



COLONIAL OFFICE

Report of the Nyasaland Constitutional Conference

Held in London in July and August, 1960

*Presented to Parliament by the Secretary of State for the Colonies
by Command of Her Majesty
August 1960*

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REPORT OF THE NYASALAND CONSTITUTIONAL CONFERENCE

11

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INTRODUCTION

Mr. Lennox-Boyd announced in February, 1957, that there would in due course be discussions on constitutional development in Nyasaland and that if it was decided that there should be changes these would take place at the end of the life of the present Legislative Council. The Council was at that time due to end in May, 1960, but has since been extended. A proposed visit by Lord Perth to Nyasaland for constitutional discussions was deferred in February, 1959, as a result of the deteriorating situation which led soon after to the declaration of a state of emergency. Mr. Macleod visited Nyasaland in March–April, 1960, where he had a series of talks covering the widest possible range of political opinion, to enable him to assess whether consideration of constitutional advance in Nyasaland could be resumed. Following this visit he announced on 14th April, 1960, that this consideration could in his view usefully be carried forward by means of a Conference to be held in London in the summer. On 25th May, 1960, the Governor of Nyasaland was invited to obtain and submit the nominations of the various groups to be represented at a Conference to assemble in London on 25th July, 1960.

2. A list of the delegates and advisers who took part in the Conference is annexed.

3. The Conference met at Lancaster House between 25th July and 4th August, 1960, and held 16 plenary meetings. The Secretary of State for the Colonies presided at all but three of these; the Minister of State presided in his absence.

CURRENT CONSTITUTION

4. The present constitution of Nyasaland is contained in the British Central Africa Order in Council, 1902, as amended from time to time by the Nyasaland Orders in Council, 1907 to 1956, and in the Royal Instructions of 1907 as amended by Additional Instructions of 1942, 1948, 1955, 1957 and 1959.

5. The salient features of the present constitutional arrangements are :

A. *The Legislative Council*

There are 27 members excluding the Speaker. Members are of four kinds—officials ex-officio, nominated officials, African unofficials and non-African unofficials.

The present numbers are :

- 4 officials ex-officio
- 10 nominated officials
- 7 African unofficials—3 elected and 4 nominated
- 6 non-African unofficials, all elected.

The electoral provisions for the African elected members are at present in abeyance and vacancies are filled by nomination. Non-African elected members are elected in single-member constituencies by non-Africans satisfying the franchise qualifications laid down.

B. *Franchise*

(i) Non-African members are elected by non-Africans who to qualify for registration as voters must:

- (a) be British subjects ;
- (b) be over 21 years of age ;
- (c) have been born in the Protectorate or have resided in the Protectorate for a continuous period of two years immediately preceding the date of registration ;
- (d) during the whole of the period of three months immediately preceding the claims for registration, have had the requisite means qualification, that is to say, must either—
 - (i) have occupied a building in the Protectorate of the value of £250 (provided that in the case of joint occupation the share of each occupier is not less than £250) ; or
 - (ii) have been in receipt in the Protectorate of income at the rate of not less than £200 per annum (a married woman being deemed to have the same means qualification as her husband if she does not have it in her own right) ;
- (e) have an adequate knowledge of the English language ; and
- (f) be able, unassisted, to complete and sign the prescribed claim for registration as a voter.

(ii) African elected members are elected by members of African Provincial Councils. They must also be British subjects or British protected persons, be resident in the Protectorate on the day fixed for the nomination of candidates, and be literate in English to the extent of being able to take an active part in the proceedings of the Council.

C. *The Executive Council*

The constitution provides for an Executive Council to consist of three members ex-officio (the Chief Secretary, Attorney-General and Financial Secretary) and such other persons as may from time to time be appointed. The present composition of the Executive Council is :

- The Governor (who presides)
- 3 officials ex-officio
- 2 nominated officials
- 2 nominated non-African unofficials
- 2 nominated African unofficials.

Africans were first appointed as members of the Executive Council under the interim constitutional arrangements announced by the Governor on 24th August, 1959. At the same time changes were made in the detailed arrangements for the carrying out of the executive functions of the Government so as to give unofficial members of the Council a more active and practical part in the day-to-day conduct of affairs.

THE CONFERENCE

6. The purpose of the Conference was to advise the Secretary of State on the nature of the next stage of constitutional advance in Nyasaland ; questions affecting Nyasaland's relationship with the Federation were outside its scope. In his opening statement to the Conference the Secretary of State said that its task was to seek a pattern for the orderly evolution of Nyasaland's political institutions on a democratic basis, in a form which would meet the aspirations and apprehensions of the peoples of Nyasaland ; which would provide for the continuance of stable government and progressive administration, and which would enable Her Majesty's Government effectively to discharge their protective responsibilities towards Nyasaland for as long as all its peoples so desired.

