers to provide legal training centred on the Zaria Institute of Administration. This team should consist of a Grade II Officer, to correspond with the other courses centred on the Institute; a Crown Counsel or Grade III Administrative Officer; and a Grade IV Officer. All should be Hausa speakers. It would be preferable that both the senior posts should be filled by Officers with legal qualifications, and essential that one of them should (while the other might be filled by one who had had considerable experience in the guidance of Native Courts), and the junior post might be filled by an administrative officer who is aspiring to obtain legal qualifications.

45. This team should organise courses of three different types, as and when this becomes possible:

(a) Short courses at Zaria for Chief Alkalai and other Senior Native Court personnel who will have to be "guided" by the new Northern Nigerian Penal Code. These courses should, initially, concentrate almost entirely on practical teaching as to how the new Penal Code and Code of Procedure are to be applied. It is understood that from the

beginning of next year accommodation will be available at the Zaria Institute for some thirty such senior personnel at least for three periods of six weeks' duration; and it is felt that an intensive course, even as short as this, would be of the greatest benefit in explaining the rudiments of the new Code and Procedure to those whose duty it will be to apply them in the more serious cases.

(b) Courses arranged in different Provinces for District Officers, Alkalai, Registrars and Court Members. These courses should be arranged in between the courses at Zaria described under (a) above. A particular point should be made of including District Officers in the scope of these courses; for it must be emphasised that this major change in the administration of the law in the Region can be successfully effected only if administrative officers in charge of Divisions give continued guidance and encouragement, particularly in the early stages, to those who will be called upon to learn a new technique. In this context the Panel strongly recommends the appointment, in each Province, of an Administrative Officer, parallel to the present Councils D.O., to be charged with the general supervision of all Native Courts in the Province.

After District Officers, these courses should concentrate on all the personnel of the Native Courts – giving priority, initially, to those in the senior appointments. The objective should be elementary and practical instruction on how the new Code and procedure are to be understood and applied.

46. In addition to the practical instruction provided under (a) and (b) above, it is extremely important that a few lectures on law, and, in particular, on the importance of a proper application of the new Code – should be included in other courses given at the Zaria Institute (for A.D.O.s., Emirs, Local Government Personnel, etc.). In this and other ways every effort must be made to foster wide-spread enthusiasm not only for the Code but for the efficient administration of the law throughout the Region.

(c) The third type of course which should be arranged as soon as practicable is one in which the short term and the long term objectives coincide: namely, a succession of courses at Zaria for registrars, scribes, and court members from throughout the Region. In order that these courses should not make undue demands on the teaching staff, every effort should be made to train Nigerian instructors and to provide standardised lectures and demonstrations. It is only by a succession of such courses that the standard of the lower courts can be raised.

47. In addition to courses of these three types, all of which might be handled by the team of instructors centred on the Zaria Institute of Administration, the long-term project of training Northern Nigerians for the legal service, Magistracy and Bench, will require facilities for courses of a longer duration and a higher quality for selected candidates who have passed out of Secondary Schools at the Advanced level. The pick of these, who might be expected to develop into the High Court Judges of the future, should be sent straight to London to combine a University degree with the completion of their Bar qualification; and it is noteworthy that the London LL.B. makes provision for a candidate to choose the Indian Penal Code in place of English Criminal Law and that an option in Mohammedan Law (the syllabus for which covers the law of the family and personal status) is available both in the London LL.B. and in the Bar examinations as an alternative to Real Property. But the greater number should concentrate on the Bar

qualification alone; and it would be beneficial if they could do their first year's study in Nigeria. The Panel is uncertain whether it is intended that a Faculty of Law should be started at Ibadan University in the near future. Alternatively, suitable provision for such a course might be made at the Zaria College of Arts and Technology. For such a course two qualified instructors would be needed.

48. It has also been suggested, we understand, that the legal side of the Kano School of Arabic Studies should be strengthened by the addition of a second year course which would include some Comparative Law – which, if the proposals put forward by this Panel are accepted, would presumably take the form of instruction in Criminal Law from the new Penal Code: in procedure and evidence from the new Code of Procedure; and in the elements of the English Law of Contract. But it would effect a considerable economy if this scheme were abandoned in favour of one year of specialised legal study at Kano (chiefly in the Maliki Law of personal status), followed by transfer to Zaria to join the one year course designed for those proceeding to London to read for the Bar. In addition to economy, this plan would have the advantage of obviating too wide a divergence between those following these two lines of study. Additional instruction for specialists in the Islamic Law of personal status whether from the Maliki texts or on a more comparative basis, could be provided in London.

49. These proposals, taken together, might seem to represent an excessive strain on the Region's financial resources, and the possibility of obtaining a grant towards the necessary capital expenditure involved from Colonial Development & Welfare funds might well be explored. The Panel would emphasise that the proper administration of the law is of primary importance in the light of imminent independence, when this administration is bound to come under the searchlight of international scrutiny. It is partly for this reason that the Panel has felt bound to make proposals which involve a fundamental change in the way in which the law is to be administered in the Region; and it is essential that everything possible should be done to ensure that this change is satisfactorily effected and that sound foundations for the future – when expatriate Judges may not be available – should be laid forthwith.

3.

Summary of Recommendations

1.	Islamic law as such should be confined to the law of personal status and family relations and, when applicable, civil cases.	Para. 9
2.	The introduction of a Northern Nigerian Penal Code and a Code of Criminal Procedure based on the Sudan Codes.	Paras. 10 and 11
3.	Whereas the High Court and Magistrates' Courts should be bound by these Codes, the Native Courts should for an interim period, be "guided" by them. (The meaning attached to "guided" is explained in Paras. 12 and 13.)	
4.	All witnesses must be heard without discrimination (and sworn on essential points).	Para. 12
5.	Courts must decide cases on the weight of all the evidence.	Para. 12
6.	Specific recommendations regarding blood-money (*diyah*).	Para. 14
7.	During the interim period, non-Moslems should be permitted to "opt out" of trial by a Moslem Court and a similar option should be allowed to a Moslem who objects to trial by a non-Moslem Native Court.	Para. 15
8.	Advocates should not be admitted to Native Courts.	Para. 21
9.	Retention of Administrative Officers' powers of review and transfer, particularly during the interim period. Prisoners' friends should not be permitted.	Para. 22
10.	Regionalisation of Native Courts would be premature.	Para. 23
11.	Provincial Alkalis' Courts should be established in the predominantly Moslem Provinces to hear appeals from 'B', 'C', and 'D' Grade Native Courts. These Courts should also have first instance powers. Staff to be Regional Servants.	Para. 24
12.	Provincial Courts of three members, including one Alkali, to be set up in Plateau, Benue, and Kabba Provinces to fulfil the role of the Provincial Alkali as detailed in recommendation 11.	Para. 25
13.	Admission of suitably qualified Alkalai and Native Court members in the future to the Regional Service. These persons should continue to serve with Native Authorities on secondments.	Para. 26
4.	The Moslem Court of Appeal to be renamed the Sharia Court of Appeal.	Para. 30
15.	Creation of a permanent bench of Judges for the Sharia Court of Appeal consisting of a Grand Kadi, Deputy Grand Kadi, and two Sharia Court Judges.	Para. 32

16.	Abolition of the Panel of Assessors and adoption of a system of a quorum of three Sharia Court Judges sitting as a Bench to hear appeals.	Para 32
17.	Sharia Court of Appeal to hear appeals in matters involving personal status of Moslems exclusively. Decision of Sharia Court of Appeal to be final in these matters.	Para. 33
18.	Establishment of a Native Courts' Appellate Division of the High Court, with details of its composition and functions.	Paras. 34 and 35
19.	Provision for a Court to resolve conflicts of jurisdiction between the High Court and the Sharia Court of Appeal.	Para. 36
20.	An automatic appeal to the Native Courts' Appellate Division of the High Court in all cases in which the death penalty is imposed.	Para. 37
21.	Salaries of Alkalai, etc., should be increased.	Para. 38
22.	Recommendation that Magistrates and Crown Counsel should pass a prescribed examination in a local language.	Para. 39
23.	A policy should be decided upon without delay to train Northern Nigerians to fill the posts of High Court Judges and Magistrates in the future.	Para. 40
24.	The Grand Kadi should be a member of the proposed Judicial Service Commission.	Para. 40
25.	A suitable Commissioner of Native Courts should be appointed at once, together with an assistant to allow for extensive touring.	Para. 43
26.	A team of officers based on the Zaria Institute of Administration should provide short residential courses based on the new Code and procedure for Senior Native Courts personnel, and should also visit Provinces to give similar instruction to Administrative Officers and Native Courts personnel.	Para. 44 and 45
27.	During the interim period an Administrative Officer in each Province should be specially charged with the supervision of Native Courts and all District Officers in charge of Divisions should regard such supervision as a major responsibility for the next few years.	Para. 45
28.	That existing courses at the Institute for Emirs, Assistant District Officers, etc. should include lectures on the importance of the proper application of the new Code.	Para. 46
29.	That a succession of courses should be arranged at Zaria for registrars, scribes, etc., throughout the Region.	Para. 46
30.	That plans be made to provide for the Judges and Magistrates of the future by sending a few of those holding the best certificates straight to London to take both a University degree and the Bar qualification, and that a first-year course be established at the Zaria College of Arts & Technology for other promising	Para. 47

candidates who would proceed to London for eighteen months to complete their call to the Bar.

31. That those on the legal side at the Kano School of Arabic Studies should join the one-year course at Zaria after completing one year's specialisation in the Moslem law of personal status at Kano. Para. 48

32. That a few of these future Alkalai or Instructors might be sent for a course of specialised study in London. Para. 49

(Sgd) Sayyed Mohammed Abu Rannat[38]
Sayyed Mohammed Abu Rannat
CHAIRMAN

(Sgd) Mohammed Sharif
Mr. Justice Mohammed Sharif

(Sgd) J.N.D. Anderson
Professor J.N.D. Anderson, O.B.E.

(Sgd) S. Kashim
Shettima Kashim, K.B.E. *Wazirin* Bornu

(Sgd) P.S. Achimugu
Mr. Peter Achimugu, O.B.E.

(Sgd) Musa Othman
Alkali B. Musa, Chief Alkali of Bida

(Sgd) S.S. Richardson
Mr. S.S. Richardson, SECRETARY

KADUNA,
10th September, 1958

[38] In the copy of this report found in NAK S.MOJ/12/S.1 Vol. I, no signatures appear; the names, evidently as signed, are typed in the places for the signatures, prefaced by "(Sgd)", as here.

Chapter 1 Part IV

Statement by the Government of the Northern Region of Nigeria on the Reorganisation of the Legal and Judicial Systems of the Northern Region

Laid on the Table of the Legislative Houses, December, 1958[39]

Contents:

[39] Kaduna: Government Printer, 1958.

Statement by the Government of the Northern Region of Nigeria on the Reorganisation of the Legal and Judicial Systems of the Northern Region

INTRODUCTION

With the approach of Regional Self-Government in early 1959 it was felt by the leaders of opinion in the Region that the whole structure of the legal and judicial systems in the North should be examined. In order to ascertain what, if any, changes and reforms were necessary or desirable the Government sent delegations to Libya, Pakistan and the Sudan, all of them Moslem countries which have recently emerged from a similar state of development to that in which the Northern Region now finds itself. The general terms of reference of these Delegations were "to see how countries with diverse populations and religious beliefs are administered after the attainment of self-government with particular reference to the legal system".

2. The three Delegations duly visited the countries named and on their return made their report to the Regional Government.

3. After consideration of these Reports, the Regional Government decided to seek the help of a Panel of Jurists consisting of Sayyed Mohammed Abu Rannat, the Chief Justice of the Sudan, Mr. Justice Mohammed Sharif, the Chairman of the Pakistan Law Commission, Professor J.N.D. Anderson, of the School of African and Oriental Studies, London, Shettima Kashim, the *Waziri* of Bornu, Mr. Peter Achimugu, and Malam Musa, the Chief Alkali of Bida. The advice of the Panel was requested within the following terms of reference:

> "In the light of the legal and judicial systems obtaining in other parts of the world where Moslem and non-Moslem live side by side, and with particular reference to the systems obtaining in Libya, Pakistan and the Sudan, to consider:
>
> (a) the systems of law at present in force in the Northern Region, that is, English law as modified by Nigerian legislation, Moslem law and customary law, and the organisation of the courts and the judiciary enforcing the systems, and
>
> (b) whether it is possible and how far it is desirable to avoid any conflict which may exist between the present systems of law;
>
> and to make recommendations as to the means by which this object may be accomplished and as to the reorganisation of the courts and the judiciary, in so far as this may be desirable."

4. The Panel assembled in Kaduna on the 28th August, 1958. Between that date and the 10th September, 1958 they held nine formal sittings and had numerous other discussions, both formal and informal, with prominent Chiefs, political leaders, representatives of the Judiciary and Legal Department, and members of the public. They also studied a number of relevant documents including the Report of the Minorities Commission and the Reports submitted by the Regional Delegations to Pakistan, Libya and the Sudan.

5. The Government wishes to record its deep appreciation of the services rendered by the Panel of Jurists. Their Report provides a lucid explanation of the difficulties

inherent in the present legal and judicial systems of the Region and puts forward recommendations which will help the Government to establish a system for the administration of justice which is capable of winning international acceptance without sacrificing those traditions which the Moslem majority in the Region wish to preserve. The Government is also deeply indebted to the Delegations led by Etsu Lapai and Shettima Kashim which visited Libya, Pakistan and the Sudan.

THE RECOMMENDATIONS OF THE PANEL OF JURISTS

6. The Panel of Jurists submitted its Report to His Excellency the Governor on 10th September, 1958 and made the following recommendations concerning the reform of the judicial and legal systems of the Region.

Proposed Penal Code and Code of Criminal Procedure

7. The Panel have pointed out that all independent States, where Moslems and non-Moslems live side by side, including Libya, the Sudan and Pakistan, have introduced a codified system of criminal law enforceable in all Courts. They have accordingly recommended that there should be introduced into Northern Nigeria a Penal Code and a Code of Criminal Procedure based on the Sudan Codes. The Sudan Penal Code is virtually identical with the Code in force in Pakistan and is much better suited to the circumstances of the Northern Region than is the Nigerian Criminal Code at present in force. This is in part because the Sudan Code is much simpler, and therefore falls more within the competence of courts which have not enjoyed any professional training, and in part because it has proved acceptable to millions of Moslems in the sister country of the Sudan and to millions more in Pakistan, Malaysia, India and elsewhere. In short, while the Code is acceptable to Moslems because it contains in it nothing that is offensive to or incompatible with the injunctions of the Holy Quran and Sunna, it is also from its simplicity eminently suitable for administration by Native Courts generally.

Civil and Domestic Law: the Shari'a

8. The Panel have recommended that, with the introduction of the Northern Nigerian Penal Code, Moslem Law as such should be confined to the law of personal status and family relations and, when applicable, to civil cases. By personal status and family relations is meant questions of marriage, divorce, paternity, guardianship of minors, interdiction, guardianship of interdicted persons, wakfs, gifts, wills and succession (with the exception of claims to immovable property) in respect of Moslem litigants. Other civil litigation, that is questions of company and commercial law, claims to the ownership of immovable or movable property, and questions of tort, would be dealt with respectively under statute law, customary law, or the law under which the parties concluded their contract.

Introduction of the Codes: the Interim Period

9. With regard to timing, the Panel have recommended that, whereas the High Court and Magistrates Courts should be bound by the new Codes, from the outside [sic: outset], Native Courts should be guided by them for an interim period until the Government is satisfied that they too have had sufficient experience to be bound by them. Some explanation is required as to the meaning of the word "guided". In matters of procedure Native Courts cannot be expected to observe all the details of the new

Code of Criminal Procedure for some years to come. The Panel have therefore recommended that it should be regarded as sufficient if a court informs the accused of the offence of which he is alleged to be guilty, without framing any formal charge under specified section of the Penal Code, and if the Alkali or President then asks him after the witnesses for the prosecution have been heard what he has to say in his defence and what witnesses, if any, he has to call. All witnesses, without discrimination, must be heard. They would not normally be put on oath before beginning their testimony but would only be sworn regarding the truth of that part of their evidence which is material to the determination of the case. It would be the duty of the court to test a witness's reliability by questioning him and by putting to the witness such questions as might be suggested by the accused. Having done so, the court would decide the case on the weight of all the evidence. Furthermore, in dealing with appeals from Native Courts, superior courts would take a tolerant and understanding view of the difficulties of Alkalai or Judges of lower courts in learning an entirely new technique and would refrain from quashing decisions because of some minor defect. On the contrary, Appeal Courts should seek to remedy faults either by themselves revising the judgment or sentence concerned or by sending the case back to the lower court for further evidence. It has also been recommended that the applicability of past precedents should be excluded and that in this interim period the Appellate Courts should be able to approach problems unshackled by discussions of the past.

Choice of Court during Interim Period

10. During the interim period when Native Courts will be guided but not rigidly bound by the new Codes, the Panel have recommended that non-Moslems should be permitted to 'opt out' of trial by Moslem courts and that a similar right should be allowed to Moslems who object to trial by non-Moslem courts. As soon as Native Courts have acquired adequate training and experience, however, such options will no longer be justified and should be terminated by the Regional Government.

Regionalisation of Native Courts

11. The Panel considered the recommendation of the Minorities Commission that the Native Court system should be regionalised, that is to say that the appointment, promotion, discipline and removal of Alkalai and Native Court Judges should be withdrawn from the control of the Native Authorities and placed under the jurisdiction of the Regional Government. The Panel have concluded, however, that there is value in the essentially local character of Native Courts and that it would be premature to proceed with regionalisation except to the extent of setting up the Provincial Courts described in the next paragraph.

Proposed Provincial Courts

12. The Panel have advised that a new type of Native Court should be set up in each provincial headquarters. The staff of these courts would be regional public servants appointed by the Judicial Service Commission. The courts would hear all appeals from Grade B, C and D Native Courts and the present appellate powers of Chief Alkalai and Native Courts of Appeal would be abolished. Where, for local reasons, a hearing in an independent court was desirable, the new courts would also have power of trial in the

first instance. In predominantly Moslem provinces, these courts would consist of an Alkali who would call upon assessors in cases involving native law and custom with which he was not well acquainted. On the other hand, in the non-Moslem provinces, the court would be composed of a president and two permanent members, one of whom would be an Alkali. In these provinces, when hearing appeals involving Moslem personal law, the Alkali would sit alone.

13. Alkalai and court members who obtained the necessary qualifications would be offered the choice either of entering the service of their Native Authorities or of joining the Regional Service and accepting secondment on agreed terms to a Native Authority willing to employ them. This measure would permit new entrants to enjoy the advantages of Regional conditions of service while safeguarding the local character of the Native Court system and would enable the Government to build up a nucleus of trained and experienced staff upon which it could base a policy of regionalisation if such was considered desirable in the future.

Proposed Native Courts' Appellate Division of the High Court

14. To deal with normal civil and criminal appeals, the Panel have recommended that a Native Courts' Appellate Division of the High Court should be established. This court would hear all appeals in criminal and civil matters coming up from A, A Limited and Provincial Native Courts and would be composed of a panel of three judges, two of whom would be judges of the High Court while the third would be the Grand Kadi or another Judge of the Shari'a Court of Appeal. All three members would have an equal voice in the decisions of the court and the judge considered to have the greatest knowledge of the law to be administered would preside.

15. It has also been recommended by the Panel that there should be an automatic appeal to the Native Courts' Appellate Division of the High Court in all cases in which the death penalty was imposed and that condemned persons should have the right to free legal aid.

The Moslem or Shari'a Court of Appeal

16. The Panel have proposed that the Moslem Court of Appeal should be renamed the Shari'a Court of Appeal because this is a more appropriate title for a court administering Moslem law.

17. The Panel have also examined the present system whereby the President and Assessors of the Moslem Court of Appeal are selected from Panels appointed by the Governor and have found it unsatisfactory in that it tends to lead to inconsistencies in judgments and consequently to reduce the prestige of the Court in the eyes of the public. They have therefore recommended that a bench of judges for the Shari'a Court of Appeal should be created consisting of a Grand Kadi, a Deputy Grand Kadi and two Shari'a Court judges. The bench would be permanent and the posts would be filled by men of learning and experience.

18. It has also been recommended that the present Panel of Assessors should be abolished and a system of a quorum of three Shari'a Court judges, sitting as a Bench to hear appeals, should be adopted. All Moslem countries, including Saudi Arabia, have appeal courts similarly constituted.

19. With the introduction of the Penal Code, the Shari'a Court of Appeal would confine itself to hearing appeals in all cases involving the personal status of Moslems. This would be its exclusive jurisdiction and its decisions would be final and not subject to further appeal to the High Court.

Remedy for Conflicts of Jurisdiction

20. The Panel have recommended that, to resolve conflicts of jurisdiction which may arise between the Shari'a Court of Appeal and the Native Courts' Appellate Division of the High Court, special machinery should be provided. In the Sudan such disputes are resolved by a court presided over by the Chief Justice with the Grand Kadi, one Shari'a Court judge, and two High Court judges sitting as members, and it has been proposed by the Panel that a similar tribunal should be set up in the Northern Region.

Administrative Officers' Powers to Review

21. The Panel have advised that Administrative Officers' powers of review and transfer should be retained for the time being, certainly during the interim period, because the Administration will need them if they are to play their part in guiding the Native Courts in the new technique of applying codified criminal law.

Supervision of Native Courts

22. To improve supervision, the Panel have recommended that the office of the Commissioner of Native Courts should be strengthened by an additional officer and that during the interim period one Administrative Officer in each Province should be posted to the full-time duty of supervising Native Courts.

Blood Money

23. In regard to questions of blood money (*diyah*) the Panel have recommended that the practice prevailing in the Sudan should be adopted. Thus in cases of murder there would be no question of such payments but only in those circumstances in which the exercise of the prerogative of mercy was contemplated might the payment of *diyah* be made a condition of clemency. In cases of homicide not amounting to murder, acceptance of blood money by the relatives of the deceased might be taken into account as a factor which might justify the reduction of the sentence. Such payments however, should never be regarded as a substitute for the punishment of the offender and the Panel have emphasised that there must be no discrimination against non-Muslims.

Advocates in Native Courts

24. The Panel have recommended against Advocates being admitted to Native Courts. Only a professional court can be expected to admit Advocates and ensure that both parties to the dispute have a fair chance to present their case with legal representation. Nor should Prisoner's Friends be permitted because their introduction would make litigation more expensive and possibly cloudy. On appeal from Native Courts, however, Advocates are now allowed to appear in the High Court and this practice should continue.

Salaries of Alkalai and Native Court Judges

25. The Panel have proposed that the salaries of Alkalai and Native Court Judges should be increased.

Language Examinations

26. The Panel have suggested that in future all recruits to the Magistracy and Legal Department should pass a prescribed examination in a local language. This innovation will remove the present dependence upon unskilled, careless or corrupt interpreters, and will help people to realise that the new courts are the courts of a self-governing Northern Region.

Training of Judicial Staff

27. The Panel have concluded that it is most important to produce a new long-term plan for the training of Northern Nigerians to fill the posts of Magistrates and High Court Judges. It is essential to begin to train Northerners at once if they are to acquire within a reasonable space of time the experience and knowledge necessary to gain international acceptance in the future.

28. To meet these needs the Panel have recommended that a Legal Training Wing should be established at the Institute of Administration in Zaria with suitably qualified staff. This Wing would organise courses in the Provinces for training both Administrative Officers and the staff of Native Courts in the technique of administering the new codes. In addition there would be longer residential courses at the Institute for Chief Alkalai and senior Native Court Presidents and Judges. Short residential courses would also be arranged for court scribes, registrars and other junior officials. For selected candidates with G.C.E. (A) or similar qualifications the Panel have recommended that special courses should be arranged. Some of these candidates might proceed direct to the United Kingdom to combine a University degree with a call to the English Bar. The rest would be given a high quality course of one year, either at the Nigerian College of Arts or at the Institute of Administration, Zaria, to equip them to pass the first part of the English Bar Examination in this country before proceeding to England to complete the Final Examination. It is expected that these students would all qualify in the special subject of Moslem Law for which provision is made in the Bar Examinations. Law students from the School of Arabic Studies, passing out from this School, would be expected to proceed to Zaria for further training in the new codes and a few selected ones might also be sent to London for special studies. Through these proposals the Panel have aimed to raise the standards of Native Courts and, at the same time, to provide a nucleus of trained young men to enter the Judicial and Legal Departments of the Region.

Composition of the Judicial Service Commission

29. The Panel have recommended that the Grand Kadi or his representative should be a member of the proposed Judicial Service Commission.

ACTION PROPOSED BY THE REGIONAL GOVERNMENT

30. The Government of the Northern Region has carefully considered the recommendations set out in the report of the Panel and has accepted all its recommendations subject only to further consideration of the desirability of automatic appeals in homicide cases and to the difficulties of legislation to provide for Native Courts being "guided" during the interim period without being rigidly bound by the new codes. Subject to these reservations, and to the determination of other matters of details,

the Government intends to introduce legislation at an early date modelled on the Sudan Penal Code and Criminal Procedure Code.

Future Review of Progress

31. It has been suggested by the Panel that if their proposals are put into effect it will be of advantage if progress is reviewed after a period of three years to determine what adjustments may be necessary. The Government agrees in principle with this suggestion.

Choice of Courts during Interim Period

32. The Government intends to introduce legislation forthwith to give effect during the interim period to the proposal of the Minorities Commission and the Panel of Jurists for permitting opting out of trial in Moslem Courts by non-Moslems and allowing Moslems similar rights in non-Moslem Courts.

Salaries of Alkalai and Native Court Judges

33. The Government has already taken action to ensure that Alkalai and Native Court Presidents and Members receive adequate salaries and Native Authorities are now in the process of implementing this policy.

Training of Judicial Staff

34. The Government fully appreciates the necessity for special training and financial provision will be made in the forthcoming Estimates for providing all the training institutions and facilities recommended by the Panel.

Miscellaneous Provisions

35. The necessary legislation will be introduced shortly to implement the remaining proposals of the Panel which have been accepted by the Government.

CONCLUSION

36. The Regional Government is confident that the reforms now proposed will meet all past criticisms and dispel the fears expressed by minorities about the administration of justice in Native Courts in the Northern Region. Furthermore the Government is satisfied that there is nothing repugnant to Islam in these reforms but that, on the contrary, their introduction without delay is essential if the Region is to avoid internal disputes, live in harmony with the rest of the Federation, and gain international acceptance after independence for its judicial and legal systems.

Chapter 1 Part V

Documents and Other Information Received by the Panel of Jurists During Its Second Session: May/June 1962[40]

Contents:

[40] Source: National Archives Kaduna S.MOJ/12/S.1 Vol. I, 45-154.

1.

Memorandum by the Attorney-General[41] to the Panel of Jurists as to the Implementation of the Policy of the Northern Region Government on the Reorganisation of the Legal and Judicial Systems of the Region based on the Recommendations of the Panel of Jurists dated 10th September, 1958

Part 1 - Preliminary

1. The Panel of Jurists reported to His Excellency the Governor of Northern Nigeria on 10th September, 1958, and set out in their report a number of recommendations for the reorganisation of the legal and judicial systems of Northern Nigeria. On the occasion of the return of the Panel of Jurists to Northern Nigeria in 1962 it is proposed that the Attorney-General as the Minister responsible for legal affairs during the period when such recommendations were implemented shall indicate briefly in this Memorandum the steps which have been taken in and towards such implementation.

2. The report of the Panel was considered by Executive Council and a summary of its recommendations was laid before the delegates to the Nigerian Constitutional Conference which assembled at Lancaster House, London, in October, 1958. The recommendations of the Panel were later approved by the Northern Regional Government, subject to the two reservations below, and a summary of the recommendations was printed as a White Paper under the title "Statement by the Government of the Northern Region of Nigeria on the Reorganisation of the Legal and Judicial Systems of the Northern Region" and was laid on the Table of the Legislative Houses of Northern Nigeria in December, 1958. This White Paper was debated in the House of Assembly on 12th December, 1958, and a resolution was passed "That this House accepts the Government proposals contained in the Sessional Paper on the reorganisation of the Legal and Judicial Systems of the Northern Region". (See Debates of the House of Assembly (Second Legislature) Second Session, Third Meeting, 10th to 13th December, 1958, columns 937 to 964).

3. The White Paper was similarly debated in the House of Chiefs on 18th December, 1958, and a similar resolution was passed. (See House of Chiefs Debates (Second Legislature), Second Session, Third Meeting, 17th to 18th December, 1958, columns 197 to 204).

Part II - Legislation

4. Thereafter the drafting of the necessary legislation was put in hand. The first measure to be tackled was the Penal Code Bill. The first draft of this Bill was based on the Sudan Penal Code, as varied by certain elements introduced from the Pakistan Penal Code and from the Nigerian Criminal Code so far as local conditions needed to be catered for. This first draft was submitted to Executive Council and considered by it on 8th January, 1959. It was then thought desirable that the Chiefs should have an opportunity of considering the Bill's provisions before the Bill was taken at a full Council meeting, and that the Bill should be examined by representative members of the Moslem community

[41] H.H. Marshall.

in order that they might be satisfied that there was nothing in the Bill which was contrary to the Moslem religion and therefore unacceptable to the people of that faith.

5. Accordingly a committee of Moslem Jurists was requested to undertake this task of examination and reassurance. It consisted of the *Waziri* of Sokoto, M. Junaidu, M.H.C.; the *Wali* of Katsina, Alhaji Muhammadu Bello; the Chief Alkali of Bida, Malam Musa; the *Magatakarda* of Kano, Malam Jibir Daura; the Junior Alkali of Kano Malam Muhammadu Sani; the Junior Alkali of Katsina, Alhaji Muhammadu Dodo; the Alkali Babba Kura and Malam Haliru Binji. These gentlemen assembled in Kaduna on 17th January, 1959, and Mr. S.S. Richardson, Commissioner for Native Courts, was present to assist them throughout their deliberations. These deliberations continued on and off until 27th January, 1959 during which time the whole of the Penal Code Bill was examined clause by clause. The bulk of it was understood and accepted, but there were a number of points on which the jurists required further explanation and reassurance. These were set out in the report made by the jurists to Executive Council and considered by Executive Council on 4th February, 1959. Executive Council decided that it should meet the jurists informally in the Premier's Conference Room on 11th February, 1959, for a preliminary discussion on the report. This meeting was duly held. Most of the members of Executive Council, including the Attorney-General, were present, and Mr. Richardson was again in attendance. Many of the outstanding points were cleared up – in some cases by compromise concessions to the Moslems – but there still remained certain tough outstanding questions, including the subject of provocation in its relation to homicide, upon which it appeared that there would be difficulty in securing agreement. The committee of Moslem jurists was therefore again convened and three meetings were held at which were present a few members of Executive Council. Sheikh Awad of the Kano School of Arabic Studies came at short notice and explained the position of Hanafi law in relation to the Sudan Penal Code, when it appeared that there are in Hanafi law various degrees of homicide which are punishable according to the circumstances in which the homicide is committed. As a result of his explanations all the other difficulties disappeared except one, namely, the question of *diyah*, to which I shall refer later. It was apparent at the discussions that it was the attachment of both the English and the Moslem lawyers to their particular technical terms of art for the various forms of homicide that was causing confusion and difficulty to the lawyers of the opposite school. Much time was taken up by an attempt to analyse the various ingredients of the crimes of amdi, ghila, haraba and khata, on the one hand, and murder and manslaughter, whether voluntary or involuntary, on the other hand. I therefore suggested that all the names of all the different types of homicide should be abandoned and that all forms of criminal killing should be described as culpable homicide, and that we should then go on to provide that culpable homicide should be punished, as Hanafi law says, according to the circumstances in which it is committed, reserving the death penalty for the worst kind only. This proposal found universal acceptance, and the whole of the homicide portion of the Bill was remodelled and redrafted to give effect to this compromise. Difficulties as to the exact place on the ladder of homicide at which we should fix the death penalty were also resolved. Amendments to the Bill to give effect to these concessions and compromises were prepared for submission to Council with one point only outstanding, and that was on the subject of *diyah*. Several of the Moslem jurists had insisted that the relatives of a murdered persons should still be able to

exercise an option as to whether they would demand the death penalty or would accept *diyah*. It was pointed out that Government had already committed itself on this subject in paragraph 23 of the White Paper by saying that in cases of murder there would be no question of such payments, but that only in the circumstances in which the exercise of the prerogative of mercy was contemplated might the payment of *diyah* be made a condition of clemency. The point, therefore, remained a sore one. The amendments were referred back to Executive Council and I reported progress. It was decided that the Bill should be considered at a full meeting of the Council at which the Chiefs would be present. For various reasons, not unconnected with the preparations for the celebration of Self-Government, consideration of the matter by Executive Council was deferred until 20th May. But on 17th May advantage was taken of the presence in Kaduna for the Self-Government Celebrations of the Emir of Kano, the Chief Justice of the Sudan (who had been a member of the Panel of Jurists who visited Kaduna in 1958), and of the Mufti of the Sudan, to arrange a further informal conference at which they were present with certain members of Executive Council, including the Minister of Finance, Alhaji Aliyu, *Makama*n Bida, the Minister of Education, Alhaji Isa Kaita, *Madawaki* of Katsina, and the Attorney-General. The Commissioner for Native Courts was also present. At this conference the Emir was asked if he had any outstanding points and he raised several, including the questions of provocation and of *diyah*. The Mufti of the Sudan was able to satisfy the Emir by a reference to the Sunna that Moslem, and even Maliki, law recognised provocation in certain circumstances as an element which would justify the reduction of the degree of culpability in homicide so that it would be punishable not by death but by a lesser punishment such as imprisonment. He was also able to reassure the Emir on the subject of *diyah* by referring to those passages in the Koran and Sunna and the works of the Moslem jurists which treat of the power of the Imam to use his Siyasa power to punish a wrongdoer in the interests of public security.

