

CHAPTER 9

LEGAL LITERATURE IN THE SUDAN

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Background: Conditions Affecting Legal Publishing

This brief introduction considers the potential market for legal literature and also some of the constraints which may affect its production.

The Legal Profession

The Judiciary in the Sudan is divided into two branches: the Civil Division and the Sharia Division. In December 1977 there were two hundred and seventy-one judges in the Civil Division and two hundred and three judges in the Sharia Division. The number of advocates during the same period was four hundred. The decline in the number of judges and the corresponding rise in the number of advocates has been noticeable in recent years. Between October 1974-January 1976 eighty-seven judges left the Judiciary. Thirty-seven of these resigned and the rest were either appointed to other government posts or were pensioned off.

Legal Education

As to academic lawyers the Faculty of Law, University of Khartoum had in December 1977 thirteen full-time lecturers, seven part-time lecturers and two teaching assistants. In addition three lecturers and eight teaching assistants were on study courses abroad and two lecturers were on secondment abroad. The number of lecturers will increase, it is hoped, when the teaching assistants studying abroad complete their courses. The Islamic University of Omdurman, Faculty of Law and Sharia, had in December 1977 twenty lecturers. Twelve of these were full-time and eight were part-time. The classification of academic staff in the University of Cairo, Khartoum Branch, is a little different. In 1976 there were five full-time lecturers; three lecturers were seconded to the Faculty for a year and seventeen were seconded to the Faculty for a period varying from ten days to three months.

Of the three universities, only the University of Khartoum has post graduate students. During the academic year 1977/78 there were twenty-five post graduate students. Ten of these were in the Department of Sharia and fifteen were in the Civil (i.e. non-Sharia) Departments.

The annual intake varies not only between the three universities but also within the same university. For the academic year 1977/78 the intake was eighty-six for the University of Khartoum and twenty-seven for the Islamic University of Omdurman. The intake for the University of Cairo, Khartoum Branch, during the academic year 1974/75, was one thousand and twenty-one. It is clear that in terms of intake the University of Cairo, Khartoum Branch, offers attractive choices to intending law students. Unfortunately many of these students do not pass the Bar examination or even attempt it.

Several articles on the legal system and the role of the legal profession have been published, but legal education has come under especially close scrutiny.¹ In particular one might mention the Report of the Committee on Unification of Legal Education, Taqrir Lajnaht Tauhid Al-Talim Al-Qanuni, produced by the National Council for Higher Education, Khartoum, 1976. This report covers the Faculties of Law in the University of Khartoum, Islamic University of Omdurman and the University of Cairo, Khartoum Branch. It sets out first data on legal education which includes: regulations governing admission; content and duration of courses; method and language of teaching; law libraries provisions; examinations and assessment of students; number of lecturers; and, lastly, the annual intake and number of graduates during the period 1966/67 - 1974/75 in the case of University of Khartoum and Islamic University of Omdurman, and 1955/56 - 1974/75 in the case of University of Cairo, Khartoum Branch. The three universities differ on practically all these points and as might be expected the Committee makes recommendations towards unification of certain aspects of legal education. Also, the Committee recommends a training programme for law graduates. A memorandum submitted by

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Dr. Zaki Mustafa, then Attorney-General of the Sudan, is attached to the Report. Eight years earlier in an unpublished paper on legal education in the Sudan, Dr. Mustafa had argued that the research functions of the academic staff at the University of Khartoum could be widened to include not only more courses for graduates, members of the legal profession and members of local (i.e. Native and Chiefs) courts but also publication of a monthly bulletin containing legislation, case-law, news about research activities and the legal profession generally.

Law Publishing

Legislation and other official publications are produced by the government printer. A local firm, McCorquodale & Co. (Sudan Ltd.) published the Digests mentioned later in the paper in the 1950s but the most notable local publisher in recent years has been the University of Khartoum Press. On a non-commercial scale the Faculty of Law, University of Khartoum, has also made an important contribution. Several law books have been published by companies outside the jurisdiction, in Egypt, Lebanon, the U.K. and U.S.A. No local financial aid is available for the publication of legal works and no institution administers local or regional subsidy schemes for the writing or publication of legal material. It is true that the cost (i.e. of typists, stencils, paper and binding) of the series of monographs described later were paid either by the Faculty of Law, University of Khartoum, or the Ford Foundation. However, these are of limited circulation and are not on sale to the general public. Publishers may be deterred by the small local market, although the wide ranging list of overseas subscribers to the Sudan Law Journal and Reports would indicate that there is international interest in publications on Sudan law.

Other Factors

Two other factors are likely to affect the development of legal literature in the Sudan. These are the law reform and the language. Of course these are national problems but they also affect law publishing. The permanent Constitution of 1973 contains some provisions on both problems. Thus Art. 1 provides that "the Democratic Republic of the Sudan is a unitary, democratic, socialist and sovereign republic, and is part of both the Arab and African entities". The Constitution goes on to make two specific provisions for sources of legislation and language. Under Art. 9 "the Islamic Law and Custom shall be the main sources of legislation" and under Art. 10 "the Arabic language shall be the official language of the Democratic Republic of the Sudan". This article has to be read subject to Art. 5 of the Southern Provinces Regional Self-Government Act 1972, which under Art. 8 of the Permanent Constitution 1973 is an "organic law" establishing a Regional Self-Government in the Southern Region. Art. 5 reads: "Arabic shall be the official language for the Sudan and English shall be the principal language for the Southern Region without prejudice to the use of any other language or languages which may serve a practical necessity for the efficient and expeditious discharge of executive and administrative functions of the Region."

