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FOREWORD

This year the Journal of African Law is celebrating the tenth anniversary of its publication and presents this issue as its decennial commemorative number.

The first ten years of the life of a journal are the most critical in its history. Within them the journal may either perish or become established and make a strong impact upon the class which it serves in the community. If established it may give proofs of fulfilment of its policy and realization of its objectives, or may show a deviation from its planned course towards another equally good objective, or demonstrate aimless drifting unworthy of respect.

In the Editorial to the first number of the first volume, the Editorial Board summed up the aims and objects of the Journal in a few words as follows:

> "Our intention is to provide such a periodical which may serve, in its chosen fields, to provide both material for the objective study and criticism of the law, and a forum for the discussion of general principles. We intend to deal primarily with the law of British Africa south of the Sahara (other than the Union of South Africa), including the general law (whether of English, colonial, Roman-Dutch, or Indian origin), African customary law, and Islamic law; but we hope to publish from time to time matter relating to the rest of Africa or to comparative or colonial law generally. Special attention will be paid to customary law within these limits."

Has the Journal, within the past decade, lived up to these ideals?

Of course when we talk of African law, we do not necessarily imply the existence of one single system of law, as common law for all African territories, in the same sense that we cannot point to one specific system of law which can be called European law. But certainly we can with justification talk of law in Africa. The indigenous rules by which life in primitive African society was regulated is law in Africa. So too are the customary laws as moulded to suit social, economic and cultural revolution in progress in the developing nations in Africa. The introduced laws—English, French and Islamic—which have come to form part of rules and regulations by which many modern African states regulate their affairs, are also laws in Africa.

The Right Honourable Lord DENNING, with faith in Africa and her future, looked confidently to the Journal bringing about harmonization of the different systems of law in Africa into one

comprehensible body of laws as one of the great forces supporting the evolution now taking place in Africa towards a great civilization which must contribute in no small measure to the general civilization of the world. Thus in his foreword to the first number of the Journal he says:

> "If the peoples of Africa are to emerge into a great civilization, then these discordant pieces must all be sorted out and fitted together into a single whole. The result is bound to be patchwork, but we should remember that a patchwork quilt of many colours can be just as serviceable as one of a single colour, and is often more to be admired because of the effort needed to make it. So must African Law be made serviceable: and it can only be done by great effort."

The discordant pieces have not as yet been fitted into a single whole: indeed they may never be. Nevertheless the picture which is emerging is serviceable all the same, and is an achievement; its value consisting, among other things, in the similarity of concepts of law and procedure which has emerged and continues to emerge from the diversity of colours.

Recognition of the need for study of African law, as Schiller says,[1] dates from the end of the Second World War, intensified, as far as tropical British Africa is concerned, in 1949. From then on, African law or law in Africa assumed special importance not only to scholars of the administering colonial powers and of the African territories themselves, but also to scholars of non-imperial nations, the United States of America in particular. African law thereupon acquired international interests. From then on, international conferences, seminars and symposia on law in Africa in its various forms and aspects became regular events.

The rise and growth of the spirit of nationalism and self-determination, resulting in the attainment of independence of the former colonial territories, one after another in rapid succession, opened a new page in the history of African studies.

An organ of the type of the Journal of African Law is the one indispensable institution necessary to promote, stimulate and sustain interest in the study, firstly of the systems of laws of the various territories separately and secondly of a comparative study of law in Africa together, and of law in Africa and other systems of law. But prior to 1957, there had not been in existence a single periodical solely or largely devoted to law in Africa, covering a wide field both as to territory and subject, to cope with the renaissance that occurred in the study of law in Africa.

In these circumstances there was no time more opportune for the founding of the Journal than the year 1957, the year in which, for the first time in the long history of colonization, a colony in tropical Africa emerged into independence. I refer to Ghana's independence in 1957.

