Report by the Resumed Nigeria Constitutional Conference

Held in London in September and October, 1958

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REPORT BY THE RESUMED NIGERIA CONSTITUTIONAL CONFERENCE

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I. INTRODUCTION

1. The Conference on the Nigerian constitution held in London in May and June 1957 reached agreement on changes in the structure of the Federal Government, on the attainment by the Eastern and Western Regions of Regional self-government, on constitutional changes in the Northern Region and the Southern Cameroons, and on amendments to the legislative lists. Amendments to the constitution were made in August 1957 to bring into force Regional self-government in the East and West and the major changes agreed for the Federation and the Northern Region. Since then other agreed changes have been made, including those in respect of the Southern Cameroons.

2. The 1957 Conference also agreed to the setting up of a number of Commissions, and paragraph 73 of the Conference Report (Cmnd. 207) records the following agreement on future procedure:

> "The Conference noted that, as a result of its recommendations, a number of Commissions and similar bodies would be set up and that certain items of business had been left unfinished.
>
> . . . The Conference also agreed in principle that a resumed Conference should take place to consider the reports of the Minorities Commission and the Fiscal Commission, and other matters then outstanding from the present Conference."

3. The report of the Fiscal Commission was published on the 28th July, 1958 (Cmnd. 481) and the report of the Minorities Commission on the 18th August, 1958 (Cmnd. 505). It was accordingly agreed on the proposal of the Secretary of State that the resumed Conference should open in London on the 29th September, 1958.

II. COMPOSITION AND DURATION OF THE CONFERENCE

4. Since it was a resumed Conference the basis of representation was unchanged. Each of the three Regions was represented by 10 delegates and 5 advisers, and the Southern Cameroons by 5 delegates and 3 advisers. The Federal interest was again represented by the Governor-General, the three Regional Governors and the Commissioner of the Cameroons, together with the Federal Prime Minister, two other Federal Ministers and their advisers. Lagos was represented by 2 delegates. A list of the delegates and advisers attending the Conference is at Annex I.

5. The Conference met at Lancaster House and held 40 plenary sessions between the 29th September and the 27th October, 1958.

III. FUNDAMENTAL RIGHTS

6. The Conference turned first to the question of fundamental rights. It was agreed at the 1957 Conference (paragraph 67 of Cmnd. 207) that provision should be made in the constitution for fundamental rights and that the Secretary of State's legal advisers should prepare, in the light of the

memoranda submitted to the 1957 Conference and the discussion on them, draft clauses for insertion in the constitutional instruments. These clauses were to be submitted to all Nigerian Governments and considered at the resumed Conference.

7. The Minorities Commission recommended the inclusion in the constitution of comprehensive provisions on this subject, based mainly on the Convention for the Protection of Human Rights and Fundamental Freedoms, published as a White Paper in October, 1953 (Cmnd. 8969). After studying these recommendations the Secretary of State sent for consideration to the Nigerian Governments draft clauses for inclusion in the constitution prepared by his legal advisers. These clauses and other papers were considered by the Conference and it was agreed to recommend that provision on the following lines should be made in the constitution:

(a) *The right to life*

1. No one shall be deprived of his life intentionally, save in the execution of a sentence of a court, following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as having been inflicted in contravention of this provision when it results from the use of force to such extent and in such circumstances as are prescribed by law and as are reasonably justifiable—
   (i) in defence of any person from violence or in defence of property; or
   (ii) in order to effect an arrest or to prevent the escape of a person detained; or
   (iii) for the purpose of suppressing a riot, insurrection or mutiny; or
   (iv) in order to prevent the commission of an offence.
3. The use of force in the circumstances in which and to the extent to which it is authorised by the provisions of the Criminal Code as in force in any part of Nigeria when this clause comes into operation shall be regarded as reasonably justifiable for the purposes of paragraph 2 of this clause.