Both problems are interconnected, not least because they tend to take the Sudan away from the common law orbit and reduce the number of countries that might be interested in legal publications on or for the Sudan. A book in Arabic and dealing with a common law subject will hardly sell in common law countries because of the language difficulty. At the same time it will not sell in Arab Countries because of the differences in legal systems.

As to law reform, it has become apparent that in Sudan it is difficult to discuss law reform outside the context of Sharia Law. Thus at the time of writing there is a Law Revision Committee whose terms of reference are to bring all the Sudanese laws in conformity with the rules and principles of Sharia law. Yet, the Government is continuing with the publication of the current edition of the Laws of the Sudan and this will certainly be rendered out of date by the implementation of the Committee's recommendations. Also, since many countries do not have Islamic law in all areas of legal relationships, law reform will further reduce the market for books on or for the Sudan.

Current Provision of Legal Literature

Legislation

The publication of legislation in the Sudan is provided for in part by the Interpretation and General Clauses Act 1974, section 9 of which reads,

"Every law shall be published in the Gazette within two weeks of the date of its enactment and shall, unless another date is therein provided, come into force after the lapse of one month from the date of its publication."

The word "law" is defined in section 4 as meaning "any enactment other than the Constitution and includes Acts, Provisional Orders and any regulations, subsidiary enactments or orders issued under Acts."

At this stage two observations must be made. First, it is clear that subsidiary legislation is published in the same Gazette as primary legislation. The only exceptions are judicial circulars. The other observation is that there are no unofficial publications of legislation in the Sudan. The Gazette, the Laws of the Sudan and other publications mentioned below are official Sudan Government publications.

Any legislation, whether primary or subsidiary, is therefore first published in the monthly Legislative Supplement to the Sudan Gazette and subsequently in the Laws of the Sudan, which is now in its fifth edition. Before 1948, however, they have been published separately. The Supplements issued since the Laws of the Sudan, 2nd ed., were subsequently published in annual volumes known as the Annual Supplements to the Laws of the Sudan. Similarly, the third edition has Supplements, one for each volume, and containing the laws of 1940 to 1948 (inclusive). The Laws rearranged under the original Titles and Sub-Titles and any section in the Laws of the Sudan which has been amended is reprinted in full. Some laws which have been very much amended have been reprinted in full.

It is not possible to know much about the Laws of the Sudan, 1st ed., since it is not available in any of the libraries in Khartoum, including the Central Archives. In the later editions it is stated that the first edition was published in 1907-1908 and consisted of two volumes. Volume I contained legislation in chronological order and Volume II contained the Penal Code, the Code of Criminal Procedure and the Civil Justice Ordinance with their subordinate legislation together with the Mohammedan Law Courts Ordinance.

The remaining editions, which are available, will be noted briefly. The second edition Laws of the Sudan, Revised Edition 1926-28, is in three volumes. Volume I contains legislation from 1899-1922; volume II covers the period 1923-28 and volume III contains the Civil Justice Ordinance, Orders under the Civil Justice Ordinance; the Egyptian Judgments Ordinance 1901; the Bankruptcy Ordinance 1928; the Bankruptcy Forms Rules; the Wills and Administration Ordinance 1928; the Official Administrator Ordinance 1928; the Prescription and Limitation Ordinance 1928; and the Pre-emption Ordinance 1928. The Revised Edition was followed by eleven annual supplements until the publication of the third edition in 1940. The complexity of legislation increased the number of volumes to four and by 1954 when the fourth edition appeared the volumes reached eleven. The fifth edition is now in progress and only volumes I and II covering the periods 1901-1925 and 1926-1938 respectively have so far been published. The remaining six volumes have been edited and are now with the printers.

These publications are either in English or Arabic or both. The first four editions of the Laws of the Sudan are in English and the fifth edition is in both languages. The Gazette, on the other hand, has always been published in English with parallel Arabic translations. As to the Supplements, these used to be published in English until 1961. From 1962-1971 they were published in both languages. When Babiker Awadalla, a former Chief Justice and a Pan-Arabist, was Minister of Justice, a further change occurred in August 1971 and continued until 1973. During this period the Supplement was published in Arabic only. Finally in 1973, after Dr. Zaki Mustafa had become Attorney-General of the Sudan, the Supplement started to be published in both English and Arabic and this practice is continued to the present day.

The only other collections of legislation are the three volumes of Ordinances Promulgated by the Governor-General of the Sudan, etc., which covers the period 1899 to 1908 (published 1907-8) and the Ordinances and Selected Proclamations (etc.) issued in two years 1909-1913 (published 1914). These are reprints of certain important laws, notices, rules, regulations and orders reprinted from the Gazette and published by the authority of the Governor-General.

