

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, 1962⁶²

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⁶² Source: National Archives Kaduna: S.MOJ/12 Vol. II, 135-169.

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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 *Wasiri* 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 underpaid. 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) “Wakils”, 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 seem 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 *baddi* 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 *baddi* 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 *baddi* lashing. This is, we feel, wrong in principle, for the *badd* 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 *baddi* 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 *qadhif* (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 in the alternative. 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) Habitual offenders. 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

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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. <u>SHORT-TERM.</u>	<u>Section</u> ⁶⁵
I. <u>Training and Control of Native Courts</u>	
(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. <u>before</u> 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 <u>tuhma</u> 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.

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- (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.

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- (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 *baddi* 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 *baddi* 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)