(b) *Freedom from inhuman treatment*

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

(c) *Freedom from slavery or forced labour*

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this provision the term " forced or compulsory labour " shall not include—
   (*a*) any work required to be done in consequence of a sentence of a court;
   (*b*) any service of a military character or in the case of conscientious objectors service exacted instead of compulsory military service;
   (*c*) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
   (*d*) any work or service which forms part of normal communal or other civil obligations.

(d) *The right to liberty*

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with the procedure prescribed by law:

   (*a*) the lawful detention of a person after conviction by a competent court;

   (*b*) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation imposed on him by law;

   (*c*) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

   (*d*) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

   (*e*) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

   (*f*) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or with a view to his deportation or extradition.

2. Everyone who is arrested shall be informed promptly of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (*c*) above shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantee to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions above shall have an enforceable right to compensation.

(e) *Rights concerning civil and criminal law*

(i) 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent tribunal established by law. Judgment shall be pronounced publicly, but the Press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Paragraph 1 of this clause shall not invalidate any enactment by reason only that it confers upon a tribunal, Minister or other authority power to determine questions arising in the administration of a statute, that affect or may affect the civil rights of any person.

3. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

4. Everyone charged with a criminal offence has the following minimum rights :

(*a*) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him ;

(*b*) to have adequate time and facilities for the preparation of his defence ;

(*c*) to defend himself in person or (subject to paragraph 6 below) through legal assistance of his own choosing ;

(*d*) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ;

(*e*) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

5. All courts which try any person for a criminal offence shall keep a record of the proceedings and judgment of the court, and an accused person or any person duly authorised on his behalf shall have the right to have copies of such records within a reasonable time subject only to the payment of any fee prescribed by or under any law.

6. Nothing in this clause shall invalidate legislation prohibiting legal representation in native and customary courts.

(ii) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time that the criminal offence was committed.

(iii) No person who has been tried and convicted or acquitted for any criminal offence shall again be tried for that offence except upon the order of a superior court.

(iv) No person accused of any offence shall be compelled to be a witness against himself.

(v) No person shall be convicted of a criminal offence other than an offence defined by written law.

(The Conference agreed to recommend that this provision should become effective in the Northern Region only after the proposed revised Criminal Code on the lines of the Sudanese Criminal Code had come into force there.)

(*f*) *The right to private and family life*

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the

law and is reasonably justifiable in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

(*g*) *Rights concerning religion*

(i) 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others, and in public or private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

2. Freedom to manifest and propagate one's religion or belief shall be subject to such limitations as are prescribed by law and are reasonably justifiable in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others, including their rights and freedom to observe and practise their religion without the unsolicited interference of members of other religions.

(ii) 1. No person attending any educational institution shall be required to receive religious instruction or take part in any religious ceremony or attend religious worship if such instruction, ceremony or worship relates to a religion other than his own.

2. No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination.

(*h*) *The right to freedom of expression*

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority or by others. This provision shall not prevent Governments from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are reasonably justifiable in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

(*i*) *Freedom of peaceful assembly and association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade or other unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are reasonably justifiable in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the

protection of health or morals or for the protection of the rights and freedoms of others. This provision shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the country.

(*j*) *Freedom of movement and Residence*

(1) Subject to any restriction which is imposed by any law and which is reasonably justifiable in the interests of public security, public health or morals, the prevention of crime or the punishment of offenders, every citizen has the right to move freely throughout Nigeria and to reside in any part thereof: provided that the right of residence shall not in itself convey a right to acquire land or other property.

(2) No citizen of Nigeria shall be deported from Nigeria.

(*k*) *Right to compensation for the compulsory acquisition of property*

It was agreed to recommend that the existing provision in section 223 of the Nigeria (Constitution) Order in Council, 1954 as amended should remain.

