

Chapter 1 Part VII

Statement Made by the Government of Northern Nigeria on Additional Adjustments to the Legal and Judicial Systems of Northern Nigeria⁶⁷

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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

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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 under-study 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.