Constitutional Proposals

7. In the opening sessions of the Conference, speakers from the various political parties and groups represented put forward differing views on the form which constitutional advance in Nyasaland should take. After studying these views, the Secretary of State said that, having regard to the constitutional stage which Nyasaland had reached, and taking into account also the present social and economic conditions in the Protectorate as well as the political aspirations of its peoples for the future, he considered that the Conference should base its deliberations on the following main principles.

- (i) The composition of the Legislature should have regard to the fact that there is an African majority in the country whilst providing for the vital contribution which the non-African communities make to the country's progress and prosperity.
- (ii) African representation in the Legislature should be obtained by direct elections, based on a reasonable and broad franchise suited to the present conditions of the country.
- (iii) The Executive Council should not yet become responsible to the Legislature but should remain advisory to the Governor.
- (iv) The Governor's unofficial advisers on Executive Council should be directly associated with the day-to-day administration of the Government, possibly on the basis of a Ministerial system.

8. The Secretary of State then put forward detailed proposals regarding the way in which these principles might be applied. The proposals were discussed by the Conference at a number of plenary sessions as well as in private meetings between the Secretary of State and individual groups. Although differences of opinion still remained on some points, the Conference as a result of these discussions agreed to make recommendations as set out below. In putting forward these recommendations the Conference accepted them as a working basis for the next stage of constitutional advance in Nyasaland.

A. *The Executive Council*

- (i) There should be an Executive Council of ten members presided over by the Governor. The Council should be advisory to the Governor.

(ii) Of the ten members, five should be unofficials—three chosen from among the members of Legislative Council elected on the lower of the two proposed electoral rolls (see C below), and two chosen from among those elected on the higher electoral roll. In making these appointments to the Council, the Governor should have regard to the composition of parties in the Legislative Council, and should make his selection after consultation with the leader or leaders of the main party or parties in that Council.

(iii) The Chief Secretary, the Attorney-General and the Financial Secretary should be ex-officio members of the Council; and in addition there should be two nominated official members. It should be open to the Governor to recommend at any time he thought fit, in the light of the working of the new constitutional arrangements, in particular the provision in (v) below for the appointment of Parliamentary Secretaries, that the two nominated officials should be replaced by elected members of the Legislative Council.

(iv) All appointments in the Council should carry Ministerial status, with defined departmental responsibilities, although at the Governor's discretion one or more of the unofficial Ministers might be nominated as Ministers without Portfolio.

(v) The Governor should also have power to appoint up to three Parliamentary Secretaries, who should not be members of Executive Council, but should be associated with the administration of departments. These should also be selected from among the elected members of the Legislative Council, at least two of them from members elected on the lower electoral roll.

B. *The Legislative Council*

(i) There should be a Legislative Council consisting of 28 elected unofficial members, and the 3 ex-officio and 2 nominated official members of the Executive Council.

(ii) Of the 28 unofficial members, 20 should be elected in one set of constituencies by voters who satisfy lower qualifications and 8 in another set of constituencies by voters who satisfy higher qualifications.

(iii) It should be understood that the unofficial members of the Legislative Council appointed to the Executive Council would "cross the floor" to the Government side, as also would any unofficials appointed as Parliamentary Secretaries.

(iv) The Governor should have a general power to add to the Council such number of nominated members as Her Majesty might by instructions through the Secretary of State from time to time direct. This power should be held in reserve, and should not be exercised unless it should become necessary in the interests of good government to appoint additional members to the Government side of the Council, and then only to the extent necessary to give the combined members of Executive Council a majority over the remaining unofficial members.

C. *The Franchise*

(i) There should be two electoral rolls.

(ii) The following general qualifications should be common to both rolls :

- (a) Nationality as a British subject or British Protected Person belonging to Nyasaland.
- (b) Residence in the Protectorate for two years prior to registration.
- (c) Age 21 years or over.

(iii) One of the following additional qualifications should be required of persons registering as voters in the constituencies under the lower franchise :

- (a) Income of £120 per annum (or ownership of immovable property valued at not less than £250), with literacy in English ; or
- (b) Persons on the tax register who have met their tax obligations for the past ten years and who are literate in English or any language or dialect commonly used in Nyasaland ; or
- (c) Holders of scheduled posts, i.e. chiefs, native authority members, past and present members of District Councils, and group or village headmen ; or
- (d) Master farmers ; or
- (e) Pensioners ; or
- (f) Ex-Servicemen.