6. The Bill was again considered at a meeting of Executive Council on 20th May, 1959, and approved as amended. Thereafter, by the direction of Executive Council, the Bill was referred to the Chief Justice (the late Sir Algernon Brown) for his comments. He had numerous suggestions to make and these were approved by Executive Council on 9th July. The Bill was then directed to be printed and presented to the Legislature. It was passed by the House of Assembly in August, 1959. (See Official Report of the Debates of the House of Assembly (Second Legislature), Third Session, 12th to 19th August, 1959, columns 482 to 492, 500 to 513, 543 to 546, 561 to 588, and 652 to 685.)

7. The Bill was afterwards debated in and passed by the House of Chiefs (see Official Report of the Debates of the House of Chiefs (Second Legislature), Third Session, 29th August to 2nd September, columns 102 to 119 and 125 to 142). The Motion for the Second Reading was in fact seconded by the Emir of Kano although no record of this appears in Hansard. The Bill was afterwards assented to by His Excellency but was not brought into force until the other legislation hereinafter referred to was also brought into force.

8. Work was then put in hand on the preparation of the following further Bills: the Criminal Procedure Code Bill, the Evidence (Amendment) Bill, the Native Courts (Amendment) Bill, the Northern Region High Court (Amendment) Bill, the District Courts Bill, the Sharia Court of Appeal Bill, the Court of Resolution Bill, the Coroners

(Amendment) Bill, and the Adaptation of Legislation Bill. From the very first, there was continuous contact with the Chief Justice and the members of the Judicial Department on these Bills, with the Moslem jurists who had considered the Penal Code Bill, and with other persons representing the varied interests of the Nigerian public. The negotiations and conferences with the Moslem jurists and the representatives of non-Moslem interests were lengthy, but not nearly so difficult as had been those during which the provisions of the Penal Code Bill were discussed. On this occasion, much less criticism came from the representatives of the Moslem world and the Native Courts' judges and native authority representatives, since the procedures provided for in the Criminal Procedure Bill were far more familiar to the Moslem lawyers and non-Moslem Native Courts personnel than they were to the members of the English judiciary. It was with the members of the English judiciary that there were protracted discussions, voluminous correspondence and difficult negotiations extending over the period from 16th June, 1959, to early October, 1959. During the course of these negotiations, objection was taken by the late Chief Justice to certain parts of the new procedure whereby the magistrate took cognizance of a case from the very beginning of the case and directed the police investigations. The Chief Justice also communicated direct with the Colonial Office on several occasions with regard to the Bill. After much correspondence and negotiation, the terms of the draft Bill were finally settled at a conference between the Attorney-General, the Chief Justice and representatives of the Legal and Judicial Departments at the end of September, 1959. The provisions of the Bill were accepted by the judiciary with some amendments on the clauses to which objection had been taken. The main provisions of the new procedure remained substantially unaltered. It appears that many of the difficulties which arose during the course of the discussions with the Chief Justice had been inspired by Mr. A.J. Price, a magistrate who had taken up a strong attitude towards the Bill and had opposed many of its provisions. (He has since left the country. He made an attack on the Codes and on the Northern judicial reforms generally in an article in the Modern Law Review of May, 1961,[42] which was inaccurate, but to which a complete and comprehensive reply was given in the same issue of the same publication by Professor Anderson, a member of the Panel of Jurists[43]). Negotiations also took place with Mr. Bovell, the Inspector-General of Nigeria Police and with the local Nigeria Police officers, as a result of which certain clauses were amended to meet their wishes. The Bill was duly approved by Executive Council and was presented to the House of Assembly in April, 1960, together with the other Bills mentioned above. These were all debated at length. (See Parliamentary Debates, House of Assembly (Second Legislature), Fourth Session, period 6th April to 3rd May, 1960, columns 619 to 638, 641 to 658, 665 to 698, 719 to 757).

9. The Bills were also debated in the House of Chiefs (see House of Chiefs Debates (Second Legislature), Fourth Session, period 4th May to 13th May, columns 99 to 152). All the Bills were subsequently assented to by His Excellency and are now Laws No. 10, 11, 12, 13, 14, 15, 16, 17 and 18 of 1960. They were not brought into force until 30th September, 1960 for the reasons explained below.

[42] A.J. Price, "Retrograde Legislation in Northern Nigeria?", *Modern Law Review*, 24 (1961), 604-11.
[43] J.N.D. Anderson, "A Major Advance", *Modern Law Review*, 24 (1961), 616-25.

10. In the meantime, negotiations had been going on with the Federal Government, and particularly on a personal level between myself as Attorney-General of Northern Nigeria and Mr. Unsworth, Attorney-General of the Federation, as a result of which complementary Federal legislation was prepared and enacted by the Federal Parliament. This legislation took the form of three Ordinances, namely, the Criminal Procedure (Northern Region) Ordinance, 1960, (No. 20 of 1960), the Penal Code (Northern Region) (Federal Provisions) Ordinance, 1960, (No. 25 of 1960) and the Adaptation of Federal Provisions (Northern Region) Ordinance, 1960, (No. 22 of 1960). Ordinance No. 25 of 1960 was necessary because the Legislature of Northern Nigeria had no power to create criminal offences in relation to those subjects which were within the sole competence of the Federal Legislative List set out in Part I of the Schedule to the Constitution of the Federation. Similar considerations applied to the subject of criminal procedure in so far as it related to Federal penal offences, to the jurisdiction of courts, and to powers of arrest in respect of Federal offences.

11. All the legislation, Regional and Federal, was brought into force on 30th September, 1960. There were several reasons for the choice of this particular date, among the most important of which was the necessity of delaying the commencement of the laws for a sufficient time to enable subsidiary legislation under most of the Laws to be prepared, without which the Laws themselves could not be worked. Other reasons for the choice of the exact date of 30th September were that Nigerian Independence had been fixed for 1st October, 1960, and it had been arranged that, under the Constitution for Independence, all laws existing before that date should remain in full force and effect in the independent Nigeria. It was desirable, therefore, that the legislation, both Regional and Federal, affecting our reforms, should have the benefit of the description of "existing laws" as on that date and could be "taken over" as such. This device was successful except with regard to one detail, which shall be mentioned later. A third reason for the choice of 30th September was that, on 1st October the Northern Cameroons would cease to be administered by Northern Nigeria and would come under United Kingdom Trusteeship until a plebiscite was held. It would be governed by an Administrator stationed in Mubi who would have full powers of legislation by Proclamation. The Order in Council of Her Majesty establishing this regime provided that all laws in force in Northern Nigeria before the 1st October, 1960, should apply in the Northern Cameroons with such adaptations as the Administrator might make. It was therefore desirable that our new penal and legal system should be in force in Nigeria when the United Kingdom Trusteeship Government took over. In the event, this was a very successful move, as the voting in the plebiscite returned the Northern Cameroons to Northern Nigeria, and there has been no break in the continuity of the laws and no separate treatment of the Northern Cameroons has been necessary.

12. The above is a short history of the legislation passed in the implementation of the recommendations of the Panel of Jurists. It is now desirable to treat in some detail the specific recommendations made by the Panel, and to show the history of their implementation and the various ways in which they have been dealt with.

Part III - Method of Implementation of Specific Recommendations

13. The recommendations of the Panel were summarised on pages 28 to 31 of their Report, and I will deal with their recommendations in this order, but in so doing will also

make reference to the more detailed treatment of these recommendations in the earlier pages of the Report. It was the responsibility of the Attorney-General, as Minister in charge of legal matters, to implement practically the whole of the recommendations of the Panel that had been approved by Government. A Ministry of Justice was, however, created in September, 1961, and a Minister appointed in November, 1961. He took over from the Attorney-General responsibility for Native Courts, parliamentary responsibility for the judiciary, legal education and training (policy) and official oaths (policy). (See N.N.N. 1243 of 1961).

14. Recommendation 1 – "Islamic law as such should be confined to the law of personal status and family relations and, when applicable, civil cases".

This has been done by the enactment of the Penal Code, the Criminal Procedure Code, the establishment of the Sharia Court of Appeal, the amendment of the Native Courts Law, 1956, and the provision of separate channels of appeal for cases involving personal status and family relations.

15. Recommendation 2 – "The introduction of a Northern Nigerian Penal Code and a Code of Criminal Procedure based on the Sudan Codes".

This has been done, as stated above, and there is now one criminal law and criminal procedure law for all courts in Northern Nigeria, subject to the following exceptions:

(a) The Moslem element in the community insisted on the separate treatment of certain *haddi* offences such as the drinking of alcohol, drunkenness, and the commission of adultery and defamation, some of which are crimes only when committed by a Moslem. (See Sections 387, 388, 392, 393, 401, 402, 403 and 404 of the Penal Code). Special provision is made in Section 68(2) of the Penal Code and in Part I of the First Schedule to the Native Courts Law for a Moslem to be punished with *haddi* lashing in addition to any other punishment if he commits one of these offences. Adultery is also an offence for members of those communities in which adultery was a crime at non-Moslem native law and custom. (See sections 387 and 388 of the Penal Code).

(b) While the High Court and magistrates' courts are bound by the provisions of the Codes, the Native Courts are, during the "interim period" merely guided by their provisions, except that they are bound by the provisions of certain sections providing for the fundamental principles of a fair trial. (See section 386 of the Criminal Procedure Code). More will be said on the subject of guidance in the next paragraph.

16. Recommendation 3 – "Whereas the High Court and Magistrates' Courts should be bound by these Codes, the Native Courts should, for an interim period, be "guided" by them".

The "guidance" principle, as stated above, has been introduced as recommended.

(a) Guidance in relation to procedure: The Panel suggested in paragraph 12 of its Report, that in matters of procedure the Native Courts cannot be expected to observe the details of the Code of Criminal Procedure for many years to come, but that they should be guided by the Codes except on certain essential points as stated

above. The Panel then went on to set out in detail their suggestions as to how their recommendations on this score should be carried out. It will be seen from paragraph 30 of the White Paper that the Government accepted all the recommendations of the Panel except two. One of the reservations made was that there should be further consideration of "the difficulties of legislation to provide for Native Courts being "guided" during the interim period without being rigidly bound by the new Codes". We are fortunate to be able to say that the difficulties in the preparation of the legislation relating to "guidance" were overcome, considerable assistance having been obtained from Sir Kenneth Roberts-Wray, the former Legal Adviser to the Colonial Office, in the preparation of the clauses relating to this topic. He produced for us a precedent which had been used in Uganda, and which we adapted for our needs. As stated above, the procedural provisions relating to "guidance" are set out in Chapter XXXIII of the Criminal Procedure Code, which deals with trials in Native Courts. The provision that certain fundamental principles of justice should be excluded from the "guidance" principle and that Native Courts should be bound by these has been carried out.

(b) Guidance in relation to substantive law: The "guidance" principle in relation to substantive law is set out in paragraph 12 of the Report of the Panel, in which it was stated that it was expected that the Native Courts would be able to approximate in regard to substantive law much more closely [than in regard to procedure][44] to a proper application of the provisions of the new Codes, but that the Panel hoped that legislation could be drafted which would give full scope to the judges, when dealing with Native Court cases on appeal, to take a broad and understanding view of the difficulties facing courts, which have always been accustomed to apply a different system, in learning an entirely new technique, and they further suggested that it would greatly assist these courts if the appellate court would seek to remedy minor defects, either by its revising the judgment or sentence concerned, or by sending the case back where necessary to the Native Court for further evidence, instead of quashing convictions on appeal because of such minor defects. These recommendations have been implemented in the provisions of section 288 of the Criminal Procedure Code relating to the powers of the appellate court when dealing with technicalities, and of section 382 of the same Code relating to errors or omissions in the charge or other proceedings. Section 386(4) particularly draws attention to the necessity for these sections to be observed.

(c) Guidance in relation to the law of evidence: The Panel made no recommendation as to the application of the "guidance" principle in regard to the law of evidence. But during the drafting of the Criminal Procedure Code, we were brought up against the difficulty presented by the existence of the Evidence Ordinance (Cap. 63 of the Laws of Nigeria, 1948 Edition). Evidence given in magistrates' courts and the High Court was and is governed by the provisions of the Evidence Ordinance, but section 1(2)(c) of that Ordinance provided that the Ordinance should not apply to judicial proceedings in or before a Native Court unless the Governor in Council should by order confer upon any or all Native Courts jurisdiction to enforce any or all of the provisions of the Ordinance. It does not appear that any order has been made under

[44] These brackets and bracketed language in the original.

this section. The only other provisions of importance relating to evidence in Native Courts were contained in sections 20, 21 and 26 of the Native Courts Law, 1956, which provided in effect for Native Courts, broadly speaking, to administer native law and custom and for the practice and procedure of Native Courts to be governed by native law and custom. The Criminal Procedure Code Bill, on the other hand, provided very briefly in sections 236 and 237 for the nature of the evidence which was to be given in all criminal cases. It was considered that, standing alone, these provisions were inadequate, and that the provisions of the Evidence Ordinance must be retained in force, certainly for the High Court and the magistrate's courts. The difficult question was what was to be done about Native Courts. It was considered that it would be disastrous to say that the Evidence Ordinance was too complicated for them and that they must continue to take evidence in accordance with native law and custom subject to the two provisions of the Code referred to above. Such a provision would have had the effect of perpetuating a portion of the dual system which we were seeking to abolish and would have caused immense confusion. On the other hand, we felt that it would be quite impossible to expect Native Courts to assimilate overnight highly technical English rules of evidence as laid down in the Evidence Ordinance. It was therefore proposed that the Native Courts should be "guided" by the provisions of the Evidence Ordinance also for the "interim period". The Evidence (Amendment) Law, 1960 (No. 12 of 1960) accordingly provided that in judicial proceedings in any criminal cause or matter in or before a Native Court, such court should be "guided" by the provisions of the Evidence Ordinance in accordance with the provisions of Chapter XXXIII of the Criminal Procedure Code. Some apprehension had been felt at the time of the preparation of this rather far-reaching measure that it would be the subject of considerable opposition from various quarters in the Region and that it would be opposed and criticised in the debates in the Legislature. This, however, was not the case, and the Bill passed through the House of Assembly and the House of Chiefs with virtually no debate at all. (See House of Assembly Debates, (Second Legislature), Fourth Session, 6th April to 3rd May, 1960, columns 694 to 696, and House of Chiefs Debates (Second Legislature), Fourth Session, 4th to 13th May, 1960, columns 122 to 124.).

17. Recommendations 4 and 5 – "All witnesses must be heard without discrimination (and sworn on essential points)" and "Courts must decide cases on the weight of all the evidence".

These have been carried out by the provisions of sections 389, 391 and 392 of the Criminal Procedure Code.

18. Recommendation 6 – "Specific recommendations regarding blood-money (*diyah*)".

The Panel recommended that the practice prevailing in the Sudan should be adopted in regard to blood money, i.e. that in cases of murder there would not normally be any question of such payments, but that only in those circumstances in which the exercise of the prerogative of mercy was contemplated would payment of *diyah* be made a condition for clemency. They went on to suggest that in cases of homicide not amounting to murder, on the other hand, acceptance of blood money by the relatives of the deceased might be taken into account as a factor which might justify a reduction of sentence. It was emphasised that such payment should never be regarded as a substitute for the

punishment of the offender, but rather as a means of readjusting the social equilibrium at the conclusion of a case. This recommendation was specifically mentioned in paragraph 23 of the White Paper and was among those supported by the Regional Government. As stated above, however, some difficulty was experienced in negotiations with the Moslem jurists and with the Emir of Kano over the abolition of the old *diyah* system whereby the relatives of the convicted person could waive the death penalty on payment of blood money. The problem was eventually resolved by a compromise whereby it was agreed that the wishes of the relatives should not indeed relieve a convicted person from the death penalty but should be recorded by the Native Court trying the case and should be taken into consideration by the Advisory Council on the Prerogative of Mercy when considering whether to recommend to His Excellency that he should exercise his power of commutation of the sentence of death to one of imprisonment. (See House of Assembly Debates (Second Legislature), Third Session, 12th to 19th August, 1959, column 562 and Fourth Session, 6th April to 3rd May, 1960, column 628 and section 393 of the Criminal Procedure Code).

19. Recommendation 7 – "During the interim period, non-Moslems should be permitted to "opt out" of trial by a Moslem court and a similar option should be allowed to a Moslem who objects to trial by a non-Moslem Native Court".

This recommendation was implemented even before the introduction of the legal and judicial reforms, as it was felt that there was a need to demonstrate the intention of the Government to support in this respect the recommendation of the Minorities Commission on which the Panel of Jurists in paragraph 15 of their report stated that their own recommendation was based. Accordingly, a new section 15A was introduced into the Native Courts Law, 1956, by the Native Courts (Amendment) Law, 1958, which came into force on 31st December, 1958. This section reads as follows:

> "15A. (1) Notwithstanding the provisions of section 15, where any person appears either as an accused person in a criminal case or as a defendant in a civil case before a Native Court sitting in the exercise of its original jurisdiction the Alkali or President of the Native Court as the case may be shall address to him a question to the following effect:
>
> "What is your religion?"
>
> (2) Where the Native Court before which the proceedings are being held is:
>
> (a) a Moslem court and it appears from the answer of such person that he is not a Moslem; or
>
> (b) a Native Court other than a Moslem court and it appears from the answer of such person that he is a Moslem,
>
> the Alkali or President of the Native Court as the case may be shall then forthwith ask him the following question:
>
> "Do you consent to your case being tried by this court or do you desire your case to be tried in the High Court, a magistrate's court or another Native Court?"
>
> (3) The record of proceedings before the Native Court shall contain:

(a) the question prescribed by subsection (1) and the answer to that question; and

(b) where it is necessary to ask the question prescribed by subsection (2), that question and the answer to that question.

(4) Where such person elects to have his case tried in the High Court, a magistrate's court or another Native Court the Alkali or President of the Native Court as the case may be shall forthwith report the case to the Resident.

(5) If the Alkali or President of the Native Court as the case may be shall not comply with the provisions of this section the proceedings before such Alkali or President of the Native Court shall be null and void.

(6) Where a case is reported to the Resident under the provisions of this section the Resident shall direct in what division of the High Court or in what magistrate's court or in what Native Court the case shall be heard."

By an amendment to section 2 of the Native Courts Law, 1956, "a Moslem court" was defined as a court which customarily administered the principles of Moslem Law. The Bill was introduced into the House of Assembly soon after the debate on the White Paper, and the attention of the Panel is drawn to the speech of the Attorney-General on the second reading of the Bill and the debate which ensued thereon, which is set out in House of Assembly Debates (Second Legislature), Second Session, Third Meeting, 10th to 13th December, 1958, columns 993 to 998.

Thereafter, the principle of opting out was frequently attacked and the practice of it abused. The further history of the subject is as follows. Early in 1959 it became apparent that the section, as drafted, would not work. The alkalai and other Native Courts judges frequently forgot to ask the accused person or defendant the required questions, and when the cases went up to a higher court on appeal that court was forced to declare null and void any conviction which followed after such a defect, even though the asking of the question had not in any way prejudiced the rights or the fair trial of an accused person. For instance, if a Moslem were brought before an alkali and the alkali forgot to ask the Moslem the necessary questions, and the Moslem was properly convicted at Moslem law of an offence of which he was guilty, the conviction had to be set aside. It mattered not that the accused would in any case have been tried by that same alkali by Moslem law and convicted of the same offence after being asked the question, because he in fact would not have had any option to exercise. Another aspect of the system that was being abused was in the exercise of the right of a non-Moslem to be tried by a court other than a Moslem court. As section 15A(2) was worded a non-Moslem might appear to have a right to choose whether he should be tried by a magistrate's court or a non-Moslem Native Court and he frequently prevailed upon the alkali to send his case to a magistrate's court instead of to a non-Moslem Native Court with consequent delays and inconveniences to the other party to the litigation. A further defect appeared as a result of the abuse of the system by unscrupulous persons for political and other ends. Undoubted Moslems who had been to their prayers at the Friday mosque might be charged with a crime before an alkali on the Saturday and would say that they were not Moslems and would demand to be tried before a magistrate. The alkali would point out to them that they had been to the Friday mosque the day before, and they would reply

that they had changed their religion overnight. He had no alternative in such circumstances but to send them to the magistrate's court or a non-Moslem Native Court. When their case came on in such other court possibly months later, the magistrate or the presiding Native Court judge might find that the charge against the accused was not proved because of the absence of witnesses, or he might convict the accused and give them a much lighter sentence than the alkali would have given them, or in the case of a magistrate's court owing to the greater technicality of English law and procedure, the accused might get off altogether. The device was also used in civil cases, where e.g. in a remote part of Sokoto, a Moslem A. would sue another person (Moslem or non-Moslem) B. for a perfectly good debt, say, for the price of a cow. B. would declare himself a non-Moslem (whether he was one or not) and would ask for the case to be transferred to the Kano magistrate. (It was not the practice in those days for the magistrate to sit in Sokoto.) The case would be transferred to the magistrate's court, and after considerable delays would come up for hearing. B. would ask for, and obtain, a number of adjournments on specious pretexts, thus causing A. to travel from a remote part of Sokoto to Kano on each occasion at great expense. B. might, and frequently did, by this means not only postpone or avoid payment of his debt, but so harass A. and put him to such expense that he was likely to give up his claim in despair and refrain from suing B. again. An attempt was made by some Emirs to deal with Moslems who thus declared themselves to be non-Moslems. The procedure was to announce that they were apostates, and to release their wives from the bonds of matrimony. This was a device which worked well for a short time, but Emirs cannot keep track of all cases and the system was not universally operated. Serious consideration was given at this time by the Northern Government to the abolition of opting out, but it was decided to make one more attempt to get the system to work. It was therefore arranged that in all cases where an accused did not consent to his case being tried before a particular Native Court, the alkali or president should report the case to the Resident, who was then given the task of finding out whether the accused person or defendant had given his answers honestly or in good faith, or whether his answers had been made for the purpose of obstructing or delaying the course of justice, or for any other improper purpose. In the latter event, the Resident had the duty to direct the case to be returned to, and heard in, the Native Court from which it had been reported to him. Section 15A of the Native Courts Law, 1956, was therefore amended accordingly. The amendment was effected by section 3 of the Native Courts (Amendment) Law, 1960, which was introduced into the House of Assembly as part of the reform legislation and which will be referred to in other contexts later on. Section 3 of this Law provided that decisions in cases in which a Native Court judge had failed to ask the statutory questions should not be null and void, but should be voidable on appeal or on review. Provision was also made for reference to the Resident in accordance with Government's intentions set out above. The speech of the Attorney-General on the introduction of this Bill can be found in the House of Assembly Debates (Second Legislature) Fourth Session, period 6th April to 3rd May, 1960, columns 719 to 722. There the matter rested for some months, but constant complaints were received from all quarters about the new procedure. On the one hand, there were complaints that Residents did not deal promptly with the cases sent to them, with the result that accused persons and defendants walked about jeering at the Native Courts and saying quite untruthfully that they had got off. On the other hand, Southern lawyers and political opponents criticised the system because the Resident had to make a quasi-judicial

decision without necessarily observing any judicial procedure or hearing either side in any set form. It was also generally alleged that abuses continued in the same old way and that, even where a non-Moslem legally exercised his option it was still the cause of the delays and expense referred to above. Another curious point was made against the practice of opting-out so far as criminal cases were concerned. It was pointed out that an alkali or an Emir when trying criminal cases and administering the Penal and Criminal Procedure Codes was not a "Moslem court" within the meaning of the definition quoted above. His court might be a "Moslem court" in popular parlance, but he was not administering the principles of Moslem law and therefore in strict law the right to opt out did not exist! An amendment of the Native Courts Law, 1956 to define a Moslem court as "one which was presided over by a Moslem" would have created more difficulties than it would have resolved and was not considered desirable. Accordingly, late in 1961 the Northern Government reluctantly decided that, opting-out having failed, it should be abolished. This was done by section 5 of the Native Courts (Amendment) Law, 1961, which repealed section 15A of the principal law and came into force on 30th October, 1961. The debate on this Bill in the House of Assembly can be read in House of Assembly Debates (Third Legislature), First Session, period 27th September to 13th October, 1961, columns 437 to 440. It is remarkable that on this occasion practically no criticism of the Bill was raised by the Opposition. There was only one speaker on the Opposition side; and the Leader of the Opposition and most of his supporters were absent from the House. Abolition in fact caused no stir and little comment. It may be thought unfortunate that opting-out should thus have had to be abolished long before the expiry of the interim period, but Government cannot be blamed for this. The blame lies on those members of the public who, by their irresponsible conduct, have spoiled a device which was intended for the benefit of the public as a whole. It is shocking that such a beneficial and simple device should have been made so complicated and ultimately reduced to unworkability by ignorance, malice and corrupt opportunism.

20. Recommendation 8 – "Advocates should not be admitted to Native Courts".

This has been carried out by a continuance of section 28(1) of the Native Courts Law, 1956, and by the extension of its provisions to Provincial Courts (see new section 60(2) of the Native Courts Law, inserted by the Native Courts (Amendment) Law, 1960). It has also been provided that advocates shall not appear before the Sharia Court of Appeal. (See section 19(1) of the Sharia Court of Appeal Law, 1960.)

21. Recommendation 9 – "Retention of Administrative Officers' powers of review and transfer, particularly during the interim period. Prisoners' friends should not be permitted".

This has been carried out. Many responsible persons inside the Government and out of it have, however, urged the abolition of the power of review of the Resident and administrative officer (but not that of the Native Courts adviser) as being an unsuitable anachronism in an Independent country with a reformed legal and judicial system. But up to now it has been retained, and several Residents are known to be of the opinion that it is a useful power when used sparingly in favour of a litigant who may for one reason or another have not been aware of his right to appeal to a Provincial Court or to the High Court, or for one reason or another has not been able to exercise it. In such circumstances the power of review can be exercised within the restricted limits permitted

by section 57 of the Native Courts Law, 1956. It is apparent, however, that most of the reasons for the retention of the power of review disappeared on the establishment of Provincial Courts for each province. Experience has shown that these are generally efficient and popular with the public. A further compelling reason for the abolition of the Resident's powers of review has recently come into being. Under the provisions of sections 3 and 7 of the Provincial Administration Law, 1962, passed in the Budget Meeting of the Legislature in March and April, 1962, all functions under any written law at present exercisable by a Resident of a province were vested in and exercisable by the Provincial Commissioner of the Province and all functions formerly delegated to Residents were deemed to be delegated to Provincial Commissioners. Provincial Commissioners will be political and, indeed, party men, and it seems inappropriate that they should be able to exercise a Resident's judicial powers of review under the Native Courts Law, 1956. It is upon this ground, if no other, that the recommendation set out later in this Memorandum, that the powers of review of administrative officers should be abolished, is based.

22. Recommendation 10 – "Regionalisation of Native Courts would be premature". Government accepted the recommendation contained in paragraph [23] of the Panel's Report that regionalisation of the Native Courts judiciary should not proceed beyond making the judges and staff of Provincial Courts regional public servants, and offering newly qualified alkalai and court members a choice of entering the service of native authorities direct or of joining the Regional service and accepting secondment on agreed terms to a native authority willing to employ them. The first recommendation has been implemented by the amendments to section 61 of the Native Courts Law, 1956, and can now be found in subsection (3) of that section. The second recommendation does not appear to have been used to any extent.

23. Recommendations 11 and 12 – "Provincial Alkalis' Courts should be established in the predominantly Moslem Provinces to hear appeals from 'B', 'C' and 'D' Grade Native Courts. These Courts should also have first instance powers. Staff to be Regional servants"; and "Provincial Courts of three members, including one Alkali, to be set up in Plateau, Benue, and Kabba Provinces to fulfil the role of the Provincial Alkali as detailed in recommendation 11."

These recommendations have been carried out by the provisions of sections 60 to 66, as amended, of the Native Courts Law, 1956, incorporated by the Native Courts (Amendment) Law, 1960.

24. Recommendation 13 – "Admission of suitably qualified Alkalai and Native Court members in the future to the Regional Service. These persons should continue to serve with Native Authorities on secondment".

As stated above, there does not appear to have been much development in the direction of implementing this recommendation.

25. Recommendation 14 – "The Moslem Court of Appeal to be renamed the Sharia Court of Appeal".

The Moslem Court of Appeal has been abolished by the repeal of the Moslem Court of Appeal Law, 1956, and a new court called the Sharia Court of Appeal has been created

by the Sharia Court of Appeal Law, 1960. It was thought desirable to carry out the recommendation in this way, because the functions, personnel and jurisdictions of the two courts were so totally different that a mere renaming, which would have involved extensive amendment and patching of the Moslem Court of Appeal Law was impracticable.

26. Recommendations 15 and 16 – "Creation of a permanent bench of Judges for the Sharia Court of Appeal consisting of a Grand Kadi, Deputy Grand Kadi, and two Sharia Court Judges" and "Abolition of the Panel of Assessors and adoption of a system of a quorum of three Sharia Court Judges sitting as a Bench to hear appeals".

This has been done by the enactment of sections 3, 4, 7 and 26 of the Sharia Court of Appeal Law, 1960 (No. 16 of 1960).

27. Recommendation 17 – "Sharia Court of Appeal to hear appeals in matters involving personal status of Moslems exclusively. Decision of Sharia Court of Appeal to be final in these matters".

This has been carried out by sections 3, 11, 12 and 13 of the Sharia Court of Appeal Law, 1960. Section 13 makes provision for the judgment, order or decision of the court on any matter within its jurisdiction to be final, subject to a right of appeal to the Court of Resolution on the ground of jurisdiction, and to a right of appeal to the Federal Supreme Court from decisions on questions as to the interpretation of the Constitution of the Federation or the Constitution of the Region, and from decisions on questions as to whether any of the provisions of fundamental human rights has been contravened in relation to any person. This is in accordance with section 112 of the Constitution of the Federation, to which the Panel is referred.

During the course of an inspection of Native Courts in Kabba Province in July, 1960, it appeared to be manifest that in certain parts of the riverain areas of Northern Nigeria the personal relationships of some Moslems were governed not by Maliki law but by the secular or territorial native law and custom existing in the particular area. It was realised that it would be improper for appeals from decisions of Native Courts given in accordance with any such native law and custom to lie to the Sharia Court of Appeal and to be determined by that Court in accordance with Maliki Law. Section 12 of the Sharia Court of Appeal Law, 1960, had set out the subjects in respect of which the Sharia Court of Appeal had jurisdiction. In order to remove any doubt that might arise as to the particular law that should be applied in cases involving personal relationships between Moslems who were subject to such a native law and custom the Sharia Court of Appeal (Amendment) Law, 1960 (No. 30 of 1960) was passed. This (inter alia) amended section 12 of the principal law so as to provide for questions of Moslem Law regarding a marriage, dissolution of marriage, family relationship, a foundling, the guardianship of an infant, a wakf, gift, will or succession, where the endower, donor, testator or deceased person was a Moslem, an infant, prodigal or person of unsound mind who was a Moslem or the maintenance or guardianship of a Moslem who was physically or mentally infirm, to be decided by the Sharia Court of Appeal, and not merely questions (which might be governed by some other system than Moslem law) to be so decided. The opportunity was taken to obtain the insertion of a similar amendment in the Constitution when the Constitutional Conference was resumed in Lagos in July, 1960. (See Section

52(5)(b) to (d) of the Constitution of Northern Nigeria.) Events have shown that such a provision was timely and necessary because an attempt has been made to extend the jurisdiction of the Court in several ways. Moslem law inspectors were created by the Grand Kadi in 1961. These were to have had the functions of Native Courts advisers under the Native Courts Law, 1956, but to be subject to the control of the Grand Kadi and exercise supervisory and advisory functions in relation to Moslem cases only. It was proposed at one stage by the Grand Kadi that a circular should be issued to all alkalai and judges of Moslem courts drawing their attention to section 12(e) of the Sharia Court of Appeal Law and instructing them to advise litigants to request in writing that their cases should be determined in accordance with Moslem law. This was, however, not proceeded with. Complaints were also received from Emirs and alkalai that appeals in land cases which are usually determined in Native Courts of first instance in accordance with local native law and custom (Moslem law never being really supplanted by native law and custom in land matters[45]) were being attracted to the Sharia Court of Appeal and there being determined in accordance with Maliki law to the great confusion of litigants and Emirs and alkalai who were being overruled after having given perfectly good and just decisions. The pretext for such action by the Sharia Court of Appeal was that Maliki law applied to all land cases in the North and that it was wrong to apply any other law. These two incidents were indicative of a trend which gave cause for grave concern at the time. At about this time, however, Sheikh Awad, the Grand Kadi, retired and the movement now appears to have died down. As stated above, in November 1962, a Minister of Justice was appointed and given a limited schedule. Shortly afterwards the Moslem court inspectors were transferred from the control of the Grand Kadi to that of the Commissioner for Native Court who is an official of the Ministry of Justice. It is my opinion that section 52(5)(e) of the Constitution of Northern Nigeria and section 12(e) of the Sharia Court of Appeal Law might well be repealed to the great advantage of the inhabitants of the Region.