(*l*) *The enjoyment of Fundamental Rights without discrimination*

The enjoyment of the fundamental rights set forth in this constitution shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

(*m*) *Freedom from discriminatory legislation*

1. No enactment of any legislature in Nigeria, and no instrument or executive or administrative action of any Government in Nigeria shall, either expressly or in its practical application,

   (*a*) subject persons of any community, tribe, place of origin, religion or political opinion to disabilities or restrictions to which persons of other communities, tribes, places of origin, religions or political opinions are not made subject: or

   (*b*) confer on persons of any community, tribe, place of origin, religion or political opinion any privilege or advantage which is not conferred on persons of other communities, tribes, places of origin, religions or political opinions.

2. Nothing in this provision shall prevent the prescription of qualifications for the public service or the service of a body corporate directly established by law.

3. Nothing in this provision shall prevent the Legislature or Government of a Region from imposing restrictions on persons from outside the Region with regard to employment in the public service of the Region, or the service of a body corporate directly established by Regional law, and the acquisition of land in the Region. This restriction on the provision shall be subject to review by the Regional Governments five years after its coming into force and thereafter, if it is retained, every five years.

(*n*) *Powers to Safeguard the Nation*

(i) At any time when the Federal Government has declared that a state of war or other public emergency exists, or both Houses of the Federal Legislature have declared by resolution that

democratic institutions in Nigeria are threatened by subversion, measures may be taken in accordance with such provision as may be made in that behalf by a law enacted by the Federal Legislature (which law may be either a specific law passed to deal with the particular situation or a general law passed in anticipation of such situations) derogating from the fundamental rights to be provided for in the constitution to such extent as may be reasonably justifiable in order to deal with the situation:

Provided that nothing in this provision shall authorise any derogation from provision (*a*) above except in respect of deaths resulting from lawful acts of war or from provisions (*b*), (*c*) and (*e*) (ii).

(ii) A resolution for the purposes of paragraph (i) shall require a two-thirds majority of the members of each House and shall remain in effect for two years or such shorter period as may be specified therein. It may be extended from time to time by a further similar resolution for not more than two years at a time.

(iii) Where any person is detained in derogation from the fundamental rights provided for in the constitution, that person shall have the right to require that his case should be referred periodically to an independent tribunal established by law, of which the Chairman is a person with legal qualifications appointed by the Federal Chief Justice. (The Conference noted that the Government would be obliged to review the case in the light of the tribunal's recommendations, but would not be bound to accept those recommendations.)

(iv) If in any proceedings before any court relating to any derogation or alleged derogation from the fundamental rights provided for in the constitution the Federal Government certifies that it would not be in the public interest for any matter to be publicly disclosed, the court shall make arrangements for evidence relating to that matter to be heard in private and shall take such other steps as may be necessary to prevent such disclosure.

(v) Where the movements of any person are restricted in pursuance of a law enacted under the initial words of clause (*j*) above, he shall, as in the case of persons detained, be entitled to have his case referred to an independent tribunal of the kind mentioned in paragraph (iii).

(o) *The enforcement of fundamental rights*

Any person may apply to the High Courts for protection or enforcement of any of the fundamental rights provisions contained in the constitution and the High Courts shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of these rights. There shall be a right of appeal from a High Court to the Federal Supreme Court.

IV. POLICE

8. The 1957 Conference agreed ((7) on page 20 of Cmnd. 207) that before his constitutional responsibilities for Nigeria came to an end the Secretary of State, after consultation with all the Nigerian Governments, should reach a decision whether or not the Regional Governments should set up their own police forces. The Minorities Commission recommended a series of

principles that should be observed in any decisions regarding the future of the police in Nigeria. The Conference discussed at length the arrangements for the police and reached agreement to recommend that there should be constitutional provision for a single force under an Inspector-General responsible to the Federal Government. The bulk of this force would continue to be stationed in the Regions, each Regional contingent being under the control of a Commissioner and being recruited by the Commissioner, under the general supervision of the Inspector-General, as far as practicable from within the Region. It was agreed that as far as possible constables would be posted to an area where they understood the language spoken.

