

SUPPLEMENT ON AFRICAN LEGAL EDUCATION

A. SECOND INFORMAL CONFERENCE OF TEACHERS FROM BRITISH AND AFRICAN LAW FACULTIES:

London, 8th - 10th July, 1966

A second informal conference of teachers from British and African law faculties was held under the auspices of the International African Law Association in London over the weekend of July 8-10, 1966.

The Conference, which arose out of proposals made at a meeting of the British section of the International African Law Association in November, 1965, was designed along the lines of the first such meeting held at Oxford in June, 1963. The business of the Conference concerned many of the questions considered at the previous meeting, but was specifically directed towards discussing problems which had arisen since the last meeting in connection with the recruitment of staff, linking arrangements between British and African faculties, facilities for post-graduate study and joint schemes of research and publication.

Representation

The Conference was attended by representatives from most British and African law faculties, in addition to a number of outside observers. This wide representation was made possible by the generosity of the Ministry of Overseas Development and the following companies: Shell; British Petroleum; the United Africa Company; Barclays D.C. & O.; Butterworths, and Sweet and Maxwell. The organizers were also fortunate to secure the attendance of the Hon. Mr. Justice G. B. A. Coker, President of the International African Law Association. The chair at the Conference was taken by Professor A. N. Allott.

The following delegates attended the Conference:

Ahmadu Bello University: Professor N. J. Coulson; Mr. C. McDowell.

University of Basutoland, Bechuanaland and Swaziland: Mr. A. M. R. Ramolefe.

Queen's University, Belfast: Mr. M. T. Knight; Mr. J. L. Ryan; Professor L. A. Sheridan; Professor W. L. Twining.

University of Birmingham: Mr. G. J. Borrie.

University of Bristol: Professor J. A. Coutts.

University of Cambridge, Kings College: Mr. K. Polack.
 University College, Dar es Salaam: Mr. Y. Ghai; Professor
 A. B. Weston.
 Trinity College, Dublin: Mr. A. K. Asmal.
 Edinburgh University: Dr. V. S. Mackinnon; Mr. M. R.
 Topping.
 Exeter University: Mr. D. L. Perrott.
 University of Ghana: Mr. D. K. Afreh; Dr. N. J. O. Liverpool.
 Haile Selassie I University: Mr. M. Kindred; Dean J. C. N.
 Paul.
 University of Ife: Mr. A. Okunniga.
 University of Keele: Professor D. Thompson.
 University of Lagos: Dr. Olu Odumosu.
 University of Liverpool: Mr. A. H. Hudson.
 University of London:
 I.A.L.S.: Professor J. N. D. Anderson.
 L.S.E.: Mr. J. W. P. B. McAuslan; Mr. A. E. W. Park.
 Q.M.C.: Professor F. R. Crane.
 S.O.A.S.: Professor A. N. Allott; Mr. E. Cotran; Dr.
 H. F. Morris; Mr. J. S. Read.
 U.C.: Professor D. C. Holland; Mr. M. A. Millner.
 Louis Arthur Grimes Law School, Monrovia: Counsellor G.
 Henries.
 University of Nigeria: Mr. B. O. Nwabueze.
 Oxford University, Wadham College: Mr. P. B. Carter.
 University of St. Andrews: Mr. N. A. P. Methven.
 University of Sheffield: Professor O. R. Marshall.
 University of Southampton: Professor A. Phillips.
 University of Zambia: Professor K. Bentsi-Enchill.

The Conference was also attended by the following observers:

Mr. P. Allsop	Mr. J. D. Keir
Dean J. S. Bainbridge	Mr. D. V. Lawford
Mr. R. J. Blair	Mrs. M. Mumford
Mr. J. C. Byrnell	Mr. M. Naish
Dr. P. Contini	Mr. A. Otuma
Sir Kenneth Diplock	Mr. S. H. W. Partridge
Mr. F. Dunnill	Mr. S. Roberts
Mr. J. B. Frankenberg	Mr. J. Rear
Professor W. B. Harvey	Mr. D. A. G. Sarre
Mr. D. J. Hill	Dr. D. G. Valentine
Mr. P. H. Johnston	Dr. J. Vanderlinden
Professor Quinton Johnstone	

The members of the Organizing Committee of the Conference were: Professor A. N. Allott (Chairman), Professor W. L. Twining, Mr. B. O. Nwabueze, Mr. J. W. P. B. McAuslan, Mr. I. Hamnett and Mr. S. Roberts (Organizing Secretary).