Having reviewed these publications it remains to indicate briefly whether the system of publishing legislation is satisfactory. These publications have not necessarily made legislation readily available. The reason is that each of the five editions of the Laws of the Sudan has an average life cycle of fourteen years. The number of Supplements issued since the last edition is obviously great and a lawyer who wishes to know whether a particular enactment in the Laws of the Sudan has been repealed or amended has to consult all of them. This can be time consuming as was stated in the preface to the Laws of the Sudan, 3rd. edition:

"Volumes 1 to 4 of the Laws of the Sudan contain the ordinances and subsidiary legislation (regulations, rules and orders) in force on the 1st January 1940. Laws enacted since are printed in the monthly legislative supplements to the Sudan Government Gazette, all of which have to be consulted to make sure of

the present state of the law. This is now a laborious task, made the more made the difficult by the manner in which many amendments are made, i.e. after word ... insert words ... Amendments are drafted in this way so that they can easily be written into the original text but volumes 1 to 4 are set up in a way that does not admit of many insertions and few persons can find time to make them".

Further difficulties arise from other factors. First, there are many libraries in the Sudan with no complete set of Supplements. Secondly, the executive participates in legislation. In particular it legislates by means of a provisional order when Parliament is not sitting or the government business is urgent. This provisional order becomes law when assented to by the Head of State but is subsequently submitted to Parliament for confirmation or revocation.² Perhaps it is a mark of high competence of the legal profession in the Sudan that it has been able to cope with this scattered and often inaccessible legislation.

The problems are discussed in Michael Gaiger's paper and they are likely to remain so long as there are no means, comparable for example to the British System of Citators, for lawyers to check on amendments, repeals and case interpretations. Some assistance could be obtained from Cole, Guide to the Laws of the Sudan.³ This compilation indicated whether a particular enactment in the Laws of the Sudan, 4th edition, has been repealed or amended. Also it lists provisions of primary legislation judicially considered. The importance of this compilation is, of course, reduced by the publication of the 5th edition of the Laws of the Sudan. Two compilations by David L. Perrott can also be consulted with profit. One is An Index of Sudanese Cases on Personal Property and Workmen's Compensation 1899-1964⁴ and the other is An Index of Sudanese Cases on Agency and Contract.⁵ The former contains a table of Sudanese statutes cited together with the author's observation whether such a statute has been: "applied"; "not applied"; "interpreted"; interpreted and applied"; "considered"; "discussed"; "discussed generally"; "merely referred to"; and "referred to in argument". Likewise, the latter compilation contains a table of Sudanese statutes cited and, again, various words are used to describe the purpose of citation, namely: "applied"; "not applied"; "considered"; "interpreted"; and "referred to". But difficulties certainly arise from the lack of a regular and systematic service.

Judicial Circulars

Judicial circulars are of two types: Sharia and Civil (i.e. non-Sharia). As mentioned before judicial circulars are not published in the Gazette though undoubtedly Sharia circulars are a form of subsidiary legislation.

Sharia Circulars

Three collections of circulars were published in 1949, the first two being Sharia Judicial Circulars and Memorandums (re- issued photo-litho by the Central Archive, Khartoum in 1977), and Manshurat wa Muthekkirat Muhakim Al-Sharia, Hakumat Al-Sudan. These two publications are the same except that one is in English and the other in Arabic. Both are collections of circulars issued by the Grand Kadi up to 1949. A question of Sharia law is first governed by circulars and, in their absence, by the preponderant opinion of the Hanafiyya school of jurists. The collections are thus of practical value and though published in 1949 they are still very much in use; since 1949 only seven circulars have been issued.

The power of the Grand Kadi to issue circulars was based on the Sudan Mohammedan Law Courts Ordinance 1902, which later became the Sharia Courts Act 1967. A reading of these circulars conclusively shows that Sharia law as applied in the Sudan contains elements of different schools of Sharia law. The third collection, Nasharat wa Talimat Al-Mahakim Al-Shariya is not an important source of Sharia Law. It consists mainly of administrative instructions. This too was reissued by the Central Archives in 1977.

Civil Circulars

These were collected in, Criminal Court Circulars (New Series), a Sudan Government Publication, 1932. The collection consists of circulars and instructions, mostly on points of adjectival law, issued by the various Chief Justices since 1927. They are bound in loose-leaf volumes. There are also civil (i.e. in the narrower sense of non-criminal) circulars but these are not bound in a book form.

The power to issue civil (i.e. in the wider sense of non-Sharia) circulars is not derived from any legislative enactment. Probably it is a manifestation of the generalized control which the Chief Justice exercised over the Civil Branch of the Judiciary. It is not surprising that their authority is debatable. It was the view of Gorman, J., (as he then was) in Mohamed El Sayed El Barbari v Heirs of Yassin Ali Gablan that,

"Whatever form such circulars may have when used as vehicles of administrative instruction, and however weighty the private advice and suggestion they may contain, they have no legislative validity, and they could never have been intended to serve as authoritative enunciations of principles binding on the courts".

This view is not, however, the prevailing view. In many cases that have come before the courts, civil circulars, if relevant, have been applied. A few of these circulars like Criminal Court Circular No. 26 of 1953 which concerned sentence for murder and recommendation to mercy in cases of death sentences have been incorporated in the Code of Criminal Procedure 1974.