Administration of the Police Force

9. The Conference agreed to recommend that the administration of the force should be the responsibility of a Police Council. Until a new Federal Government is formed after the next Federal elections the Governor-General should preside over this Council, but thereafter the Prime Minister or on his recommendation the Federal Minister responsible for law and order should preside. Members of the Council should be

(*a*) the Prime Minister or the Federal Minister responsible for law and order;

(*b*) the Premier of each Region or the Minister from that Region responsible for law and order; and

(*c*) the Chairman of the Police Service Commission.

The Inspector-General should always attend and should have the right to speak, but he should not be a member nor be entitled to vote. The Regional Commissioners should not be members but should be available as required to advise the Council. The force would remain a charge on Federal funds and for this reason and because the Federal Government would remain ultimately responsible for the force the Federal Government would be empowered for reasons given to over-rule the decisions of the Council. But subject to the ultimate power of the Federal Government and until independence to the reserve powers of the Governor-General the Council would be fully responsible for all aspects of the provision, maintenance and administration of the force, other than staff matters within the responsibility of the Police Service Commission. This responsibility would include the preparation and approval of the annual estimates and the decision in all matters of general police policy, including any legislation concerning police that the Federal Government might promote. The Council's responsibilities would involve a continuous administrative review of the working of the force, its adequacy and efficiency, its broad distribution, the size of its reserves and its training policy. Subject to the overriding responsibility of the Federal Government for law and order, the decisions of the Council would be final. In cases involving this responsibility, the Federal Government would communicate their decision to the other Governments represented on the Council and would lay on the table of the Federal House of Representatives a paper setting out the advice of the Council and giving their reasons for not accepting that advice.

10. Thus each Regional Government would be able through their representative on the Council to express their views about the administration of the force as a whole and in particular about the size, composition and training of the contingent stationed in their Region, and would be able also to play their full part in the decisions taken by the Council on all these matters. The Conference agreed that the object of these arrangements was to enable the police to be regarded as a force belonging not to one Government but to all the Governments and to Nigeria as a whole, to ensure without fear or favour that all men observe the law.

11. The Conference took note that the Federal Government would, in accordance with present practice, continue to send to the Regional Government for their comments draft Federal legislation concerning police matters. It would be for the Regional Governments to consider what action, if any, they should take in respect of such draft legislation, but the Conference recognised that the Federal Government and Legislature would not be required to delay consideration of the draft legislation pending any representations from a Regional Government.

Use and Operational Control

12. The Conference agreed that the Council should have no responsibility for the operational use and tactical disposition of the police force. To some extent the use of the police is already regulated by the law in that a policeman is not a mere administrative agent but is the holder of a statutory office, enjoying certain rights under the law but also owing certain obligations that are placed on him by law. It is a principle freely and widely accepted throughout the Commonwealth that in their day-to-day duties the police derive their authority from the law and have statutory obligations under the law such that they should not be used in any way that is at variance with the spirit or the letter of the law. Subject to this and to the final authority of the Governor-General and after independence of the Federal Prime Minister, the responsibility for the operational use and tactical disposition of the police force should be vested in the Inspector General. The Regional Commissioners would, in these matters, be responsible to him and under his general supervision. But each Regional Commissioner would naturally be primarily concerned, under that general supervision, with the day-to-day disposition and operation of the police force in his Region, including its tactical dispositions. In such matters the Regional Commissioner should carry out the requirements of the Regional Government in fulfilling their responsibility for law and order, subject to the overriding authority of the Governor-General, and after independence, of the Prime Minister. It was agreed that the Federal Government would not normally intervene in the day-to-day activities of the Regional contingents. Such intervention would however be necessary if there were disagreement between the Regional Government and the Regional Commissioner; and other circumstances could be envisaged in which the Federal authorities would need to have the final voice. For example, there might well be a case where a Regional Government faced with disturbances in its area asked for a given number of reinforcements from elsewhere. It might be that the Federal Government had other commitments on its hands which might prevent it from sending the number of reinforcements requested. In such a case the Federal Government must have the power of final decision.