28. Recommendation 18 – "Establishment of a Native Courts' Appellate Division of the High Court, with details of its composition and functions".

This was affected by sections 59B, 59C and 59D of the Northern Region High Court Law, inserted by section 23 of the Northern Region High Court (Amendment) Law, 1960 (No. 14 of 1960). While the clauses for these sections were being drafted, however it was realised that they were ultra vires the Constitution of Northern Nigeria which provided in section 142A of the Nigeria (Constitution) Order in Council, 1954, as amended, that "a person shall be qualified to be appointed a judge of the High Court of a Region if he is or has been a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of Her Majesty's dominions, or a court having jurisdiction in appeals from any such court, and he has been qualified for not less than ten years to practise as an advocate or solicitor in such a court." It was provided that no other person should be qualified to be so appointed. It was realised that none of the persons who would be appointed judges of the Sharia Court of Appeal would have the qualifications prescribed by section 142A. Accordingly, application was made to the Colonial Office

[45] Sic: should probably read "(Moslem law never really having supplanted native law and custom in land matters)", which is consistent with the rest of the sentence; cf. J.N.D. Anderson, *Islamic Law in Africa* (London: Frank Cass, 1955), 184-185 (confirming the amended reading).

for an amendment to the Constitution to enable the required provision to be made. There was strenuous opposition to this proposal from the Western Region Government, but the proposal was nevertheless agreed to by the Colonial Office and the Secretary of State agreed an interim amendment to the Constitution to enable the necessary provision to be made. This was carried out by section 9 of the Nigeria (Constitution) (Amendment) Order in Council, 1960, which amended section 142A of the principal Order by the insertion of two new subsections (13) and (14) as follows:

> "(13) A law enacted by the legislature of the Northern Region may provide that, when the High Court of that Region is exercising jurisdiction on appeals from decisions of a Native Court in such cases as may be prescribed by any such law, members of any such court as is referred to in paragraph (b) of the proviso to subsection (1) of section 148 of this Order may sit as additional members of the High Court.
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> "(14) For the purposes of subsection (13) of this section "Native Court" means a court established by or under the Native Courts Law, 1956, of the Northern Region (No. 6 of 1956), as amended, or any law replacing that law."

The "any such court" was in fact the proposed Sharia Court of Appeal which drafting decorum had apparently decreed should not be named before birth. This amendment came into force on 13th February, 1960. It was accordingly possible to draft and ultimately pass into law sections 59B, 59C, 59D of the High Court Law referred to above. The amending law, as previously stated, was brought into force on 30th September, 1960. On 1st October, 1960, the Constitution for Independence came into force. Thereafter the Native Courts Appellate Division of the High Court sat several times, and on one occasion was presided over by the Deputy Grand Kadi, Alhaji Abubakar Gumi, as being the member of the court considered by the majority of the judges of such court to have the greatest knowledge of the law to be administered in the particular appeal then before it. On 23rd January, 1961, an application was made to the Native Courts Appellate Division of the High Court in Kaduna in the case of *J.S. Olawoyin and six others v. Commissioner of Police* for an order under section 108(2) of the Second Schedule (i.e. the Constitution of the Federation of Nigeria) to the Nigeria (Constitution) Order in Council, 1960, that the following questions be referred to the Federal Supreme Court -

> "(1) Whether the provisions of section 59C of the Northern Region High Court Law in so far as they make the Grand Kadi or the Deputy Grand Kadi or an appointee of the Grand Kadi capable to sit as a member of the Appellate Division of the High Court have not been invalidated by the provisions of Chapter IV of the Third Schedule to the Nigeria (Constitution) Order in Council, 1960, [i.e. the chapter of the Constitution of Northern Nigeria which relates to courts][46].
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> (2) Whether the Appellate Division of the High Court is properly and adequately constituted by two judges of the High Court or
>
> (3) Whether the Appellate Division of the High Court is properly and adequately constituted by three judges of the High Court."

[46] These brackets and bracketed language in the original.

The reference to the Federal Supreme Court was duly made, and the case came on for hearing before the Federal Supreme Court on 10th March, 1961, before Ademola CJ, Brett, Unsworth, Taylor and Bairamian, JJ, when the Attorney-General of Northern Nigeria and Mr. N. Henderson, Senior Crown Counsel, attended in Lagos to argue the Reference on behalf of the Government of Northern Nigeria. On 6th April, 1961, the Federal Supreme Court gave judgment, holding that section 59C was ultra vires the Constitution.[47] The cause of the trouble had been that the amending subsections (13) and (14) to section 142A of the Nigeria (Constitution) Order in Council, 1954, had not been reproduced in the Constitution for Independence, in response to a desire of the Colonial Office draftsmen to tidy up all such amendments which had in their opinion been implemented and could be regarded as spent. It was apparently thought that by the passing of sections 59B, 59C and 59D of the Northern Region High Court Law, the Northern Regional Legislature had in fact done that which it had been given power to do, namely establish a division of the High Court for the hearing of appeals from Native Courts in which a judge of the Sharia Court of Appeal could take his place with the High Court judges, and it was also apparently thought that the provisions of section 3 of the Nigeria (Constitution) Order in Council, 1960, providing for the continuance of "existing laws" would have the effect of preserving the existence of sections 59B, 59C and 59D of the Northern Region High Court Law. Section 5(1) of the Constitution of the Federation, however, provided that the constitution of each Region should have the force of law throughout that Region and if any other law was inconsistent with that constitution, the provisions of that constitution should prevail and the other law should, to the extent of the inconsistency, be void. Sections 59B, 59C and 59D of the High Court Law were technically in conflict with section 50(3) of the Constitution of Northern Nigeria which laid down the qualifications of the judges of the High Court. The provision in section 4 of the Constitution Order that all offices, courts and authorities established under the previous Orders in Council should, so far as was consistent with provisions of the Constitution Order, continue after the commencement of the Order as if they were offices, courts and authorities established under the Order, was also unable to assist in curing the defect for a similar reason. The question would not have arisen if a provision had originally been inserted in the Constitution itself to the effect that the Northern Region High Court might be constituted as indicated above. Much consternation was occasioned in Moslem circles by this decision and some irresponsible persons alleged that the drafting omission was not accidental but a deliberate attempt to reduce Moslem influence in the North after Independence. The fact that one of the counsel who had appeared for the applicant in the case was Mr. F.R.A. Williams, Q.C. (former Attorney-General and Minister of Justice of the Western Region, but now in private practice) whose Government had at his instance objected to the amendment to the Constitution at the time it was proposed in 1959, did not improve matters. Steps were immediately taken to amend the Constitution of Northern Nigeria so

[47] *J.S. Olawoyin v. Commissioner of Police* (1961) 1 All N.L.R. (Part 2) 203. Cf. *Ado v. Dije* (1983) 2 F.N.L.R 213, 5 N.C.L.R. 260, once again striking down §59C (by then = §63(1) of the High Court Law of the Northern Region and subsequently of the states into which the region was divided), this time under Nigeria's 1979 Constitution, which also failed to make the provisions necessary to allow judges of the Sharia Courts of Appeal to sit with divisions of the High Courts hearing appeals from Native (by then "Area") Courts.

as to undo the effect of the decision of the Federal Supreme Court and to restore the position as it was before. Accordingly, the Constitution of Northern Nigeria (Amendment No. 2) Law, 1961, (No. 27 of 1961) was passed by the Northern Legislature and assented to on 20th May, 1961, but was expressed not to come into force until appointed by the Governor by notice in the Regional Gazette. This Law amended section 50 of the Constitution of Northern Nigeria by the insertion of a new subsection (3A) providing that, when the High Court was exercising jurisdiction on appeals from decisions of a Native Court, a member of the Sharia Court of Appeal might sit as an additional member of the High Court in such manner, and under such conditions, as might be prescribed by any law enacted by the Legislature of the Region. It was thought desirable to insert this affirmative authority in the Constitution rather than to repeat the oblique and, as it turned out, disastrous provision enabling a law of the Region to make the required provision. This Law was followed up by the Northern Region High Court (Amendment No. 2) Law, 1961, which inserted new sections 59B, 59C and 59D in the High Court Law, providing for the manner and conditions in and under which the High Court should hear appeals from Grade A and Grade A Limited Native Courts and Provincial Courts. Here again, the former phraseology was simplified and the expression "Native Courts Appellate Division", which had been the source of criticism and confusion, was omitted. This Law, which was dependent for its efficacy on the Constitution (Amendment No. 2) Law, was also expressed to come into force when appointed by the Governor. Because of the provisions of sections 5(4) and 6(c) of the Constitution of the Federation, the Constitution (Amendment No. 2) Law could not take effect unless a resolution supported by the votes of at least two-thirds of all members was passed by each House of Parliament signifying consent to its having effect. Considerable time elapsed before a two-thirds majority of the House of Representatives could be mustered, but this majority was eventually obtained and a Resolution duly passed in that House on 23rd November, 1961. The Bill was debated before the Senate on the 25th and 29th November, 1961 but the Senate declined to pass the Resolution and adjourned the debate. The required Resolution was, however, passed on the 27th March, 1962 and both Laws are to be brought into force by the Governor of Northern Nigeria on 1st July, 1962, (N.N.L.N. No. [89 and 92] of 1962). It is now hoped that the High Court constituted in accordance with the recommendation of the Panel of Jurists will be able to hear its appeals without any further political interference based on legal quibbles.

29. Recommendation 19 – "Provision for a Court to resolve conflicts of jurisdiction between the High Court and the Sharia Court of Appeal".

This recommendation was carried out by the establishment of the Court of Resolution by the Court of Resolution Law, 1960, (No. 17 of 1960). The court was so named because it was a court created for the purpose of the resolution of conflicts of jurisdiction between the High Court and the Sharia Court of Appeal. The equivalent court in the Sudan is called the Court of Jurisdiction. This name was not followed here because every court is in one sense a court of jurisdiction. The court is, by section 2, stated to be a court "for the resolution of any conflict of jurisdiction arising between the High Court of Justice of the Northern Region and the Sharia Court of Appeal". It has not yet sat.

Since the coming into force of the new legislation, it has been found that numerous instances have arisen of litigants lodging their appeals in the wrong court. In all these cases, there has been no dispute between the High Court and the Sharia Court as to which court was the appropriate one to hear the appeal, and therefore there was no need to invoke the Court of Resolution.[48] It was found, however, that the lodging of appeals in the wrong court worked hardship to the litigant since, if a case was called on in the wrong court and the appeal was dismissed for lack of jurisdiction, he might be too late to lodge it in the other court, and in any case if he were in time he would have to pay fees all over again in that other court. Provision has accordingly been made in the High Court (Amendment) Law, 1962, and the Sharia Court of Appeal (Amendment) Law, 1962, for mutual powers of transfer between the High Court and Sharia Court of Appeal to meet such cases.

30. Recommendation 20 – "An automatic appeal to the Native Courts' Appellate Division of the High Court in all cases in which the death penalty is imposed".

This is the one recommendation which the Northern Government found itself unable to accept. See paragraph 30 of the Government White Paper. As indicated in that paragraph, further consideration was given to the desirability of automatic appeals in homicide cases, but it was again decided not to implement this recommendation.

31. Recommendation 21 – "Salaries of Alkalai, etc. should be increased".

This has been done. Details will be supplied by the Ministry for Local Government.[49]

32. Recommendation 22 – "Recommendation that Magistrates and Crown Counsel should pass a prescribed examination in a local language".

This recommendation, although accepted in principle by the Government, has not yet been implemented. The difficulty of obtaining an adequate number of expatriate magistrates and Crown Counsel during the years since the grant of self-government, and the availability of only a few Northern magistrates and Crown Counsel persuaded us that the time was not ripe for such a requirement to be introduced. When the steady flow of barristers returning to fill the posts of magistrates and Crown Counsel in the Region reaches adequate proportions the problem will have largely solved itself, and all such officers will in fact speak a local language and should be able easily to pass an examination in one.

33. Recommendation 23 – "A policy should be decided upon without delay to train Northern Nigerians to fill the posts of High Court Judges and Magistrates in the future".

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[48] In fact the Courts of Resolution, whether of the Northern Region or of the states into which the Region was subsequently divided, were never once invoked. Before 1979 this was presumably because there were no disputes about High Court/Sharia Court of Appeal jurisdiction that could not be resolved informally, as the Attorney-General here indicates. After 1979 there were many such disputes, but appeals were now allowed from the Sharia Courts of Appeal to the (Federal) Court of Appeal in all matters, so the cases went there instead of to the Courts of Resolution. The Court of Resolution Laws were dropped from all of the "Revised Laws" of the Northern states published in the late 1980s and early 1990s, on account of desuetude.

[49] See "Memorandum of Increases in Salary Granted to Alkalai, Native Court Presidents and Other Members of the Native Courts Judiciary: 1958", no. 6 *infra*.

This has been implemented, and a scheme has been put in hand for the training of Northern Nigerians to fill the posts of High Court Judges and magistrates in the future. The panel is referred to the Memorandum of the Principal of the Institute of Administration on this subject.[50] In addition, the following progress in filling judicial posts may be noted. One Northern Senior Crown Counsel has been transferred from the Legal Department to the Judicial Department as Chief Magistrate, and now sometimes acts as a High Court Judge. A system of appointing newly-called Northern barristers to be Associate Magistrates has been formulated. It is intended that they should assist Magistrates Grade I for a probationary period of two years, during which they should receive training at the Institute of Administration, in Crown Counsel's Chambers, and on the Bench, sitting with a magistrate and studying how cases are tried. So far, one Northern Associate Magistrate has been appointed. It is intended that Associate Magistrates should be the counterpart in the Judicial Department of the Pupil Crown Counsel in the Legal Department. They have been designated Associate Magistrates because for obvious reasons it would have been undesirable to have described them as "Pupil Magistrates". A statement of the course of training and of the duties of Associate Magistrates during their two years' probationary period is set out as an Appendix to this Memorandum.

34. Recommendation 24 – "The Grand Kadi should be a member of the proposed Judicial Service Commission".

This recommendation has been implemented. It required an amendment to the Constitution which was effected by section 55(c) of the Nigeria (Constitution) (Amendment) Order in Council, 1959. This was carried forward to the Constitution for Independence and is now contained in section 53(2)(c) of the Constitution of Northern Nigeria.

35. Recommendation 25 – "A suitable Commissioner for Native Courts should be appointed at once, together with an assistant to allow for extensive touring".

This recommendation was implemented, and Mr. S.S. Richardson, an administrative officer in the Northern Nigeria public service and a former officer of the Sudan Administrative Service, was appointed to fill the post.[51] The appointment was a great success, and Mr. Richardson not only made an excellent Commissioner for Native Courts, but also materially assisted the Attorney-General and his staff in the preparation of the legislation referred to above, based as it was on the Sudan legislation. In this respect, his experience in the Sudan was invaluable to us. An Assistant Commissioner for Native Courts was also appointed, and he and the Commissioner carried out extensive touring, on some occasions being accompanied by the Attorney-General. The standard of Native Courts has been considerably raised by the new measures, and by the training of the Native Courts judges. There has been a considerable overhaul and reorganisation of Native Courts in non-Moslem areas and criminal jurisdiction vested in a few central courts only. Jurisdiction in criminal matters has been taken away from

[50] No. 3 *infra.*

[51] S.S. Richardson's separate memorandum "on sundry problems arising from the Implementation by the Government of Northern Nigeria of the Recommendations made by the Panel of Jurists in 1958" is item no. 4 *infra.*

those courts deemed incapable of applying the Codes except in cases of adultery. This crime has been left for them to deal with in order to supplement their divorce jurisdiction.

36. Recommendation 26 – "A team of officers based on the Zaria Institute of Administration should provide short residential courses based on the new Code and procedure for Senior Native Courts personnel, and should also visit Provinces to give similar instruction to Administrative Officers and Native Courts' personnel".

This was implemented, and particulars of the courses given to senior Native Courts personnel by the team of officers at the Zaria Institute of Administration and to administrative officers and Native Courts personnel by that team in the provinces are set out in the memorandum of the Principal of the Institute of Administration which will be presented to the Panel.

37. Recommendation 27 – "During the interim period an Administrative Officer in each Province should be specially charged with the supervision of Native Courts and all District Officers in charge of Divisions should regard such supervision as a major responsibility for the next few years".

This recommendation was implemented during the period when preparation was being made for the inauguration of the new legal and judicial systems. A "D.O. (Courts)" was appointed in each province and he was charged with the responsibility for the legal training and supervision of Native Courts staff. These officers worked hard and produced good results, and their training was an excellent supplement to the training given at the Institute. It was naturally not possible for the team of officers at the Institute to train all the Native Courts personnel, native authority police, and others before the system was brought into force, but the D.O.s (Courts) organised courses in each province. These were elementary, basic courses in the nature of "first aid" and were successful beyond all expectation. I personally visited a number of these courses and can testify to the keen interest taken by all those whom I met. Owing to constitutional changes, shortage of staff, the retirement of expatriate officers, and Northernisation, it has not been possible to maintain a separate officer in each province as D.O. (Courts) since the new legal system has been inaugurated.

38. Recommendation 28 – "That existing courses at the Institute for Emirs, Assistant District Officers, etc., should include lectures on the importance of the proper application of the new Code".

This has been done. Please see particulars in the memorandum of the Principal of the Institute of Administration.

39. Recommendation 29 – "That a succession of courses should be arranged at Zaria for registrars, scribes, etc. throughout the Region".

This has been done. Please see the Principal's memorandum as set out above.

40. Recommendations 30, 31 and 32 – "That plans be made to provide for the Judges and Magistrates of the future by sending a few of those holding the best Certificates straight to London to take both a University degree and the Bar qualification, and that a first-year course be established at the Zaria College of Arts and Technology for other promising candidates who would proceed to London for eighteen months to complete

their call to the Bar", "That those on the legal side at the Kano School of Arabic Studies should join the one-year course at Zaria after completing one year's specialisation in the Moslem law of personal status at Kano", and "That a few of these future Alkalai or Instructors might be sent for a course of specialised study in London".

These have been implemented as far as possible. Please see memorandum of the Principal as stated above. The whole subject is now under reconsideration, having regard to the impending establishment of the Ahmadu Bello University of Northern Nigeria. It is intended that the School of Arabic Studies in Kano (to be named the Abdullahi Bayero College) and the Institute of Administration are to be colleges of the University. It is intended to establish a Faculty of Law in the University so that the degree of LL.B. may be granted to successful students. Even though a law degree is to be made available in other Universities in Nigeria, it is thought necessary that the Northern University should be able to grant its own, having regard to the radical differences between the legal systems of the Northern Region and the rest of Nigeria. The degree course has not yet started, but Dr. Alexander, the Vice-Chancellor of the University, hopes to initiate the first one in October of this year. Further particulars can be obtained from him. In the meantime, it is hoped to proceed with the present training programme at the Institute, so that by the time it is discontinued (and it was always contemplated that it would only be temporary) an adequate supply of trained local lawyers will have been built up.

41. This brings us to the end of the recommendations of the Panel. In addition to the legislation specifically referred to above, the attention of the Panel is drawn to the following Laws which have been passed for the specific purpose of amending particular sections of the Laws which are an integral part of the new legal system. The amendments speak for themselves and were made either to implement decisions taken at the various Nigerian Constitutional Conferences to bring legislation into accord with the Constitution or as a result of experience in working the system.

(1) The Penal Code (Amendment) Law, 1960 (No. 19 of 1960)
(2) The Native Courts (Amendment No. 2) Law, 1960 (No. 21 of 1960)
(3) The Criminal Procedure Code (Amendment) Law, 1961 (No. 48 of 1961)
(4) The District Courts (Amendment) Law, 1961 (No. 34 of 1961)
(5) The Northern Region High Court (Amendment) Law, 1961 (No. 9 of 1961)
(6) The Northern Region High Court (Amendment No. 3) Law, 1961 (No. 35 of 1961)
(7) The Penal Code (Amendment) Law, 1961 (No. 47 of 1961)
(8) The Coroners (Amendment) Law, 1962 (No. 20 of 1962)
(9) The Penal Code (Amendment) Law, 1962 (No. 11 of 1962)
(10) The Criminal Procedure Code (Amendment) Law, 1962 (No. 12 of 1962)

41A. The passing of the new legislation has involved the repeal of the following Ordinances and Laws:

(1) The Criminal Code Ordinance (Cap. 42 of the 1948 Laws)
(2) The Criminal Procedure Ordinance (Cap. 43 of the 1948 Laws)
(3) The Magistrates' Courts (Civil Procedure) Ordinance (Cap. 124 of the 1948 Laws)

(4) The Magistrates' Courts (Civil Procedure) Ordinance (Cap. 124 of the 1948 Laws)
(5) The Magistrates' Courts (Northern Region) Law, 1955 (N.R. No. 7 of 1955)
(6) The Moslem Court of Appeal Law, 1956 (N.R. No. 10 of 1956)

41B. The following subsidiary legislation has been passed under various provisions of the new Laws and obsolete subsidiary legislation revoked:

(a) The Adaptation of Legislation Order in Council (N.R.L.N. No. 120 of 1960)
(b) The Criminal Procedure Code (*Haddi* Lashing) Order in Council (N.R.L.N. No. 85 of 1960)
(c) The Criminal Procedure (Punishment on Summary Conviction) Order in Council (N.R.L.N. No. 86 of 1960)
(d) The Criminal Procedure (Statements to Police Officers) Rules (N.R.L.N. No. 106 of 1960)
(e) The Criminal Procedure Rules (N.R.L.N. No. 110 of 1960)
(f) The Criminal Procedure (Execution) Rules (N.R.L.N. No. 118 of 1960)
(g) The District Courts Rules (N.R.L.N. No. 101 of 1960)
(h) The Native Courts (Civil Procedure) Rules (N.R.L.N. No. 84 of 1960)
(i) The Native Courts (Jurisdiction in Miscellaneous Criminal Offences – Transitional Provisions) Order in Council (N.R.L.N. No. 139 of 1960)
(j) The Provincial Courts Rules (N.R.L.N. No. 111 of 1960)
(k) The Provincial Courts (Amendment) Rules (N.R.L.N. No. 151 of 1960)
(l) The Northern Region High Court (Appeals from Native Courts) Rules (N.R.L.N. No. 112 of 1960)
(m) The Sharia Court of Appeal Rules (N.R.L.N. No. 136 of 1960)
(n) The Native Courts (Jurisdiction and Powers) Notice, 1962

Some of the above have themselves been amended since they were made.

42. It may be added that the new system and the new Laws, involving as they did the establishment of a Penal Code and Criminal Procedure Code applying to everyone and available to and understandable by everyone have been received in the North with enthusiasm and excitement, particularly by the man in the street. At one time the Penal Code was a "best-seller" in all towns and was sold out whenever it appeared in the bookshops. Lingering objections to the new system remain in conservative quarters and particularly amongst certain old men brought up in the Moslem way of life who are reluctant to make changes. The opposition is not vocal or widespread or, indeed, patent. It takes the form of quiet, passive resistance and an obstinate determination to apply Moslem law in the old way, instead of the Penal Code, whenever this can be done without interference.

43. This memorandum is intended to be a report of the work done in the implementation of those recommendations of the Panel of Jurists which were approved by the Government of Northern Nigeria. It will be seen that the major portion of those recommendations have been implemented, and successfully implemented. This is probably not the place to make recommendations for the future, but it may be permitted to set out here those suggestions for reform which arise out of the preceding paragraphs of this memorandum. They are as follows –

(a) the abolition of the power of review except that of Native Courts advisers;

(b) the repeal of paragraph (e) of subsection (5) of section 52 of the Constitution of Northern Nigeria and of paragraph (e) of section 12 of the Sharia Court of Appeal Law, 1960.

[signed H.H. Marshall]
Attorney-General, Northern Nigeria

28th April, 1962

Appendix

Course of Training for Associate Magistrates

1. Attend the course on the new Penal and Criminal Procedure Codes at the Institute of Administration. If on completing the course at Zaria the "Associate Magistrate" was invited to instruct on a subsequent course, he should be given the opportunity of doing so, as teaching is the best way of learning. He should be asked to make a special study of the Constitution and of those Ordinances and Laws with which he will be particularly concerned in administering justice; and also of the subsidiary legislation relating thereto. He should be given some training in accounts so as to be able to recognise a fraud when he sees one.

2. Be under the pupillage of a chief magistrate or a first grade magistrate of experience to learn and practise the work of a magistrate in chambers and to sit in court to see how cases are conducted.

3. Be under the pupillage of a judge to gain experience of pleadings, evidence and procedure; to study records of appeal, especially appeals from magistrates; to follow an appeal through from beginning to end, and to learn from the errors of others.

4. A short pupillage in Crown Counsel's Chambers and be given simple cases to prosecute, at first under supervision.

5. When he is considered to have sufficient experience he might be assigned to defend in homicide cases.

6. Sit as a second grade magistrate to hear cases passed to him by a chief magistrate or first grade magistrate.

7. Continue to hear cases passed to him under 6 as a first grade magistrate when the Chief Justice so recommends.

8. At the end of two years from call to Bar be considered for permanent appointment as a first grade magistrate on probation.

2.

Memorandum from the Acting Chief Justice[52] to the Panel of Jurists

In this memorandum are set out comments and suggestions which represent the views of the Judges of the High Court and myself on matters which we consider to be of interest to the Panel of Jurists.

2. Up to April 1961 a Judge of the Sharia Court of Appeal and two Judges of the High Court met together in the Native Courts Appellate Division of the High Court to hear appeals from Native Courts arising under the new legislation. It was a matter of great regret to the Judges of the High Court when following the decision of the Federal Supreme Court in April 1961 a Judge of the Sharia Court of Appeal was no longer able to sit with us to hear these appeals. Now that the constitutional issue has been resolved we welcome the return of the Judges of the Sharia Court of Appeal as members of the Native Courts Appellate Division of the High Court.

Statistics:

3. It may be of interest to mention that during the calendar year 1961 the High Court heard 161 criminal appeals and 24 civil appeals from Native Courts. Of these, 50 criminal appeals were allowed, including cases where retrials were ordered; and 7 civil appeals were also allowed. 41 criminal appeals and 24 civil appeals came from Provincial Courts of which 4 criminal appeals and 7 civil appeals were allowed. The remaining appeals came from Grade A and Grade A Limited Native Courts.

Provincial Courts:

4. We, the Judges of the High Court, are much impressed by the standard of work in Provincial Courts and the high reputation that these Courts have acquired. As the High Court holds session in each province of Northern Nigeria we regularly meet the Alkalai, Presidents and Members of Provincial Courts for informal discussions on our mutual problems from which all of us derive much benefit.

Native Courts:

5. Native courts generally have made commendable efforts to understand the Penal Code and Criminal Procedures Code and to apply the provisions of these Codes. Most Native Courts have wholeheartedly striven to assimilate the reforms and the progressive improvement in the standard of their work is reflected in the records of proceedings which came before the High Court on appeal. The courses for personnel of Native Courts at the Institute of Administration at Zaria have done much to raise the standard of the work in Native Courts. But with so many Native Courts in Northern Nigeria, it will take time to train sufficient personnel to man all the courts; and until that is achieved we recommend that the guiding principle in section 386 of the Criminal Procedure Code should continue to apply to Native Courts and no attempt should be made at the present time to force the pace.

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[52] J.A. Smith.

Appeals from Native Courts:

6. When hearing appeals from Native Courts the High Court endeavours as far as possible to decide an appeal on its merits and to avoid technicalities. It may however be of interest to mention the sort of procedural mistakes that arise and the way the High Court deals with them. It is noticeable that Native Courts find difficulty in appreciating the meaning and implication of a formal charge. Formal charges when framed are often defective as formal charges; but the High Court has accepted such a charge as a sufficient statement of offence under section 387 of the Criminal Procedure Code provided that it contains the particulars required by that section. Where no attempt has been made by a Native Court to frame a formal charge or to set out as such a statement of offence the High Court has accepted the record of the opening address of the prosecutor as sufficient provided again that it contains the particulars required by section 387. When there has not been a formal charge and nothing on the record of the proceedings that can be taken as a statement of offence then the High Court has applied sections 288 and 382 and considered whether or not there has been a failure of justice.

7. With regard to those sections of Chapter XXXIII of the Criminal Procedure Code by which Native Courts are bound, the High Court on appeal has dealt with a failure of a Native Court to comply therewith in the following ways. As to section 388 the High Court has where possible remedied the omission by applying section 70(1)(b)(iii) of the Native Courts Law and substituting a proper conviction. An omission by a Native Court to call upon an accused to state his defence as required by section 389 has been held to be a failure of justice and a retrial ordered. (*Samuel Bobaye v. Kano N.A.* decided 16th December, 1961). An omission to ask an accused for his witnesses as required by the same section when the accused in fact had eye-witnesses to call in his defence was also held to be a failure of justice and a retrial ordered (*Ubi Yola v. Kano N.A.* 1961 N.R.N.L.R. 103).

Records of Proceedings:

8. The recording of proceedings in a Native Court as required by section 395 has much improved but the standard varies considerably from court to court. The Judges of the High Court are from time to time left with the impression that an omission on the face of the record may be due to a failure by the scribe to record what has happened at the trial rather than a failure by the court to comply with the provisions of the Criminal Procedure Code. It is obviously important that a full and accurate record of proceedings should be kept; and we would suggest that courses be held for scribes designed to improve the standard in the keeping of records of proceedings.

Evidence Ordinance:

9. Native courts are also to be guided by the Evidence Ordinance. We recommend that they should continue to be guided by the Ordinance and not bound by it. It has been noticeable that Native Courts when hearing cases have not applied their minds to questions such as corroboration or the evidence of accomplices. These are aspects of the law of evidence which are no doubt taught on the courses at Zaria; but it will take some time before these and other aspects of the law of evidence have been sufficiently mastered by Native Courts for them to be bound by the detailed provisions of the Evidence Ordinance.

Exhibits:

10. It is not the practice of Native Courts to mark as exhibits documents put in evidence and it is often difficult for the High Court on appeal to ascertain from the record of proceedings what documents were put before the Native Court. There is a further complication in that it is the practice of Native Courts to return the documents to the party concerned when the case is over and not to retain them until the appeal has been heard. The result is that delays occur while documents are being traced and when finally produced it may not be possible to identify them as the ones which were produced before the court. We would recommend that Native Courts be directed to mark as exhibits all documents and articles produced to the court as evidence; and the way it is to be done might be included in the curriculum of courses for court scribes.

Review and Transfer:

11. We observe that under the Provincial Administration Law 1962 which is about to come into force, the powers of Residents pass to Provincial Commissioners who will have the status of Ministers. These powers include the review and transfer of cases under the Native Courts Law. We think that to give a political appointee these judicial functions will give rise to criticism no matter how fairly and impartially Provincial Commissioners exercise these powers in practice. We would suggest that as there is now a comprehensive system of appeal from Native Courts to Provincial Courts and the High Court, the power of review might be abolished as the need for it no longer exists. The power to transfer a case from one court to another may still be needed and we suggest that this power might be vested exclusively in the Commissioner of Native Courts.

Powers to Imprison and Fine in Native Courts and Magistrates' Courts:

19. There is a considerable discrepancy between the powers to imprison and to fine given to Native Courts and to the corresponding magistrates' courts. The powers of a Native Court to impose a sentence of imprisonment or a fine are to be found in the First Schedule of the Native Courts Law. The corresponding powers in magistrates' courts are set out in sections 15, 16, 17 and 18 of the Criminal Procedure Code. A comparative table is attached at Appendix A. It will be observed that while the powers of Grades B, C and D Native Courts to imprison are greater than the corresponding powers of the courts of magistrates Grades I, II and III the maximum powers to fine given to magistrates' courts are greater than the powers given to corresponding Native Courts. It is suggested that these anomalies should disappear and so far as possible the maximum powers of corresponding courts should be made uniform. In due course the posts of magistrates and alkalai will all be filled by Northerners and the powers of magistrates with their professional qualifications should in principle be at least equal to those of corresponding Native Courts. It is recommended that the powers of a Grade B Native Court and of a Grade I magistrate's court to imprison and fine should be similar; and likewise the powers of a Grade C Native Court and a Grade II magistrate's court; and a Grade D Native Court and a Grade III magistrate's court should be the same. If the powers of a magistrate Grade I are to be increased to a maximum term of three years' imprisonment in conformity with the powers of a Grade B Native Court then it is considered that the maximum powers of a Chief Magistrate to imprison should be

increased from five to seven years. It is appreciated that such an increase in the powers of a Chief Magistrate would be considerably less than the powers of a Grade A limited Native Court but it is not thought that at the present time a Chief Magistrate's court and a Grade A limited Native Court could be more closely assimilated.