Law Reports

Law reporting in the Sudan can be divided into three periods: the period of the digests (1915-54); the post-independence period (1956 to date), and the pre-independence period (1900- 55). It is apparent that there has never been any systematic law reporting in the Sudan.⁷ The initial question was whether law reporting is appropriate for a country like the Sudan. It was the view of Lindsay, C.J., that law reporting was not appropriate. His alternatives to law reporting were judicial circulars, commentaries and a law journal. In his words,⁸

"From that point of view of the practical administration of justice, circulars and commentaries are the best medium for drawing attention of Judges and Magistrates to points of practice and established precedents arising out of the judicial interpretation of the codes. In addition, a quarterly journal for limited circulation to the more academic minded would probably be useful."

Of the three alternatives, only judicial circulars have been used.

Another alternative to law reporting was the Judges' Meetings. For example the question of correct interpretation of 'Custom' in section 5 of the Civil Justice Ordinance 1929 was referred to the Judges' Meeting of 1945.⁹ In that meeting Bennett, C.J., developed doubts which he entertained a year earlier in Marika Constantine Cambouris v Constantine Procos¹⁰ and concluded by proposing an amendment to section 5. Though the majority of the Judges rejected the proposed amendment, it is clear that most of the Judges must have become aware of the difficulties surrounding the word 'custom'. Moreover, Bennett, C.J.'s views can be traced in Lindsay, C.J.'s, decision in 1954 in the well-known case of Bamboulis v Bamboulis.¹¹

Another provision which was discussed in the Judges' Meeting of 1945 is section 8(I)(c) of the Native Courts Ordinance 1932. This section prohibited the local courts established thereunder from hearing any claim to the ownership of land. This provision has been interpreted to mean that the local courts have jurisdiction to decide claims relating to any right or interest in unregistered land short of ownership. Among these rights are the right of cultivation, grazing and cutting of timber. This interpretation not only conferred a concurrent jurisdiction in respect of such claims on the civil and local courts but it has given rise to confusion, uncertainty and conflict. The Judges, in their meeting of 1945, looked at the whole matter and their discussion brought out many anomalies of this interpretation.

While the necessary information upon which to formulate a decision might be acquired by means of circulars or judges' meetings, none of these methods proved a viable substitute for law reports. Consequently, some members of the profession prepared personal compilations of precedents. Clearly such compilations were of limited circulation but they enabled the compilers to invoke precedents for their decisions. For example, in Mohamed El Tahir El Tom v. Taha Mohamed Attiyah Atabani, J., relied on his compilation and stated¹²

"This is not the first case of its kind in this country and I am not trying to create a precedent. I believe that the principle has long been acted upon by the Sudan courts. Referring to my personal digest - and again regretting the absence of official case reporting which would at least secure uniformity - I come across the case of Singer Machine Co. v. Abdel Wahab Ibrahim and Sharif Ahmed Ghalib."

It is clear from this passage that Lindsay, C.J.'s view on this matter was not shared by all his contemporaries. Indeed, the editorials in the Sudan Law Journal and Reports and prefaces to the Digests, one by Chief Justice Lindsay himself, explain the absence of law reporting on the grounds of lack of funds and shortage of personnel. It is indicative of the acuteness of these problems that the Sudan could not afford a single series of reports.

Although financial difficulties still remain today, it could be argued that there is still a further obstacle. This is the paucity of reportable cases, for which two reasons could be suggested. First there is in recent years a noticeable decline in the art of writing judgments. Secondly, traditionally and historically, Sharia and Customary Law have no case-law and the courts which administer these laws - the Sharia and local courts - undertake the bulk of litigation in the Sudan.¹³ Thus, subject to a few exceptions to be indicated in appropriate places below, the reported cases referred to in any of the digests and the law reports mentioned below do not include decisions of Sharia and local courts. These digests and the law reports may now be looked at in greater detail.

The Period of the Digests 1915-55

The digests which are all in English are the only compilations of cases nearest to law reports in the Sudan before 1956, when law reporting was started with the post - 1956 cases. They were the results of the untiring efforts by private individuals. The decisions which have been noted are those of the Court of Appeal and the High Court. The digests are often brief and are thus not sufficient for a balanced view to be reached on whether the common law was being properly adopted. In many ways, however, the digests are useful. They contain important principles which must be considered in any decision. Moreover, they are used as teaching materials. The first of these publications was the Digest of the Decisions of the Court of Appeal of the Sudan, from May 15, 1915, to February 3, 1926, by R.H. Dun, Chief Justice of the Sudan 1917-26 and T.N. Francoudi, Advocate before the Sudan Civil Courts, 1926. This contains 93 civil (i.e. non- criminal) cases extending to 48 pages. The title is a little misleading as it suggests that only decisions of the Court of Appeal are noted whereas in fact a few decisions of the High Court are included. The digest was bound in loose-leaf form so that subsequent notes on decisions could be inserted. However, no subsequent decisions were inserted.

The second is the Law Reports: The Court of Criminal Appeal 1949-1953, by D.F. Hawley, Chief Registrar of the Judiciary, and W.E.D. Davies of the then University College of Khartoum (now University of Khartoum), 1954. This volume, popularly known to the legal profession as the Green Book, was intended to be a regular series of reports on cases decided in the Court of Criminal Appeal. The volume was in loose-leaf form so that subsequent decisions could be inserted. This aim was partially achieved. As originally published the volume contained 11 cases which, together with the Index of Subjects and Sections, extended to 60 printed pages. Later two cases decided in 1954 and 1955 were added thus bringing the printed pages to 86.