13. Should the Commissioner conclude on any particular matter that he was unable to meet the wishes of the Regional Government, he would so inform them, giving his reasons. Up to the next Federal elections the Regional Government could, if they wished to carry the matter further, submit it for decision to the Governor-General through the Regional Governor. After the Federal elections the decision would lie with the Federal Prime Minister. No doubt before giving a decision the Governor-General, and after the next Federal elections the Prime Minister, would normally consult the Federal Minister responsible for law and order and the Inspector General. Under these arrangements the Regional Government would have a full say in the use and operational control of police in their Region. It was agreed to recommend that the Governor-General's discretionary powers over the police would be surrendered to the Prime Minister after the Federal elections and before independence, leaving the Governor-General until independence only with reserve powers.

14. The Conference agreed that, save in an emergency, the Inspector General should not move substantial numbers of police either temporarily or permanently out of the Region to which they are normally assigned without the agreement of the Regional Government concerned. If the Inspector General concluded that in an emergency substantial numbers needed to be moved without first obtaining the agreement of the Regional Government, he should for the present obtain the authority of the Governor-General, and after the next Federal elections of the Prime Minister.

15. The Conference agreed that just as the Regional Commissioner should keep in close touch with the Regional Government, so the Inspector General should keep in close touch with the Governor-General (until independence) and with the Federal Minister responsible for law and order over the disposition, use and operational control of the whole force. It would thus be open to the Federal Minister to make his views and wishes on these matters known to the Inspector General. Subject to his own professional standards and assessment of the situation, the Inspector General should wherever possible observe these wishes, but if on any particular matter he was unable to do so, he should so inform the Minister, giving his reasons. The Minister could then, if he wished, refer the matter to the Governor-General, or after the next Federal elections to the Prime Minister, who would be empowered to give a decision.

Personnel

16. Until independence the Police Service Commission should continue to advise the Governor-General on matters of first appointment, promotion and discipline of the officer cadre. The Conference agreed to recommend that after independence it should, like the Public Service Commission, become fully executive, and there should be special constitutional provision protecting the appointment and tenure of office of members of the Police Service Commission. Although the Police Service Commission would have the final say in the appointment of all officers, it should, in the case of the Inspector General, be open to the Federal Government to request the Governor-General to refer back to the Police Service Commission their recommendation to him concerning either the appointment or the dismissal of the Inspector General. Similarly, in the case of the posts of Regional Commissioner, it should be open to the Government of the Region concerned to request the Governor-General to refer back for reconsideration to the Police Service Commission its recommendation concerning the appointment of a Commissioner to that Region, or concerning the dismissal of the Regional Commissioner. The Inspector General should continue to be responsible under Police Regulations for the appointment, promotion and discipline of non-gazetted ranks, subject to certain rights of appeal to the Governor-General, or after independence to the Police Service Commission.

Local Forces

17. The Conference noted the recommendation of the Minorities Commission that it should be an object of policy to absorb local forces gradually into the Nigeria Police. It was agreed that this was a long term problem. Nigeria as a whole was under-policed and the Conference hoped that the Police Council would take the view that any increases in the police establishment should come from the expansion of the Nigeria Police. The following agreement about local forces was reached:

(*a*) Local forces should be retained to operate in conjunction with the Nigeria Police but no local forces should be organised in units exceeding in size and area of authority a Provincial force.

(*b*) It should be the duty of the Nigeria Police to develop the existing facilities for training local forces and, if it was practicable, to provide officers on secondment to advise or command them. The Local Authorities and Native Authorities should be encouraged to make increased use of this help.

(*c*) The existing establishments of local forces and changes proposed in these establishments should be regularly reported to the Regional Government so that they may have a full and continuous picture of the police situation in the Region. The representative of the Regional Government on the Council should keep it fully informed.

