D93

RESTATEMENT OF AFRICAN LAW PROJECT

EXTRACTS FROM FIRST ANNUAL REPORT 1959-60

1. General

This is the first Annual Report submitted on the work of the Project, which commenced active operations in October 1959 (though preliminary work began in May 1959 with the appointment by the School of Mr. W.C. Daniels as a Research Assistant in African Law).

The objectives of the Restatement of African Law Project are to survey existing sources of information, published and unpublished, on African customary law in the Commonwealth territories of Africa, to arrange for their supplementation by further local enquiry where necessary, and to restate the principles of African customary law as they vary from one people or ethnic group to another.

These objectives have both an academic and a practical utility. Apart from the necessity of recording and studying varieties of customary law before they vanish from the African scene, it is essential for the future economic and social development of African countries that their laws - in which customary law still plays a major part - should be studied and analysed.

2. Financial

The present estimate is that the Project as a whole will require a seven-year term for completion. The major proportion of the funds for the Project is being provided by the Nuffield Foundation, who have promised a grant of £14,200 to meet the cost of the Project during its first three years of operation; but the School is continuing to meet the salaries and research expenses (including study-travel) of the Reader and Lecturer in African Law at present on its strength.

3. Staff

There are at present six members on the staff:- Mr. W.C. Daniels (a national of Ghana) who holds an LL.M. in Laws from University College and a Diploma in African Law from this School; Mr. W.T. McClain, a national of the United States of America and a graduate in Laws of Indiana University and a member of the Bar of Indiana; Mr. E. Cotran, a Palestinian Arab by origin, holding an LL.B. degree at the University of Leeds and a Diploma in International Law at the University of Cambridge; Miss J.A. Hall is a graduate in History of the University of London, and was appointed as Clerican and Bibliographical Assistant; Mr. J.S. Read, Lecturer in African Law, and myself are also working on the Project.

4. Research in Progress

The work of the Project can be divided into two phases:-
(i) a preliminary phase, during which comprehensive bibliographies of all known published and unpublished sources of information on the customary law of the areas under study are compiled and analysed, and (ii) the phase of "restatement" of the customary law, carried out on the basis of the written and other material made available by the analytical bibliographies.

(a) The preliminary phase is already well-advanced. All English language periodicals which may contain material on African customary law are being systematically read, and provisional bibliographies should be available for circulation to persons interested by the end of this year. In the light of comments and suggestions for additions made by the recipients of the provisional bibliographies, definitive analytical bibliographies will be compiled and published.

(b) In order to complete the bibliographies and lay the foundations for restatement of the customary law, the staff of the Project are making or will make, a number of visits to the field (for which see 5 below).

(c) It appeared to us an essential preliminary to the work of restating the customary law as it is administered today to make a brief survey of the existing legislative and judicial machinery for the application of customary law in African territories; the members of the Project have therefore compiled a statement on "The Judicial and Legal Systems of African Territories" (such territories comprising the British Territories, Liberia and the Sudan). This statement was circulated as part of the background material for the London Conference on the Future of Law in Africa (28 December 1959 - 8 January 1960). As there exists no comparable brief statement on the legal systems of African countries, the work was generally commended by delegates to the Conference. The drafts have subsequently been revised by experts in each territory.

(d) In order to test the procedure for restatement of customary law, experimental restatements of the customary law relating to adultery - based exclusively on published sources - have been drafted. (It is necessary to emphasize that these are merely tentative, since in practice they would be amplified or corrected by local discussions with the people themselves, by native court decisions, etc.) Three such statements, one for the Yoruba of the Western Region of Nigeria, one for the Kamba of Kenya, and one for the Tswana of Bechuanaland, have been prepared.

These statements are in English. Arrangements have been made for the translation of them into the appropriate vernacular and back again into English in order to discover legal and linguistic problems that may arise in practice. These procedures will, apparently, have linguistic as well as legal interest.