Associate Magistrates:

13. To encourage newly called Northern barristers to become magistrates, the posts of "associate magistrate" analogous to that of pupil crown counsel were created in February, 1961, with the object of providing a course of training within the Judicial Department of newly called Northerners as magistrates. The period of training has been equated to that of pupil crown counsel and extends to two years from date of call. At present the associate magistrate is required before appointment to have completed the Post-Final Practical Training Course of the Council of Legal Education. His further training on appointment as an associate magistrate includes a study of the Penal and Criminal Procedure Codes and other local legislation; a period of pupillage in Crown Council's chambers; a period of pupillage under a Chief Magistrate or an experienced magistrate Grade I; and then he is given magisterial powers to try at first simple cases and progressively more difficult cases, until at the end of two years from call he becomes eligible for appointment as a magistrate Grade I on probation.

14. One Northern barrister has passed through this training and is now sitting as a magistrate Grade I. It is anticipated that two more newly called Northerners will be available for training as magistrates in August and that there will be three more next year. Thus by 1965 there would be six Northerner barristers who will be magistrates Grade I.

Supernumerary Chief Magistrates:

15. In addition the post of supernumerary chief magistrate has been created as a further step towards Northernisation with the object of giving a Northern barrister of about five years' standing experience on the bench as a Chief Magistrate with a view to his acting as a High Court Judge. This post has been filled by a Northern Senior Crown Counsel who has already acted as a Judge and will so act more frequently in the future until he is eligible to be considered for appointment as a High Court Judge. Further such posts might be created if suitable candidates become available. But as the Panel is no doubt aware there is an acute shortage at present of Northern barristers of experience.

Summary:

16. The recommendations and suggestions in this memorandum may be summarised as follows:

(i) Native courts should continue to be "guided" by the Criminal Procedure Code and Evidence Ordinance. (paras. 5 and 9).

(ii) Courses be held for court scribes to improve the standard in the recording of proceedings in Native Courts. (para. 8).

(iii) Native courts be directed to mark as exhibits documents and articles put in evidence before the court. (para. 10).

(iv) The power of review be abolished. (para. 11).

(v) The power to transfer cases from Native Courts be exclusively vested in the Commissioner for Native Courts. (para. 11).

(vi) The corresponding grades of Native Courts and magistrates' courts be given similar maximum powers to fine and imprison. (para. 12).

(vii) The training of "associate magistrates" to continue. (para. 13).

(viii) That the posts of supernumerary chief magistrates be increased as and when candidates are available. (para. 15).

[Appendix]

CRIMINAL CAUSES

Maximum			Maximum		
Native Court	Fine	Imprisonment	Magistrate's Court	Fine	Imprisonment
A limited	Limited only by absence of jurisdiction in homicide cases: otherwise unlimited.		Chief Magistrate	£500	5 years
B	£150	3 years	Magistrate Grade I	£200	2 years
C	£30	18 months	Magistrate Grade II	£100	1 year
D	£15	9 months	Magistrate Grade III	£25	3 months

3.

Memorandum by the Principal of the Institute of Administration, Zaria,[53] to the Panel of Jurists on the Subject of Legal Training carried out in Implementation of the Recommendations of the Panel submitted to the Government of Northern Nigeria on the 10th September, 1958

1. The recommendations of the Panel of Jurists submitted in 1958 on the subject of legal training were all accepted by the Government of Northern Nigeria and the training facilities necessary were duly established at the Institute of Administration, Zaria in 1959.

2. As a result the Northern Region established the first (and still the only) Law School in Nigeria. There is no doubt of the success of this operation. The work of the Institute in this field received honourable mention in the Report of the London Conference on the Future of Law in Africa published in 1960.[54] The Rt. Hon. Lord Dening P.C. visited the Institute in 1961. Lord Dening was subsequently Chairman of a Committee established by the British Government in 1961 to advise on legal training for Africans. This Committee duly reported to the British Parliament that it was highly impressed by the work of the Institute and recommended that other African territories facing a shortage of trained legal staff and similar problems in regard to native or customary courts should consider setting up a similar school. As a result a number of East African territories have established legal training institutions on the Zaria model.

3. The successful launching of the Law Department owes much to the vision, energy and drive of Mr. I.G. MacLean, a Crown Counsel seconded to the staff of the Institute from the Legal Department. He was ably supported by three Administrative Officers with legal qualifications and since the inception of the scheme, it has been possible to recruit four Northerners with long experience of the work of Native Courts as Instructors in specific subjects concerning the training of Native Courts Staff. The present staff available for legal training consists of three legally qualified lecturers and four instructors working under Mr. J.L. McNeil who heads the Department in an acting capacity. The Principal is also actively involved in teaching. The staff is to be reinforced shortly by an American Law Graduate provided under the Afro-Asian programme of the University of Syracuse and a newly qualified Northern barrister. I explain below the part which this strong and experienced team is expected to play in the establishment of an efficient Law Faculty in the Ahmadu Bello University in October, 1962.

3.[55] The present role of the Institute in Legal Training can be summarised as follows:

(a) the initiation of training for Northern Nigerians for Call to the Bar (in implementation of Recommendation 23 of the Panel of Jurists Report, 1958).

(b) re-orientation training for the staff of Native Courts (in implementation of Recommendations 26 and 29 of the Panel of Jurists Report, 1958).

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[53] S.S. Richardson.

[54] A.N. Allott, ed., *The Future of Law in Africa* (London: Butterworths, 1960).

[55] The number 3 is repeated in the original and subsequent paragraphs continue from there.

(c) the provision of basic legal education for students in the fields of public administration and local government undergoing courses of instruction at the Institute (in implementation of Recommendation 28 of the Panel of Jurists Report, 1958).

(d) courses for Emirs and Chiefs (in implementation of Recommendation 28 of the Panel of Jurists Report, 1958).

(e) a research role in preparing books, teaching material, translations and visual aids for legal training throughout the Region (and perhaps, in the future, for the Federation as a whole).

(f) a touring role aimed at giving basic training in Provinces and following up the training provided at the Institute (in implementation of Recommendation 26 of the Report of the Panel of Jurists, 1958)

Each of these activities is reported upon more fully in succeeding paragraphs.

4. The Bar Course. Three classes of 12 students have now completed their studies at the Institute and a fourth is under recruitment. Entry standards have generally been set at West African School Certificate Grade II, but some successful students have been accepted with lower qualifications if they have been able to show a good in-service record. Instruction is given over a period of nine months at Zaria, in Roman Law, Contract and Tort, Constitutional Law, Legal History and Criminal Law. Studies are directed with the close co-operation of the Council of Legal Education and Messrs. Gibson and Weldon Limited, Law Tutors, of Chancery Lane. Arrangements have been made for students to sit the necessary examinations under the supervision of the Chief Justice in Kaduna. Successful students proceed to the United Kingdom with four passes in Part 1 and take the paper in Muslim and African Law after a course of study extending over two terms at the School of Oriental and African Studies in London. Simultaneously, they attend a course of lectures for the Final Examination conducted by the Inns of Court Law School. The Final Examination is then attempted after a five months course with Messrs. Gibson and Weldon. Providing that a student has successfully passed the Final Examination, arrangements are made for him either to read in Chambers for six months or to attend the Post Final Course organised by the Council of Legal Education. The first two students to complete this scheme of study are due to return to Nigeria in June. They duly passed the Final Examination for Call to the Bar 26 months after first joining the course at the Institute of Administration, Zaria. A further 14 students are at various stages of their training in U.K., and a further 12 are expected to leave for U.K. in September, 1962.

This programme should, therefore, produce for the Northern Region six qualified barristers in 1962, eight more in 1963, twelve in 1964 and twelve annually thereafter for as long as the scheme is continued. The fact that these students are closely supervised throughout their training in U.K. by the best teachers obtainable and have the advantage of reading in Chambers before their return to Nigeria, means that they return with better qualifications to practise than the average private student. It is hoped, also, that they will shortly be able to benefit from the courses to be organised by the Federal Government at the projected Law School in Lagos. Present policy would appear to be to continue training for the English Bar for a number of years at least until the Law Faculty of Ahmadu Bello University is producing graduates. One advantage of continuing the

programme for a while is that the Institute can accept students for this training with entry qualifications substantially lower than those required for admission to the Law Faculty.

5. Reorientation training for the Staff of Native Courts. The introduction of a codified system of criminal law in October, 1960 could not have been successful in the Region without intensive training of the staff of Native Courts. Although much valuable work was done in the Provinces by way of locally held training courses, there is no doubt that the more effective instrument in making implementation of the reforms possible has been the three months intensive residential course at the Institute specifically designed to introduce the staff of Native Courts to the new legislation. Initially the objective has been to produce at least one man trained at Zaria for each Native Court. On the 1st October, 1960, when the new legislation was brought into effect there were 752 Native Courts in the Region, almost all of which had previously administered Native Law and Custom or Moslem law in criminal matters. Appendix B of this memorandum shows that our first objective has still not been attained since only 506 of the staff of Native Courts have attended residential courses of three months or more at the Institute. A considerable number of Native Courts are therefore still administering the new Codes with only the background of training received in the Provinces. This weakness has been mitigated by rationalising the structure of Native Courts in some Provinces and reducing the number of courts with jurisdiction in criminal matters. Reference is made to this policy in the memorandum submitted to the Panel by the Hon. Attorney-General. Nevertheless, there is a clear need for continuing the three months residential course for a number of years. The course aims at giving the student a sound knowledge of the Penal Code and the Code of Criminal Procedure and through the instrument of mock trials, moots etc., some practical experience in using the legislation. Opportunity is also taken to teach the Native Courts Law, 1956, the Road Traffic Ordinance, the Native Courts (Civil Procedure) Rules, 1960, the Evidence Ordinance and other legislation of importance to Native Courts. Instruction is given in English and Hausa and it is important that the Senior Staff responsible for this work should be fluent Hausa speakers. But the main concentration of the effort in such a short course must of necessity be upon the Criminal Law and there is a need to consider the possibility of organising a further course of much longer duration to give adequate instruction in all the legislation with which a Native Court is called upon to cope.

6. The provision of basic legal education for other classes of students. As may be confirmed by examination of the statistics given in Appendix B, the Law Department of the Institute has given legal education to all categories of students at the Institute and in particular to Administrative Officers, Executive Officers, and Administrative Cadets in training. All these students have judicial functions in the field requiring considerable knowledge of the law. Administrative Officers have a major responsibility under the Native Courts Law, 1956, to supervise the work of the Native Courts and must, therefore, have a thorough grounding in the law. It has also proved beneficial to teach all students at the Institute the principles of the Constitution and the law involved in their particular field of work (e.g. Co-operative Management). The Department of Law thus makes a major contribution to the teaching strength of all the Departments at the Institute.

7. Courses for Emirs and Chiefs. The Law Department has supplied about half the tuition time on two annual courses for Emirs and Chiefs giving instruction on the new Criminal Codes, the Constitution and the Native Courts Law. These courses have been successful in that students returning to the service of their Native Authorities after judicial training at the Institute have found it easy to implement their knowledge where the Emir or Chief has himself the basic understanding of the reforms to give effective support.

8. The Research Role. The staff of the Institute have played a leading part in the translation work which has been necessary to enable the new laws to be taught in the vernacular. Members of the staff have produced a number of books and pamphlets on the legislation to be applied by Native Courts which have been widely distributed throughout the Region. This aspect of the work of the Institute is likely to assume greater importance as the Law Faculty of the University develops and the need for textbooks on various aspects of Nigerian law becomes critical. The Institute staff is alert to these requirements and at the present time the following work is being undertaken by members of staff in an attempt to meet foreseeable requirements of the Law Faculties in the new Universities to be set up in Nigeria:

(i) a book of Nigerian Case Law and Statute Law relating to the law of Contract and Tort.

(ii) a student's text book on the Nigerian Constitution.

(iii) a Commentary on the Criminal Procedure Code.

(iv) revision of the book "Notes on the Penal Code". Members of the staff are collaborating with Professor A. Gledhill of the School of Oriental and African Studies in the preparation of a comparative study of the Penal Codes of India, the Sudan and Northern Nigeria.

9. Extension Work. The staff of the Institute have made a number of tours in the Provinces with the dual object of following up the work of ex students at the Institute and of providing short courses for the staff of Native Courts for whom, as yet, places cannot be found at the Institute. These tours are valuable in that the staff of the Institute is thereby enabled to keep in touch with the realities of the task in the Provinces, judge the effectiveness of the training provided at the Institute, and assist Residents in resolving local training problems. The Institute has a well established reputation for extension work in Local Government and maintains a training team full time in each Province on this work. This organisation has recently assumed responsibility for elementary accountancy training and it might well be useful to consider attaching legal instructors to these teams in the future to continue the work no longer possible through the agency of the Special Duties Administrative Officer.

10. Government's decision to incorporate the Institute of Administration with Ahmadu Bello University in October 1962 raises the problem of the future of the Department of Law. In the absence of alternative accommodation the decision has been taken to launch the Law Faculty at the Institute, reserving until a later date the question of its permanent location. Although the teaching staff of the Institute is strong and experienced, there is clearly a need for the appointment without delay of a Professor of Law, who must have an established academic training record from overseas and, if possible, a special

knowledge of the peculiar legal and judicial problems of the Northern Region. An outline syllabus for a first degree course of three years in Law has been prepared by Professor L.C. Gower, the Federal Advisor on Legal Education. The syllabus makes provision for the inclusion of the study of Moslem personal law and North[ern] Nigerian Criminal Law as obligatory subjects. A copy of the proposed curriculum is attached to this memorandum as Appendix C. It will be seen that the proposed first year includes no subject which cannot be taught adequately by the existing staff of the Institute or which is in any way likely to cramp the style of a newly appointed Professor seeking to develop a three year LL.B. curriculum. It is, therefore, anticipated that a class of 15 LL.B. students will be admitted in October, 1962 and a start made. The entry standard required throughout the University is at least two 'A' level subjects in an examination equivalent to that of the General Certificate of Education.

11. There is no doubt about the need to continue with the task of providing legal training for the staff of the Native Courts, the Administrative Service and other categories of students at the Institute of Administration. The necessity [to] continue for some time with the re-orientation three months course for existing Native Courts staff is clear from the statistics provided in Appendix B of this memorandum. Additionally, thought must be given to the development of a comprehensive course of at least one year's duration to equip young men to enter the service of the Native Courts more adequately trained to meet the challenge of the time. It is proposed that while the year's course should be essentially practical and designed to meet the needs of the Native Courts system, it should at least aspire to achieve an academic standard comparable to that of an Inter LL.B. and include the advanced work in Moslem personal law proposed for the full LL.B. degree. The result should be a Diploma recognised by the Ahmadu Bello University and, if possible, sponsored by some overseas institution such as the School of Oriental and African Studies in London, to ensure the establishment of high standards. Sponsorship in this context means what has been accepted by the Ahmadu Bello University in other fields – advice on curriculum, assistance over the recruitment of staff, and the provision of external examiners.

12. Prudent investment by the Northern Regional Government over the past three years, the generosity of the Ford Foundation and a number of valuable gifts have enabled the Institute to build up its library resources. The Law Library at the Institute will contain about 5,000 volumes by 1st October, 1962 and will thus be the most comprehensive library available to law students in West Africa. The Government of the United States has undertaken to build an air conditioned library to house this collection and to provide adequate facilities for students wishing to use it.

13. In conclusion it is clear that the recommendations made by the Panel of Jurists in 1958 have resulted in the Institute of Administration establishing and developing a role in legal education which has given the Northern Region a clear lead (of three years) in this field over the rest of the Federation of Nigeria. Ahmadu Bello University will therefore be able to launch a Law Faculty on a surer foundation than any other University in Nigeria.

The new Faculty of Public Administration established at the Institute will have responsibilities extending far beyond normal undergraduate work and will embrace a variety of activities of a sub University standard in the Provinces aimed at generally

improving standards in administration throughout the Region. The Law Faculty will presumably also similarly extend its influence through its impact upon the training needs of the Native Courts and thus develop into an organisation with responsibilities substantially greater than those of a normally constituted faculty. There are obvious advantages in such a development.

APPENDIX A:

Legal Courses for Potential Barristers

Legal Course No. 1 – August 1959 – September 1960
No. of students - 12
No. of students sent to England - 8
No. of students who have taken finals - 2
Balance of 6 students to take final examinations in September and December, 1962.

Legal Course No. 2 – August 1960 – September 1961
No. of students - 12
No. of students sent to England - 8
These 8 students to take Moslem Law to complete part 1 in May 1962.

Legal Course No. 3 – August 1961 – September 1962
No. of Students - 12
All students to sit Roman Law, Constitutional Law and Legal History, Tort and Contract in May 1962. Criminal Law to be taken in September 1962.

Legal Course No. 4 – August 1962 – September 1963
Expected to be at least 12 students.

APPENDIX B:

Judicial Training at the Institute Since September, 1959

Persons trained up to and including Judicial Course No. 31, which finishes on 14th July 1962, in the Penal Code and C.P.C.

1.	Alkalai, Presidents and Members	271
2.	Scribes, Mufti and Legal Advisers	221
3.	Judicial Department – Clerks	14
4.	Sharia Court Inspectors	2
5.	Emir's Course (held at Kaduna)	43
6.	A.S.T.C.	90
7.	Administrative Officers (in service)	60
8.	Provincial Court Clerks	14
9.	Nigerian Police	19
10.	Advanced Course for N.C. personnel	47
	Total	781

APPENDIX C:

Proposed Syllabus for the LL.B.

First Year (Intermediate)

1. Introduction to Nigerian Law. The sources of law, custom, English common law and equity, statutory law and delegated legislation. Outline of the extent to which English statute and common law and the principles of equity apply in Nigeria. Law Reports and the doctrine of precedent. Determining the ratio decidendi. Statutory interpretation. Text books and digests. The use of the law library. The main divisions of the law. The advantages and disadvantages of case law and codification. General principles relating to the application of Customary Law.

2. The Nigerian Legal Systems. Historical development of the machinery of justice in England. The history, development and present jurisdiction of the Courts, Magistrates and Native Courts in Nigeria from the mid-19th century to the present day. The relationship between these Courts including appellate and supervisory jurisdictions. The organisation of the Nigerian Legal profession. Outline of civil and criminal procedure in Nigeria and main principles of the law of evidence.

3. Constitutional Law.

(a) The Commonwealth. The main forms of constitutional development and structure within the Commonwealth; relations of Commonwealth countries with the Crown, with each other and with the United Kingdom; allegiance and citizenship in the Commonwealth; the Judicial Committee of the Privy Council.

(b) The Nigerian Constitution. History and development of the Legislative and Executive Councils; introduction of representative and responsible government; development of the present federal constitution; its analysis; the distribution of legislative, executive and judicial powers considered by comparison with other leading federal constitutions; fundamental rights; judicial review of unconstitutionality; the development of the local government and Native Authority system; the judicial control of public authorities and tribunals.

4. Criminal Law. General principles as embodied in the Nigerian Criminal Code and the Penal Code of the Northern Region.

Second Year

1. The Law of Contract.
2. The Law of Tort.
3. Equity.

} General principles of the English Law (as applicable in Nigeria treated by reference to relevant case law and legislation in Nigeria).

4. Land Law. So much of English Land [Law] as is applicable in Nigeria; the general principles of customary land tenure; the relationship between English and customary Land Law; the legislation in Nigeria affecting the ownership, occupation, use and disposition of land.

5. The Law of Evidence. General principles of the law of evidence as embodied in the Evidence Ordinance.

Third Year

1. Legal Theory. Theories of the nature and basis of law; the law of nature and natural rights; law and ethics; law and fact; sovereignty and the imperative theory; individual and social utilitarianism; legal positivism; analytical theory and the pure theory of law; the historical school and customary law; sociological theories and theories of interests; economic interpretations and Marxist theory; legal realism.

2. Islamic Law. Private jurisprudence; history and development of Islamic Law and its different schools; the law according to the dominant school in Nigeria in such matters as marriage, legitimacy, guardianship, succession, gifts and waqf.

3. Conflict of Laws. Private international law treated by reference to English and Nigerian case law and to Nigerian legislation; conflict of customary laws in Nigeria.

4. Public International Law. Characteristics and sources of international law; the principles of Sovereignty, Recognition, Consent, Good Faith, International Responsibility, Freedom of the Seas, and Self-Defence; international order and organisation.

4.

Memorandum to the Panel of Jurists by S.S. Richardson, Esq., O.B.E., lately Commissioner for Native Courts on sundry problems arising from the Implementation by the Government of Northern Nigeria of the Recommendations made by the Panel of Jurists in 1958

1. This memorandum assumes that full facts have been given to the Panel concerning the action taken by the Government of Northern Nigeria in implementing the recommendations made by the Panel in 1958. It is therefore confined to stating a number of problems which have arisen during the past three years. Any opinions expressed on these problems are my own, and should not be read as representing the official view of the Northern Nigerian Government.

2. Land Jurisdiction. In 1958, the Panel discussed generally the question of jurisdiction in land cases. Since the institution of the Shari'a Court of Appeal there has been some difficulty in deciding where jurisdiction in land cases should properly lie. Some such cases have been decided by the Shari'a Court of Appeal on the grounds that Maliki Law applied. The questions which appear to arise in this matter are:

(a) What is the native law and custom in regard to land in the Northern Emirates? and

(b) Where it is said that Moslem Law applies, what is the position when the lower courts' interpretation does not accord with an interpretation by the Shari'a Court of Appeal, which is based on classical Maliki texts?

3. A Code of Civil Procedure. Considerable benefits have flowed from the introduction of a Code of Criminal Procedure common to all courts. Many Alkalai and Native Courts Presidents have told me that they would like to achieve a similar uniformity in Civil Procedure. The provisions of the existing Native Courts (Civil Procedure) Rules, 1960 and the District Courts Law, 1960, are widely divergent. A possible precedent for a code of the type envisaged would be the Civil Justice Ordinance in the Sudan suitably amended to meet local conditions. Codification of civil procedure would enable the production of uniform records in all courts in all causes and matters throughout the North and would achieve as a by-product uniformity in the law of Evidence. Such an achievement would represent a substantial gain. The proposal in no way implies a codification of substantive civil law or the law of personal status which would be an impossible task of immense complexity in present conditions.

4. The Principle of "Guidance". "Guidance" has been substantially defined by the courts and there seems to be no reason why it ever should be abandoned in respect of proceedings in Native Courts. The concept is being accepted elsewhere in Africa as a most useful formula and there would not appear to be any strong argument in favour of "binding" the Native Courts.

5. Regionalisation of the Staff of Native Courts. The success of the Provincial Courts has undoubtedly stimulated a large number of Alkalai and Native Courts judges to press for further steps towards regionalising the Native Courts. In 1958, the Panel recognised that a large measure of local control through the Native Authorities was inevitable in

view of the many local variations of tribe, religion and custom. The problem now is one of the degree of control which should be exercised by the Government to ensure efficiency and adequate remuneration for staff. The desired measure of control might be achieved by establishing a system of grants-in-aid and a stronger Regional inspectorate. A need to strengthen the inspectorate appears to be developing since administrative control of the Native Courts at the Provincial level is weakening as a result of chronic shortage of Administrative Staff.

6. Provincial Courts. The present system of obtaining leave reliefs for Provincial Court Judges by making ad hoc temporary appointments is haphazard and gives rise to heart burning and jealousies in the Provinces. Representations have been made from time to time for the appointment of Muftai in the nine Provincial Courts at present under the control of a sole judge. The creation of such posts would accord with local tradition and would permit the establishment of a reservoir of staff available for posting as leave reliefs.

7. Abolition of the Administrative Power of Review. Administrative powers of review are set out in Part VIII of the Native Courts Law, 1956. There is pressure to abolish these powers in the Northern Region. Such powers have largely disappeared elsewhere in Africa, and the concept of administrative interference with the courts was strongly criticised at the London Conference on the Future of Law in Africa. The problem arising from abolition is that the English system of prerogative writs is not applicable to Native Courts (except for the writ of habeas corpus). There must be in any judicial system a method of righting a wrong which cannot be handled by the normal channel of appeal. Some form of judicial review is therefore desirable and it may be that the systems now in force in the Sudan and Pakistan will provide an answer to this problem.

8. The Power to issue a Fetwa. The Hon. Grand Kadi, Sheikh el Awad Ahmed, recently retired, frequently discussed with me the possibility of vesting a power to issue Fetwas in the Shari'a Court of Appeal similar to that exercised by the Grand Kadi in the Sudan. In the Sudan, this power was used sparingly after full consultation to achieve notable reforms in the administration of Shari'a law. Such a power would be an innovation to the Northern Region only in that the Fetwa of the Grand Kadi would presumably be binding throughout the Region unless displaced by legislation. Books of Fetwas issued by judicial authorities in Sokoto and Bornu dating back to the XVth century are known to be in existence.

9. The Problem of Legal Representation of Parties in Native Courts. Criticism continues to be levelled at the Native Court system because legal practitioners are not permitted to appear in Native Courts. Such argument is normally disposed of by:

(a) drawing attention to precedents in other countries where legal practitioners have effectively milked the peasant in lower courts;

(b) showing the cheapness of justice in Native Courts and the satisfactory nature of the procedure adopted which is readily intelligible to the peasant;

(c) pointing out the variety of local law and custom administered in the Native Courts; with which no legal practitioner could hope to be familiar;

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(d) pointing out that if legal practitioners were permitted to appear there would be real risk that the non-professional staff of those courts would be cowed by their presence and would, therefore, not be able to administer justice as effectively as in the past;

(e) lastly, but most important, showing that any person aggrieved by a decision of a Native Court may obtain the services of a lawyer in cases where appeal lies to the High Court.

The loophole in this argument is that the Shari'a Court of Appeal Law, 1960 does not permit representation by legal practitioners in the Shari'a Court of Appeal. If the Law was amended to permit the appearance of duly licensed *Wakil*s (as distinguished from Barristers at law) the North would be able to argue that any person aggrieved by any decision of a Native Court may have the benefit of legal representation on appeal. In the Sudan, the Grand Kadi has the power to license persons learned in Moslem law and of good character to practise in the Shari'a courts. Similar persons have long been permitted to practise as *Wakil*s in India and Pakistan.

10. Northernisation of the Judicial and Legal Departments. Progress in Northernisation of the Regional Civil Service has been rapid and within the next few months virtually all policy making posts in the Administration and Technical service will be held by indigenous officers. Northernisation of the Judicial and Legal Departments have lagged behind the rest of the Service for two reasons:

(a) the Constitution prescribes minimum periods of professional experience before a person may be appointed a High Court Judge or Attorney-General; and

(b) the dearth of Northern lawyers with practical professional experience.

There is no doubt that public opinion is in favour of taking some justifiable risks to ensure that Northern lawyers obtain experience without delay in the senior posts in the Judicial and Legal Departments, whilst experienced expatriates are available as guides and mentors. If a satisfactory solution of this problem is not found quickly, pressure may build up which could adversely affect good relations and a continuation of the progress made during the past few years towards the development of sound legal and judicial systems in the Region which are generally acceptable to the people and the world at large.

It is therefore, important that such Northerners as are qualified professionally and have obtained some experience in the field be given early opportunity to act on the High Court Bench and to occupy some of the senior policy making posts in the Legal Department. If such opportunities are not opened up there is a dangerous possibility of a vacuum when expatriates begin to leave, such as was experienced in the Sudan in 1955. There the situation was saved by the fact that some Sudanese had held high judicial office for some years before independence.

5.

Letter from the Commissioner of Police[56]

No. S.3(2) 38
CONFIDENTIAL

The Commissioner of Police,
Northern Nigeria,
KADUNA.
21st May, 1962

Ag. Permanent Secretary,
Ministry of Justice,
Northern Nigeria,
KADUNA.

Review of Penal Code by Panel of Jurists

I refer to your letter reference JS. 12/43 of 28th April, 1962 and have to advise you that I have consulted with my Officers and attach a number of points on which we would be grateful of clarification and ruling.

(F.W.M. MULIN)
A.C. 'A' Dept.
For: C.P. N.N.

[Three pages are attached raising the following points:]

Backlog of Cases in Magistrates Court. Guidance was requested by P.P.O. Jos on clarification of Section 157 of the C.P.C. which states that even if an accused person admits that he has committed an offence, if the said offence justifies a penalty of more than three months imprisonment, the Magistrate is not allowed to convict him at once, but must hear witnesses and frame a charge. P.P.O. Jos pointed out that by this procedure a tremendous backlog of cases in Jos had been caused, in fact to such an extent that first hearing dates were six months in advance. The Commissioner whilst being sympathetic with this state of affairs had to concur with S.S.P. 'D's statement that a Magistrate could not be compelled to convict on the face of a plea of guilty. Clarification would be sought, however, from the Chief Registrar, as to whether a Magistrate after framing a charge is bound to record all the evidence in the face of a man amending his plea of guilty.

[Bicycle stealing.] Bicycle stealing is a popular offence in Nigeria. Most cycles are fitted with a lock but apparently it is possible by the process of re-shaping a bicycle key to open almost any of the types of lock fitted. The general name given to this sort of key is the "master cycle key". It seems that it is necessary to prove that the person in possession of such a key was in fact the person who re-shaped or altered it. This being

[56] Alhaji Kam Salem.

so, neither section 361 nor 319A of the Penal Code is applicable. Would it be possible to insert a provision in the Penal Code to make it illegal for any person to be in possession of a master cycle key?

[Screening of offenders.] The provisions of section 167 of the Penal Code (Screening of Offenders) does not appear to cover the following hypothetical case akin to accessory after the fact: "a person who knowing or believing an offence has been committed, and knowing the identity or whereabouts of the offender intentionally withholds such information or takes no action to see that the offender is brought to justice…" The opinion of the Panel of Jurists would be appreciated on this point.

F.I.R.s. Is it permissible for the Police to verify an information or complaint before completing a First Information Report?

Sections 117 and 133 C.P.C. imply that the first duty of the police is to make out an F.I.R. if complaints or information are likely to be accepted.

We are not always in a position to confirm at a given moment that we are going to accept such complaints neither do we know whether we are going to refuse them. Certain courts insist on the existence of an F.I.R. before they will issue a search warrant. It may be that the execution of such a warrant will enable the police to make up their minds whether there is any substance in an information or not. But as indicated we are not given the chance to make any decision in some instances.

[Prosecutor's right of reply.] It is desired to know whether a prosecutor in summary trials in Magistrates' courts has a right of reply after an accused person has called witnesses in his defence. Chapter 16 of the C.P.C. is quiet on this point.

Chapter 18 dealing with High Court cases gives the prosecutor a right of reply. Would it be correct to say that what applied in the High Court also applies to a Magistrates' Court?

Section 27 of the C.P.C. Could the word "require" where used in this section be substituted by the word "order"?

The commonest meaning of the word "require" is "to be in need of" and it seems that as used in section 27 of the C.P.C. it is not fully understood by some Police officers.

6.

Memorandum from the Ministry for Local Government[57]

Memorandum of Increases in Salary Granted to Alkalai, Native Court Presidents and Other Members of the Native Courts Judiciary: 1958

From the 1st of October, 1958, the salary of all judicial staff employed by Native Authorities were reviewed and the majority received increases. A year later on the 1st September, 1959, all judicial staff received further increases along with the general increases for all N.A. staff following the Mbanefo recommendations for revision of salaries. Thus all staff over the period 1st October 1958 to 1st September 1959 received increases in salary some very considerable increases.

2. The Panel of Jurists recommended that salary should be based upon qualifications, experience and length of service. This recommendation was carefully examined by Native Authorities, Residents and a Regional Committee. The final finding was that the recommendation could only be accepted if there was a unified Native Courts Judicial Service, and that this was not considered an appropriate time to start such a service; the recommendation could not therefore be accepted as it stood without regard to any other factors. The reason for this was the very wide difference in the revenues of the Native Authorities. Instead, the principle was accepted that the salaries of Chief Alkalai, Alkalai and Court Presidents should be related to their status in the community in which they served.

3. Following this principle the recommendations given below were approved by the Government.

(a) General

(i) Salaries should be fixed and not incremental for Alkalai and Court Presidents.

(ii) The salary of an Alkali or full-time Court President should be related to that of the District Head in whose District he served. Normally his salary would be lower than that of the District Head but there was no objection where local conditions warranted for his salary to be higher than that of the District Head, as it already is in some areas.

(b) Chief Alkalai

(i) In those Native Administrations where the majority of Appeal cases lie to the Chief Alkali the salary of the Chief Alkali should be adjusted to become the third or fourth highest salary in the Native Administration, excluding professionally and technically trained staff (e.g. teachers, engineers, etc).

(ii) In those Native Administrations where the majority of Appeal cases do not lie with the Chief Alkali (e.g. in Adamawa N.A.) the salary of the Chief Alkali

[57] The source of this memorandum is identified in several other places as being the Ministry for Local Government. See e.g. Memorandum by the Attorney-General, no. 1 *supra*, ¶ 31. The Minister for Local Government at the time was Alhaji Sule Gaya.

should be related to his place in precedence among the traditional members of the Native Administration.

(iii) The salary of a Chief Alkali should be not less than the salary of the ninth most highly paid employee of the Native Authority. (In fact, in most Native Authorities, the Chief Alkali is in very much higher than the ninth place).