The final work is the Digest of Cases in the Court of Appeal and the High Court, by the Honourable Mr. Justice Stanley-Baker, 1955. This digest of civil (i.e. non-criminal) decisions is divided into two parts. Part 1 consists of 42 notes on decisions extending to 61 printed pages. Six of the cases noted in this Part are reported in full in Part II, which extends to 38 printed pages. The digest is the best known in the series not least because the important decision in Bamboulis v. Bamboulis, which excluded religious laws of the Sudanese Excepted Communities from the expression "any custom applicable to the parties" in section 5(a) of the Civil Justice Ordinance 1929, is reported fully at p.76.

The Post-Independence Cases

Cases decided since independence are reported in the Sudan Law Journal and Reports, a yearly series which at present covers the period 1936-72. The series became possible when in 1957, a year after Independence, the government accepted to meet the costs of publication of law reports and a law journal and the Faculty of Law, University of Khartoum, accepted to edit them. In this way, the reports and the journal were combined. The editors have included such eminent scholars as Professors Twining and Atiyah. The novelty of combining the reports and journal was continued even after 1961 when this series started to be edited by the Judiciary, first by the Law Reporting Office from 1961-70 (inclusive) and since 1971 by the Technical Bureau of the Supreme Court, as in Egypt.

Cases decided since Independence appeared to be an appropriate starting point. The first issue not only marked Independence but also contained the most recent cases. Before 1971 any reportable cases could be included, irrespective of the Court which rendered it. Thus the Court of Appeal, High Court, Province Courts, Major Courts, District Courts and Magistrates Courts are all covered. Since 1971, however, after the structure of the Judiciary had been modelled on the Egyptian system, the Technical Bureau has published only the decisions of the Supreme Court and the Court of Appeal. This is a slight modification of the system in Egypt, where the Technical Bureau publishes only the decisions of the Supreme Court. The 1971 and 1972 volumes are unique in that they contain cases decided in the Sharia circuits of the Supreme Court and the Court of Appeal. Exceptionally, the 1971 volume contains the Judge-Advocate's summing up in the Trial of F.E. Steiner: A Court Martial and the 1972 volume contains a case decided by a Sharia Province Court. The Sharia cases have no titles but are merely referred to under their subject-matter such as A Marriage Guardianship case, A Maintenance case, A Divorce case, etc.

Though it has always been the policy of the Sudan Law Journal and Reports to publish articles and notes in English and Arabic¹⁴ the 1956-69 volumes are all in English, except that in the 1961 volume the Editor has printed a correspondence in Arabic. In the 1970-72 volumes both English and Arabic are used. In the 1970 volume the English part (207 pp.) begins from left to right and it includes the whole of the journal. The Arabic part begins from right to left and extends to a mere 50 pages. The 1971 volume is rather odd in that the materials published in English and Arabic are mixed up and one starts reading from left to right even for judgments and materials in English. This mistake is not repeated in the 1972 volume, which has separate parts for both languages. The English part, which includes the whole of the journal, extends to 116 pages and the Arabic part extends to 277 pages.

There is no subscription to the Sudan Law Journal and Reports. It is sold simply to customers in Britain and other countries and the price of each volume varies according to its size. Inevitably there have been changes. However, one central fact runs through the entire series, namely, the combination of the reports and the law journal. Thus the series appeals at once to the practising and academic lawyer.

Pre-Independence Period 1900-1955

Cases decided before independence are reported in the Sudan Law Reports, which is financed from a series of Ford Foundation grants which began in 1961 to the University of Khartoum. The actual collection and editing of cases was undertaken by a team, mostly from the Faculty of Law, known as the Sudan Law Project.

Five volumes of Sudan Law Reports: Civil Cases, covering the period 1900-1949 have been published, the first two in 1969 by Oceana Publications, New York, and the remaining three by the Faculty of Law, University of Khartoum in 1975. A further three volumes are in the process of publication by the Faculty and should be out in 1979. Volume 1 of Sudan Law Reports: Criminal Cases, which is in two parts covering the period 1900-1969 was published by the Faculty in 1971, and another two volumes will appear shortly. The forthcoming volumes of both civil and criminal cases will bring the coverage of the reports up to 1955.

So far only the first two volumes of civil cases have been published in book form. The remaining volumes are monographs of a limited circulation. There are 200 copies of each monograph and these are intended for the use of the Faculty of Law and senior members of the Judiciary. The delay in publication is due in part to the fact that during the break in diplomatic relations between the Sudan and U.S.A. following the Six Day War, there was no follow-up with the Ford Foundation. Publication was also delayed because the change to the civil law system in 1971-1973 was the very opposite of the aims of the Sudan Law Project, which was to provide the legal profession with the rules of the common law evolved in decided cases.

The whole series is in English and the courts covered are, on the civil side, the Court of Judicial Commissioner (which ceased to function in 1915), Court of Appeal, High Court, District Courts and the Court of Jurisdiction. On the criminal side, the courts which are covered are the Mudir's Courts, Major Courts and the Chief Justice.