V. SELF-GOVERNMENT FOR THE NORTHERN REGION

18. At the 1957 Conference the delegates of the Northern People's Congress stated that they did not propose to ask for self-government for the Northern Region before 1959. In July and August, 1958, the Legislative Houses of the Northern Region approved a White Paper which the Regional Government tabled containing proposals for the attainment of self-government by the Northern Region on the 15th March, 1959. The Regional Government then submitted the White Paper to the Secretary of State, who replied by despatch setting out his preliminary comments. After full consideration of the White Paper and of the Secretary of State's despatch the Conference agreed to recommend that constitutional provision should be made for the Northern Region to become self-governing on the 15th March, 1959. The provisions for self-government should follow the pattern established in 1957 for the Eastern and Western Regions with the following variations appropriate to the circumstances of the Northern Region:

(*a*) The Governor-General should possess in respect of the Northern Region the same powers to safeguard the Federation as he possesses under section 135 of the Nigeria (Constitution) Order in Council, 1954, as amended, in respect of the Eastern and Western Regions. The Governor of the Region should be empowered to exercise these powers in the capacity of an agent of the Governor-General.

(*b*) The Governor should retain general reserve powers in relation to the Northern Cameroons to enable the United Kingdom Government as the Administering Authority for the Trust Territory to ensure the discharge of its obligations under the Trusteeship Agreement.

The Conference took note that the question of a plebiscite to ascertain the wishes of the people of the Northern and Southern Cameroons as to the future status of the territory was covered by the terms of reference of the Visiting Mission of the United Nations shortly due to visit the Cameroons.

(*c*) The intention of the Regional Government is that for the time being the office of Attorney-General should remain a public office; that its holder should continue to be the legal Member of the Executive Council and as such a member of both Houses of the Regional Legislature; and that he should be appointed by the Governor in his discretion after consultation with the Premier and the Public Service Commission. It should, however, be open to the Regional Government to assimilate the position of the Attorney-General of the Region to that of the Attorneys-General of the Western and Eastern Regions when they consider that the time is ripe to do so.

(*d*) The office of Director of Public Prosecutions should also be created. The constitutional provisions concerning this office, including the

method of appointment to it, should be the same as those applying to the similar office in the Eastern and Western Regions. So long as the holder of the office of Attorney-General is a public officer, it will be possible to appoint him also to the office of Director of Public Prosecutions.

19. The Conference took note of a statement by the Government of the Northern Region summarising the recommendations of the Panel of Jurists concerning the re-organisation of the legal system of the Region, and recording that the Regional Government has, subject to further consideration of particular matters, approved these recommendations.

20. The Conference took note that the minimum number of judges for the High Courts of the Eastern and Western Regions was prescribed in the constitution and that the Northern Regional Government would furnish information to the Secretary of State and to the other Nigerian Governments concerning the minimum number of High Court judges to be prescribed for the Northern Region.

21. The Conference took note of the undertaking by the Northern representatives that on the attainment of Regional self-government the Government of the Northern Region would enter into a Public Officers' Agreement with the United Kingdom Government, safeguarding the conditions of service of overseas officers. It was agreed that in view of this undertaking the Northern representatives should not proceed with the proposal in the White Paper that legislation which might adversely affect the Regional Public Service should continue after Regional self-government to be subject to Her Majesty's power of disallowance of legislation.

VI. THE POSITION OF LAGOS

22. The Conference considered memoranda submitted by the Governor-General on behalf of the Federal Government concerning certain of the arrangements for Lagos on which agreement was reached at the 1957 Conference (Cmnd. 207, paragraph 56 (*b*), (*d*), (*f*) and (*g*)). The Conference took note as follows:

(*a*) The Federal Government have concluded that the following functions should be transferred from the Federal Government to the Lagos Town Council:

(1) HEALTH

Functional division of responsibility to be implemented as soon as possible.

Federal Government: Hospital and Curative Services, but including Port Health and anti-plague measures.