(iv) The salary of the Chief Alkali should be not less than £25 more than the salary of the highest paid District Alkali employed by the same authority.

(c) Alkalai and Full-time Court Presidents

(i) The minimum salary of an Alkali or full-time Court President should be £189 per annum. If an N.A. cannot afford to pay this, then it should be able to reduce the number of its Alkalai so that one Alkali serves more than one District. In this way it is considered that any N.A. should be able to pay the minimum salary recommended.

(ii) Where the District Head's salary is higher than that of the Alkali or full-time Court President then the Alkali's salary should be not only not less than £189 per annum but also not less than 50% of the salary of the District Head. To this minimum salary could be made additions as merited by the Grade of Court, volume of work, character of work and individual qualification of Alkali. This latter would be in the form of a personal allowance. (The salary of Alkalai would be subject to the approval of the Minister for Local Government after consultation with the Ministry of Justice).

(iii) An Alkali previously on an incremental scale should not suffer in any way by the abolition of that scale but should receive the equivalent salary by way of a personal allowance while holding that appointment.

(iv) Full-time Court Presidents, full-time Court members and Alkalai who passed the proposed new course at the Institute of Administration recommended by the Panel of Jurists should be granted a personal allowance of £15 per annum in addition to the basic salary of £189.

(v) A Kano graduate on being appointed an Alkali should be granted a personal allowance to bring his emoluments up to not less than £216 per annum.

(d) Mufti (Assistant Alkalai). Mufti known as Assistant Alkalai in the Estimates, should have their salaries revised so as to attract able and qualified men to take up a judicial career. The minimum salary of a Mufti qualified at the School of Arabic Studies should, therefore, be not less than £216 per annum which is the entry point for similarly qualified Arabists entering the teaching profession. The minimum salary for unqualified Mufti should be £120 p.a.

(e) Part-time Court Presidents. The emoluments of part-time Court Presidents should be either in the form of sitting fees or preferably as a salary computed as consolidated sitting fees.

(f) District Court Members. These members should have their sitting fees revised so that their revised fees are proportionately no less favourable than the revised allowances of members attending N.A. and Provincial Councils.

(g) Members of Emir's Council. Those members of Emir's Courts other than members who were also Councillors should have their salaries revised. The increases, if any, should be at the discretion of the Native Authority and approved by the Minister for Local Government after consultation with the Ministry of Justice.

4. Attached is given a table which shows salaries of Chief Alkalai, Alkalai and Registrars (taken at random from the Estimates) for the year 1958/59 before the increases and in 1962/63 after the increases. In most cases the 1962/63 list gives the salary for the same post as for 1958/59 list. In one or two cases the post may be different but this can only be checked by references to the N.A. concerned.

[Attachment]

SALARIES OF ALKALAI

N.A.	POST	SALARY	
		1958/59	1962/63
BORNU	Chief Alkali	720	1278
	Alkali	400	780
	"	360	766
KANO	Chief Alkali	1248	1519
	Alkali	588	1176
	Registrar	564	(Insp. of Cts.) 1282
KATSINA	Chief Alkali	716	1285
	Alkali	323	854
	Insp. of Cts.	282	564
ILORIN	Chief Alkali	345	660
	Snr. Alkali	282	540
	Registrar	270	510
IDOMA	Court President	200	250
	Registrar	162	225
	President	48	250
BORGU	Alkali	180	264
	Alkali	162	Abolished
GUMEL	Alkali	252	552
	Alkali	132	290
	Asst. Alkali	132	290
TIV	Alkali	216	240
	Registrar	180	180
	President	150	500
LAFIA	Alkali	120	366
	Alkali	66	216
	Mufti	66	138

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7.

Letters from Judges of Provincial Courts

No. PCS/P.14/Vol. 1/70
Sokoto, Provincial Court
5th May, 1962.

The Permanent Secretary,
Ministry of Justice,
Private Mail Bag 2035,
Northern Nigeria,
Kaduna.

With reference to your letter No. JS. 12/17 of 15th March, 1962, I am very grateful to forward herewith my points and suggestions which I wish the Panel to consider in the light of the experience gained in adopting the new Penal system are as follow below:

(1) This introducing the new Penal system in this Northern Nigeria is very good because it deserves the people of this Region due to differences of religions and customs and tribe, but if you go through Penal Code carefully you would see, it governs and fits all these differentiations.

(2) I understood that if Alkalai follow all instructions they received from their courses or from their Departments and put them into practice, surely they would prevent them from misleading which will result unjustice to their judgments.

(3) I suggest that section 68(2) this to be inserted after the word Penal Code: "And if the offence is confirmed by witnesses as prescribed by Moslem Law".

(4) I suggest that if a man being a Moslem and found guilty contrary to "*Haddi* Lashing" as prescribed by Moslem Law and if it is first offence to be sentenced to *Haddi* Lashing only. But if he is shown to have been convicted of an offence under *Haddi* Lashing sections, be published with imprisonment or fine or both.

Judge, Provincial Court
Sokoto

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Ministry of Justice
Kaduna
CONFIDENTIAL

The Permanent Secretary,
Ministry of Justice,
Northern Nigeria,
Kaduna.

Reference to your circular letter No. JS.12/17 of the 15th March, 1962, I forward herewith my suggestions.

1. Yearly conference of the Provincial Court Judges to be arranged. This will help both Court Members and the Ministry of Justice to solve certain problems in general it will throw more light in the mind of the Ministry about the different problems existed in each Province that will enable the Ministry to know more about how he will introduce new policy and how to remedy certain mistakes for the interest of Justice. In other words this will keep the Ministry to be more aware about the different problems of each province and the matters which are common and need some sort of policy and direction for the interest of justice.

2. The position of the jurisdiction of the Provincial Courts to be a Court of Grade A Limited to be reviewed so that the Court may be upgraded to Grade A unlimited. This will cut down the volume of works for the High Court about the Homicide cases. Even to give them a power of examining Homicide cases and to commit an accused person for the trial at High Court.

3. Federal offences to be extended to the jurisdiction of certain Native Courts if not to all.

4. Duty of the Justices of the Peace appointed need more explanation about how, when and where it be discharged. And a method about how the public will be aware of that to be introduced, because up to now even the Public will be aware of that to be introduced, because up to now even the Police Department I think especially N.A. Police didn't know the power or duty of the J.P. Even most of the N.A. didn't although some of them may know whom they are.

5. F.I.R. as a procedural first step in criminal matters another arrangement about forwarding it to the Native Courts by the Police Department still left very much to be desired because it was often neglected unless if it was intended as a formality. The biggest problem about this occurred in the N.A. Districts areas where normally only 2 N.A. Police men detailed on duty in the District for 3 to 6 months there was no Police charge office and the P.C.s attached are illiterate but they prosecuted offenders without F.I.R. and no case diary kept for those cases. This is common everywhere. (Needs attention).

6. The idea that Provincial Courts like the rest of the Native Courts have no right or power to give direction to the Nigerian Police needed to be reviewed. Provincial Courts is among the distinguished Government Courts in the Region though called a Native Court.

7. Is Provincial Court solely responsible direct to the Ministry of Justice or solely responsible to the Ministry through the Residents of the Provinces, because I see that every major instruction came to us through the Resident but not direct from the Ministry? Those instructions used to reach us lately. I should like the Ministry to view this matter on the point of view that Judiciary should be a separate body from the Administration so that independence of the Judiciary should be assured. (There must be a separation of powers).

8. Sections 387 and 388 now need more attention because some people took it as a shield of committing adultery, this seemed to me an encouragement of immorality on the ground of local custom of the offender.

9. Up till now certain tribes recognised enticing each other's wife lawful according to their primitive local custom whereas the Penal Code law of the Region recognised it as a criminal offence. But certain Native Courts were prevented by the N.A. not to punish them on the ground that it was their lawful custom in local custom law existed in that area. This problem should be viewed and reconsidered for interest of justice, because the Penal Code was not passed into law to be faned with [sic].

10. Posting of Provincial Court Judges to be arranged so that they may gain experience of every Province and that will broaden their mind more.

11. Security, Independence of the Provincial Court Judges to be assured with an enactment of the Legislature of the two Houses of the Region if possible so that the Judges may feel independence, if they acted according to law.

Provincial Court Judge
Sardauna Province, Mubi

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PC. 2/189
Provincial Court,
Makurdi 14th April, 1962.

The Permanent Secretary,
Ministry of Justice,
Northern Nigeria,
Kaduna.

With reference to your circular No. JS/12/17 of 15th March, 1962 I append hereunder my comments at moment:

1. There does not appear to be a section in the penal code of harbouring a thief/thieves except for harbouring robber/brigands. What happens to an accused who harbours a habitual criminal who is neither a robber nor a member of brigands.

2. Section 315 of the criminal procedure code stipulates the procedure to be followed when a contempt is committed in the view or presence of any criminal court. But what will be the way out if a person commits contempt in the presence of a civil court which has no criminal jurisdiction at all.

3. Under section 140(1)(b) of the criminal procedure code no court shall take cognizance of an offence under sections 155, 158, 159, 160, 161, 164, 165, 174, 175, 176, 179, 180 and 182 of the penal code. But supposing that a person commits contempt before a court under section 155 of the penal code and the court is unable to hear the case as required by criminal procedure code section 315(1), I wonder why the court should have to give a consent before prosecution could be begun.

President
Provincial Court

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Reference your No. JS.12/17 of 15th March, 1962
My suggestions are as follows:

1. The Quorum of the Provincial Court to be one (irrespective of the special position of the Alkali) to permit sittings in a maximum of three divisions.

2. All Criminal Courts and if possible all customary Civil Courts to be taken over by Government, so that the staff of these courts are paid by Government.

3. All Judiciary to be separated from Administration e.g. no Chief, District Head, or Village Head to sit on Court.

4. To consider means of compelling Native Authorities to make a Declaration of Custom which will clarify the relationship between customary law in adultery, fornication and correction of wives by chastisement on one hand, and the Penal Code Provisions on adultery and causing hurt on the other.

5. That the powers of transfer to a Magistrate's Court or a District Judge's Court be granted to all Native Courts to facilitate transfer where the Native Court lacks jurisdiction and to avoid the hiatus which occurs at present because such transfers can be effected only by District Officers or Residents.

6. To withdraw the powers of Administrative Officers to sit in and advise a Native Court in session, but to retain their powers of review.

7. To consolidate the jurisdiction of part-time Courts (i.e. Courts with insufficient jurisdiction or work to give them a full-time occupation) so that fewer and full-time Courts need be established.

8. That the principle of one-man courts (cf. Alkali and Magistrates) be extended to all Native Courts to ensure practice for each appointed Judge, and the responsibility of the individual Judge alone for his official action. This will reduce expenditure and at the same time, enable a proper salary to be paid commensurate with the work and status of the Judge.

President, Provincial Court
Lokoja

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NC.PCT/NC.4/199.
Ilorin, 24th March, 1962.

The Ag. Permanent Secretary,
Ministry of Justice,
Northern Nigeria,
Kaduna.

Thank you for your letter No. JS.12/17 of 15th March, 1962. I have much pleasure in forwarding these two suggestions which I hope you will wish the panel to consider.

(a) Jurisdiction of Native Courts over Nigeria Police Force. Several complaints are being made here against Nigeria Police Constables in respect of adultery offences and

enticement of married women and as a result of the provisions laid down under the Criminal Procedure Code Law of 1960 and section 16(1) – (3) of Handbook for Native Courts Law which prevent Native Courts from having jurisdiction over the offenders, by virtue of Public Notice No. 146 of 1944 that is in Vol. IX Chapter 142 of the Laws of Nigeria 1948 also refers.

I suggest that there should be some sort of review to solve these situations.

(b) Robes. It is also noticed that the Sharia and the Provincial Courts are newly established and it is therefore more honourable and proper for the Government of the North to consider and supply all the Judges of Sharia and Provincial Courts including their Registrars with most acceptable kind of robes similar to that of Pakistan or India by doing this, it will also signify their position. For the Government to consider this, is another progress.

Provincial Court Judge
Ilorin Province

8.

Memorandum from the Grand Kadi[58] to the Panel of Jurists

The following components and suggestions represent my personal views which I hope will interest the Panel of Jurists.

2. The experience I gained in the High Court Appellate Division is very limited as the period we sat together with the Judges of the High Court in that division was very short following the decision of the Federal Supreme Court in April, 1961. The Constitution has now been amended so that we shall return to sit again as members of the High Court when hearing appeals from the Native Courts. Our return to sit in that Appellate Division has a great importance, as I know many appeals had been given up by some Moslems due to absence of a Sharia Judge on the bench.

3. The above mentioned amendment has given the Sharia Court of Appeal a lot of work in addition to its own. This will lead us sometimes to defer some of our duties in wait of quorum. I, therefore, suggest that the number of the Sharia Judges be extended from four to five.

Penal Code

4. With very little criticism, the Penal Code of 1960 is widely accepted in the whole Northern Nigeria as it has done away with the conflict of different laws in the Region and it is written in the language which are understood to the people and that has given a great effect in keeping the peace.

But I suggest that all offences in the Chapter XXII in connection with Moslem Parties should come within the Emir's and Alkali's jurisdiction only. Nothing of that kind should go to a Magistrate or a Judge of the High Court at the first instance. The reason for making such suggestion is that, although the offences in the chapter involve Moslems who commit them according to their customs and religion, the wording of the code is not at all Islamic.

The offences of sections 387, 388 and 390 of the Penal Code in Islamic Law are the same in their penalty. I agree that the punishment should not exceed what is prescribed in the Penal Code. I am also afraid that a non Moslem Judge or Magistrate who has no knowledge of Moslem Law of the chapter may be involved in a libel offence in the course of his proceedings on such cases or convict some of accused persons who are innocent according to the Law binding them. For example, in Case Notes of Northern Nigeria 1961, Part I, Page 9, paragraph 3, "Maryam vs. S" which reads "Since, although the pregnancy began during the period of Iddah there was proof that the Appellant had not cohabited with the Respondent during the vital period and the child would have technically been the product of a quasi adulterous union" is not a good expression to be made by a court in connection with Moslem parties. The procedure to be followed in connection with Moslem parties must be purely Islamic, which is quite different from the C.P.C., see section 142. Any statement given by the prosecutor cannot be regarded as evidence on which such a judgment can be based, neutral witnesses must come in to give evidence to support the claims of the prosecutor. The offence of adultery is a great

[58] Alhaji Abubakar Gumi.

defect of a Moslem side that is why we do not like to confirm it upon him easily, that is why the Law of evidence here is very strict.

Issuing Fatwa

5. It is known that the most Native Courts are following the classical texts of Maliki Law in all their civil proceedings and the books are written in classical Arabic. Although most of the Alkalis understand Arabic and learn the Law in Arabic but those who are properly learned and can make their way throughout for all the problems are very limited. You sometimes find some of them very versed in the classical knowledge he has learnt but he lacks the knowledge of the current affairs, so that that makes a defect in his ability to mince and measure today in the measurement of yesterday or to know what should be used in an environment which is different from that of the author of a text book. A judge in all cases whatsoever must know the time and the place where the causes of the matters arise or must be guided by one who has a sufficient experience of the two, otherwise, no full justice can be obtained. In all Moslem world, old and new, besides Nigeria, the Fatawa (giving legal opinions) is not left to many different Malamai (learned men) it is confined in one person who has authority of promulgating those opinions always. In Jordan and Saudi Arabia for example there are Grand Muftis and in the Sudan there is Grand Kadi whose opinions, in addition to the official rite of the country, are followed.

6. Northern Nigeria is for a long time influenced by Islam but it is not an Arab country, so it must have some good customs of its own which are quite different from those of the Arabs and which should be reserved for the society and observed in the Law Courts. Although the country within itself has different customs and environments, and cases are also like faces, no two of them are similar in all aspects, yet as far as it is in one country, something should be done to unify the work of the courts. I therefore, suggest the Northern Nigeria will adopt the method of practice in the Sudan for issuing Fatwas on things according to the suitability of the country and the current affairs of the time. I think that that will help greatly in doing away with conflicts not only in courts but also in religious services and will lead to peace and preclude political tensions in religious matters.

7. There should be no distinction between Moslems in personal and family Laws as far as Moslems, whether they are old Moslem or newly converted to Islam parties, are concerned. I do not appreciate the Amendment of the Sharia Court of Appeal Law published in Northern Nigeria Gazette No. 30 of 17th November, 1960 page A 310 section 3. Because that will make more confusion in the system and create another conflicts of Laws which we are trying to avoid both in civil and criminal cases. The Islamic Personal and Family Law has provisions for affairs built on the Islamic basis and those based on other customs before the parties concerned have embraced Islam. This Amendment gave the jurisdiction to the High Court to hear the appeals on the case "Maryam vs. S", hereabove mentioned, the report of which will remain as a disgrace for the parties and the child in dispute.

Advocates

8. It is not prohibited, in Islam for a litigant in a case to employ a counsel to represent him in a court. Those counsels are known as Muhami or *Wakil* el Khusumah. What will

not coincide with Islam is the dress of eagle form used by advocates or judges of the Western type, as that is a token of Christianity or Western paganism of the olden days. In order to satisfy the time, I suggest that the Grand Kadi will be given a power to appoint some learned people as *Wakil al Khusumah* who can represent litigants in the Sharia Court of Appeal, Provincial Courts and Grade A Courts only. There are Muhamis in all modern Moslem courts including Saudi Arabia's courts.

Provincial Courts

9. In the Native Courts Law 1956, section 6(2) reads: "A Provincial Court in each of the Provinces of Plateau, Benue and Kabba shall consist of a President and two other Permanent members of whom one of the three shall be an alkali." In my opinion the Alkali should be the President of the Court because the Alkalai in those courts at present are the only members with the professional knowledge of law they cannot be dispensed with in all cases and they sit alone when hearing an appeal on a personal Law case. I am sorry to say none of them is in the position of Presidency. They should be given a special consideration if justice is to be observed and their work appreciated.

10. I would like also to suggest that each one of the Provincial Courts other than those of Plateau, Benue and Kabba should get at least one permanent assistant to sit with the Provincial Judge. This assistant will help in pointing out the Laws and in giving more confidence to the peasants in the Court. It was stated in the report of the Panel of Jurists, 1958, page 19, that "It is pointed out, however, that every Moslem Country in the world including Saudi Arabia has recognised that in an appeal court the judgment of an Alkali sitting in lower court should not be reversed by a single judge sitting alone."

Sharia Court of Appeal

11. This Court is established in order to hear appeals on the personal status, family affairs and when the litigants choose their case to be tried according to the Islamic Law alone in other civil cases. I want to point out that the court has a very big responsibility in its jurisdiction but it is not given a least power to see that its decisions are carried out or its dignity is observed. To say that it is a superior court of Record (see N.R. No. 30 of 1960 page A 310 section 2) is not sufficient for it nowadays in such a country, unless its authority to fine and imprison for contempt of its authority is clearly written among its Laws and rules. The experience shows that most of the corruption in Native Courts is committed during the trial of personal Laws. When an appeal lies from the lower courts to the Sharia Court of Appeal and is accepted, we, in may times, have difficulties in getting the parties or executing the judgment if it is not in favour of the lower court of the first instances. If a court cannot enforce its decision immediately, it is no more than a school, especially in a new country like Northern Nigeria.

Transfer

12. Sharia Court of Appeal, after hearing an appeal is given the power of section 70A of the Native Courts Law, 1956 sometimes when it quashes the proceedings of the lower court it considers it desirable to order the cause to be reheard de novo before the Provincial Court but it is not made clear that it can do that when the appeal does not lie from the Provincial Court. I do not know whether the Panel can recommend that Sharia Court of Appeal, when it is desirable for the sake of justice, can transfer any case within its jurisdiction from a lower Native Court to another one including a Provincial Court

after hearing an appeal or in a course of proceeding of the lower court of first instance on the application of all or one of the parties.

Grant in Aid

13. I suggest and recommend that the Government will subsidise the Native Authorities for the payment of Alkalis. This will make the Native Authorities before appointing an Alkali consider the right person qualified for the grant. This, if carried out, I think, will raise the standard of the Native Courts as the situation is in Education.

SUMMARY

14. The recommendations and suggestions I have stated above can be summarised as follows:

(a) The number of the Judges of the Sharia Court of Appeal to be increased to five (para 2 & 3).

(b) Chapter XXII of the Penal Code to be confined within the jurisdiction of Alkalis and Emirs when the parties are Moslems (para 4 & 5).

(c) An authority for issuing Fatwa should be given to one person (para 5 & 6).

(d) All appeals on cases of personal Law concerning Moslem parties without distinction, lie to the Sharia Court of Appeal.

(e) Advocates should be allowed in the Sharia Court of Appeal, Provincial Courts and all Courts of Grade A and "A" Limited (para 8).

(f) Alkalis of the Provincial Courts of Plateau, Benue and Kabba to be presidents of the Courts and other Provincial Judges to have assistants (para 9 & 10).

(g) Sharia Court of Appeal as a Court of record should be given a written power to punish for contempt of its authority and the power of transfer (para 11 & 12).

(h) Grant in Aid be given to Native Authorities for their Courts (para 13).

9.

Letter from Haliru Binji

Sharia Court of Appeal,
Private Mail Bag 2050,
Kaduna.

22nd May, 1962

The Permanent Secretary,
Ministry of Justice,
Kaduna.

With reference to your letter No. JS.12/17 of 15th March, 1962, I would like to raise two points:

1. A school for training the Alkalai and Muftis to be established

I am suggesting this because the Kano School for Arabic Studies which used to produce these Alkalai will no longer carry on with this course as from December, this year. The last batch used for this purpose is passing out next December and no provision has been made for a substitute.

Some arrangements are going on between the Sokoto N.A. and the Ministry of Education about the possibility of improving and transferring the Sokoto N.A. Kadi School to the Regional Government. It was suggested that the School would admit students who completed the Standard VII of Senior Primary School to give them a four years course on the teaching of Maliki Law. But I learnt that, though I am not sure, that the Ministry of Education likes to transfer this kind of training to the Ministry of Justice.

The establishing of this type of School is an urgent matter. Because without it all the future recruits into the N.A. Judicial Service will be from the conservative Mallams who have no Western education at all. Even if the School starts to operate next January, 1963, it will take four years before the first intake will pass out.

My second point is that I would like to suggest that the salaries of registrars of the Provincial Courts be increased. The basic salary for this post, I learnt, is £450 p.a. The present registrars have already been committed to heavy expenditure by giving them advance to purchase private cars. The prices of cars and some of their spare parts have gone up this year. It is difficult for them to maintain themselves and their cars with this small income. And to minimize temptation, an increase in their salaries will be justifiable.

I have the honour to be,
Sir,
Your obedient Servant,

(Sgd) Haliru Binji

Ostien: Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook: Vol. I

10.

Memorandum by the Minister of Justice[59] to the Panel of Jurists on the occasion of its return to Northern Nigeria in May, 1962

Part I: Preliminary

1. The report which the Panel of Jurists submitted to His Excellency the Governor of Northern Nigeria on 10th September 1958 contained a number of recommendations for the reorganisation of the Legal and Judicial systems of Northern Nigeria. These recommendations were, with two reservations, approved by the Northern Regional Government, and they were embodied in a White Paper entitled, "Statement by the Government of the Northern Region of Nigeria on the Reorganisation of the Legal and Judicial Systems of the Northern Region." The Paper was debated by the House of Assembly and the House of Chiefs during the Second Session of the Second Legislature in December 1958, and the proposals of the Government included in that White Paper were accepted by both Houses.

2. The main responsibility for the implementation of the reorganisation fell to the Attorney-General, and that Minister has submitted a Memorandum indicating the steps that have been taken in and towards such reorganisation. However, on 8th November 1961 the Minister of Justice assumed responsibility for the following business of government, that is to say, Native Courts, parliamentary responsibility for the judiciary, legal training and education (policy), and official oaths (policy). (See N.N.M. 1243 of 1961). In furtherance of this assumption of responsibility, the office of the Commissioner for Native Courts was removed from the Chambers of the Attorney-General to the Ministry of Justice.

3. It is proposed that the Minister of Justice shall now briefly review the progress made in and towards the implementation of the recommendations of the Panel of Jurists of September 1958, and to make mention of some of the difficulties which have been encountered, in so far as they affect matters which are within his responsibility.

Part II: Native Courts

Provincial Courts

4. In accordance with the Recommendations 11 and 12 of the Panel of Jurists, Provincial Courts with appellate and some first instance jurisdiction, were established in and for each Province of the Northern Region. (Subsection (1) of Section 60 of the Native Courts Law, 1956.) In Kaba, Benue and Plateau Provinces, the Provincial Courts consist of three members, one of whom is an alkali. (Subsection (2) of Section 61 of the Native Courts Law, 1956.) In other Provinces, the Court consists of an alkali sitting alone. A list of approved assessors has been drawn up for each court.

5. All Provincial Court Judges, Registrars and court staff are members of the Regional Public Service. (Subsection (3) of Section 61 of the Native Courts Law, 1956, and see Recommendation 10 of the Panel of Jurists.)

[59] Alhaji Mamman Nasir.

6. Provincial Court Judges were selected from those distinguished members of the Native Court benches, whose standing in their Native Authorities and generally, indicated their suitability for such responsible posts. They were selected and appointed on the advice of the Judicial Service Commission and come under the control of that commission for disciplinary purposes; the Ministry of Justice is responsible for these Judges administratively.

7. Initially Provincial Court Registrars were outside the control of the Judicial Service Commission, but an amendment to Section 61 of the Native Courts Law, 1956, effected by the Native Courts (Amendment No. 2) Law, 1960 has changed this position.

8. As the occasion has arisen, because of the leave or absence for some other reason of the substantive Provincial Court Judge, suitably qualified persons have been temporarily seconded from Native Authority service to the Provincial Court bench. This has been done to offer wider experience to promising men, who might, in the future, be promoted to the higher courts.

9. Some of the Provincial Alkalai have urged that permanent Muftai should be appointed to each Provincial Court. It is claimed this is a useful and traditional appointment, which would assist Alkalai in the dispatch of Muslim matters. Whatever the merits of such a suggestion as affecting the day to day working of the Courts, such appointments would create a clearly defined reservoir of persons who would have experience of the working of the Provincial Court system, and from which the Government could draw for future appointments to the Provincial Court Bench.

10. In an assessment of the work of the Provincial Courts it is almost impossible to overestimate their influence on other Native Courts. Apart from formal instruction in the new laws which some Judges have given, the example which they have shown in respect of integrity, learning and sense of duty has made a very wide impression. Much encouragement has been given to Native Court personnel by the establishment of these courts, but the discrepancy between the salaries paid to Provincial Court staff and that of even the highest paid Native Authority Alkalai has been generally noted.

11. A table showing the amount of work undertaken by Provincial Courts during the period 1st July 1961 to 31st December 1961 appears at appendix 'A' to this Memorandum. A table showing the incidence of appeals per thousand first instance cases for the same period and comparing these figures with similar ones for 1949 appears at appendix 'B' to this Memorandum.

Other Native Courts

12. Native Courts have not been Regionalised, and there has been no move for the Government to appoint Government servants to posts in Native Courts, other than Provincial Courts. In its Recommendation 10, the Panel suggested that Provincial Courts staff might properly be Government servants, and further, that newly qualified Alkalai might be offered the alternative of entering Government service, with the prospect of secondment to a Native Authority. The latter part of the Recommendation has not been implemented although it was accepted by both the Government and the Legislature.

13. In the absence of Regionalisation which has been rejected by the Government as a matter of policy, the Government does exercise a variety of controls over the Native

Courts under the provisions of the Native Courts Law, 1956. The types of control, none of which are recent innovations, are summarised at Appendix 'C' to this Memorandum.

14. The requirement for confirmation by the Governor, acting on the advice of the Judicial Service Commission, and in some cases the prior approval of the Premier of the appointment of Native Court judicial personnel (Subsection (8) of section 4 of the Native Courts Law, 1956), was introduced by the Native Courts (Amendment No. 2) Law 1960 as a direct result of agreement reached at the Resumed Nigeria Constitutional Conference of 1958. Paragraph 29 of the Report of that Conference provided as follows:

> "29. The Conference considered the methods of appointment of Judges of Customary and Native Courts and agreed –
>
> (a) the appointment, dismissal and disciplinary control of Judges of Customary and Native Courts should be divorced as far as possible from political and executive control.
>
> (b) each Regional Government should review the situation in its own Region and should prescribe by legislation those Customary and Native Courts whose members should be appointed on the recommendation or under the supervision of the Judicial Service Commission.
>
> (c) the Regional Governments should seek to ensure that the powers of appointment, dismissal and disciplinary control of all Judges of Customary and Native Courts (other than Emirs) with power to impose prison sentences of more than six months or fines of more than £50, should be exercised on the recommendation or under the supervision of the Judicial Service Commission.
>
> (d) the appointment of Emirs as Judges should be by the Governor in his discretion after consultation with the Judicial Service Commission."

15. Subparagraph (c) of this paragraph caught all Native Courts in the Region since even Grade 'D' courts may imprison for nine months. Thus it became necessary to devise a method of appointment of Native Court judiciary which was "on the recommendation or under the supervision of the Judicial Service Commission." The Government had already set its face against the regionalisation of Native Courts and so did not implement this agreement by providing that the Governor should make appointments to the Native Court judiciary on the advice of the Judicial Service Commission, as it might have done by extending the scope of Section 180E(2) of the Nigeria (Constitution) Order in Council, 1954, as amended. It was therefore decided that the method of appointment, including the existing requirement for approvals should remain unaltered, but that the appointment should, in every case, be made subject to confirmation of the Governor acting on the advice of the Judicial Service Commission, and this is the purport of subsection (8) of Section 4 of the Native Courts Law 1956.

16. As a result of these changes in the requirements for appointment, suspension and dismissal of Native Courts judicial personnel, the procedure is now as follows:

> (a) Appointment etc. of a Chief to be President of a Court. Such appointments are made by the Governor in his discretion after consultation with the Judicial Service

Commission. (See Section 3A of the Native Courts Law, 1956 which was inserted by the Native Courts (Amendment No. 2) Law, 1960).

(b) Appointment etc. of Members to Native Courts, other than Alkalis Courts.

(i) To posts carrying salaries of less than £450. The Resident selects the person to be appointed and signs the warrant of appointment, then forwards the warrant to the Commissioner for Native Courts with such comments as he thinks appropriate. The Commissioner then submits the warrant to the Judicial Service Commission with any further comments which may be called for. The Judicial Service Commission then advise His Excellency whether to confirm the appointment or not. If the appointment is confirmed, the warrant is returned to the Resident direct from the Judicial Service Commission, and a copy of the warrant is lodged with the Commissioner for Native Courts.

(ii) To posts carrying salaries of more than £450. The Resident again selects the person to be appointed and signs the warrant of appointment. The warrant is passed to the Commissioner for Native Courts with such information as the Resident thinks necessary. The Commissioner for Native Courts then passes the warrant to the Premier for him to signify his approval of the appointment, or otherwise, in accordance with subsection (2) of Section 36 of the Native Courts Law, 1954. If the Premier approves, the Commissioner for Native Courts, to whom the papers are returned in any event, passes the warrant to the Judicial Service Commission for its consideration. That Commission advises the Governor, and if he confirms the appointment the warrant is returned to the Resident direct from the Judicial Service Commission. A copy is lodged with the Commissioner for Native Courts. (See subsections (1), (5) and (8) of Section 4 of the Native Courts Law, 1956).

(c) Appointment etc. of Alkalai to Native Courts.

(i) To positions carrying salaries of less than £450. The Native Authority selects the person to be appointed and completes the warrant which is passed to the Resident. The Resident then considers the appointment and if he approves it, he sends the papers to the Commissioner for Native Courts who passes them to the Judicial Service Commission. That Commission thereupon advises the Governor as to confirmation of the appointment. If the appointment is confirmed, the warrant is returned to the Resident direct from the Judicial Service Commission and a copy is lodged with the Commissioner for Native Courts.

(ii) To positions carrying salaries of more than £450. The Native Authority appoints the Alkali, if the Resident approves the appointment the warrant is passed to the Commissioner for Native Courts. The Commissioner then seeks the Premier's approval in accordance with subsection (2) of Section 36 of the Native Courts Law, 1954. After the Premier's approval has been obtained, the Commissioner for Native Courts sends the papers to the Judicial Service Commission which advises the Governor whether to confirm the appointment or not. The warrants are then disposed of by the Commission as before. In all cases the Resident sends the Native Authority sufficient copies of the approved

and confirmed warrant for its records and for the court concerned. (See subsections (3), (6) and (8) of the Native Courts Law, 1956).

17. It may be noted in passing that the only control possessed by Government in fixing of standard qualifications and standards of integrity and efficiency of alkalai lies in the power of approval vested in the Resident and the Premier by Section 4 of the Native Courts Law, 1956 and Section 36 of the Native Authority Law, 1954 respectively.