The first volume of the Journal set a high standard; the ten other volumes which have since been published have maintained and improved upon that standard. The articles have been written from

[1] Professor A. Arthur Schiller, Review Article, Allott's *Essays in African Law*, [1960] J.A.L. 175.

various points of view, the legal, sociological, anthropological, political and administrative. The reviews and comments which the Journal carries have covered publications, reports, and events of legal significance, e.g. constitutions, legal systems, law reforms. The notes on cases cover decisions from different countries in Africa; and the regular bibliography has kept the reader up to date with African legal literature and legal scholarship. The combined effect has been a production not only of Lord DENNING's predicted "patchwork quilt of many colours, as serviceable as one of a single colour", but, more than that, a revelation of similarities in the concepts of the indigenous law of many African countries or tribes and their influence on legal thinking generally. Furthermore the Journal has, within these ten years, shown that in the application of the common law of England and African countries local circumstances may necessitate different approaches.

Many an important decision of a Local Court (variously known as Native Tribunal, Native Court or African Court) on customary law, particularly one which has not been the subject of appeal to a superior court, has remained in obscurity, to be known only to the research student. It is a well-established principle, especially in West Africa, that the customary law, being of an unwritten source, resides in the breasts of the traditional elders of the locality whose law it is. Therefore a declaration of that law made by a Local Court constituted by traditional elders is an authoritative pronouncement binding even on the superior courts, unless disqualified under the principle of repugnancy or where a superior court has previously made a pronouncement on the issue after proper enquiry into the nature and content of that customary law.[1]

By reason of this fact, the Editors of the Journal have not been slow to give some decisions of the Local Courts prominence by the inclusion now and again in the Journal of material from some of those decisions, to make available to its readers this important source of the customary laws; and sometimes too they have had to call attention to the significance which the superior courts in one part of Africa or the other have attached to such decisions.

Here it may be appropriate to refer to the editorial note on the East African case of *Kinyanjui Kimani* v. *Muiru Gikanga & anor.*[2], a case which dealt with mode of ascertaining customary law in Kenya, and the relevancy or otherwise of a decision of a Local Court in such process. To conclude their notes, the learned Editors had to refer the reader to the view which obtains in West Africa:

> "It is by now well established in West Africa, where questions of this sort have been raised for many years, that although the means of ascertaining the existence or content of customary law may resemble those employed for determining questions of fact, ... it is a finding of law not fact." (*op. cit.* 41.)

The Journal has been most valuable to judges, practitioners, and academicians, also to students in the fields of law, sociology and

[1] See *Anane* v. *Mensah*, [1959] G.L.R. 53; *Kwam* v. *Nyiani*, [1959] G.L.R. 67.
[2] [1966] J.A.L. 40.

anthropology. All these classes of people have read the Journal with satisfaction, many of them are inspired to contribute to its pages through articles, commentaries, reviews and notes.

And now, a brief look into the future. The Journal of African Law is the official organ of the International African Law Association: an international body actively concerned both with the development of law in Africa, the judicial systems of, and the administration of justice in, the various developing countries in Africa, and the concept of the rule of law, its interpretation and application in Africa. And there is much excitement today in Africa in the field of law and culture. New constitutions are being forged; old ones are being amended or replaced. There is, for example, the question of recording the customary laws of tribes whose laws have not yet received judicial investigation. There is need for restatement of the law, both indigenous and introduced; and there is the big question of law reform which may take the form of codification, revision of old statutes and the enactment of new statutes either to replace old ones or to meet new situations created by the social, economic, political and cultural revolution now in progress all over Africa. All these open fresh fields of study of legal concepts and procedure generally.

The Journal has laid the foundations; it must now move forward, together with the International African Law Association, to play a significant role in the new ventures.

As its performance and achievements over the past decade have won for the Journal the confidence of the Bench, Bar and academicians, so is it expected to continue, in vigorous academic independence and unmistakable professional integrity, to inspire its readers.

N. A. OLLENNU[1]

[1] Judge of the Court of Appeal of Ghana; President, International African Law Association.