(iv) The monetary and educational qualifications for persons registering in the constituencies under the higher franchise should be based on the equivalent provisions in the current Northern Rhodesian qualifications for ordinary voters.

(v) The question to what extent women might appropriately be enfranchised, on either roll, either in their own right or as wives of husbands who themselves qualify for the vote, should be remitted for consideration to the Working Party which should be set up in Nyasaland to work out the detailed implementation of the recommendations of the Conference (see paragraph 17 below). In doing this, the Working Party should have regard to the principle followed generally by the Conference of enfranchising at this stage categories of people who, in the conditions of Nyasaland today, measure up to reasonable standards of responsibility and experience.

The Judiciary

9. The Malawi Congress Party suggested the setting up of a Judicial Service Commission to regulate the appointment and removal of Judges, and the setting up of similar machinery for magistrates, together in both cases with the right of appeal to the Judicial Committee of the Privy Council. They also suggested that High Court Judges' salaries should be a charge on the general revenues of Nyasaland, and that at local government level judicial functions should be separated from executive or administrative functions.

10. The Conference recognised the need to ensure the complete impartiality and independence of the judiciary. They therefore agreed that at the next opportunity steps should be taken to provide for the protection of Judges' salaries and for the security of tenure of their offices. They also accepted in principle the desirability of avoiding the vesting of judicial and executive functions in the same persons, so far as this was practicable.

Fundamental Rights

11. It was also suggested that in order to preserve fundamental human rights, provisions should be written into the revised constitution on the model of those in the Nigerian constitution, due allowance being made for local circumstances.

12. The Conference agreed that, while such a provision would not be appropriate to the next stage of constitutional advance in Nyasaland, a study of the matter might usefully be started so that when the time came suitable provisions could be included to this end.

The Civil Service

13. The Conference agreed that security and non-discrimination should be assured to the Civil Service and that at the appropriate stage this assurance should be enshrined in a Public Officers' Agreement. They emphasised the need to train local persons for appointment to Civil Service posts and endorsed the current policy that local candidates of all races should have full opportunities for promotion and advancement based solely on the ability and qualifications of the officer concerned. The Conference welcomed the recent announcement by the Nyasaland Government regarding the setting up of a Committee under the chairmanship of the Head of the Ghana Civil Service to study the best means of promoting localisation of the Service, including the problem of providing the necessary education and training for the men and women who will be needed.

14. The Conference also welcomed the announcement by the Governor in his address to the Legislative Council on 4th July, 1960, that it had been decided to create a Public Service Commission in Nyasaland. At the present stage this would be advisory to the Governor but at a later stage it would be appropriate that as in other territories, it should be given constitutional or legal status and independent executive responsibility.

Local Government

15. The Conference were agreed that an efficient local government was an important factor in maintaining stability in the country and recognised that the ultimate objective should be to build on a firm democratic base. The development of local government is a matter which is essentially a task for the government of the day in Nyasaland and will no doubt be studied by the government which takes office when the general constitutional arrangements recommended by the Conference come into effect. The Conference took note that the Secretary of State's Local Government Advisory Panel would be available, if required, to give advice on this matter to the Government of Nyasaland.

Position of Chiefs

16. The Conference recognised that the traditional political institutions in Nyasaland must be harmoniously reconciled with the development of parliamentary government at the centre, so that modern democratic government can be established in an orderly manner. The Conference reaffirmed that in this process the Chiefs would have an important and time honoured role to play.

Implementation

17. It is recommended that an immediate start should be made on the detailed work required to implement the conclusions of the Conference, with a view to holding elections under the new constitution as soon as administratively possible. In particular, the Governor should be invited to appoint a Working Party to draw up detailed recommendations for such matters as the definition of the franchise qualifications listed in paragraph 8 C above, the registration of voters, the qualifications and nomination of candidates, the delimitation of constituencies, and other matters preparatory to the holding of elections. Those represented at the Conference should be kept in touch with the progress of the work of this Working Party. In addition, if the Advisory Commission on the Review of the Constitution of the Federation of Rhodesia and Nyasaland (the Monckton Commission) should make any recommendations relevant to the matters covered by the conclusions of the Conference, the Governor should consult, as necessary, those represented at the Conference, with a view to reporting back to the Secretary of State.