The terms of Section 4 of the Native Courts Law, 1956 are such that an alkali or member is appointed to a particular court. Thus, when he is transferred from one Court to another, it is necessary to go through the procedure indicated at paragraph 16 (above). Several times in the career of an alkali the Government may have the opportunity of refusing to approve his appointment to a new court, but at no time can it initiate disciplinary action against him short of a criminal prosecution. Should there be a decline in an alkali's performance, even if it falls below the desired standard, only the Native Authority has the power of suspension or dismissal. Similarly, subject to review by the Native Authority at the age of 55 under the Native Authority Staff Regulations, aged alkalai may continue in office for as long as they live, provided that they remain in the one court and the Native Authority takes no action to remove them. This is not the case with court members of courts other than alkali's courts, for the power to initiate appointments, suspension and dismissals is, there, in the hands of the Resident.

18. The introduction of the Penal Code has been met with enthusiasm in most courts. At the same time it rendered necessary a survey of courts possessing criminal jurisdiction. It was seen that many customary courts staffed by traditional office holders and community representatives would be quite unable to administer the provisions of this, or any other written law. As a result of this, widespread reorganisation of courts has been undertaken in Benue, Adamawa, Plateau, Kabba and South Zaria Provinces.

For example, in the Tiv Division of Benue Province, criminal jurisdiction was withdrawn from 61 customary courts, of these five were left with only civil jurisdiction and fifty-six were given criminal jurisdiction only in respect of the offence of enticing etc. with criminal intent, a married woman. There were created sixteen courts of purely criminal jurisdiction which now deal with the bulk of the criminal work of the Division. The same policy has been followed on a wider scale in Kabba, Zaria and Plateau Provinces (See Native Courts (Jurisdiction and Powers) Notice 1962 N.R.L.N. of 1962).

19. The device of separating criminal from civil jurisdiction is the only way to permit the application of written criminal law in areas where most court members are illiterates. The device was adopted first in Kabba and Benue because there, there was an adequate reservoir of educated persons to staff the new criminal courts. However, in Plateau and Sardauna Provinces the low general standard of education, plus the extreme insularity of the population makes it difficult either to find trainable local material or to import strangers to staff courts capable of applying the new law. There must be a higher degree of education and enlightenment for any reorganised court system to work properly in these areas.

20. In such reorganisations as that mentioned in the paragraph above, the opportunity might well be taken to revise the membership of customary courts. It may be considered that in most civil and all criminal courts it would be desirable for there to be but a single

Judge, assisted, if need be, by assessors. The advantages of this form of court would be to eliminate the representative concept of members duties and to eliminate internal conflict, both of which reduce public confidence in this type of court. A corollary which would follow, would be that the standard of qualification for this type of appointment might be considerably raised, to approximate more closely with that of alkalai.

22. A further matter for consideration is whether it is desirable to create Government Native Courts possessed by powers similar to those of Native Authority Courts. Such courts, staffed by Government employees would be established in centres of mixed and moving populations, such as Kano, Jos, Kaduna and Makurdi. The courts would have perhaps only one or two members who would be posted as required. The purpose would be to fill a position between Native Authority courts and magistrates, and, it might be thought, possess the advantages of both.

23. With regard to the salaries. The Panel's Recommendation 21 that "salaries of alkalai etc. should be increased" has to some extent been implemented. The Minister for Local Government has addressed you on the subject. It is clear that now, when administrative costs are increasing and new commitments involving Native Authorities in the recruitment of larger staffs, are put upon them, all but the largest Authorities have reached a position when it is impossible to pay higher salaries. An additional handicap is the policy of making an alkali's salary conform with a certain formula involving the salaries paid to other employees in the Native Authority.

24. It is clear that the need for increased salaries becomes more urgent as the task of the alkalai etc. becomes more technical and expert. The Government has tacitly endorsed this in the salaries of the Provincial Court staff. It may well be necessary for Government to seek ways of subsidising the Native Authorities in the payment of approved basic salaries to qualified Native Court staff. In this way the Government would be in a position to lay down a minimum salary for persons of a recognised qualification. This, in turn, would raise the standard of court personnel and would enable even the smallest Authority to have properly qualified and properly paid alkali. To lay down a fixed salary scale for Native Authorities would work a hardship on the staff of the larger ones which will always be able to pay more than the others. A fixed minimum is desirable.

25. An incidental benefit to be gained from the institution of a grant in aid system would be the sanction which its withdrawal would constitute, to enable the Government (as contrasted with the Native Authority) to deal with the problem of the declining alkali adverted to in paragraph 17 (above).

Part III: Commissioner for Native Courts

26. The work of the Commissioner for Native Courts during the last three years has been largely concerned with the establishment and staffing of the Provincial Courts and implementation of the Penal Code and the Criminal Procedure Code. The new legislation has been translated under his supervision, and much effort has been devoted to securing its acceptance in all parts of the Region. Native Courts have been supplied with the texts of laws and rules within their competence; they are without doubt better equipped to administer the law than they have ever been in the past. The Commissioner has issued a number of circulars elucidating points of law and practice for Native Courts,

as the need for these has arisen. The duties of the Commissioner includes the supply of criminal forms to Native Courts.

27. Extensive touring has been undertaken and recently two Assistant Commissioners have been working with the Commissioner. More recently, two Inspectors of Courts (Shari'a) have been appointed to the Ministry of Justice, and these work in cooperation with the Commissioner.

28. With the establishment of the Ministry of Justice, the Commissioner now works under the direction of the Minister and Permanent Secretary, who has assumed responsibility for the administration of Provincial Courts. The functions of the Commissioner in respect of the appointment of Native Court judiciary, have been explained at paragraph 16 (above).

29. The Commissioner for Native Courts is in theory assisted by two assistants, two Inspectors of Shari'a, the legal staff of the Institute and by thirteen D.O. Courts, one in each province. Staff shortage has eliminated the D.O. Courts to all intents and the staff of the Institute has not been very effective. The diversity of control and effort in the work of those persons who are outside the control of the Commissioner (Institute Staff and D.O. Courts) has probably been wasteful. The Panel is invited to consider the desirability of establishing a central inspectorate of say ten under the immediate control of the Commissioner for Native Courts and which would be divided up into groups each of which would be allocated a certain field of activity within the Region. It might be thought that the centralised control would promote efficiency and direction in inspection.

Part IV: Legal Education and Training

30. The responsibility of the Minister of Justice is for the policy of legal education and training. The Principal of the Institute of Administration has submitted a memorandum concerning legal training at the Institute. Such training is divisible into that of Native Court staff and that of potential barristers and others.

Native Court Staff

31. The standard course for Native Court staff is that of three months which is designed to instil the elements of the Penal Code, Criminal Procedure Code and Evidence Ordinance. This course can only incidentally improve the general standard of performance of the Native Court judiciary, since it has such a limited aim. Advanced courses do have the aim of rendering alkalai better equipped to run their court, but these courses are, like the other, supplementary in nature and limited in scope.

32. There is a need, if Native Courts are not to continue to lag behind others, for the opportunity to be made for some formalised and uniform qualification to be adopted as the standard for appointment to Native Courts. It is thought that such a standard might be a Diploma issued by the Institute but underwritten by a reputable University, which would be awarded on the successful completion of a special year's course in subjects of concern to staff of Native Courts.

33. It is regarded as essential that the standard and the reputation of this course should be of the highest. Unless it is of or near the standard of Inter LL.B. there is a danger that the intelligent schoolboy will be attracted to another course which would lead him away

from the Native Courts, where he might otherwise have made his career. If the year's course falls below the desired standard the natural drain of the best young men from the Native Courts, which were once, virtually, the highway to a respectable and satisfactory livelihood, but which, now, must be much lower on the scale of desirable careers, will be exaggerated and not stemmed.

34. Such a diploma, if of the right standing would make a suitable prerequisite for the award of a grant in aid mentioned in paragraph 22 (above). It would further be a useful yardstick for those concerned with appointments to Native Courts, who are now faced with a large variety of qualifications and virtually no standard.

35. In the more distant future one could foresee that for alkalai, the degree in Islamic Studies or Islamic Law at the Ahmadu Bello University, plus the one year diploma course at the Institute would be a very satisfactory qualification which might be regarded as in no way inferior to that of Barrister. The one year at the Institute would be equivalent to the year at law school which will become a compulsory part of a Barrister's training this year. If that were accepted, however, it would be difficult to see how staff of non-Muslim courts could obtain a qualification as well suited to the needs of their courts, as the Ahmadu Bello degree would be to alkalis' courts. The truth is that there is no prospect of teaching customary law until it has been rationalised and codified. Only then, could one expect a respectable standard in non-Muslim Native Courts.

Barristers and Others

36. The Principal of the Institute of Administration has adverted to the training of barristers at the Institute of Administration. This type of training must clearly continue either there or elsewhere. It is a matter of importance that as many Northerners with recognised legal qualifications should be produced as soon as possible.

37. At a time when it would seem that the first signs of coalescence between the two systems of law in the North are appearing, it would be wrong to perpetuate the rift simply because of the methods of training the young men who will inherit the legal system from our hands. Every effort should be made to render their training as balanced as possible. To this end, it may be considered that for many years to come that selected persons should be urged to continue their studies abroad, and, for example, on the completion of their barrister's training, to continue their studies in Sudan, Tunisia or other Muslim countries. In this way, it will be possible to build up a cadre of men well qualified to occupy the highest legal, judicial and academic posts in the future.

38. Mention was made at paragraph 31 above that there might be a need for the rationalisation and the codification of the customary law of the country. It is recognised that the codification of Muslim Law of procedure, and those parts which deal with the concepts of torts and contracts, would also be beneficial; this, not so much for the purposes of instruction, but for the benefit of litigants and the alkalai's courts generally. The Minister would wish the Panel to make a recommendation on this point and specifically on the question of whether the law of divorce should be included in such codification.

[Editor's note: coming after the memorandum of the Minister of Justice in the file in the National Archives, are brief hand-written notes, on three separate pages, on the recommendations to the Panel of Jurists made in the memoranda of the Attorney-General and the Minister of Justice. It is unclear who made these notes; they are omitted here.]

11.

Records of Conversations between the Panel of Jurists and Various Persons[60]

Record of conversation with Alkalai of Sokoto on 25th May, 1962

After introducing the Panel and explaining the reason for its visit, the Chairman invited comments on the Penal Code. The points raised were as follows:

(a) The Alkalin Gusau felt that when grave suspicion fell upon an accused person, but there was no evidence against him, it should be permissible under the Criminal Procedure Code for the Alkali to call upon him to swear an oath in regard to his innocence, as in Maliki Law. The Panel explained to the Alkalin Gusau that the basis on which a trial under the Criminal Procedure Code was conducted was that the judge must weigh all the evidence against the person and decide the cause only on the evidence produced, therefore it would not be permissible to call upon a person to swear his innocence.

(b) With regard to the offences of adultery and enticement of married women, it was suggested that to permit the aggrieved parties in such cases to compound the offence, was to encourage immorality. To get over this difficulty the Native Authority should be able to institute proceedings as well as the husband, or guardian, or father of the woman involved. It was pointed out that the persons aggrieved are the only ones concerned with the offence and therefore it should be for them to institute action. However, further consideration would be given to the question.

(c) With regard to the punishment for being drunk in a public place (7 days or 1 month imprisonment) this was thought to be too small and should be increased. The Panel was in general agreement with this.

The Panel asked the Alkalai whether a simple code of civil procedure would be of value. The general opinion was that it would be but that care should be taken in its drafting and some Alkalai found difficulties in relation to the case of marriage and divorce.

Record of conversation with Chief Alkali of Sokoto on 25th May, 1962

The Chief Alkali in reply to the Chairman's introduction said that the Penal Code is a good piece of legislation and that it was in conformity with the country's requirements. There was nothing in it which was objectionable but he would like to see some provision made whereby a suspected person could be compelled to swear his innocence.

The Panel explained that the Alkali should hear all the evidence from both sides in determining the issue as to whether it was proved or not, and decide solely on the evidence before him.

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[60] These records are evidently typed-up summaries of notes made during the conversations recorded. Occasionally hand-written corrections have been made in the typescript; these are incorporated here.

Record of conversation held at Sokoto between the Panel of Jurists and Provincial Court Judge, Sokoto at 8 a.m. on 26th May, 1962

The Panel of Jurists visited the Provincial Court Judge, Sokoto in his Court at 8 a.m. on the 26th May, 1962. The Provincial Judge Sokoto mentioned two points which he had raised in his letter of the 5th May, which were:

(i) I suggest that section 68(2) this to be inserted after the word Penal Code: "And if the offence is confirmed by witnesses as prescribed by Moslem Law".

(ii) I suggest that if a man being a Moslem and found guilty contrary to "*Haddi* Lashing" as prescribed by Moslem Law and if it is first offence to be sentenced to *Haddi* Lashing only. But if he is shown to have been convicted of an offence under *Haddi* Lashing sections, be punished with imprisonment or both.

And the Panel agreed to give further consideration to these matters. The Provincial Judge had no further points to raise.

2. The Provincial Judge considered that it was desirable for Alkalai of Provincial Courts to sit with Muftai.

Record of conversation with Sultan of Sokoto and members of his council

After greeting the Sultan the Chairman explained the reason for the Panel's visit to Sokoto. The Chairman invited comments on the Penal Code and Criminal Procedure Code.

2. The Alkalin Alkalai, speaking on behalf of the Native Authority said that with regard to adultery by a woman, section 140 of the Criminal Procedure Code required that the complaint should be made by either the woman's father or guardian or by the woman's husband, it was considered that in order to maintain public peace it was desirable for the Native Authority to be given such power to institute proceedings in such cases.

3. With regard to section 392 of Criminal Procedure Code, the Native Authority has experienced difficulty because as they understood it, the court was not permitted to convict on the confession of the accused person.

The Panel explained that the meaning of the word "evidence" in English was wide enough to include a confession, and thus a conviction could be had on the confession of the accused person. It was agreed that the confusion arose from the poor translation of the word "evidence" in [the] Hausa version of the Criminal Procedure Code, and that this would be corrected.

4. The Alkalin Alkalai said that he considered that the law as represented in example (c) in subsection 1 of Section 222 was misconceived. Professor Anderson explained the principle of provocation and that in the example the provoked person was only an instrument of the bystander, who put the knife in his hand.

Conversation with the *Waziri*, Chief Alkali, the President of the Mixed Court and other Alkalai of Kano at 8 a.m. on 27th May, 1962

In reply to the Chairman's explanation of the reason for the Panel's visit, the *Waziri* said that the Penal Code and the Criminal Procedure Code were useful laws, but that

lack of understanding caused difficulty in their application and that there were a number of proposed amendments which would be put forward on behalf of the Native Authority, these were:

Changes in the schedule to Criminal Procedure Code which set out the jurisdiction of Native Courts over offences in the Penal Code. The changes suggested were:

(i) To allow Grade B Courts to hear cases under section 216 of the Penal Code (dealing with witchcraft). The reason for this was that such cases usually occurred away from the major towns, in places where there was no Grade A Court. The limiting of jurisdiction to Grade A Courts resulted in villagers, who were frightened by supposed instances of witchcraft, sometimes taking the law into their own hands.

(ii) He would suggest further amendment in the cases of sections 284 (unnatural offences), 232 (causing miscarriage), 248 (causing grievous bodily harm) and 320 (cheating) and in all these cases he would have Grade B Courts granted jurisdiction. He had no further amendment to either code.

2. In reply to questions by the Panel, he said that he thought that the Alkalai had begun to understand the Code but that there was an urgent need for further courses to be held. The Chief Alkali was of the opinion that a Civil Procedure Code would be inappropriate.

3. It was agreed that since there was no crime of apostasy in the Penal Code a person could avoid a *haddi* lashing or a conviction under section 403 by stating that just before the time when he was supposed to have committed the act which constituted the offence, he had abandoned the Muslim religion.

4. The opinion of the *Waziri* and other persons was that the effect of abolition of section 403 of the Penal Code would be to encourage drinking of alcohol by Muslims and not make it less popular.

Record of conversation with the Ag. Provincial Court Judge, Kano, Alhaji Mohammed Dodo

In reply to the Chairman's introduction, the Provincial Court Judge said that if the Codes were properly understood they are very good and operated to decrease injustice. However, in Kano it was clear that there were some Alkalai who did not understand the Codes, he agreed that a remedy might be to collect the Alkalai together and to give them instruction on those portions of the Codes which he observed were not applied properly and that this might be done periodically.

2. He was of the opinion that the Code of Civil Procedure would be acceptable.

3. He would welcome the appointment of Muftai to Provincial Courts.

4. He pointed out that there seem to be a number of irregularities in the administration of the Kano Provincial Court, in particular that the record book had not been kept since February 1961 in cases of criminal cases and July 1961 in cases of civil cases. Also that difficulty was experienced in obtaining records of first instance cases from the lower courts.

5. The Ag. Provincial Judge said that he observed that some courts submitted records of cases to be heard in the Provincial Court through the Emir and that he had stopped this practice.

6. The Panel interviewed Alhaji Muhammed Sani who said that in his opinion Penal Code was a very useful instrument in keeping public peace and that he had no recommendation for its amendment.

7. He told the Panel that he had experienced difficulty in obtaining Court records from first instance Courts and that the majority of these, though not all, were written in Hausa. He explained that in the Provincial Court it was his habit to keep the record himself in a file, but to have it rewritten by the Court Registrar and this accounted for the absence of Court record since 1961.

8. When asked his opinion about a proposed Civil Procedure [Code], he said that he considered it was not yet time for this and that in any event the Code should not depart from Muslim law.

Record of conversation with Provincial Court Judge
Maiduguri on 28th May, 1962

The Provincial Judge in reply to the Chairman's opening remarks said that he had prepared a list of seven points to be discussed and he presented the list to the Panel.

(a) With regard to point 1: "Amendment of section 287 of the Penal Code seems to be essential as the maximum punishment provided by this section for the offence of theft is only 5 years whereas habitual criminals who deserve longer term of imprisonment could not be dealt with properly according to the nature of their offence."

The Panel agreed that there might be some provision to deal with habitual offenders and that this might be inserted, perhaps in Section 68 of the Penal Code. The Panel agreed to take note of the point.

(b) With regard to point 2: "Section 216 of the Penal Code is also to be amended as witchcraft is commonly practised in most areas and it is mentioned in many books of Islamic Law and Traditions, therefore a provision is to be made that once a person is accused of witchcraft he is to be dealt with in accordance with the Native Law and Custom of the area concerned."

The Panel said that it did not doubt the belief in witchcraft but it felt that if the law was to compel the person accused of witchcraft to do some act to remedy a supposed instance of witchcraft it would seem that the Government was encouraging the belief in witchcraft and similar superstitions. It pointed out that section 216 was carefully worded so as not to refer to witchcraft as any more than imaginary fact.

(c) With regard to point 3: "A separate section for quarrelling between two parties where both parties used criminal force and assault is to be created as such an offence is not constituted unless both offences of criminal force and assault are committed and no injury of whatsoever is inflicted on either party."

The Panel considered that there was sufficient provision in the Penal Code under the section dealing with the injuries to the person and affray to meet the point raised by the Provincial Judge.

(d) With regard to paragraph 4: "We have seen in the Regional Gazette a bill for the general information that a supplementary section 403(A) of the Penal Code has been proposed to be put before the House of Assembly prohibiting Moslems from manufacturing and selling of any alcoholic drink, but we do not know whether this bill has been passed into Law. If it is not passed into Law we consider it to be passed into Law."

It was explained that the bill dealing with section 403(A) was never placed before the legislature and the Panel was satisfied that a properly administered system of licensing could regulate Muslims dealing in or manufacturing alcoholic drink.

(e) With regard to paragraph 5: "A separate section is necessary for punishing those who extend their lands either farms or houses without the consent of their neighbours and this type of offence does not fall in the definitions of either theft or criminal misappropriation of property as land is not a movable property and also it does not fall in the definition of cheating and this can be regarded as crime in Maliki Law according to Traditions."

The Panel considered that section 342 of the Penal Code was sufficient to deal with the point raised.

(f) With regard to paragraph 6: "We also consider that a provision is to be made in the Penal Code. When any property is stolen and the footprint of the thieves or the animals stolen stops in a village or town the persons suspected to be involved in this theft are to be charged as having committed the offence of theft."

The Panel realised that the Provincial Judge was seeking collective punishment for the village to which the tracks led and the Panel decided to give further consideration to the point involved.

(g) With regard to paragraph 7: "Native Courts Law section 65 subsection (2) (ii) where it said that a Provincial Judge can sit with or without assessors. It will be more beneficial if the section is amended and that the Provincial Judge sits with assessors."

The Panel told the Provincial Judge that it was giving consideration to a proposal that Provincial Alkalai should sit with Muftai and this satisfied the Judge.

2. The Panel then asked the Provincial Judge whether he considered that a simple code of civil procedure would be acceptable in Northern Nigeria.

The Judge recognised that there are two points involved in a trial:

a. how to bring the case before the court, and

b. how to determine the issue involved.

He considered that a Code dealing with the first of these to be acceptable but that to try to regulate the second would necessarily involve conflict with Maliki Law and therefore

was unacceptable. He would welcome the Code if it were designed to regulate mixed civil causes, where it might be of particular value.

3. The Provincial Judge raised the question of whether it would be possible to introduce the provision requiring an accused person on whom there was grave suspicion to swear an oath of innocence. This he considered was a very appropriate requirement.

The Panel agreed to consider the matter further.

4. In its conversation with the Legal Adviser and Alkalai of Bornu, the Panel was presented with a similar list of subjects to that to which reference has been made under the conversation with the Provincial Court Judge. To this list the same answers were given.

5. Professor Anderson asked the Legal Adviser and the Alkalai whether a simple Code of Civil Procedure might be useful if it did not carry the law beyond the terms of Maliki Law. The Professor pointed out that the Criminal Procedure Code did this but it has been accepted. The general feeling was that it would be desirable not to allow a Civil Code to interfere with the Maliki Law.

Record of conversation with the Provincial Court President and Members Makurdi on 29th May, 1962

The President of the Provincial Court Makurdi in reply to the Chairman's opening remarks said that he has no comments on the Penal Code or Criminal Procedure Code but that he found the Hausa translation of the Penal Code difficult to read.

2. In reply to the question put by Professor Anderson the Alkali said in mixed civil causes concerning guardianship or marriage the Alkali looked at the Law governing the contract or the ceremony of marriage concerned and applied this to the case. In inheritances he looked at the deceased's mode of life and applied the law which was appropriate to this.

3. In reply to further questions he said that *haddi* lashing was unknown in the area.

4. Mr. Kondon raised the question of Screening of Offenders (Sections 167 and 168 of the Penal Code). The Panel explained that it was impossible to convict a person of these offences if the person did not have guilty knowledge.

5. Mr. Kondon raised the question of Contempt of Court before a Civil Court which had no jurisdiction to try criminal offences. It was pointed out that the civil courts action should be to commit the offender for trial under section 155 of the Penal Code to another court which possessed criminal jurisdiction. The Panel pointed out that in modern times, the general feeling was against a Court trying instances of contempt alleged to have been committed before it.

6. Professor Anderson asked the Court's opinion as to whether a simple Code of Civil Procedure might be useful.

Mr. Kondon said that he could foresee difficulty if the Code conflicted with Muslim Law and particularly in that category of cases known as Akwal Shasiya but otherwise such a Code would be widely welcomed.

7. Mr. Kondon raised two points in regard to Native Courts. Firstly, it was very apparent that some Native Courts were still not yet independent of the pressure and influence of Native Authorities and secondly it is a most difficult job to get records of proceedings from some Native Courts, when cases come from them on appeal.

8. With regard to courses at the Institute of Administration, Mr. Kondon felt that the courses were too short and not all together effective.

The Panel informed him that the Panel was considering a proposal for a one year or eighteen months course for Native Courts Personnel.

Record of conversation with Reed and Smith JJ. on 29th May, 1962 at Makurdi

Mr. Justice Reed said that the Penal Code and Criminal Procedure Code had effected a marked improvement in the standard of Native Courts. The establishment of Provincial Courts had reduced greatly the number of appeals coming to the High Court. Records of cases were much better than before, but of course they were not yet perfect.

2. Both Judges agreed that a simple Code of Civil Procedure will probably be of value.

3. The Judges considered that it might be better at this stage not to make any of provisions of the Evidence Ordinance mandatory.

4. The Judges considered that it was possible for system of judicial review to be established.

5. Mr. Justice Reed said that Provincial Courts erred during the hearing of appeals in retrying the case without proper reason.

Professor Anderson pointed out that the lack of sophistication in Native Courts made it necessary in a large proportion of cases to re-examine witnesses etc. Both the Panel and the Judges thought it might be desirable that when the Provincial Court embarked on a retrial that it should give its reason for doing so.

6. Mr. Justice Reed objected in principle to Prosecutor having the right of appeal under Section 67 of the Native Courts Law 1956. Since that it gave the Prosecutor two bites at the cherry.

It was pointed out that it was necessary in many cases for this right to be given because the Native Court is not yet entirely free of external influences.

7. The Judges felt that it was desirable for Native Courts personnel to be employed by Government and to be made transferable.

The Panel agreed to this as an ultimate objective but that language barriers would prevent absolute freedom of postings in any event.

Records of conversation with the President and Members of the Grade B and Grade D Native Courts of Makurdi Town on 29th May, 1962

The President and the members had no comments on the Penal Code apart from saying that they were satisfied that it was a good piece of legislation. They would welcome the Code of Civil Procedure.

Record of conversation with Mr. Stafford D.O. Makurdi, on 29th May, 1962

Mr. Stafford told the Panel that he considered that there is a great deal of interference by Native Authorities with Native Courts personnel. This was to be seen in the financing, in the staffing, and appointments to the Courts and in some clear cases of political interference in execution of judgements, etc.

2. Mr. Stafford thought that the time had come for definite standard to be fixed for Native Courts employees.

3. Mr. Stafford hoped that the political Provincial Commissioner would not be vested with the powers now held by the Residents under the Native Courts Law.

4. He pointed out that much of the good work done in training court personnel was spoilt by the ignorance of the law in the Police prosecutors and said that the Police tended not to use the prescribed forms.

5. Mr. Stafford thought that it was desirable to establish one-man customary courts in order to raise the standard and to pay larger salaries and attract qualified persons to Native Courts. Many of the reforms of the last couple of years had been undermined by the appointment of untrained and inexperienced staff, by understaffing courts and administrative mistakes.

6. In Kabba and Benue Provinces the Provincial Courts were overworked and [he] wished to suggest that these courts should sit in three divisions.

7. He wished to see an efficient system of inspection and training. He would encourage the codification of customary law which he thought was now not being pursued as energetically as he would wish.

8. With regard to the power of transfer, he considered that Native Courts should be able to transfer cases to Magistrate Courts and to refer matters to the High Court of their own initiative.

9. Finally, he considered that Provincial Courts should have no first instance jurisdiction.

Record of conversation with the Provincial Court Judge, Ilorin on 30th May, 1962

In reply to the Chairman's remarks, the Provincial Judge said that the only change which he would like to see in the Penal Code and Criminal Procedure Code would be to introduce a section permitting the court to call upon a person upon whom grave suspicion fell to swear his innocence. It was pointed out that the whole basis of the Code was that a person is innocent until he is proved guilty.

2. The Judge expressed doubts about the admissibility of evidence and it was explained that the basis to be found in Muslim Law to relatives of the accused giving evidence were not to be found under the new system. The Judge had to weigh all the evidence presented to him in the case.

3. The Judge raised the question of the immunity conferred upon Nigeria Policemen by N.P.N. No. 146 of 1944. The Panel said that they would consider this.

4. The Judge raised the question of the provision of a suitable uniform or robe for the Judges when on the Provincial Bench.

The Panel agreed that this might be appropriate.

5. Professor Anderson said that the Panel might recommend that Provincial Alkalai should sit with Muftai in the North, but would like the Judge's opinion on whether a bench of three members would not be more appropriate for Ilorin. The Judge agreed to this proposal provided that the Alkali would deal with Muslim matters.

6. The Judge considered that the simple Code of Civil Procedure was not a subject on which he would give any definite answer but he was confident that if ever adopted it should not conflict with Muslim Law.

7. The Judge told the Panel that in most cases local custom was followed but that the pure Muslim Law was applied when dealing with land and Iddah.

Record of conversation with Emir of Ilorin speaking on behalf of the Native Authority and Alkalai on 30th May, 1962

The Emir said that he would welcome regular meeting of the Panel and that the fruits of their last meeting were good and that [fears that] the Penal Code might conflict with Muslim Law had proved ill-founded. He raised a number of points:

1. With regard to section 142(b) of the Criminal Procedure Code he said that this worked a hardship in Ilorin because it did not include a person to whom a girl was betrothed as an aggrieved person capable of instituting an action for adultery, whereas in Ilorin such a person was regarded as quasi husband of the girl. It was pointed out that the question turns on whether the girl was regarded as being married in Native Law and Custom or not and that usually the marriage actually took place on the conclusion of the contract and that this is a matter for local determination.

2. The Panel said that it would consider some sort of definition of the term "marriage" in the Penal Code but too strict a definition would do more harm than good and the Emir said that he was satisfied with this.

3. With regard to question of Nigeria Policemen being exempted from the jurisdiction of the Native Courts under the provision of 1944 Public Notice.

The Panel said that they would consider the matter.

4. The Emir considered that there was nothing in the Penal Code which would enable a court to enforce its judgment properly for example when a woman refused to follow a court order to return to her husband's house after an enticement action.

The Panel said that it would consider this further.

5. The Panel pointed out that the prosecution had a power of appealing against an acquittal under Section 67 of the Native Courts Law 1956.

The Emir said that a simple Code of Civil Procedure would be most useful in the Emirate.

12.

Summary of Recommendations, etc.[61]

I. <u>Native Courts</u>

A. General

(i) Policy for future.

(ii) Provisions regarding "guidance" to be continued.

(iii) Certain sections of Evidence Ordinance to be mandatory.

(iv) Courses to be provided for Scribes in recording.

(v) Exhibits to be marked.

(vi) Single judges as objective, especially in Criminal Cases.

B. Power of Review

(i) Review by administrative officers to be abolished.

(ii) Review and transfer of cases by Commissioner for Native Courts (and Court Advisers or Inspectors) to be retained.

(iii) Provision for judicial review to be made.

C. Regrading of Courts

(i) Provincial Courts to be made Grade A, and take homicide cases.

(ii) Emirs' Councils to be made A (Limited) and <u>not</u> take homicide cases.

(iii) Powers of Native Courts to be co-ordinated with corresponding Magistrates' Courts.

D. Regionalisation of Courts

(i) Government Native Courts to be established in Kano, Jos, Kaduna, Makurdi, etc.

(ii) Divisional Criminal Courts to be established, under Provisional Courts for criminal cases.

(iii) System of Diplomas and grants-in-aid for Alkalai and others.

(iv) Appointment, transfer, dismissal and discipline through a 'Judicial Service Board' (consisting of C.J., Grand Kadi, Chairman, Commissioner for N. Courts (for Minister and Head of Legal Section of Institute of Administration).

(v) Prescribed qualifications for appointment.

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[61] This summary is at the back of the National Archives file containing the documents and other information received by the Panel of Jurists in 1962. It is not clear who made it or at what stage of the proceedings. It bears comparison with the actual proposals made in the "Report of the Panel of Jurists, Second Session", *infra*.

(vi) Central Inspectorate.

II. Provincial Courts.

(1) Those in North to be made bench of three alkalai, or at least Muftai provided.

(2) Those in Riverain always to be presided over by Alkali.

(3) To be regarded as A Courts (unlimited).

(4) To be directly responsible to Ministry of Justice, not through Residents.

(5) Salaries and Registrars to be increased.

(6) Postings to be watched – not to own Province.

(7) Security and independence of Judges.

III. Sharia Court of Appeal

(i) One extra Judge to be added.

(ii) Repeal of Section 12(e) of Sharia Court of Appeal Law.

(iii) Problems of Islamic Law and Customary Law in land, marriage and succession cases.

(iv) Power to punish for contempt, or order transfer of cases.

(v) Power to issue Fatwas or Judicial Circulars (with safeguards).

(vi) *Wakil*s to be appointed and permitted to appear.

IV. Codification

(i) Code of Civil Procedure to be drafted (along lines of Sudan Civil Justice Ordinance).

(ii) Law of tort to be codified – and contract.

(iii) Declarations of customary law to be requested.

(iv) Law of divorce.

V. Training

(i) Diploma for Alkalai, etc.

(ii) Basic training for future Alkalai.

(iii) Training for customary law judges.

(iv) Co-ordination of training for different types of Courts.

VI. Special Offences for Muslims (Drinking, Slander, Adultery)

(i) *Haddi* lashing only if offence confirmed by witnesses prescribed by Muslim law.

(ii) Lashing to be only penalty in cases of discrimination.

(iii) Such cases to be tried by Muslim Courts only.

Chapter 1 Part VI

Report of the Panel of Jurists
Second Session

Submitted to the Minister of Justice of the Northern Region of Nigeria
on 4th June, 1962[62]

Contents:

[62] Source: National Archives Kaduna: S.MOJ/12 Vol. II, 135-169.

1.

Letter from Panel of Jurists submitting report to Minister of Justice

The Honourable Alhaji Muhammadu Nasir
Minister of Justice
Northern Nigeria

Sir,

We were invited by the Government of Northern Nigeria to reassemble on 24th May, 1962, to review the implementation of the recommendations which we had made for the reorganisation of the legal and judicial systems of Northern Nigeria in 1958.