SESSION I

At the first session, following the opening of the Conference by the Hon. Mr. Justice G. B. A. Coker, President of the International African Law Association, representatives of African law faculties outlined the developments which had taken place since 1963.

There was general agreement that a number of problems had been solved since the last Conference. Applications to all faculties from students well qualified for admission exceeded the places available. Particularly in those faculties which had been open for a reasonable time, library facilities had ceased to present the pressing need which they had in 1963. An adequate supply of most teaching materials required by undergraduates had been assembled, although those required for post-graduate study were often not readily available. Recruitment for junior staff appointments for the most part no longer represented any difficulty. In many cases these could now be filled by a faculty's own graduates, with the result that the need for such appointments being made from among expatriate law teachers had diminished.

It was, however, the unanimous opinion of all the representatives who spoke that two principal difficulties remained to be overcome. The first problem related to the recruitment of persons qualified to fill senior staff positions. In most cases it remained necessary to recruit overseas. For this reason, many of the speakers urged that the United Kingdom universities should maintain a liberal attitude towards the secondment of senior staff. It was pointed out in this context that one year was the minimum useful period, although two or three year periods were more desirable.

The other major problem yet to be resolved, that of the provision of adequate facilities for post-graduate students, arose from a lack of study facilities for these students in the African universities and the limited financial resources which were available to enable them to study abroad. The hope was expressed that this latter difficulty could be remedied by the institution of scholarships and suitable courses of study at United Kingdom universities.

SESSION II

Professor Allott invited the representatives of the United Kingdom law faculties to give their views upon the topics which had been discussed and to state the policies of their faculties towards secondment.

All United Kingdom faculties represented at the Conference encouraged schemes of secondment and considered that individuals participating in such schemes should not have their seniority and promotion prospects in any way prejudiced. However, certain general points of reservation were made. First, some faculties, which supporting secondment in principle, were at present unable to spare any members of their staff owing to the pressure of their domestic commitments. Secondly, it was also suggested that the excellent opportunities for appointment and promotion in U.K. faculties left little incentive for law teachers to look further afield. A further factor which inevitably influenced plans for

secondment was the fluid political situation in many parts of Africa. While opinion was divided as to the potency of this cause, it was generally agreed that coups and deportations discouraged many people from seeking secondment to African universities. An instance was cited of one law teacher being upon the point of departure to take up a post in an African faculty when conditions there compelled him to change his plans and go to Australia instead.

The following existing schemes of secondment were specifically mentioned:

(i) *The Queen's University, Belfast*

There was at present a scheme sponsored by the Ministry of Overseas Development under which Belfast would appoint a lecturer willing to spend the first three years of his appointment at Ahmadu Bello University and then return as a permanent member of the Belfast faculty. This scheme had been advertised, but it had proved difficult to fill the post.

(ii) *The University of Edinburgh*

There exists at present schemes involving both U.B.L.S. and Haile Selassie I University. A plan was presently being discussed in conjunction with the Ministry of Overseas Development which would enable one member of the Edinburgh faculty to be away on secondment at any given time.

(iii) *The London School of Economics*

A policy is adopted by the Law Department under which 15 % of the teaching strength is available for secondment at any one time. Although Africa had enjoyed no special priority, it had had its share.

(iv) *The School of Oriental and African Studies*

The School was in a special position in that it had a considerable pool of suitable people available. The current policy of the School was to have a member of the staff of the Law Department on secondment to an overseas university at any one time.

(v) *University of Sheffield*

Here there was a similar scheme of joint recruitment to that at Belfast. Under this scheme it was proposed to appoint a teacher who would work for two years at Ife and then come permanently on to the faculty at Sheffield. There had been no response the last time that this appointment was advertised; but a further attempt would be made.

Following the reports from the representatives of British faculties' there was a discussion of the problems arising from them, and also of problems raised in the previous session by representatives of the African faculties.

Two clear and contrasted views emerged from the discussion as to the type of link which could best exist between British and African law faculties. One school of thought considered that the establishment of a formal link between individual British and African faculties was desirable. The other, which seemed to represent the general feeling of the Conference, considered that arrangements of an informal kind were preferable, under which faculties were not tied to one another, but individual schemes could be set up wherever the need and the means of satisfaction coincided. It was felt that the formal link might prove too inflexible and did not enable the best use to be made of the resources available.