Lagos Town Council: Health and Preventive Services, but including Schools Medical Service, the Infectious Diseases Hospital and the power to establish maternity homes.

(2) LAGOS FIRE BRIGADE

Responsibility to be transferred to the Lagos Town Council as soon as possible.

(3) EDUCATION

Responsibility for primary education in Lagos to be transferred to the Lagos Town Council in accordance with plans already prepared by the Federal Ministry of Education.

(4) WELFARE

Responsibility for Port Welfare, Adult Welfare, Care of Discharged Prisoners and School Care Services of the Social Welfare Department to be transferred to the Lagos Town Council.

(5) LAGOS EXECUTIVE DEVELOPMENT BOARD

Responsibility for the Town Planning function of the Lagos Executive Development Board to be transferred to the Lagos Town Council when, in the opinion of the responsible Minister, the activities of the Board have, due to the completion of its other work, been so reduced as to consist of that function alone.

(*b*) The Federal Government and the Western Regional Government, having consulted together on the advisability of establishing a joint planning authority in accordance with paragraph 56 (*g*) of Cmnd. 207, have agreed that the establishment of such an authority would be premature, but that the closest co-operation between the Lagos Town Planning Authority and the Ikeja Town Planning Authority is necessary. They have taken steps to ensure such co-operation.

(*c*) The Federal Government have referred to an official committee the recommendation in paragraph 56 (*d*) of Cmnd. 207 that Lagos should be entitled to be represented in the same manner as a Region on all Statutory Boards, Corporations or Committees established by the Federal Government. The Committee have recently submitted a comprehensive report which the Federal Government propose to examine after the Conference.

23. The Conference also took note of a memorandum submitted by the Governor-General on behalf of the Federal Government reporting that further study had been given to the question of the representation of the traditional Chiefs of Lagos on the Lagos Town Council. The views of the Oba and Chiefs of Lagos, of the Lagos Town Council and of all political parties with branches in Lagos had been sought and examined in detail against the historical background. After very careful consideration of the various views expressed the Federal Government had reached the conclusion that the present proportion of traditional Chiefs to elected members represents the proper balance between the traditional tie and the need to ensure that the Council is directly responsible through its elected members to the people of Lagos. The Federal Government had accordingly concluded that there should be no change in the existing provision for the representation of the traditional Chiefs of Lagos on the Lagos Town Council. The Conference expressed the view that the representation should not be reduced below the present number of four.

24. The question of the extension of the boundaries of the Federal territory of Lagos was raised. The Governor-General, who was then in the chair in the temporary absence of the Secretary of State, said that it was clear from paragraphs 71 and 73 of 1957 Conference Report (Cmnd. 207) that the question was not outstanding from the 1957 Conference but had been covered by the compromise recorded in paragraph 56 (g) of that Report. He considered it unlikely that a fresh agreement on it would be reached at the Conference and pointed out that any agreement which was reached on a procedure for changing after independence the boundaries of a Region (paragraph 51 below) would extend to the boundary between the Federal territory of Lagos and the Western Region. At a later session the

Secretary of State informed the Conference that after full consideration he endorsed the statement made by the Governor-General. This was noted by the Conference.

VII. THE JUDICIARY

25. The Conference agreed to recommend that the composition of the Federal Supreme Court should be enlarged by adding to its membership as *ex-officio* members the Chief Justices of each of the Regions.

26. In the course of discussing the proposals for self-government for the Northern Region the Conference gave further consideration to the present arrangements for the appointment in the Eastern and Western Regions of Regional Chief Justices and members of the Judicial Service Commissions. The Conference agreed to recommend that these arrangements should remain unchanged and that there should be similar provision for the Northern Region on the attainment there of Regional self-government.

27. The Conference agreed to recommend that there should be constitutional provision to validate as necessary any appointments to native and customary courts which might be deemed invalid in view of the provisions of section 2 (4) (*a*) (iv) of the Nigeria (Constitution) Order in Council, 1954, as amended, which came into effect on the 1st April, 1958.