It was a matter for deep regret that the Honourable the Chief Justice of Sudan, Sayyed Mohammed Abu Rannat, was prevented, by ill health, from attending when we began this, our second session as a Panel of Jurists. In his absence, we elected as our Chairman, Senator, the Honourable Shettima Kashim, C.B.E.

Having considered a number of memoranda submitted to us by persons interested in the legal and judicial systems of Northern Nigeria, we set out on a tour of the Provinces. We visited Sokoto, Kano, Maiduguri, Makurdi and Ilorin, and in each of these places we had discussions with persons connected with the judicial systems of the area.

On our return to Kaduna we had discussions with representatives of the Judiciary and Legal Departments and the Ministry of Justice.

We have been gratified at the energetic and enthusiastic efforts which have been made to implement our recommendations of 1958. Some further recommendations have suggested themselves, and these are embodied in our report, which we now have the honour to submit.[63]

Finally we wish to take this opportunity to thank you, Sir, and the Government of Northern Nigeria for the facilities which you have placed at our disposal during our meeting.

We have the honour to be,
Sir,
Most obedient Servants,

[sgd Shettima Kashim] Chairman
[sgd Mohammed Sharrif]
[sgd J.N.D. Anderson]
[sgd Peter Achimugu]
[sgd Musa Bida]
[sgd J.W. Burnett] Secretary

[63] As he had done after the Panel of Jurists' first visit, Professor Anderson again wrote up his own report on the second visit for an international audience, see J.N.D. Anderson, "Return Visit to Nigeria: Judicial and Legal Developments in the Northern Region", *International and Comparative Law Quarterly*, 12 (1963), 282-294.

2.

Report of the Panel of Jurists
Second Session

The Panel of Jurists are most grateful to the Northern Nigerian Government for the invitation to reassemble to review what has been done since (and partly as a result of) their first visit, and make any further suggestions that may occur to them. It was a great disappointment that, at the last moment, their Chairman in 1958 – the Honourable the Chief Justice of the Sudan, Sayyed Muhammed Abu Rannat – was prevented by ill health from coming. In his absence the Panel elected the *Waziri* of Bornu, the Honourable Senator Shettima Kashim, C.B.E. as their new Chairman, and the other members have much appreciated the ability and courtesy with which he has presided. They were all delighted to hear the announcement, during the final stage of our deliberations, of his selection as Governor-designate of Northern Nigeria and the intention of her majesty the Queen to confer on him the honour of Knighthood; and they express to him their warmest congratulations and best wishes as the first Nigerian to be chosen for this high office.

The Panel has been much helped in its review of the situation by a comprehensive memorandum of what has been done since their last visit provided by the Honourable the Attorney-General, Mr. H. H. Marshall, C.M.G., Q.C., supported by all the relevant legislation. They have also received much assistance from memoranda submitted by the Honourable the Acting Chief Justice, Mr. Justice J. A. Smith, by the Honourable the Grand Kadi, Alhaji Abubakar Gumi, by the Principal of the Institute of Administration, Mr. S. S. Richardson, O.B.E., by the Commissioner of Police, Alhaji Kam Salem, by the Honourable the Minister for Local Government, Alhaji Sule Gaya, by a number of the Judges or Chairmen of Provincial Courts and by the Ministry of Justice. They deeply appreciated the fact that the Honourable Alhaji Sir Ahmadu Bello, K.B.E., *Sardauna* of Sokoto, Premier of Northern Nigeria, and the Honourable the Minister of Justice, Alhaji Mamman Nasir, left them an entirely free hand, with no precise terms of reference and that the Minister abstained from expressing his own views until the Panel had had the opportunity to form their own impressions.

After a preliminary consideration of these documents the Panel spent some six days on tour, visiting in succession Sokoto, Kano, Maiduguri, Makurdi and Ilorin before returning to Kaduna. They wish to express their gratitude to the Sultan of Sokoto, the Emir of Kano, the Shehu of Bornu, and the Emir of Ilorin for receiving them; to the Residents of Sokoto, Kano, Bornu and Benue for their help and hospitality; and to the members of Native Authorities, Chief Alkalai, Provincial Court Judges and members, and many others who gave them information, answered their questions, and made suggestions.

Finally, the Panel are very grateful to the Acting Chief Justice, the Grand Kadi, the Attorney-General, the Minister of Justice and the Principal of the Institute of Administration for accepting the invitation to address them, make proposals and answer queries; and also, in the case of Mr. Richardson, for entertaining them at the Institute and giving them an opportunity to see something of its activities. This was most

profitable and illuminating. They are also greatly in the debt of the Governor, the Premier, the acting Chief Justice, and the Attorney-General for hospitality.

First and foremost, we should like to put on record the great encouragement and gratification we have all felt from the way in which the major reforms we recommended in 1958 have been received in the Region as a whole. This has exceeded our most sanguine expectations. We realise that the greatest credit for this is due to the Attorney-General (Mr. H. H. Marshall), to the Commissioner for Native Courts (for most of the time Mr. S.S. Richardson), to the Legal Draftsman (Mr. Manus Nunan) and to all who were concerned with the laborious task of translating our recommendations into legislation. We were similarly gratified and surprised by the outstanding progress which has been made, in the short period of under two years since the legislation was promulgated, in the equally difficult and taxing task of putting these reforms into operation, with the major need not only to train vast numbers of persons in an wholly new technique, but also to persuade those concerned – and the public at large – of the virtues of the new Codes. It has been most heartening to learn for ourselves what a very wide measure of acceptance and appreciation the new Penal Code and Criminal Procedure Code have in fact won, and how the Penal Code now seems to be an established part of the life of the people of the Region. We shall like to record the credit we believe this reflects on the work of Mr. Richardson, Mr. I. G. MacLean (the previous Head of the Legal Wing of the Institute of Administration), the Adult Education experts and all who have helped them.

But in spite of all that has been done – some of it little short of the miraculous – an enormous lot still, beyond question, remains to be accomplished. It is, indeed, because we know that the Government desires not only praise but suggestions that we now turn to the future. Some of the suggestions we propose to make are such as could, we feel., well be put into effect at once, while others are more in the nature of long-term objectives. It would, however, be clumsy and difficult to keep these apart – except, perhaps, in a final summary; so we have decided to classify our proposals subject by subject.

I. Training and control of Native Courts

The most clamant problem of all, we are convinced, is not improvement of the present system – although we shall, in fact, suggest certain amendments later – but the need to improve the way in which it works. In spite of all that has been done – and which we have put on record – much ignorance of the details of the new system, and a certain lingering attachment to the old ways, are still apparent. This was obvious from some of the talks we had on our tour, and it must be still more applicable to many of the lower grade courts we were not able to visit. In addition, we have been told that not only ignorance, but even what can only be termed wilful obstruction, is sometimes encountered – particularly in certain areas.

We hope that the force of public opinion will soon bring this situation – which seems to be of very limited extent – to an end, and that the Northern Nigerian Government will tackle any cases which may come to light with firmness. Ignorance, on the other hand, demands different remedies. On a short term basis all that can probably be done is to continue with all possible energy and despatch the excellent re-orientation

courses – for Alkalai, Court members, Court scribes, Police (this is most important) and even Native Authority officials – which have already proved so useful. But on a long-term basis we feel that certain other suggestions might be made.

(a) Number of courts. We feel that real efficiency will never be achieved in some areas without a further reduction in the number of courts. Considerable progress has already been made in this matter, we understand, and criminal jurisdiction (except for questions of adultery) has been taken away from a number of grade D courts, and vested instead in a smaller number of higher grade courts. We would recommend that this process should continue, as and when this is practicable.

(b) Size of courts. Exactly the same considerations apply to the size of some of the courts in the Region. As an ultimate objective, we believe that the Government should aim at Native Courts staffed by a single court-holder, assisted by a limited number of assessors when required. This would make it possible to insist on adequate qualifications and training on the part of all court-holders and their scribes. But until this ultimate objective is attainable we feel that every practicable step should be taken in this direction.

(c) Longer training courses. While we feel that the present short courses should continue – for there is no other way in which many of the personnel concerned can be adequately reached – we believe there is also a need to commence longer courses, for selected personnel, as soon as possible. We would suggest a Certificate or Diploma course of one year's duration (although this might well be increased at a future date); that it should be sponsored by the Northern Nigerian Government in co-operation with some outside body (such as the School of Oriental and African Studies in the University of London); and that a suitable syllabus, and standard of achievement, should be mutually devised and maintained. We also recommend that the syllabus and standard devised for the Diploma should be such that it would be acceptable to the University of Northern Nigeria as "credits" representing one year's work towards a Law Degree. This would enable any outstandingly good candidate to be selected for the full course.

(d) Grants-in-aid. We consider that it would also be most helpful if the Northern Nigerian Government could institute a system of grants-in-aid, by way of augmentation of salary, to such alkalai or court members as had obtained this Diploma. This would provide a great incentive to the individuals concerned; it would also act as a stimulus to the Native Authorities to send their personnel on such courses; and it would help some of the poorer Native Authorities to pay their court-holders a decent salary. In addition, such grants-in-aid would give the Government more control over the courts concerned.

(e) Minimum qualifications. We further propose that, at some future date, the possession of such a Diploma should be regarded as a basic requirement before a man can receive a substantive appointment to one of the higher Native Courts. It is only by insisting on minimum qualifications that real and lasting progress will ever be achieved.

(f) The selection, appointment, and independence of court members. Here we reach the nub of the whole matter. The Panel feel compelled to record their view that, as an ultimate objective, all courts should be regarded as a Regional, rather than a Native Authority, responsibility. We realise, however, that the time for this may not be yet. Be that as it may, we feel that the present system – under which the Native Authority actually appoints alkalai (with the approval of the Resident, and in suitable cases of the

Premier) before confirmation by the Judicial Service Commission, is a mistake in principle. Such confirmation cannot well be withheld without such a "loss of face" by those most directly concerned as puts the confirming authority in a very difficult position. Instead, we feel that the order of procedure should be reversed; i.e. that the Native Authority should put forward their recommendations (with the approval of the appropriate Ministry rather than that of the Resident), together with adequate details of the careers, characters and qualifications of persons concerned, and that it should be only after the Judicial Service Commission has approved a name that the Native Authority concerned should proceed to announce a substantive appointment. Similarly, provision should be made to empower the Commissioner for Native Courts to refer to the Judicial Service Commission any cases which would seem to require discipline or dismissal.

(g) "Guidance". But whatever improvements may be made in the training and selection of Native Court-holders and their scribes, it would be wholly unrealistic to expect anything approaching perfection in the foreseeable future. The Panel, therefore, are convinced that the "interim period" they envisaged in their first Report, during which the Native Courts were to be guided rather than bound by the new Codes, has by no means come to an end. On the contrary, they believe that this system of guidance should continue for a considerable time to come – at least until the suggested reduction in the number of courts and of court-members, and a manifest improvement in their basic education and technical training, have been achieved. We would observe, however, that it would be right and proper to expect an ever-rising standard of genuine "guidance". Perhaps one example of what we have in mind may be pertinent at this point. On our visits we had a number of requests for the re-introduction of the oath of tuhma, by which an accused person, against whom insufficient evidence has been adduced, may swear to his innocence. In our first Report we were willing to accept such an oath as part of the total evidence; but the Government – wisely, in our view – did not include any such provision in the Criminal Procedure Code. To make legislative provision for its re-introduction at this stage, therefore, would seem to us a retrogressive step, which would only encourage a return to the old system which was based on rigid rules of what testimony was admissible or inadmissible, how many eye-witnesses were required in this or that type of case and, in default, a system of oaths. The new system, by contrast, requires the court to hear all the evidence, weigh and evaluate it, and come to a considered conclusion – with the proviso, always, that the accused must be acquitted if the court is not satisfied as to his guilt. These principles need continual re-emphasis.

(h) Evidence Ordinance. In this connection the suggestion has been made to us that, just as in the Procedure Code Native Courts are to be guided by most of its provisions but bound by a minimum number of those basic principles which are essential to a trial which is fair and just, the Evidence Ordinance might well receive similar treatment at a suitable date. Native courts are to be guided by this Ordinance too; but it would be possible to extract certain provisions (e.g. those relating to evidence of previous convictions, to the position of accomplices, and to the need for corroboration in certain types of cases) which could be made mandatory. We believe that this suggestion merits consideration.

(i) Supervision and review.[64] In our last Report we recommended that – again during this interim period of training – the supervision of Native Courts, the transfer of cases from one court to another, and the revision (where necessary) of judgments already given, should remain the responsibility of administrative officers. We feel, however, that this system is now becoming an anachronism, here as elsewhere in Africa, and should be brought to an end. We are fortified in this belief by the fact that the position now occupied by the Residents is soon to be taken over by Provincial Commissioners, who will be representatives of the Executive rather than the Civil Service. The basic principle of the "separation of powers" demands, therefore, that they should not have this virtual control of the machinery of justice.

This is not to say, however, that the need for supervision, transfer of cases, and occasional review of judgments is not still needed. The problem is, rather, by whom these powers are to be exercised. We recommend that the Minister of Justice should introduce a Region-wide system of Inspectors of Native Courts under the aegis of his Ministry and the direct control of the Commissioner for Native Courts, who would tour the country to give guidance and advice. The function of supervision of Native Courts would best, we feel, be entrusted to these civil servants.

The question of transfer and revision is rather more difficult. It is tempting to suggest that the need for revision of judgments might now be past, and that the rectification of injustices could be left to the system of appeals alone. We are assured, however, that this is not so, and that cases not infrequently come to light in which courts have exceeded their jurisdiction and given a sentence beyond their competence, but the condemned man has been too ignorant or lethargic to appeal. Such injustices can most speedily, cheaply and effectively be remedied by review or revision, for the fault is apparent, beyond argument, on the court record.

We feel, therefore, that in such cases the power of review should be retained, but that – as elsewhere in Africa – it should pass from the administration to the judiciary. The most suitable courts to exercise it, in our judgment, are the appropriate courts of appeal – namely, the Provincial Courts in relation to grade B, C and D Native Courts, and the Native Courts Appellate Division of the High Court in regard to A and A (limited) Native Courts (including, of course, the Provincial Courts). Sometimes, of course, some relative of the aggrieved person would move the appropriate court to act in such circumstances; but it should be part of the duty of Inspectors of Native Courts to bring any such cases as come to light on their tours to the notice of the appropriate court. Until, moreover, an adequate number of Inspectors of Native Courts have been appointed, administrative officers might exercise a similar function under the authority of the Commissioner for Native Courts. As for transfers, it should be within the competence of the High Court, in suitable circumstances, to order the transfer of a case from one court to another. The only alternative would be the re-introduction of the "Prerogative Writs."

(j) Future policy regarding Native Courts. It is tempting to speculate on the way in which Native Courts should eventually develop. That Regionalisation should be the

[64] This section is labelled "(j)" in the report, but so also is the next section; we conclude that this section should be "(i)".

ultimate policy of Government has already been suggested – and also that the ideal would be, in most cases at least, a single court-holder sitting, where necessary, with suitable assessors. This would not only facilitate an enormous improvement in the quality and efficiency of Native Courts, but would make it possible to envisage their eventual incorporation in a unified system of justice. When the education and technical training of Native Court-holders and their scribes have been sufficiently improved, and the Bench and magistracy largely filled by indigenous personnel, an ever-increasing co-ordination of the two sets of courts will be possible. It seems important, therefore, that the training of prospective barristers, on the one hand, and Native Court-holders, on the other, should be integrated as far as this is practicable.

(k) [Refresher courses.] Finally, on the subject of training, we would observe that as soon as the herculean task of providing a basic re-orientation course of three months' duration in the new Codes to all the personnel of some 700 Native Courts is complete, the same facilities might well be employed in providing "refresher" courses. These should prove to be of outstanding value and importance. We understand that about one-fifth of the personnel concerned has already gone through the first course, and that the initial task might be completed in some two years more. By that time the Codes will have been in operation for about four years, and a short refresher course for some of those trained at the beginning – but not considered suitable for a longer and higher course – might give new insights not only into the progress which is being achieved throughout the Region, but into the salient weaknesses which still remain.

II. The Provincial Courts

The Panel feel that the Provincial Courts deserve a section all to themselves, for these courts were brought into operation as a result of our recommendations in 1958. As with the new Codes, moreover, we believe that we can say with confidence that these courts have proved a great success. Everywhere we went we made a point of visiting the Provincial Court, and we always got the impression that it had commanded the respect and appreciation of the people. The provision of a central court, in each Province, to hear all appeals from Native Courts of Grade B, C and D – and a court which by its nature is not under the influence of any Native Authority – seems to have had a most beneficial effect on the work of the Native Courts as a whole.

This is not, of course, to suggest that these Provincial Courts are by any means perfect. Just because they inevitably serve as an example throughout the Province, it is vital that such courts should be really adequately staffed, and that every effort should be made to see that the Judges have all the facilities for training which are available. It is particularly important, perhaps, that they should be helped to master the difficult art of giving due weight to different types of evidence, and then coming to a reasoned and equitable conclusion.

One point emphasised in one after another of the Provincial Courts was the need for an additional court member to help the Judges. We would suggest that this additional court member should, whenever possible, sit with the Judge as a bench of two; if their opinions differ, we would suggest that the view of the Judge should prevail, but that the opinion of the dissenting court member should be recorded in the record for the information of any appellate court. This suggestion would not preclude the Judge from

sitting alone on occasions when the additional member was not, for some reason, available. As it was put to us when on tour "two minds are better than one" – and this is particularly true in appeal cases, where there is something inappropriate in a single Judge reversing the decision of an alkali who may be little less learned, and possibly even more experienced, than he is himself

The appointment of such additional court members to help the Judges of the Provincial Courts might also solve the vexed problem, as things now stand, as to who is to be appointed Acting Provincial Judge when the substantive holder of that office is ill, on leave, or for any reason unable to act. In such cases the additional court member, if a fit and proper person, would be the obvious choice. But this at once emphasises the point that these court members must have received the same training. To appoint elderly men who have been trained exclusively in the traditional way, and whose contribution would always take the form of a reference to the classical texts, would not serve the purpose.

The above remarks apply to all these Provinces where the Provincial Court is composed of a single Judge, with the solitary exception of Ilorin. On our visit to this Province it became clear that the Yoruba, who represent the overwhelming majority of the population, habitually follow Yoruba customary law – whether they profess to be Christians, Muslims, or Pagans. As a consequence, almost all the work of the Provincial Court is concerned with this customary law; and we have no doubt that the present Judge applies this law faithfully and well. It seems clear to us in principle, however, that we made a mistake on our last visit in not recommending that the Provincial Court of Ilorin, like that of Plateau, Benue and Kabba should be composed of three members, one of whom (and perhaps in this case the President?) should be an alkali. We would also suggest that these Provincial Courts should be authorised to sit as a bench of two when this is necessary. We know, of course, that the Provincial Courts in Sardauna, Adamawa, and Bauchi Provinces are also, very frequently, called upon to apply customary law, and we understand that they do this to the general satisfaction of Pagans as well as Muslims. But we consider that Ilorin represents a special case, for the proportion of customary work handled by the courts in that Province exceeds the proportion in any other Province whatever, with the possible exception of Plateau.

It was suggested to us that the Judges of Provincial Courts should always be chosen from those not indigenous to the Province. While, however, we see the point of this suggestion, we realise also that other factors – and particularly language – are relevant in this connection, and we should prefer not to make too definite and precise a recommendation.

It was also represented to us that the Registrars of these courts are sometimes under-paid. We feel, however, that we should merely refer this matter to the Government, with the observation that it is particularly important that Registrars, as well as Judges, should be properly qualified and should receive an adequate remuneration.

III. The Sharia Court of Appeal

(a) Jurisdiction. This court, like the Provincial Courts, was also brought into existence – instead of the previous Moslem Court of Appeal – as a result of our recommendations in 1958. It is apparent to the Panel, however, that the jurisdiction of this court, as now

defined, is a great deal wider than what they envisaged or proposed. We recommended, in our paragraph 9, that the Islamic law, as such, should be confined to the law of personal status and family relations; and in our paragraph 16 that such cases "would go first to the Alkalai and then to the Sharia Court of Appeal" (after a previous appeal to the Provincial Court in suitable cases), while "other civil cases", and "all criminal cases", should go on appeal to the Native Courts Appellate Division of the High Court – the creation of which represented yet another of our proposals. It was because we recognised that some of these "other civil cases" – such as certain cases of contract and tort – would involve principles of Islamic law that we recommended that the Grand Kadi, or some other Judge from the Sharia Court of Appeal, should sit with two High Court Judges in this Division. Similarly, it was because we proposed that the new Sharia Court of Appeal should confine itself to questions of pure Islamic law in the field of marriage, divorce, inheritance, etc., that we suggested that its judgments should be final and not susceptible to any further appeal (except, of course, to the Federal Supreme Court in a point involving fundamental human rights).

In particular, the Panel feel that the principle enshrined in section 12(e) of the Sharia Court of Appeal Law is open to grave abuse. It seems to us wrong in principle that litigants should be able, by their unilateral decision, to change the law properly applicable to their litigation, for choice of the law which is to govern any particular issue (e.g. questions of land tenure) is for the Legislature, not the individual. Were it not that this provision is also included in the Constitution we should have recommended its repeal. Since, however, difficulties which at one time, we understand, arose in this matter seem now to have found at least a temporary solution, we will content ourselves with recommending that the Government should keep this principle clearly in view, and make a suitable amendment in the relevant legislation whenever that may become necessary or convenient.

We would also respectfully commend the amendment to sections 12(c) and (d) of the Sharia Court of Appeal Law introduced by the Sharia Court of Appeal (Amendment) Law, 1960 – whereby the words "of Moslem Law" were inserted in each of these sections. Enquiries during our tour amply confirmed the fact that there are many matters even in the sphere of marriage, succession, guardianship, etc., in which persons of certain tribes and localities (e.g. the Yoruba) habitually follow their customary law whether they profess Christianity, Islam, or Paganism. It is possible, of course, that some of these customs are contrary to "morality" and should not be recognised by the courts. But it is abundantly evident that many of them are not by any means of this nature, although they differ considerably from the relevant rules of Islamic law. Until such time, therefore, as the people concerned may decide to change these customs, it would be wrong – and largely useless – to attempt to change them through the courts, and any such attempt might well occasion serious political unrest. There is no doubt that those on the spot fully realise the position; but it would certainly be wrong for a case of this sort to come up on appeal to the Sharia Court of Appeal, rather than the Native Courts Appellate Division of the High Court.

About land law we shall have something more to say below. In the present context, therefore, we would only observe that we do not feel that land cases should go to the Sharia Court of Appeal, with the solitary exception of inheritance cases in these rare

instances (as we understand it) in which land is regarded, in this Region, as in the full ownership of some individual proprietor.

(b) "*Wakil*s", or legal representation. The suggestion has been made to us that suitably qualified persons should be allowed to represent litigants before the Sharia Court of Appeal. It has been represented to us that whereas legal representation is not allowed in any Native Court in the region – and the Panel are of one mind in agreeing that this rule must be maintained – the retention of counsel is permitted in any appeal from the Native Courts which reaches the Native Courts Appellate Division of the High Court. As a parallel provision, therefore, should not suitable legal representation be allowed in any such appeal which reaches the Sharia Court of Appeal?

The Panel see the force of the argument, particularly since the Sharia Court of Appeal is the final court in such cases, since it may soon start a system of Law Reports, and since its decision would be of great authority in other courts throughout the Region. They are convinced, however, that this matter would have to be covered by regulations very carefully drawn. They would suggest that licenses to appear before this court should only be given to those whose legal qualification includes a recognised test of their knowledge of Islamic law and those who, though not qualified lawyers, have taken a recognised examination in their knowledge of Islamic law. It is most important both that barristers with no real knowledge of this subject should be excluded, and also that the licensed practitioners should not be limited to those whose training was exclusively traditional and whose outlook might be narrow and obscurantist. Any persons so licensed would have to conform to the relevant rules of procedure.

(c) The issue of Fatwas or Judicial Circulars. It has been suggested to us that the Grand Kadi should be empowered to issue "fatwas" which would be binding on the courts – along the lines of the Judicial Circulars and Memoranda issued by the Grand Kadi in the Sudan (with the concurrence of the Government) under legislative authority.

The Panel recognise that many most salutary reforms have been introduced by this means in the Sudan – on the basis that, instead of being tied in matters of family law to the dominant view of a single school, it has been possible to make an eclectic choice between the various opinions held by reputable Muslim authorities of the past in the light of present-day requirements. On this principle outstanding reforms have been introduced – to the general satisfaction – in such matters as marriage, divorce, inheritance and bequests. But equally beneficial results, and on precisely the same juridical basis, have been achieved in Egypt, Jordan, Syria, Tunisia, Morocco and Iraq by means of legislation sponsored by the Government on the advice of a suitable committee.

The Panel believe that the time may soon come when certain reforms along these lines may be welcomed also in Northern Nigeria. But we are of the opinion that legislation, rather than judicial circulars or memoranda, represent the more appropriate method. Such legislation could, of course, be suggested by a committee of which the Grand Kadi might be an ex-officio member.

(d) Other requests by the Grand Kadi. The Grand Kadi represented to us that, now that the Constitutional objection to a Judge from the Sharia Court of Appeal sitting with two High Court Judges in the Native Courts Appellate Division of the High Court has

been happily resolved, the appointment of an extra Judge to the complement of the Sharia Court of Appeal has become urgent. This request we would respectfully support. He also requested that the powers of the Sharia Court of Appeal to punish for contempt of court should be made explicit, rather than left implicit in its description as a "Court of Record." Finally, he asked that this court might be given the right, on appeal, not only to deal with the question itself or refer the case back to the court of first instance, but also to transfer the case to some other Native Court of competent jurisdiction. But the Panel note that this power was already provided.

IV. Northernisation of the Judiciary and Legal Department

The Panel are conscious of the urgent need to press forward, as soon as possible, with the recruitment of Northerners as Magistrates, Judges, Crown Counsel and Legal Officers. At the same time, of course, it is of paramount importance that the necessary standards should be maintained.

We were informed by the Acting Chief Justice of the plan now being operated to encourage newly called Northern barristers to become magistrates by appointing them as "associate magistrates" for two years, on analogy with the posts of "Pupil Crown Counsel" which were instituted in 1961. We believe that this scheme, the details of which seen to be excellent, should prove most beneficial, and we wish it every success.

We were equally interested in the plan for "Supernumerary Chief Magistrates", under which a suitable Northern barrister of some five years' standing can be given experience on the bench as a Chief Magistrate and then serve as an acting Judge of the High Court. We understand that such a post has already been filled by one Northerner and we recommend that such appointments should be increased as soon as suitable personnel become available.

This seems to be all that can be done at present with regard to the judiciary. But it also seems to us of paramount importance that a Northerner should be given some experience, as soon as practicable, of the policy-forming offices in the Legal Department. We understand that the Constitution precludes the appointment of a barrister of less than ten years' standing as Attorney-General, or even Acting Attorney-General, but that no such provision exists in regard to the office of Solicitor-General. We recommend, therefore, that this office should be filled by a Northern barrister as soon as possible. We realise that this would mean that he could not – for the present – act as Attorney-General in the absence on leave of an expatriate Attorney-General. But we understand that the appointment of someone other than the Solicitor-General to act for the Attorney-General in his absence is not without precedent, which could be repeated; and we feel that the lack of any Northerner with experience in this sort of work is so serious that the expedient is necessary. It is obvious that the person so appointed Solicitor-General will not necessarily be selected as Attorney-General when the time comes for a Northerner to be appointed to the latter office.

V. Codification

It has been suggested to us by a number of those with whom we have talked, and who have submitted memoranda, that the compilation of a Code of Civil Procedure – as a companion to the Code of Criminal Procedure – would be beneficial. Such a code, if

promulgated, would bind the High Court and the magistrates' courts, and would serve as a guide to the Native Courts.

There can be no doubt that many of the Provincial Courts, and not a few of the other Native Courts, would welcome a simple code of this sort. Others with whom we spoke, on the other hand, were apprehensive that it would impinge too much on their traditional procedure in civil cases. Such wide differences exist in this Region, moreover, between the procedure of the High Court and the magistrates' courts, to say nothing of the Native Courts, that the drafting of such a code would be a major undertaking, although the Civil Justice Ordinance in the Sudan might provide a partial model.

On a long-term basis there can be no doubt that such a Code would prove beneficial – particularly along the lines of its influence in unifying matters of procedure throughout the Region and eliminating the need for reference to the Rules of the Supreme Court of Judicature in London. From the point of view of the Native Courts, however, it might well be advisable to "hasten slowly", and ensure that they have mastered the new Codes by which they are already to be guided before introducing anything else.

We recommend, therefore, that the Government should give further study to this question and that such a Code, if acceptable to the judiciary, should be put in hand, but only introduced in Native Courts as and where this seems desirable.

The Panel also considered the possibility of getting Native Authorities to make Declarations of their native law and custom under section 48 of the Native Authority Law, 1954. It was realised that this might prove very helpful, provided the relevant statement covered an adequate area and did not incorporate minor differences of detail. The Panel took cognisance of the Restatement of Customary Law Project at present in operation under the aegis of the School of Oriental and African Studies, in the University of London, with the help of a grant from the Nuffield Foundation. This Restatement is being prepared by Research Officers, under adequate supervision, with the co-operation of local authorities; and it is designed both to help the courts, by providing a record of customary law, which is of persuasive but not binding authority (and which therefore does not in any way preclude further developments in the law concerned), and also to facilitate teaching and research. In addition, it would be advisable for the Government to appoint competent persons to enquire into the customary law of the principal tribes so far as these relate to marriage, dower, divorce, guardianship, succession, etc. In spite of apparent divergencies, such enquiries might reveal that in certain respects the customary law does not differ in any fundamental way over a considerable area. The resulting record would then constitute prima facie evidence of the law, subject of course to the right of the other party to prove the contrary. These enquiries should include references to court decisions wherever such are available. We would also recommend this as a suitable field for research by members of the new Faculty of Law.

VI. Miscellaneous Matters

(a) Homicide Cases. In our last Report the Panel recommended that there should be an automatic appeal to the Native Courts Appellate Division of the High Court in all cases of homicide involving the death penalty. This recommendation the Government felt unable to accept. We are by no means confident, however, that such trials are even now

adequately handled under the new Codes in some of the courts concerned, or even that condemned persons are always properly informed of their right to appeal. There may, indeed, be reasons to explain a failure to appeal even when the condemned man is in fact informed of his right.

We should still prefer, therefore, that in cases in which the death penalty is passed an appeal should be regarded as automatic. If, however, the Government considers this undesirable, we would recommend what is termed in some countries a "Murder reference" – by which the record of any trial in which a judgment of execution has been passed in a Native Court should be sent to the Native Courts Appellate Division of the High Court for "confirmation." This would enable that court to order a new trial, reduce the sentence, or take any other appropriate action if the record made them suspect that there had been a miscarriage of justice; and a Judge of the Sharia Court of Appeal would always participate in such a decision. It would be only after such confirmation that the papers would go to the Council concerned with the Prerogative of Mercy.

(b) Land law. The Panel are pleased to note that the Government has recently been concerned with this problem, as evidenced by the Land Tenure Law, 1962. We are conscious that widely different views are held by different people in this Region regarding the basis of the land law; but the vital point would seem to be that all courts which handle such questions must realise that it is the legislative policy of the Government – which has remained substantially unchanged for many years now – which must necessarily prevail; and under this, as we understand it, full individual ownership of land, whether under Islamic, English or Customary law, is extremely rare. And it can be only in such cases that the Islamic law of inheritance, for example, properly applies.

(c) Government courts in major towns. It is partly in the context of land cases that the Panel considered a suggestion that Regional Native Courts, A (limited) in grade, might be established in such towns as Kano, Kaduna, Jos, Makurdi and possibly Zaria. These courts might well have exclusive jurisdiction in cases regarding immovable property in these towns, and any other jurisdiction (e.g. criminal causes), which the Government might choose to confer upon them. They would be staffed by well educated and well trained personnel, so they could supercede the Mixed Courts which already exist in some of these towns and for which a need had been expressed in others – provided, always, that adequate precautions are taken to ensure that the tribal law of immigrant litigants is given due recognition. It would, we feel be necessary for these courts to be grade A (limited) in order to enable them to deal with cases of an adequate value. The first experiment in Native Courts under Regional auspices – namely, the Provincial Courts – has been such a success, that we believe that this further experiment would prove equally successful and acceptable to the people concerned.

(d) Jurisdiction of courts. It has been brought to our notice by the Acting Chief Justice that a comparison between the jurisdiction of B, C, and D grade Native Courts, and that of 1st, 2nd and 3rd class magistrates reveals that each grade of Native Courts has wider powers of imprisonment, and more restricted powers in the imposition of fines, than the corresponding class of magistrate. It would, however, be quite a simple operation to adjust this jurisdiction. In the interests of uniformity, therefore, we would commend this suggestion to the consideration of the Government.