5. Visits

Mr. Cotran will be making a six-months' visit to East Africa from July to December 1960, inclusive, during which he will visit Kenya, Uganda, Tanganyika, Zanzibar and probably the Somali Republic if there is time. The objects of this field-trip are as follows:-

(i) To complete compilation of the bibliographies of published and unpublished sources relating to customary law; and for that purpose to make (or arrange to be made) inventories of relevant material at all centres (e.g. provincial and district offices, academic institutions and libraries, mission stations).

(ii) to establish legal maps for the region, showing homoeonomic* ethnic groups and sub-groups.

(iii) To procure for the Department of Law comprehensive documentation of all legislation and documents relating to customary law and its administration in each territory.

(iv) To note and examine in detail, and - where possible and desired - to assist, any project or machinery for the recording of customary law.

It is not intended that any independent field investigation of the customary law itself should be undertaken at this stage.

Mr. Daniels will be visiting West Africa, and Mr. McClain will be visiting Central and Southern Africa, on similar missions during the first six months of 1961.

6. Contacts and Collaboration with other Institutions

Special emphasis is placed on collaboration with governments and university institutions in Africa in the work of recording and analysing the customary law. Relationships with legal and administrative authorities in Africa are already good.

* having similar laws

Several possible official schemes for the recording of customary law are at present being confidentially discussed with representatives of the appropriate governments; it is probable that the Project will be invited to participate in and advise on such schemes when they are introduced.

At the London Conference on the Future of Law in Africa (already referred to), which was attended by judges, law officers, administrative officers and other representatives of the English-speaking territories in Africa, the recording of customary law was one of the items on the agenda. The Restatement Project was explained to delegates by myself, and warm support for the aims and methods of the Project was expressed by practically all the delegates present.

Collaboration with non-British persons or bodies is developing most satisfactorily. Work of this nature cannot be confined to rigid national lines since national boundaries in Africa are mainly arbitrary and do not follow ethnic divisions. The pooling of experience is also helpful in a field like this. The creation of an International African Law Association, for the specific purpose of facilitating international collaboration in the study of the law in Africa, has already turned out to be a valuable initiative (in the Belgian Congo, for instance, it is local sections of I.A.L.A. that are carrying out the investigation and restatement of the customary law). There is close collaboration between the Restatement Project and researchers in Belgium and the Sudan; the Restatement Project's organization, working procedures, forms, etc., are being adopted in toto in these countries, thus ensuring international standardization and harmonization of activities. French langaage periodicals will be systematically read by the Belgians and French for bibliographical purposes; and arrangements have been made for the exchange of relevant bibliographical items between the Project and continental schemes.

A.N. ALLOTT
June 1960

RESTATEMENT OF AFRICAN LAW PROJECT

School of Oriental and African Studies, University of London.

INSTRUCTIONS FOR FIRST FIELD SURVEY

The objectives of this preliminary visit are:-

1. To complete compilation of the critical bibliographies of published and unpublished sources relating to customary law; and for that purpose to make (or arrange to be made) inventories of relevant material (pro forma annexed) at all centres (e.g. provincial and district offices, academic institutes and libraries, mission stations).

2. To establish legal maps for the region, showing homoeconomic ethnic groups and sub-groups (to be done in collaboration with sociologists, etc, on the spot and in U.K., and showing relationships across international frontiers).

3. To procure for the Department of Law comprehensive documentation of all legislation and documents relating to customary law and its administration in each territory (viz. copies of central and local legislation affecting native courts or customary law; circulars, etc, issued by native courts advisers on administration of customary law, etc; customary law reports), and to arrange for this documentation to be kept up to date.

4. To note and examine in detail, and - where possible and desired - assist, any project or machinery for the recording of customary law (e.g. local law panels).

N.B. It is not intended that any independent field investigation of the customary law itself should be undertaken at this stage.

January 1960

A.N. ALLOTT
Director of Project