18. All delegates declared that they mean to work the new constitution and recognise that a reasonable period of trial for it will be necessary to ensure the stability upon which economic and social progress and further constitutional advance could be based. The Secretary of State said that for his part he would require to be satisfied that the necessary experience in working this constitution had been gained before recommending a further advance.

Final Remarks

19. The Conference wished to place on record their deep appreciation of the efficiency and speed with which the Secretary-General and all the members of the Secretariat had discharged their responsibilities throughout the proceedings.

20. In his final address to the Conference, the Secretary of State said :

“We are here to report agreement from the whole Conference. There are no minority reports.

We have proceeded in this Conference from a discussion of four general principles which were broadly approved to a detailed examination of how we might implement those principles, and we have always taken into account, particularly in our proposals relating to the franchise, the special circumstances of Nyasaland.

When first in Central Africa I announced that this Conference would take place, and even when we assembled here in London ten days ago, practically no one in Nyasaland, or the Federation, or here, thought that there was any chance of agreement. Yet we have shown that men of different races, African, European and Asian can come together round the table and reach agreement, even though they started from widely differing points of view.

For myself I gladly give the credit where it belongs—to the members of the Conference. You, Dr. Banda, leading the Malawi Party, said at the beginning that you had come in a spirit of give and take, and you have

proved your words. You, Mr. Dixon, leading the United Federal Party, said at the beginning that you had come in a responsible and constructive spirit, and you have proved your words. I am very grateful to you both and to all the members of the Conference. For myself I have nothing more to add except to say that I hope and pray that the work we have done will play its part in building a happy and peaceful future in Nyasaland."

IAIN MACLEOD, *Chairman.*

R. B. M. KING, *Secretary-General.*

Lancaster House,
London, S.W.1.

4th August, 1960.

ANNEX

LIST OF THOSE ATTENDING THE NYASALAND CONSTITUTIONAL CONFERENCE, 1960

REPRESENTATIVES FROM NYASALAND

Chiefs

Chief Chikumbu.
 Chief Chinde.
 Chief Kuntaja.
 Chief Makanjira.
 Chief Masula.

Malawi Congress Party

Dr. Hastings Banda.
 Mr. Orton Chirwa.
 Mr. M. W. K. Chiume.
 Mr. Aleke Banda.

United Federal Party

Mr. A. C. W. Dixon, C.B.E.
 Mr. M. H. Blackwood.
 Mr. L. A. Little.
 Mr. Matthews Phiri.

Congress Liberation Party

Mr. T. D. T. Banda.

African Members of Legislative Council

Mr. J. R. N. Chinyama.
 Mr. N. D. Kwenje.

Asian Community

Mr. A. S. Sacranie.
 Dr. A. J. P. Antao.

Group Accredited Advisers Present at Meetings

Dr. T. O. Elias, Malawi Congress Party.
 Mr. Y. M. L. Chirwa, Congress Liberation Party.

The Government of Nyasaland

Sir Robert Armitage, K.C.M.G., M.B.E., Governor.
 Mr. J. H. Ingham, C.M.G., M.B.E., Secretary for Local Government and Social Services.
 Mr. D. E. Barson, Assistant Secretary.

REPRESENTATIVES FROM THE UNITED KINGDOM

Delegates

The Rt. Hon. Iain Macleod, M.P., Chairman of the Conference, Secretary of State for the Colonies.

The Rt. Hon. The Earl of Perth, Vice-Chairman, Minister of State for Colonial Affairs.

Sir Hilton Poynton, K.C.M.G.

Sir John Martin, K.C.M.G., C.B., C.V.O.

Mr. W. B. L. Monson, C.M.G.

Mr. N. D. Watson, C.M.G.

} Colonial Office.

Legal Advisers

Mr. J. C. McPetrie, O.B.E.
Mr. J. A. Peck.
Mr. H. Steel.

Secretariat

Mr. R. B. M. King, M.C., Secretary-General.
Mr. A. McM. Webster.
Mr. J. C. Edwards. } Secretaries.
Miss J. Cook,
Mr. P. N. Reynolds. }
Mr. R. W. Francis, Press Officer.
Mr. L. F. Ridgewell, Documents Officer.

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ERRATA

Page 51, paragraph 136: in line 10 on page 51, insert “ (including rural clinics) ” after the word “ hospital ”, and substitute “ 300,000 ” for “ 290,000 ”;

in line 11, substitute “ 7,000,000 ” for “ 6,000,000 ”.

Page 169, Annexure IV: in column 1, substitute “ 28 ” for “ 21 ”.

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