The cases are notable for their learning and comparative nature. This is particularly true of the cases decided under the quasi-legislative function of the courts to decide, in absence of legislation, according to "Justice, equity and good conscience".¹⁵ A fine example of the comparative nature of early Sudanese judgments comes in the following passage by Dun, C.J., in Yanni Krithany v. Mariam Bint Dasta:¹⁶

"There is no ordinance or proclamation dealing with the case, and it must therefore be decided on the principles of justice, equity and good conscience. Against the decree we have on the one side the Roman civil law and practically whole of modern European law and the Moslem law: in favour we find on the other side the Roman common law, the Dutch law, English and Scottish law, the law of most of the states of the U.S.A. and the greater part of the British Empire including some parts which were once French, Swiss law and the law of certain Hindu castes. There is therefore not any general consensus of opinion amongst the legislators of the world in favour of one view rather than the other. I know of no other previous decisions in the courts of this country to guide me."

The publication of the Sudan Law Reports leaves the Digests of little usefulness. The cases originally noted in the Digests are now reported in full in this series. The only cases one could find noted in the Digests but not reported in the Sudan Law Reports are the conflicts cases of Dello Strollogo & Co. v. The Khedivial Mail Line¹⁷ and Justice v. Mann.¹⁸ Preparation of Comprehensive Index to all volumes of Sudan Law Journal and Reports and Sudan Law Reports is mooted but the problem is finance.

Secondary Material

The only published bibliography of books and periodical literature is W. Twining, P. Twining and A.R. Nasri's "Bibliography of Sudan Law - I"¹⁹. This compilation is primarily of books and articles in English. Recently John Bruce has compiled (but not published) a Bibliography on Customary Law, which consists of books and articles on customary law written by lawyers, administrators and anthropologists.

The Sudan has only one manual of procedure for the jurisdiction. This is Awad, M. Mohy El Din. *Al Qanun Al-Jinaiy Ijra'at fi Al Tasna Al-Misri wa Al-Sudani, Al-Matba'at AL-Alamiya*, Cairo 1964. It deals with the law of criminal procedure in Egypt and the Sudan. Appendix 1 contains a list of other books on the law of the Sudan published since 1965. Eleven of the twenty-one authors are Sudanese and the rest are expatriates, and, out of the 24 books listed, 17 are in Arabic, the remainder in English. Most of the earlier books were published either in Cairo or in Beirut, but since 1971, publication has been undertaken by the University of Khartoum Press or by British publishers. It is interesting to note that although a comparatively large number of titles were published between 1968 and 1971 (14) only seven have appeared since then, one of these a pamphlet, and only one book, Vasdev's *Law of Homicide in the Sudan* has appeared since 1976.

In addition to the books a significant contribution to legal literature has been made by a series of monographs produced by the Faculty of Law, University of Khartoum, although these are not widely available (they are also listed in Appendix 1). Although the monographs are short they supplement the text-books in their respective fields of study.

Two of these works, by Kadouf, are *A Preliminary Survey of Customary Law in Qala El Nahal and El Hawata Area, Kassala Province, Sudan: Customary Law Memorandum No. 1* and *An Outline of Dinka Customary Law: Memorandum No. 2*. These monographs are the first in a series of restatements of customary law, a project financed by the Ford Foundation. Each describes and restates the prevailing customary law in that area. Not surprisingly there is close affinity between customary law and Sharia as a result of mutual borrowings.

On the other hand, the *Outline of Dinka Customary Law*, though it restates Dinka law, is concerned principally with the investigation of the rights, such as the right of grazing and cultivation, which will inevitably be affected by the proposed Jonglei Canal. The work is thus of assistance to people in many branches of study.

It may be appropriate to observe that customary law is a subject in which writers fall into routine and Mr. Kadouf is no exception. Certain features of these works are reminiscent of the School of Oriental and African Studies' Restatement of African Law series. In both works for example the estate of a deceased person is regarded as including widows.

Another work in the series is Salacuse, *The Constitutional and Administrative Law of the Sudan: Syllabus and Materials*. This is a collection of Sudanese constitutional documents and other materials from 1953 to the present day. The work is designed for the University students and is divided into two parts. Part A deals with constitutional law and Part B deals with Administrative Law. Since historical events have shaped constitutional developments in the Sudan there are numerous references to historical sources. The monograph contains also the author's useful notes and questions for class discussion.

The monograph series also includes four works by Faisal Abdel Rahman Taha, *Documents and Materials on the International Boundaries of the Sudan*; *Studies on the Southern International Boundaries of the Sudan*; *Documents and Materials on the Nile Waters* and (forthcoming), *The Sudan in International Law: Cases and Materials*, (published between 1975 and 1977).

The International Boundaries of the Sudan deals with the boundaries between the Sudan and each of its neighbouring states: Ethiopia; Egypt; Libya; Chad; Central African Republic; Zaire; Uganda and Kenya. The Sudan boundaries with the last-mentioned three states are dealt with again in the *Southern International Boundaries of the Sudan*. These boundaries follow geographical, not ethnic, lines and this has raised problems, not least the question of controlling the transfrontier movements between the ethnic groups. The monograph on the Nile Waters deals with the various attempts by the Sudan and Egypt to utilize the Nile waters and it includes treaties and other documents and the Sudan's succession to the Nile Waters Agreement 1929. All three publications were made for the Sudan Government.