One suggestion which emerged from the meeting was that a central organization should be set up, which would be in a position to act as a liaison agency between British and African faculties. This agency should function both as a source of information and as a clearing house through which the available resources could be channelled in the most effective way.

At the close of the discussion an *ad hoc* sub-committee was formed to consider and report back to the Conference upon the possibility of setting up an organization to facilitate relations between British and African law faculties.

SESSION III

At the third session the main topics discussed were: study facilities for African students in United Kingdom universities; schemes of research and publication; and library facilities.

Study Facilities

The Conference was told that special schemes of study for African *undergraduates* existed at Edinburgh and the School of Oriental and African Studies.

Facilities for *post-graduate* study of particular interest to African graduates at Belfast, Birmingham, Cambridge, Exeter, London and Oxford were mentioned to the Conference.

It was noted that few students would be in a position to take advantage of these opportunities without some form of scholarship assistance. The availability of British Council and Commonwealth Scholarships was noted, and attention was also drawn to the Junior Research Fellowships offered yearly by the Institute of Advanced Legal Studies. These last were intended for mature lawyers and did not directly envisage the holder undertaking research with a higher degree in view. The view was expressed that one of the functions of the central organization might be to provide information as to the availability of funds for African post-graduate students.

Publications and Libraries

Various problems were discussed in connection with the provision of library facilities, but the discussion always came back to the very high cost of textbooks and other teaching materials. Schemes of subsidy were suggested as a palliative.

SESSION IV

At the Fourth Session the Conference divided itself into three groups, which respectively discussed the problems incidental to the teaching of constitutional law, criminal law and land law in African law faculties.

A. The Problems of Teaching Constitutional Law

(Chairman: Professor J. C. N. Paul)

Professor Paul opened the discussion by listing some of the special features which might be encountered by those teaching constitutional law in African territories. Among those which he considered important were; the presence of tribal loyalties, poor communications, the cleavage of interest between the traditional authorities and the young educated élite, and the institution of the one-party state.

It was insufficient to introduce the student merely to the formal constitutional provisions of the country concerned. Professor Paul suggested that the student should also be confronted with some of the following specific questions: (*a*) the objectives of government; (*b*) the role of the constitution in creating an ideology in a revolutionary society; (*c*) the problems of security and the legitimate use of the military apparatus; (*d*) the role of opposition; (*e*) the problem of corruption in the public service, and (*f*) the role of the government in economic planning. It was generally valuable to expose the students to comparative materials, in particular those constitutions incorporating a strong executive arm.

When the discussion was opened to the group as a whole, a difference of opinion emerged as to the proper content of a constitutional law course. There were those who considered that a wide choice of materials should be made, including those normally encountered in courses on politics and government. On the other hand, some felt that the rigour of individual disciplines might not be maintained if too wide a choice of materials was indulged in. There was agreement upon the point that the size of the course in any circumstances demanded some degree of topic selection.

One interesting suggestion thrown out in the discussions was that in emerging countries there might profitably be set up a Constitutional Development Plan—along the lines of the known Economic Development Plans—so that controlled constitutional growth could be facilitated.

B. The Problems of Teaching Land Law

(Chairman: Professor O. R. Marshall)

Discussion started with a brief consideration of how land law was at present taught in those African law faculties represented at the round-table. From this the fundamental problem which emerged was that courses generally were unavoidably enlarged as they had to deal with three systems of law: customary law; received statute and case law; local statutes and case law. Various remedies were suggested for dealing with this fundamental problem; (*a*)

adherence to a fairly traditional land law course, which would exclude the law relating to land use (*e.g.*, Rent Acts, agricultural use and credit legislation); (*b*) division of the course into two, one in 'modern', and one in customary law; (*c*) endeavouring to discover from extraneous sources what the main problems of the land were in any particular African country and tailoring the course to a consideration of the legal solution of those problems. A subsidiary problem which was implicit in these suggested solutions was to decide the ultimate object for which students were being taught land law; *e.g.*, were they to become conveyancers working mainly in the field of private commercial transactions, or land officers and legal assistants working in state agricultural banks where a knowledge of agricultural use law and the problems of agricultural credit in a peasant society would be essential to them?

