

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

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**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 28<sup>th</sup> August, 1958. Between that date and the 10<sup>th</sup> 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 10<sup>th</sup> 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 (*diyyah*) 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 *diyyah* 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,

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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.