The Sudan in International Law, on the other hand, is intended for use by the university students and is now being bound by the University of Khartoum Press.

The earliest of the monographs is Cliff Thompson's *The Land Law of the Sudan: Cases and Materials*, (published in 1965). This work holds a special place not only for the bulk of material but also for its pioneering efforts. It contains legislation, decisions and important documents relating to land law of the Sudan, particularly customary law of Northern Province. The author's notes and questions are very useful for class discussion. It must now be read subject to the Unregistered Land Act 1970 (amended 1971) which deems all unregistered land to be registered in the name of the Government. The Act thus renders materials on settlement of land disputes out of date and largely historical. A further work on land law is El Mahdi, *Essays on Land Law of the Sudan* (undated but Library stamp dates it as 1975). This includes three essays on restriction of the right of ownership of land and its public control; the concept of co-ownership in the Sudan land law; and leases, tenancies and licences.

A final book of cases and materials is Tier, *Private International Law in the Sudan: Cases and Materials*. This monograph is written primarily for the University students. Each chapter is introduced by a short note and the questions which follow the extracts are intended to aid the student in case and statute analysis.

At present only two periodicals publish legal materials. They are the *Sudan Law Journal and Reports* and the *Sudan Notes and Records*. Details of the *Sudan Law Journal and Reports* have already been considered under the heading of Law Reports. The *Sudan Notes and Records* (S.N.R.), incorporating proceedings of the Sudan Philosophical Society, is a yearly periodical which at present covers the period 1918-1974 and publishes any material about the Sudan. Its printers have changed over the years. For example, the 1974 volume was printed in England by A. Brown & Sons Ltd., Hull and London, while the 1974 volume is now being printed by the Khartoum University Press. Subsequent volumes will, it is hoped, be published by Khartoum University Press. Annual subscription is 12 dollars per volume for subscribers outside the Sudan and Ls. 2,500 per volume for subscribers inside the Sudan.

Proposals for starting a Khartoum Law Review have long been mooted, and although the Review has not yet been started the consensus is that it will eventually come out. In particular the return of members of staff studying abroad will, it is hoped, reduce the significance of shortage of staff which has led the Faculty of Law to emphasize teaching at the expense of research.

Appendix I

I Law Books Published Since 1965

Abdel Gouad, Mohamed, Sharh Qanun Al-Murafa'at Al-Madani Al-Sudani, Matba-at Gama-at Al-Qahira, Cairo, 1968.

Abdel Rahim, Muddathir, Imperialism and Nationalism in the Sudan: A Study in Constitutional and Political Development 1899-1956, Clarendon Press, Oxford, 1969.

Awad, M. Mohy El Din, Qanun Al-Uqubat Al-Sudani Muallagan aliehi, Al-Matba'a Al-Alamiya, Cairo, 1970.

Awad, M. Mohy El Din, Qanun Al-Ijra'at Al-Jinaiya Al-Sudani, Muallagan aliehi, Al-Matba'a Al-Alamiya, Cairo, 1971.

Beshir, Al-Shafia Mohamed, Al-Qanun Al-Dusturi wa Al-Nizam Al-Siyasi Al-Sudani: Dirasa Mugarana Bil-Dasstur wa Al-Nizam Al-Misri, Munsha'a Al-Ma'arif: Alexandria, 1970.

Deng, Francis M. Modernization and Tradition: A Challenge for the Law Among the Dinka of the Sudan, Yale University Press, New Haven, 1966.

El Dhariir, El Siddiq M. El Amin, Nizam Al-Ahwal Al-Shaksiyah, Ma'had Buhut Al-Dirasat Al-Arabiya, 1968.

El Dhariir, El Siddiq M. El Amin, Al-Mirath fi Al-Sharia Al-Islamia, Matba'at Dar Al-Jihad, Cairo, 1969.

El Mahdi, Saeed Mohamed Ahmed, Al-Jarima wa Al-Uqubat fi Al-Sudan, Gism Al-Ta'lif, Khartoum University Press, Khartoum, 1971.

El Mahdi, Saeed Mohamed Ahmed, Sharh Qanun Tagyid Al-Ijarat Al-Sudani wa Ta'dilat, Dar Al-Talif wa Al-Tarjama wa Al-Nasara, University of Khartoum Press, Khartoum, 1974.

Musa, Ibrahim El Hag, Al-Tajriba Al-Dimuqratiya wa Tatawwur Nizam Al-Hukm fi Al-Sudan, Matba'at Al-Ahram Al-Tijariya, Cairo, 1970.

Mustafa, Zaki, Al Qanun Al-Madani Al Sudani, Tarikhu wa Kasaisu, Ma'had Buhut Al-Dirasat Al-Arabiya, 1968.

Mustafa, Zaki, The Common Law in the Sudan: An Account of the 'Justice, Equity and Good Conscience' Provision, Clarendon Press, Oxford, 1971.

Omer, Mohamed Abdel Khaliq, Qanun Al-Murafa'at Al-Misri wa Al-Sudani, Ma'had Buhut Al-Dirasat Al-Arabiya, 1976.

Omer, Mohamed El Sheikh, Al-Qanun Al-Madani Al-Sudani, Matabia Sajal Al-Arab, Cairo, 1972.

Omer, Mohamed El Sheikh, Qanun Taqyid Al-Ijarat, University of Khartoum Press, Khartoum, 1975.

