

## A REPORT ON THE ISLAMIC LAW IN AFRICA PROJECT

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The Islamic Law in Africa Project (ILAP) recently conducted its first symposium in Tanzania. The project is supported by the Ford Foundation and has a two-year duration. The project explores the relationship between the post-colonial African State and religious law, specifically Islamic law. The project is being convened by Ebrahim Moosa, Associate Professor at the University of Cape Town and currently Visiting Professor at Stanford University in California. One of its aims is to maintain a distinct pan-African focus.

The Project has been divided into three symposia, the second of which will be held in Dakar in April 2001, and the third in Cape Town in December 2001. These symposia will be followed by a publication of a selection of papers. Incorporation of African scholarship and student participation forms an integral part of ILAP.

The first symposium was held from the 21 to 23 July 2000 in Dar Es Salaam, Tanzania. It was convened by the Centre for Contemporary Islam (CCI), the research unit based at the University of Cape Town.

There were sixteen conference papers presented. Respondents to these papers were Prof. Issa G. Shivji, from the Faculty of Law at the University of Dar Es Salaam, Dr. Mahmood Mamdani of Columbia University, Prof. Miriam Cooke, Professor of Arabic and Prof Bruce B. Lawrence, Professor of Religion both at Duke University

and Prof Abdulkader Tayob, Professor in the Department of Religious Studies at the University of Cape Town.

In session one, the first participant to make a presentation was Prof. Ibrahim Idris from the University of Addis Ababa. He delivered a clear and concise report on the "Federal Shariah Courts in Ethiopia" and the various ordinances leading to the establishments of these courts. He noted in particular the existence of a parallel system of Shariah and civil courts in Ethiopia. It was further noted that the federal Shariah courts only had a mandate on certain aspects of MPL. The courts in reference were the "naiba" courts which was the "First Instance Court of Shariah", the other two courts being the Federal High Court of Shariah and the Federal Supreme Court of Shariah.

The second presentation was by Dr Shamil Jeppie from the University of Cape Town and a visiting fellow at Somerville College and OXCIS, Oxford. His paper entitled "Shariah and State in the Sudan: From Late Colonialism to late Islamism" proved to be an interesting and well-documented account of the Sudanese experience. He noted that the Shariah State in the Sudan did not begin in the colonial era and questioned if Sudan was the kind of model the other states should strive for. He argued that Sudan's Shariah State was more advanced than its neighbours in Egypt and West Africa, and that British rule tried to incorporate Shariah leaders into their system citing Sayyed Abdurahman Mahdi as a prominent example. Dr Jeppie also noted the case of people who choose to remain outside of the system and questioned how we should deal with devout Muslims who prefer not to be within the Shariah State regime.

In session two Abdirashid A. Mohamud delivered a paper entitled "The Status of MPL in Modern Somalia". This paper provided a good example of how Shariah is fused with customary law. He explained that the current law came about when the British and the Italian experts sat down with the qadis to reform the law. He noted that this was a unique opportunity for the ulama to devise a modern law based on Shariah.

In session three, two papers were presented. Prof Badru Kateregga, Vice-Chancellor of the University of Kampala was the first to present his paper entitled " MPL in Uganda from Colonialism to the Present: Challenges and Prospects". This was followed by Dr Ahmad Sengendo's paper, "The History of MPL in Uganda 1900-2000: A Century of Mixed Fortunes". Both papers "navigated an area of history".

In session four Nabisere Asia Rizzo of the University of Kampala presented her paper "Human Rights and Women's Rights", and Mr Haamidu Byamugenzi's paper, "The Rights of Muslim Women vis-à-vis the Family Law in Uganda: 1960-2000", were commended for being enriching and for highlighting the dynamics of women's rights and human rights in Uganda. The two papers concluded that human rights were a western notion that could not be adopted into certain communities.

In session five, the first paper, "The Secular State and the state of Islamic Law in Tanzania: With Reference to the Proposal to establish Kadhi's Courts" was delivered by Prof Robert Makaramba of the University of Dar Es Salam. His report gave a clear and concise account on the interface between the secular state and Islamic law in Tanzania with special reference to the establishment of Kadhi courts.