(e) Exhibits in Native Courts. We understand that considerable difficulty and delay are sometimes caused in appeals from Native Courts by reason of the fact that Exhibits which formed part of the case at first instance, are not adequately marked and therefore cannot be readily identified. We have no doubt that the need for such action is already included in the course of instruction provided at Zaria, but we would recommend that this matter should be emphasised to all concerned.

(f) Witchcraft cases. The prevalence of cases of alleged witchcraft was a matter of considerable concern to some of those whom we interviewed when on tour, and we were asked to recommend that the handling of such cases under the Penal Code should be brought within the competence of Native Courts of the A (limited) and B grades. We were also asked if legislative authority could not be given to enable a court to order one who was alleged to have cast a spell on another to take suitable action to remove it. The Panel had no doubt that such a provision would meet with a warm welcome in some quarters, but they feel that the price – namely what would amount to an official, if implicit, recognition of the reality and validity of magic practices – would be such as the Government could not properly accept. They also recognised that the reason why such cases had been kept within the exclusive jurisdiction of the A courts was that magic practices constitute a major disruption in the life of the community as a whole which should be handled exclusively by the highest courts. For these reasons the Panel felt unable to recommend either of these requests.

(g) Tracking stolen animals. The Panel were asked to consider whether some special provision could not be made to cover cases where the tracks of thieves or stolen animals could be followed plainly to some village but then cease. It was customary in Bornu, for example, in the past for such cases, in default of other proof, to be dealt with under a system of collective responsibility, according to which the headman and villagers would be held collectively responsible for the value of the cattle if they could not show that the cattle had in fact been driven elsewhere, would not hand over the thief, or could not show cause why they should not be regarded as responsible. Cases like this could often, of course, be brought under the terms of sections 167-170 of the Penal Code; but the Panel felt unable to recommend any other action which could not be brought within the terms of the Collective Punishment Ordinance (Chap. 34), which itself seems to require amendment to bring it into accord with the Constitutional provisions regarding fundamental human rights.

(h) Criminal Trespass. Several of those whom we interviewed were concerned that where a man wrongly extended his farm or house at the expense of his neighbour his act would not, of course, come within the definition of theft. The Panel considered, however that such cases could be adequately dealt with under the provisions regarding criminal trespass, for such action would always involve an "intent to annoy", at least in the sense that this must be regarded as the natural and probable effect of such behaviour.

(i) Cases of adultery in Ilorin. The Emir of Ilorin told us that it is common, in his Emirate, for a father to promise his girl in marriage, when still young, to a prospective husband. The girl will stay with her parents, and may well go to school, but the prospective husband will start making payments in respect of the marriage. If, then, this girl is enticed and becomes pregnant, it was felt that he was necessarily an aggrieved

party – yet, as the law now stands, it is only the girl's father who can institute proceedings under section 142 of the Criminal Procedure Code. The Panel considered that this question turned on the stage at which a valid marriage could be regarded as having been contracted. In Islamic law, for instance, this is when the contract of marriage, in contra-distinction to the promise of marriage, is concluded, but this may well take place a long time before the bride goes to live in her husband's house. In customary law, on the other hand, there are frequently a number of different stages in the conclusion of a binding marriage, and it would be for the people themselves to decide at what point the marriage, as such, can be said to have been effected. The Panel realised, however, that the promise in marriage of very young girls gives rise to difficult questions of personal freedom if the girl, when she grows up, were resolutely to refuse the promised suitor.

(j) Jurisdiction over policemen. Complaints were also made, in some quarters, about the fact that members of the Nigeria Police were not justiciable in criminal cases before Native Courts, even in matters of enticement, adultery, etc. The Panel took cognisance, however, that this principle does not apply to Native Authority police, and that the position of the Federal Police Force is at present under discussion between the Premier and the Prime Minister. In these circumstances we felt precluded from making any recommendation.

(k) Cases of contempt in courts which only exercise civil jurisdiction. Now that a number of Native Courts have been precluded from exercising any criminal jurisdiction except in cases of alleged adultery, the question was put to us how cases of contempt of such courts should be handled. The Panel considered that such cases come plainly within the terms of section 155 of the Penal Code (intentional insult or interruption to public servant sitting in a judicial proceeding), but that the court concerned should refer the matter to a court exercising criminal jurisdiction for the punishment of the alleged offender, on the testimony of the aggrieved court member.

(l) Registrars of Emirs' Courts. It has been brought to our notice what a vital function in the administration of justice is performed by the Registrars of the Emirs' Courts. We wish to emphasise, therefore, how important it is that all these Registrars should receive proper training and instruction.

(m) Cases involving *haddi* lashing. The Panel have discussed sections 387, 388, 392, 393 and 401 – 404 of the Penal Code (those sections, that is, in connection with which *haddi* lashing may be imposed under section 68(2), in the case of Muslims only, in addition to any other punishment therein prescribed) on a number of occasions, with the Grand Kadi, Provincial Court Judges, Alkalai and others. It seems to us that in these sections an attempt has been made to combine two elements which it would have been preferable to keep distinct and separate – namely, a secular offence, punishable by fine or imprisonment or both, and a religious offence, punishable by *haddi* lashing. This is, we feel, wrong in principle, for the *hadd* and *ta'azir* punishment are, properly, mutually exclusive; and it also involves many problems with regard to evidence, for the secular offence may, of course, be proved by any evidence which satisfies the court that the accused was guilty of the alleged words or action, while the *haddi* lashing should not properly be inflicted except where the offence is proved by that confession, or that

number of witnesses to the very act, which is prescribed in the Sharia. This has frequently been emphasised by those whom we have interviewed.

In regard to extra-marital sexual intercourse (sections 387 and 388) and defamation (sections 392 and 393), we believe that this situation can best be remedied by excluding the *haddi* lashing in all cases. For these offences the secular penalty is a much greater deterrent than *haddi* lashing as now administered; and this solution would both avoid the inconsistency of combining a *hadd* and *ta'azir* punishment and also the complication that the definition of the offence of that *qadhf* (defamation) for which lashing is prescribed, and the standard of proof required before a Muslim can properly be subjected to this punishment either for defamation or, still more, for *zina*, is such that no court can properly be expected to deal with both the secular and religious offences and penalties at the same time.

Next, the question of drunkenness or, for a Muslim, any consumption of alcohol, except for medicinal purposes, under sections 401-404. It seems very strange that the maximum penalty for being drunk in a public place, if not disorderly or incapable, should be only seven days imprisonment or one pound fine (or both) under section 401(1), while the maximum penalty under section 403 for any consumption of alcohol whatever, by a Muslim, is one month in prison or five pounds fine (or both). This does not make sense. The Panel recommend that the maximum penalties for being drunk in a public place under section 401(1), drunk and disorderly or incapable in a public place under section 401(2) or drunk and offensive in a private place to anyone who has the right to exclude the offender, should all be suitably increased, and that in those cases, too, the penalty – for Muslims only – of *haddi* lashing should be abolished. The reasons for this are precisely the same as those noted in the previous paragraph.

There remains the absolute prohibition of alcohol for Muslims only, except for medicinal purposes, under section 403. In many ways the most appropriate punishment for this is not imprisonment or fine but the specifically religious penalty of *haddi* lashing, but most of those whom we interviewed were strongly of the opinion that the penalties of fine or imprisonment should also be retained, for the present at least. The Panel recommend, therefore, that for this offence *haddi* lashing, fine or imprisonment should all be retained, but only <u>in the alternative</u>. This would avoid the inconsistency of combining a *hadd* and *ta'azir* punishment, and would also provide the court with a suitable choice of penalties.

In conclusion, the Panel suggest that it would be preferable, in their view, for Muslims, like others, to be charged under sections 401 and 402, rather than section 403, wherever the facts warrant this. They would also observe that, again, the standard of proof properly requisite under section 403 for fine or imprisonment is different in nature from the evidence prescribed under the Sharia for *haddi* lashing, and that appeal against this last sentence, if any, should properly go up to the Sharia Court of Appeal, whereas appeals in all other cases under these sections should go to the Native Courts Appellate Division of the High Court.

(n) <u>Habitual offenders</u>. Several of those whom we interviewed raised the question of the maximum punishment which could be imposed on a habitual thief, for they did not consider a sentence of up to five years under section 287 of the Panel Code to be

adequate. The Panel were of the opinion, however, that the position of habitual offenders should be considered in more general terms rather than in connection with one specific offence. It would be perfectly possible to provide for a sentence of what is commonly called "preventive detention", up to a maximum number of years, to be substituted for the ordinary maximum penalty in the case of one who, for example, has already been sentenced not less than three times for the same offence. We would content ourselves in this context, however, with recommending that this matter should be given adequate study, in the light of contemporary penological study and experience, before it is introduced in Northern Nigeria.

Finally, the Panel wish to place on record our warm appreciation of the efficiency, helpfulness and courtesy of our Secretary, Mr. J. W. Burnett and of all that has been arranged for our comfort.

[signed] Senator Shettima Kashim, C.B.E., *Wazirin* Bornu, CHAIRMAN

[signed] Mr. Justice Mohammed Sharif

[signed] Professor J.N.D. Anderson, O.B.E.

[signed] Mr. Peter Achimugu, O.B.E.

[signed] Malam Musa Bida

[signed] Mr. J. W. Burnett, SECRETARY

KADUNA, 4th June 1962.

3.

Panel of Jurists: Second Session

PROPOSALS

A. SHORT-TERM.		Section[65]
	I. Training and Control of Native Courts	
(1)	That Government should deal firmly with any wilful obstruction in regard to the new Codes.	I
(2)	That short courses for Akalai, court members, scribes, police and N.A. officials should be pressed forward with all urgency.	I
(3)	That courts in some areas should be reduced in number as and when possible.	I(a)
(4)	That the size of some courts should be reduced, so that court-holders can be adequately qualified and trained.	I(b)
(5)	That a year's Diploma course for court-holders should be sponsored by Government in co-operation with an outside body.	I(c)
(6)	That this course should be so devised that it could count towards a Degree in Law.	I(c)
(7)	That Government might provide grants-in-aid towards the salary of those who have gained this Diploma.	I(d)
(8)	That N.A.s should secure the approval of the J.S.C. before making substantive appointments of alkalai.	I(f)
(9)	That the Commissioner for Native Courts should be empowered to refer to J.S.C. questions of discipline or dismissal of personnel from N.A. courts.	I(f)
(10)	That the principle of "guidance" should be continued indefinitely, but that a rising standard of guidance should be required.	I(g)
(11)	That the oath of tuhma should not be reintroduced, but the new principles of evidence and judgment continually re-emphasised.	I(g)
(12)	That the selection of a few provisions from the Evidence Ordinance as mandatory on Native Courts should be considered.	I(h)
(13)	That the Minister of Justice should introduce a system of Inspectors of Native Courts under the Commissioner for Native Courts.	I(i)
(14)	That powers of supervision and review now exercised by administrative officers should pass to these Inspectors, and the courts, respectively.	I(i)

[65] The report refers in this summary of its proposals to page numbers, not section numbers; in view of changes in pagination we have decided to use section numbers instead.

(15)	That until enough Inspectors are appointed cases needing review should be referred to the courts by administrative officers, acting under the Commissioner for Native Courts.	I(i)
(16)	That "refresher" courses should be started at Zaria as soon as possible.	I(k)

II. The Provincial Courts

(17)	That the Provincial Courts should be adequately staffed and helped in every way to set an example.	II
(18)	That an additional court member should be appointed to help single Provincial Court Judges.	II
(19)	That such courts should normally sit as a bench of two.	II
(20)	That where they differ the view of the Judge should prevail, but the dissenting opinion should be recorded.	II
(21)	That this arrangement should not preclude the Judge from sitting alone when necessary.	II
(22)	That the additional court member must be adequately trained, so that he can act for the Judge when absent.	II
(23)	That in Ilorin the Provincial Court should consist of three members, as in Plateau, Benue and Kabba.	II
(24)	That all such courts should be empowered to sit as a bench of two in case of need.	II
(25)	That the salaries of the Registrars of Provincial Courts should be kept under review.	II

III. The Sharia Court of Appeal

(26)	That the jurisdiction of the Sharia Court of Appeal should be limited to cases of personal status and family law under the Sharia.	III(a)
(27)	That section 12(e) of the Sharia Court of Appeal Law should be repealed as soon as is necessary or convenient.	III(a)
(28)	That questions of family law governed, even among Muslims, by customary rather than Sharia law should not come to this Court on appeal.	III(a)
(29)	That jurisdiction in land cases should come to this court only in regard to the inheritance of the rare cases of full, individual ownership.	III(a)
(30)	That suitably qualified barristers and others should be licensed to represent litigants in the Sharia Court of Appeal only.	III(b)
(31)	That reforms in family law along the lines introduced in almost all Arab Countries should be considered by a Committee which might propose legislation (not fatwas).	III(c)
(32)	That an extra Judge should be appointed to the Sharia Court of	III(d)

Appeal.

(33)	That consideration be given to making explicit the right of this court to punish for contempt.	III(d)

IV. Northernisation of the Judiciary and Legal Department

(34)	That the Scheme for appointing Northerners as "associate barristers" should be given every encouragement.	IV
(35)	That the plan for appointing Northern barristers as "Supernumerary" Chief Magistrates (and acting Judges) should be extended as practicable.	IV
(36)	That a Northerner should be appointed Solicitor-General at the first opportunity.	IV

V. Codification

(37)	That a Code of Civil Procedure should be prepared, but made applicable to the Native Courts for guidance only when considered wise.	V
(38)	That Declarations, studies and "Restatements" of customary law should be sponsored by Government, outside bodies and the Faculty of Law.	V

VI. Miscellaneous Matters

(39)	That there should be an automatic appeal, or at least "Murder reference", whenever a Native Court passes a death sentence.	VI(a)
(40)	That in land cases all courts must enforce the relevant legislation.	VI(b)
(41)	That Regional Native Courts (of Grade A limited) should be set up in Kano, Kaduna, Jos, Makurdi and possibly Zaria.	VI(c)
(42)	That these should be suitably staffed and should have exclusive jurisdiction in land cases and such other jurisdiction (e.g. in criminal cases) as Government may decide.	VI(c)
(43)	That the jurisdiction of Native Courts of Grades B, C and D and magistrates' courts Class I, II, and III should be mutually adjusted.	VI(d)
(44)	That the need to mark Exhibits in Native Courts should be emphasised.	VI(e)
(45)	That jurisdiction in witchcraft cases should not be conferred on lower courts.	VI(f)
(46)	That the principle of "Collective Responsibility", in suitable cases, should be given further consideration.	VI(g)
(47)	That cases of "usurpation"[66] of land should be dealt with as criminal trespass.	VI(h)

[66] Spelled "insurpation" in the report.

(48)	That whether father or husband may take action in cases of alleged adultery depends on the stage at which a marriage is regarded as legally concluded.	VI(i)
(49)	That the result of discussions between Premier and Prime Minister regarding liability of Nigeria Police should be awaited.	VI(j)
(50)	That cases of contempt in courts exercising only civil jurisdiction should be referred to criminal courts for punishment.	VI(k)
(51)	That the Registrars of Emirs' Courts must be adequately trained.	VI(l)
(52)	That *haddi* lashing should be abolished in cases of illicit sexual intercourse and defamation.	VI(m)
(53)	That the penalties for drunkenness under sections 401 and 402 should be increased.	VI(m)
(54)	That the penalties of *haddi* lashing, fine or imprisonment under section 403 should never be combined.	VI(m)
(55)	That Muslims should be prosecuted under sections 401 or 402, rather than section 403, whenever possible.	VI(m)
(56)	That "Preventative Detention" for habitual offenders should be introduced only after due study and consideration.	VI(n)

B. ULTIMATE OBJECTIVES.

(57)	That courts should consist of a single court-holder, sitting with such assessors as may be needed.	I(b), I(j)
(58)	That minimum qualifications (including a Diploma) should be required before substantive appointment to higher Native Courts.	I(e)
(59)	That the Regionalisation of all courts should be the ultimate policy of Government.	I(f), I(j)
(60)	That the aim of Government should be the ever-increasing co-ordination of all courts in the Region.	I(j)

Chapter 1 Part VII

Statement Made by the Government of Northern Nigeria on Additional Adjustments to the Legal and Judicial Systems of Northern Nigeria[67]

Contents:

[67] Kaduna: Government Printer, 1962. No specific date is given for publication of this White Paper; from various other indicators we have concluded that it was issued in June 1962, quite soon after the Panel of Jurists completed its work.

Statement made by the Government of Northern Nigeria on Additional Adjustments to the Legal and Judicial Systems of Northern Nigeria

INTRODUCTION

In the year 1958 the Government of the Northern Region of Nigeria, realising the need to reform the legal and judicial systems of the Region, invited a Panel of Jurists consisting of Sayyed Mohammed Abu Rannat, Chief Justice of the Sudan, Mr. Justice Mohammed Sharif, Chairman of the Pakistan Law Commission, Professor J.N.D. Anderson, of the School of African and Oriental Studies (University of London), Shettima Kashim, *Waziri* of Bornu, Mr. Peter Achimugu and Malam Musa, Chief Alkali of Bida, to advise it. Their terms of reference were:

> "In the light of the legal and judicial systems obtaining in other parts of the world where Moslem and non-Moslem live side by side, and with particular reference to the systems obtaining in Libya, Pakistan and the Sudan, to consider:
>
> (a) the systems of law at present in force in the Northern Region, that is, English law as modified by Nigerian legislation, Moslem law and customary law, and the organisation of the courts and the judiciary enforcing the systems, and
>
> (b) whether it is possible and how far it is desirable to avoid any conflict which may exist between the present systems of law;
>
> and to make recommendations as to the means by which this object may be accomplished and as to the re-organisation of the courts and the judiciary, in so far as this may be desirable."

2. The Panel submitted its report to His Excellency on the 10th of September, 1958 and most of the recommendations contained therein, which were set out in a White Paper laid before the Legislative House in December, 1958, were accepted by the Regional Government. One of these was that after a period of approximately three years the same Panel should return to the Northern Region in order to review the progress and advise on any further changes that might prove necessary.

3. The members of the Panel were therefore invited by the Regional Government to re-assemble on 24th May, 1962. This time the members of the Panel were given an absolutely free hand to consider the entire judicial and legal systems of the Region and to advise as they thought fit. Shortly before this date, the Government received with deep regret the news that Sayyed Mohammad Abu Rannat, the Chief Justice of the Sudan would be prevented by ill-health from attending. The remaining members toured a cross-section of the Region for six days, visiting Sokoto, Kano, Maiduguri, Makurdi and Ilorin, and held discussions with members of Native Authorities, Native Court judges and others. On their return they considered in detail the memoranda submitted by Heads of Government departments, Moslem Jurists and many others, and drew up a report which was submitted to the Hon. Minister of Justice on 4th June, 1962. This report contains two main elements, firstly a review on progress so far made in implementing their original recommendations, and secondly their further recommendations for future policy in the light of the progress made. The latter were listed in six heads as shown below.

4. Towards the end of the Panel's deliberations it was announced that the Hon. Senator Shettima Kashim, C.B.E., *Waziri* of Bornu had been selected as Governor-designate of Northern Nigeria, and that Her Majesty the Queen was to confer upon him the honour of Knighthood.

5. The Government wishes to record its gratitude for this invaluable further assistance to the Region rendered by the Members of the Panel and its sincere regret that the Hon. Chief Justice of the Sudan was prevented from coming.

REVIEW OF PROGRESS

6. In their first report one of the Panel's main recommendations was the introduction of a Penal Code and Criminal Procedure Code for the Northern Region, to be of universal application. They felt that as it would take time before Native Courts could be trained in the operation of these Codes, they should in the interim period be "guided" by them, whereas the High Court and Magistrate's Courts should be bound by them from their inception. The Panel were therefore gratified to see that Codes on the lines previously recommended had been enacted and had satisfied all shades of opinion. They were also agreeably surprised as to the progress made in training Native Court personnel in the operation of these Codes. This had necessitated a considerable training programme, which had been and was still being conducted by the Institute of Administration, Zaria, supplemented by the efforts of Government and Native Authority Staff in the Provinces. As a result the majority of the Native Courts of the Region were applying the main provisions of the Codes, even in cases where personnel had not been properly trained.

7. The Panel had also recommended a revision of channels of appeal from Native Courts. One Government Native Court per Province was to be established to hear appeals from Native Courts of grades B, C and D. A Sharia Court of Appeal was to be established to replace the Moslem Court of Appeal for the hearing of appeals involving the Moslem law of personal status from courts of grades A and A Limited. Appeals from courts of grades A and A Limited in other matters were to be heard by a Native Courts Appellate Division of the High Court, which would consist of High Court judges sitting with a Sharia Court Judge. The Panel noted that the provincial courts had won such a reputation for fairness and impartiality sufficient to warrant an extension of the system of Government Native Courts (*see* below paragraph 27). Also the Sharia Court of Appeal, despite the brief period of its life, had made a name for Moslem legal learning and sound judgments, and it was recommended that the judges thereof be increased by one. Once the constitutional difficulties encountered by the Native Courts Appellate Division of the High Court had been resolved, the appeal system was working to general satisfaction.

8. The Panel felt however that there remained certain factors which still hindered the universal application of the Codes. Firstly there were still certain areas, mainly where criminal jurisdiction was in the hands of low-grade courts consisting of illiterate members, in which the new system had had little impact; in such cases the court personnel were virtually untrainable and some re-organisation would be required.

9. In addition the Panel noticed that there were still a few instances where the old ways were being deliberately adhered to, in a manner obstructive to progress, and it was

recommended that the Government take a very strong line where such cases come to light.

RECOMMENDATIONS

I. – TRAINING AND CONTROL OF NATIVE COURTS

(a) Training

10. While appreciating that the existing system of three-month Primary Courses at the Institute of Administration should continue as it is in order to achieve extensive familiarity with the new system, the Panel considered that it is also necessary to introduce more intensive training for selected Native Court personnel, so as to make a start in raising the standard required for appointments. This should take the form of a Diploma Course of at least one year's duration at the Institute of Administration, which would by the time the first course begins be part of the Ahmadu Bello University. The Course would be sponsored by the Northern Nigeria Government in co-operation with the Ahmadu Bello University and the School of Oriental and African Studies, University of London. The syllabus and entry qualifications would be agreed upon between these three bodies and, it is hoped, would be accepted by the Ahmadu Bello University as representing one year's work towards a law degree. In future years the Diploma would be a basic requirement for a post in a higher Native Court.

11. The Panel recommended that Diploma holders would be entitled to payment on the higher salary scales; their terms of service would be fixed by the Government who would pay to Native Authorities grants-in-aid in respect of the salaries of Diploma holders employed by them on these terms. This would encourage court personnel to take the Diploma and would assist poorer Native Authorities to pay reasonable salaries.

(b) Appointment, Dismissal and Discipline of Court Member

12. Under the present system, Native Authorities with the Resident's approval appoint alkalai and the Residents appoint court members other than Chiefs and alkalai. These appointments take immediate effect, but subsequent confirmation by the Judicial Service Commission is required. The Panel recommended that particulars of all proposed appointments should be sent to the Ministry of Justice, and the names be submitted for the Judicial Service Commission's approval before the appointments take effect.

13. Furthermore, the Commissioner of Native Courts should be empowered to refer to the Judicial Service Commission cases in which he considers that court personnel should be dismissed or disciplined but in which the Native Authority has failed to do so. The Judicial Service Commission would thus be empowered to direct disciplinary action against court personnel, including dismissal.

(c) Guidance

14. The Panel recommended that the guidance principle should continue as at present in relation to the Penal Code, the Criminal Procedure Code, and the Evidence Ordinance, but as in the case of the Criminal Procedure Code at present, some basic provisions of the Evidence Ordinance should be selected and made binding upon Native Courts.

(d) Supervision and Review

15. In order that the new system have the maximum impact upon Native Courts their supervision should be entrusted to a specialised and legally trained body of Inspectors under the Ministry of Justice controlled by the Commissioner of Native Courts. These Inspectors would in addition to supervision of court work be responsible for initial training in the Provinces and for collecting material for the codification of native law and custom.

16. The Panel considered that the present system of review by administrative officers, being now by general consensus of opinion out of date, should be replaced by some system whereby the actual function of amending or revising a Native Court judgment or sentence should be performed by a court of appeal. Inspectors should therefore be empowered, whenever they come across a case in which they considered justice to have miscarried, to refer that case to the court to which appeal would have lain. The court of appeal would then uphold, reverse or amend the lower court's decision. In the interim period, before the Inspectorate was fully established, administrative officers could exercise the powers of Inspectors in order to procure the review of cases.

(e) Size and number of Courts

17. The Panel noted with satisfaction that, in several areas of the Region efforts had been made to reduce the number of low grade courts and also to reduce the number of court members, but observed that in certain cases criminal jurisdiction remained in the hands of a proliferation of grade D Courts whose members are largely illiterate. Furthermore, the number of members of these courts was usually far too large for efficiency. They recommended that criminal jurisdiction (except for questions of adultery) should be removed from low-grade courts of this kind and vested in a smaller number of higher grade courts. Also the number of members of Native Courts in general should be progressively reduced, and the ultimate aim should be courts staffed by single court holders, assisted by assessors when required. This would make it possible to insist on adequate qualifications and training on the part of all court holders and their scribes.

II. – PROVINCIAL COURTS

18. Where the court now consisted of a single Judge, an extra court member should be appointed so as to constitute a bench of two. This would be advantageous both in the court's administration, in that the court member could act as leave relief for the judge, and in the dispatch of cases where two heads are better than one (as usually applies in appeal cases). In the event of disagreement between the two the judge's opinion would prevail but the dissenting opinion of the member would be recorded. The judge would not be precluded from sitting alone where necessary.

19. With regard to Ilorin Provincial Court, the Panel recommended that since the proportion of cases in which customary law was applied was greater in the court than in any other Provincial Court (excepting probably Plateau) the court should consist of three members including one alkali, as in Benue, Kabba and Plateau Provincial Courts now.

III. – SHARIA COURT OF APPEAL

(a) Jurisdiction

20. The Panel recommended that the jurisdiction of the court should be limited to cases of personal status and family law under the Sharia.

(b) Membership

21. The Panel recommended that an extra judge should be appointed to the Court. This was made necessary by the fact that a Sharia Court Judge always sits in the Native Courts Appellate Division of the High Court.

(c) Status

22. The Panel recommended that the Sharia Court of Appeal Law, 1960 should be amended to remove all doubts as to the power of the Court to punish for contempt of court committed in its presence. Such power is vested in "courts of record" by the Penal Code, and the amendment recommended would simply be declaratory.

IV. – NORTHERNISATION IN THE JUDICIARY AND LEGAL DEPARTMENTS

23. The Panel appreciated that everything possible was already being done to northernise the Judiciary. The System of appointing newly called Northern barristers as Associate Magistrates, and more experienced Northern barristers as supernumerary Chief Magistrates with opportunity of acting as High Court Judge, had already been introduced. One of each had already been appointed, and more would be appointed shortly.

24. With regard to the Legal Department the Panel recommended that a Northern barrister should be appointed as soon as possible to the post of Solicitor-General.

V. – CODIFICATION OF PROCEDURE AND NATIVE LAW AND CUSTOM

(a) Civil Procedure

25. The Panel considered that, since the Penal Code and Criminal Procedure Code have now been largely assimilated, the next requirement was the drafting of a Civil Procedure Code which would, as with the Criminal Procedure Code, bind the High Court and District Courts, but guide the Native Courts until the time is ripe to make it binding upon them. This would of course be an even more far-reaching measure than the introduction of the Criminal Procedure Code and would have to take account of Moslem Law and the various kinds of customary law at present followed by Native Courts, and would take a great deal of time, thought and research to complete.

(b) Native Law and Custom

26. The Panel recommended that some initial steps be taken towards codifying native law and custom, particularly in respect of personal status. Since the numbers of different systems at present is legion, some measure of standardisation would be required. This would not of course mean imposing a standard legal system in areas where it was not recognised. What is suggested is that research into the provisions of native law and custom be undertaken, and codes be drawn up, each covering as wide an area as possible and incorporating all the provisions which are common to the system included, and excluding minor divergencies of detail. These would be of persuasive not binding effect initially, but in the long run would probably prove generally acceptable.

VI. – MISCELLANEOUS

(a) Government Courts in Major Towns

27. In view of the success of the Provincial Courts the Panel considered that a reform of Native Court organisation in the major towns of mixed population, such as Kano, Kaduna, Makurdi, Jos and possibly Zaria, was needed. The law governing immovable property in these towns is complicated, and the value of immovable property involved in cases originating therefrom is often beyond the limits of the jurisdiction of the existing Native Courts. What is required therefore is the establishment by Government of high-grade courts (probably A Limited) consisting of a sole judge, who should be highly trained. The Government would be enabled to confer on such courts land jurisdiction and any other jurisdiction necessary. The courts would of course have to take due note of the native law and custom applicable to any case as is now the practice in the Provincial Courts. These courts could supersede the mixed courts as at present established.

(b) Jurisdiction of Courts

28. The Panel recommended that the powers of imprisonment vested in magistrates of the first, second and third grades by the Criminal Procedure Code be equated to those of Native Courts of grades B, C and D.

(c) Haddi Lashing

29. The Panel recommended that consideration should be given to making the punishment of *haddi* lashing and "tazir" mutually exclusive. Under the present provisions of the Penal Code *haddi* lashing may be awarded in addition to fine or imprisonment for adultery, defamation, drunkenness and kindred offences.

30. The Panel also recommended that the penalty for being drunk in a public place, which, at present is limited to a £1 fine or seven days' imprisonment, should be increased; it is less than the penalty for a Muslim drinking alcohol, which is anomalous.

(d) Automatic Appeal or Murder Reference

31. The Panel recommended that wherever the death penalty was awarded in a Grade A Native Court, automatic appeal should lie to the High Court.

32. As an alternative they suggested a system of reference whereby the record of a capital case was sent to the High Court for confirmation.

ACTION PROPOSED BY THE REGIONAL GOVERNMENT

33. The Government has carefully considered the recommendations set out in the Report of the Panel and has accepted its recommendations subject to certain reservations noted below. The necessary legislation will be introduced shortly to implement the main proposals. The following paragraphs indicate the Government's specific intentions in respect of individual recommendations.

TRAINING AND CONTROL OF NATIVE COURTS

34. The Government intend to set up a Native Court Inspectorate Division in the Ministry of Justice at the first possible opportunity, and hopes to employ among others

some of the newly qualified Northern barristers, due to return shortly, in this work. Selection of Inspectors will be made very carefully and only those persons fully suited by qualification or experience will be selected. Furthermore, as a transitional measure it is proposed that the Minister of Justice shall be empowered to confer on individual Inspectors themselves the power of review.

35. It is hoped that the first Diploma Course will begin in October, 1962. The Government will fix the terms of service suitable to Native Court personnel holding either a Diploma gained on this course or another higher legal qualification, and will pay grants-in-aid in respect of salaries of court personnel so qualified, to Native Authorities who comply with the terms of service so fixed.

APPOINTMENT AND DISCIPLINE OF COURT MEMBERS

36. In respect of Native Courts of grades A and A Limited and Government courts the Government has accepted the Panel's recommendation that the powers of approving appointments and initiating disciplinary action against court personnel shall vest in the Judicial Service Commission. But as consideration of appointments by the Judicial Service Commission takes time, and in practice it is often necessary to make acting appointments at short notice, it is intended that the Minister of Justice be empowered to approve appointments to courts of grades B, C and D.

PROVINCIAL COURTS

37. The Government accepts in principle the proposal of appointing an extra member to single-judge Provincial Courts, and of converting Ilorin Provincial Court into a three-member bench. Both will be implemented in due course.

NORTHERNISATION OF THE LEGAL DEPARTMENT

38. The Government has accepted the recommendation to appoint a Northerner to the post of Solicitor-General as soon as possible. In order to enable a suitable officer to gain this experience, a Northerner will be appointed Deputy Solicitor-General to understudy the post.

CODIFICATION

39. As soon as several Inspectors have been appointed, one of their tasks will be to conduct the necessary research into the provisions of the various bodies of native law and custom, with a view to codification as recommended by the Panel.

HADDI LASHING

40. The Government intend to retain both forms of punishment as at present provided in the Penal Code, but accepts the recommendation that the penalty for drunkenness in a public place be increased.

AUTOMATIC APPEAL OR MURDER REFERENCE

41. The Government consider that the introduction of either of these procedures is unnecessary. Judges of Grade A Native Courts always inform condemned persons that they may appeal against sentences within thirty days from the date of judgment; and in addition Native Authority Councillors and administrative officers, during the weekly

prison inspections, invariably see condemned persons and ask them whether they wish to appeal.

CONCLUSION

42. The legislation enacted and the policy decisions taken by the Government as a result of the Panel's first Report determined the lines upon which the reform of the judicial and legal systems of the Region would proceed, and in the intervening years a good measure of reform has been achieved. The major changes referred to in this statement will give the Government the powers they require to direct and accelerate the process, and will provide Native Authorities with an incentive to improve their courts; in addition they will broaden the field of reform by including those branches of the law which are still not properly applied by Native Courts, namely law of evidence and civil procedure. The Regional Government is confident that as a result the stage is set for an even greater advance than has been witnessed over the past three years, and that an uniformly higher standard of Native Court work throughout the Region is now assured.