

Barbara E. Harrell-Bond and Ulrica Rijnsdorp (with contributions from J. Sanpha Koroma and L.C. Green), Family Law in Sierra Leone: a research report. Leiden: Afrika-Studiecentrum, 1975. viii & 144 pp. No price.

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According to its authors, this monograph reports the first research project on family law in Sierra Leone. Their stated objective was to focus on the relation between law and "those aspects of the social reality that may be submerged and difficult to establish without specialized study," indicating those problem areas where there are conflicts of law or where law is causing or aggravating social problems. Although their report is directed principally to the government of Sierra Leone and its citizens it is of interest to students of African law, and of law and society generally.

A multi-dimensional methodology was applied to this research problem: family law cases were observed in both Local and Magistrate Courts, and Local Court records were consulted. Informal disputes were also traced from inception to settlement. Caseworkers of the Social Welfare Department were interviewed, data were gathered on all family cases handled by social workers over a three-year period, and the handling of family problems by case-

workers was observed. Statistics were also collected on suits for the maintenance of dependents. Legal officials, appropriate government officials, chiefs, and headmen, were interviewed, and questionnaires were sent out to each Local Court in the country. Indeed, the effort seems to have been at once so intensive and so extensive that its completion represents a remarkable achievement, even in a country as compact as Sierra Leone. Methodologists might wish for greater detail in describing the sampling of courts, legal cases, informal dispute settlements and interview subjects, but they are not the audience to whom the report was directed.

There are descriptions of the various forms of customary marriage, divorce, variations in women's rights to property, legal problems concerning maintenance, inheritance and customary rights over children, and adoption. These are followed by analyses of problems of conflict of law, and--getting away from the specific focus on family law--a discussion of the workings of Local Courts. The concluding section takes the country's legal pluralism to be a primary problem, and considers as possible directions of reform (1) codification, defined as "the enactment of accepted customary practices by legislation," (2) re-statement, and (3) unification, at least as it applied to family law.

The reader should not expect a static cataloguing of practices, for although this monograph is written in the anthropological present, its emphasis is on change, as in the impact of modernization on personal wealth, the diminishing usefulness of brideprice as a protection of the wife's role, and generally, in the disruptive effect upon customary rules of the fact that extended and even nuclear families are now often spatially separated. The monograph is not an attempt at restatement, but rather focuses on the failings of law and legal process as they operate for the majority "native" population.

The authors do not seem overly concerned about the political difficulties undoubtedly inherent in implementing the changes they propose. It is perhaps because of the nature of their primary audience that they tactfully understate the political ramifications of the suggested reforms. But they demonstrate that there is less cause to doubt the state's potential effectiveness in implementing such legislation than critics of legal change in Africa often maintain. Everywhere they have found a tremendous respect for the power of the bureaucracy, not only in a negative sense, but in the readiness of those with family problems to consult social workers rather than traditional intermediaries. They demonstrate convincingly that the obstacle to legislated reform of family law in Sierra Leone lies not so much in the govern-

ment's inability to implement change as it does in their lack of will to do so.

The appropriateness of their contextual approach to legal problems is perhaps best seen in an extended discussion of the role of "medicines" and "swears" in interpersonal conflict and in dispute settlement, even in the Local Courts themselves. This is a fact of life in many transitional societies, but rarely finds its way into the rationales for legal reforms presented to governments and to judicial personnel.

Another often-neglected facet of reform rationales that is considered here is the impact of procedural differences in customary and introduced law. The customary emphasis on reconciliation of disputing parties is contrasted several times with the assignment-of-guilt objective said to characterize the processes of the more formal courts, although there is perhaps too strong an emphasis on the presence or absence of lawyers as the variable most affecting the emphasis of one or the other goal.

The most interesting chapter of this study for the student of comparative legal systems is the discussion of approaches to the problems of a plural legal system. The first of these the authors label as "codification." This is perhaps an unfortunate choice, since they use the term to refer to what is no more than the legislative enactment of customary legal principles; other African countries, notably in francophone Africa, are attempting true codification, i.e. the drafting of comprehensive legislation covering areas such as family law. The use of the term codification here may reflect current usage in Sierra Leone, but it is confusing in a comparative context. Be that as it may, the authors argue against legislative enactment of customary law on the ground that it might be more conservative than other forms of legal statement, introducing rigidity in the law at a time of rapid social change. This argument is considerably weakened by their ultimate recommendation in favor of another form of written law; it is not clear why enactment of a contemporary statement of custom would have a more rigidifying effect than would enactment of unified law which would replace custom.

Some rather curious points are made in discussing the second approach, that of restatement, as developed especially by Allott and others for use in East Africa. The authors see in restatement an assumption that each ethnic group "has a separate and distinct legal system." (p. 99) While it is true that one of the purposes advanced for restatement has been to spell out the similarities and differences in various customs in order to

determine their common features as a basis for national legislation, this is by no means essential to the approach. Rather, its principal purpose seems to be to develop informal guides to the customary law for judicial and governmental personnel who are not versed in that law, but must make decisions which take it into account. This is a useful purpose even if, as evidently is the case in Sierra Leone, there is no significant ethnic diversity in legal systems.

However, the authors also worry that, since Sierra Leonean lawyers and judges already fail to make use of assessors, they might not use the restatement, but that if they did, they might rely on it not as a guide, but as a final authority in cases involving customary law. But greater use might be made of a restatement than of assessors, and even uncritical acceptance of a restatement seems preferable to the present situation, in which the customary law is entirely ignored. Finally, they doubt whether the Local Court Presidents who are chosen for their knowledge of customary law, would ever consult such a document, if written in English and presented only as a guide; but presumably it would be intended principally for use by Magistrates, higher judicial officers, judicial advisors, and administrators, rather than by Local Courts.

The principal reason for the authors' rejection of the first two alternatives is their strong preference for the third, the unification of family law. They argue quite forcefully that the present distinction between "natives" and "non-Natives," which determines the applicable family law, is both arbitrary and ambiguous. Furthermore, they state their belief that "a country's best interests are served when national identity transcends ethnic identification." After their exhaustive research, one cannot quarrel with them in their conclusion that ethnic differences in family law are at most "ceremonial." (Their discussion of the misuse of the concept "tribe" in Africa seems unnecessary, and largely irrelevant.) Consequently, they urge that Sierra Leone go beyond mere enactment or restatement of customary law and adopt a single body of family law that will allow for the variations in practice now extant. They demonstrate convincingly that laws can be written that will be sufficiently broad to "contain these differences."

If a clear case is made for unification, however, it seems to be at least potentially in contradiction with an earlier recommendation for the continuance of low-level, informal dispute-settlement institutions. One wonders, for example, how it would be possible to maintain the role of village elders and chiefs in this process if a single, national law is to be made applicable to all. It would appear that they would be much less qualified to

decide in accordance with the law if they can no longer rely on their collective experience and memories as guides to what is legal. Unification of law seems to imply centralization, at least of the control of the judicial system. If dispute-settlement institutions are not to become remote, it will fall on the government to provide for lower-level informal institutions, and to ensure that they are operated within the law.

The strength of this monograph lies in the exhaustiveness of its data, and its success in capturing the dynamic interaction of law and society as they affect the basic social unit, the family.