These questions led on to a topic on which there was further division of opinion. Granted that some choice of topics to be covered had to be made, should the choice be openly based on policy grounds with the corollary that throughout the course policy should be clearly articulated to the students in an endeavour to get them to understand the angle from which the course was being tackled and the economic and social mainsprings of the law, or should policy be kept to a minimum, both in the initial choice and in the teaching of the course? For the first view it was argued that, without a clear policy background, the initial choice might be hazy and the unity of the course never made clear to the students; for the second view it was argued that students could not appreciate the policy choices until they knew the law, the course was full enough as it was, and policy could only be introduced at the expense of substantive law which would be undesirable. The group agreed only to differ.

What emerged clearly from the discussion, which was agreed upon all sides to have been useful, was that while there were common problems, solutions should be worked out in the context of and to fit the country in which the land law course was being taught; a "universal" solution—be it English, Nigerian or East African—was doomed to failure.

C. The Problems of Teaching Criminal Law

(Chairman: Mr. James S. Read)

The Chairman introduced the discussion with an outline of the sources of criminal law in African countries. He indicated that in the University of East Africa the Faculty of Law had responded to the needs of the local situation by including within the current LL.B. syllabus compulsory courses in criminal law and criminal procedure, and an optional course in criminology and penology. A large proportion of the graduates from that Faculty worked soon after graduation as magistrates or State prosecuting attorneys. In conducting these courses during the previous three years, the Chairman had found it valuable and practicable to emphasize their practical and sociological aspects. The course in criminal

procedure had been taught for the greater part by means of mock trials and moots; these were accompanied by analytical seminar discussions of some major problems of criminal procedure, such as the problem of balancing the interests of society against the freedom of the individual in such contexts as pre-trial procedure, illegally obtained evidence, etc. The students had acquired a basic knowledge of the fundamental rules of local procedure, while at the same time examining those rules in a wider critical context. The Chairman suggested that courses in criminal law itself should be taught (perhaps even in English faculties) with greater attention to the practical aspects—such as problems of trial procedure and police activity—and to the criminological aspects.

Some support for these views was expressed amongst those who participated in the discussion, although the opinion was also strongly held that primary importance must be given to the traditional content of the criminal law course, the definition of general principles on liability and of the major offences, and that this left very little time for the other aspects mentioned.

SESSION V

FINAL DAY: RESOLUTIONS

At the final session the Chairmen of the respective discussion groups presented brief reports on the main conclusions of their groups. Members of the Conference were in general agreement that these exchanges of views had been one of the most valuable features of the Conference as a whole.

Professor Allott then presented the report of the *ad hoc* sub-committee which had been established to consider the possibility of setting up a British clearing-house which would facilitate relations between British and African law faculties:

1. The committee agreed that such a clearing-house should be established.
2. Its objects should be broadly drawn and should not be limited to the recruitment of staff.
3. The Society of Public Teachers of Law, the Inter-University Council, the British Council and the Ministry of Overseas Development could all help with this proposal, but none of these bodies could be asked to take over full responsibility for it.
4. An extended British section of the I.A.L.A. might be able to act as organizing body for such a clearing-house. It was essential to ensure that any such body should be representative and to this end law faculties in the United Kingdom and elsewhere should be encouraged to join the Association as corporate members.
5. The Association should approach the S.P.T.L. and ask them to put the matter on the agenda of their forthcoming General Meeting.

6. A small directing committee should be appointed by the Association's British section, which would be responsible to the Association.
7. Some full or part-time staff would be required to provide the necessary services for the clearing-house. As an indication of the minimum required, it was suggested that there might be a part-time Administrator together with a half or full-time assistant and secretarial assistance.
8. Finance might be sought from the Commonwealth Foundation or some charitable foundation. Funds would be required to meet the cost of staff salaries and the functioning of the clearing-house, as well as special funds, *e.g.*, for scholarships.
9. The clearing-house would most conveniently be located in London.

Professor Allott moved, seconded by Mr. Nwabueze, that the report of the committee be accepted. The motion was carried, *nem. con.*

After a considerable discussion of the practical difficulties and requirements of operating such a clearing house and the means of establishing it, it was proposed by Mr. Nwabueze, seconded by Mr. Cotran, That the British section of the I.A.L.A. be asked to ensure the implementation of the report. This motion was carried, *nem. con.*

The meeting concluded with warm expressions of thanks by the meeting to the Organizing Committee and its Secretary, Mr. S. A. Roberts, and to the three rapporteurs, Messrs. Ghai, McDowell, and Nwabueze.