Riad, Henry (translator), Ashar Al-Ahkam Al-Sudaniya Ashara Ahkam Nagal Al-Ahkam min Al Injeliziya ila Al-Arbiya, Dar Al-Tagafa, Beirut, 1967.

Riad, Henry, Mujke Tarikh Al-Sulta Al-Tashriy'a fi Al-Sudan, Dar Al-thagafa, Beirut, 1967.

Riad, Henry, Uyub Al-Rida fil-Qanun Al-Sudani, Al-Injelizi, Dar Al-Tagafa, Beirut, 1968.

Taha, Faisal Abdel Rahman, The Settlement of the Sudan-Ethiopia Boundary Dispute, Khartoum University Press, Khartoum, 1975 (Pamphlet).

Tonido E. and Hill, R. (ed.) The Opening of the Nile Baisin, C. Hurst & Co. (Publishers) Ltd., London, 1974.

Vasdev, Krishna (forthcoming), Law of Homicide in the Sudan, Butterworths, London, 1978.

Dagbir, Yousif A. Al-Usool Al-Arabiya Lil-Dirasat Al-Sudaniya, Matba'at Al-Najwan, Beirut, 1968.

El Mahdi, Saeed Mohd. Ahmed, Guide to Land Settlement and Registration in the Sudan, Khartoum University Press, 1971.

II Monographs Produced By The Faculty of Law, University of Khartoum Since 1956

El Mahdi, Saeed Mohamed Ahmed, Essays on the Land Law of the Sudan (?1975)

Kadof, Hunud Abia, A Preliminary Survey of Customary Law in Qala El Nahal and El Hawata Area, Kassala Province, Sudan; Customary Law Memorandum No. 1. (1975).

An Outline of Dinka Customary Law; Memorandum No. 2. (1977).

Salacuse, Jeswald W. The Constitutional and Administrative Law of the Sudan: Syllabus and Materials (1976).

Taha, Faisal Abdel Rahman, Documents and Materials on the International Boundaries of the Sudan (1975).

Studies on the Southern International Boundaries of the Sudan (1976).

Documents and Materials on the Nile Waters (1977).

The Sudan in International Law: Cases and Materials.

Thompson, Cliff F. The Land Law of the Sudan: Cases and Materials (1965) 3 vols.

Tier, Akolda M. Private International Law in the Sudan: Cases and Materials (1977).

FOOTNOTES

1. Surveys include:
"Guttman, E., "A Survey of the Sudan Legal System" (1956) S.L.J.R. 6, esp. pp. 45-46.

Atiyah, P.S., "Legal Education in the Sudan" (1958) J.S.P.T.L., p. 137.

Thompson, C.F., "The Formative Era in the Law of the Sudan" (1963) S.L.J.R., p. 474.

Twining, W.L., "Legal Studies in the University of Khartoum" (1962) 6 J.A.L., p. 145.

Khalil, M.I., "A Plea for Shorter LL.B. Course in Khartoum" (1963) 7 J.A.L., p. 125.

Khalil, M.I., "The Legal System of the Sudan" (1971) 20 I.C.L.Q., p. 624.

Mustafa, Z., "Opting out of the Common Law: Recent Developments in the Legal System of the Sudan" (1973) J.A.L., p. 133.

Mustafa, Z., "Some Thought About Legal Education in the Sudan" (1968) unpublished m.s. intended for publication in the proposed Khartoum Law Review.
2. The Constitution of 1973 makes the President both the Executive and Head of State and thus disposes with this additional procedure.
3. (1962) S.L.J.R. p. 263.
4. (1965) S.L.J.R. p. 169.
5. (1965) S.L.J.R. p. 382.
6. (1900-1931) 1 S.L.R. 473, pp. 472-3.
7. For the early literature on law reports in the Sudan see Guttman, E. "Law Reporting in the Sudan" (1957) 6 I.C.L.Q. p. 685; Twining, W.L. "Law Reporting in the Sudan" (1959) 3 J.A.L. p. 176.
8. Cited in Thompson, "The Formative Era in the Law of the Sudan", (1965) S.L.J.R., p. 474 at p. 482 n. 43.
9. The Judges' Meeting, March 7th to 13th, 1945, Minutes, Sudan Law Project Archives.
10. AC-APP-5-1944.
11. (1953-1954) Digest of Cases in the Court of Appeal and the High Court, p. 38, at p. 76, where it is reported in full.
12. (1941-1945) 3 S.L.R., p. 159.
13. According to one view the local courts alone handle about 55% of the decided cases in the Sudan: see El Nur "The Role of the Native Courts in the Administration of Justice in the Sudan", Sudan Notes and Records (1960), Vol. 41, p. 78. According to another view their work constitutes between 55% and 75%, see Thompson op. cit. The present position is probably different as since 1969 the local courts are gradually being phased out.
14. Twining, W.L. "Editorial and Editorial Note" (1959) S.L.J.R. 97 at p. 99.
15. S.9 C.J.O. 1929.
16. (1900-1931) 1 S.L.R. p. 91 at p.93.
17. (1953-54) Digest of Cases in the Court of Appeal and the High Court p. 19.
18. *ibid* p. 21.
19. (1960) S.L.J.R. p. 313.