The second paper, "The Recognition of MPL in a Modern African State" by Justice Augustino Ramadhani presented a historical overview of the situation in Zanzibar.

Session six commenced with the paper, "A Historical Development of Muslim Personal Laws and Muslim Legal Institutions in Kenya ca. 1965", by Hassan Mwakimako from the University of Nairobi who made mention that there was no apparent difference between colonial and post-colonial Kenya, and noting that the people of a particular religious group was subjected to the same rule as previously.

The second presenter in this session was Abdulkadir Hashim from the College of Shariah and Islamic Studies, Thika (Kenya). In his paper "Application of MPL in the Kenyan Courts", he argued that state law was grounded in tradition and that it originated from western law. He also noted that one has to understand the context and differentiate between the rational law as opposed to irrational feudal law.

In session seven, Qadi Hammad Qasim and Prof. Susan Hirsch of Wesleyan University presented their papers, "Towards the Expansion of Interpretations of the Rights of Women and Children in Shariah" and "State Intervention in Islamic Family Law in Kenya and Tanzania" respectively. Both papers purported that law has multiple messages. Qadi Hammad made a crucial point concerning marital property as this benefited women, and at the same time promoted women's rights. This suggested that women were no longer discriminated against as regards their ownership and property rights, but placed them on an equal footing with men.

In the penultimate session, three papers were presented. Firstly, Dr Ibrahim Koodoruth from the University of Mauritius delivered a thought provoking and

insightful paper entitled "The Relevance of MPL in the state-community relationship in Mauritius". His paper highlighted that Mauritius could be considered a centre of Muslim activity.

Paper two was presented by Liazzat Bonate from Eduardo Mondlane University, Mozambique entitled "MPL in Mozambique". Shaheena Karbanee, from the University of Cape Town, presented paper three, entitled "MPL in Zimbabwe" contrasting the diversity in understanding Islamic family law in Africa. Papers two and three emphasised the intention of both populations in structuring law. In addition, Liazzat Bonate's paper highlighted the historical aspects of the legal structure within Mozambique and thus made Mozambican law a national rubric. She explained that history explored the legality of MPL in Mozambique and thus provided it with a sense of authentication.

The symposium adjourned with Bruce Lawrence and Justice Ramadhani giving an overview of the papers that were presented. In his exposition Lawrence referred to the publication, "ISM" in which there was an article relating to the issue of Law, State and Theory called "The Study of Islam in Sub-Saharan Africa". He commented that no other article had been written on Sub-Saharan Africa. In the article the writer mentioned that when referring to Sub-Saharan Africa, the focal point of Africa is confined to three countries viz., Sudan, Senegal and Tanzania. The thrust of the article focussed on the possibility of critical scholarship assisting Muslims in elucidating the past, present and future. The conference, in contrast reflected on various countries. He suggested that conferences such as these should give an overview of countries like Sudan, which was the best known, and Zimbabwe that was rarely featured. After

examining the history and structure of these countries, a comparative and contrasting approach should be applied to the pertinent and contentious issues. He noted that certain issues had been omitted from the papers, which were the study of the Sufi tariqahs, race/ethnicity and globalisation. He explained that it would have been interesting to experience the interplay between the Sufi tariqahs and their resistance and encounters with the colonial authorities.

Justice Ramadhani, in his concluding remarks stated that MPL would remain static if the "players" did not show interest and were not mobilised to implement it. At the same time he cautioned that MPL should not be steered by a specific or elite group that gains control over all the issues, but should be recognised as a community effort. Muslims should thus come together and resolve problems and issues that affect them and every other Muslim population at large. On a more positive note he observed that the papers that were delivered showed that Muslims were aware of their dire need to institutionalise and implement MPL, and if this trend continued more inroads could be made.

An engaging three days of deliberations and discussions concluded with Moosa thanking the participants for their contributions to a very productive symposium.