28. The Conference agreed to recommend that throughout Nigeria Justices of the Peace should at the appropriate constitutional stage be appointed on the advice of the Judicial Service Commissions.

29. The Conference considered the methods of appointment of judges of Customary and Native Courts and agreed—

(*a*) The appointment, dismissal and disciplinary control of judges of Customary and Native Courts throughout Nigeria should be divorced as far as possible from political and executive control.

(*b*) Each Regional Government should review the situation in its own Region and should prescribe by legislation those Customary and Native Courts whose members should be appointed on the recommendation or under the supervision of the Judicial Service Commission.

(*c*) The Regional Governments should seek to ensure that the powers of appointment, dismissal, and disciplinary control of all judges of Customary and Native Courts (other than Emirs) with power to impose prison sentences of more than 6 months or fines of more than £50 should be exercised on the recommendation or under the supervision of the Judicial Service Commission.

(*d*) The appointment of Emirs as judges should be by the Governor in his discretion after consultation with the Judicial Service Commission.

30. The Conference agreed to recommend that section 229 (1) (6) of the Nigeria (Constitution) Order in Council, 1954, as amended, should be amended to provide that the Governor, after consultation with the Public Service Commission of the Region, may permit a Director of Public Prosecutions who has attained the age of 55 years to remain in office for a period not exceeding seven years after his attainment of that age.

VIII. THE EXERCISE OF THE PREROGATIVE OF MERCY

31. The Conference discussed the exercise of the prerogative of mercy and the composition and functions of the Nigerian Privy Councils. The Conference recognised that because of the gravity of the questions to be

decided the exercise of this power calls for the highest qualities of impartiality and balanced judgment on the part of the person or persons responsible for its exercise. It was agreed that the provisions for its exercise should be such that public opinion is left in no doubt that these qualities will be brought o bear. It was recognised that the Privy Councils had been created for the purpose of providing impartial and expert advice to the Governor-General and Governors and that the advice given had proved of the greatest value. The Conference agreed that it would be wise to provide for similar advisory bodies to replace the Privy Councils when the Governors ceased to be responsible in their discretion for the exercise of the prerogative of mercy.

32. The Conference agreed to recommend that there should be provision for the following arrangements in the Eastern and Western Regions forthwith, and for similar arrangements in the Northern Region, the Southern Cameroons and the Federation on their attainment of self-government:

(*a*) Responsibility for the exercise of the prerogative of mercy should be vested in a single Minister charged with recommending to the Governor how the power should be exercised.

(*b*) Since the Minister like the Governor will be in need of and would benefit from independent expert advice there should be constitutional provision for a body advisory to the Minister just as the Privy Council has been to the Governor. Because the Governor as The Queen's representative will no longer be associated with this body, the title of Privy Council will not be appropriate and the body should be known from its function as the Advisory Committee on the Prerogative of Mercy.

(*c*) The Advisory Committee should consist of members appointed for three years by the Governor on the advice of the Premier and eligible for reappointment. It should not be open to the Premier to recommend the removal of any member save for misconduct or inability to perform the functions of his office.

(*d*) The Advisory Committee should be composed as follows:

The Minister responsible, as Chairman.

The Attorney General.

Not less than five nor more than seven other members, not holding Ministetrial office and not being members of the Legislature. At least one of these members should be a doctor. (It was recognised that there might be advantage in appointing as the medical member the Head of the Government Medical Service.)

(*e*) The Director of Public Prosecutions should if required attend the Advisory Committee but should not be a member.

(*f*) The Advisory Committee should be required to record its advice by vote and a permanent record of its proceedings should be maintained. If the Minister rejected the Committee's advice he should be required to record by minute the reasons for doing so. In making his recommendation to the Governor he should submit this minute and the record of the Committee's proceedings.

IX. THE REPRESENTATION OF NIGERIA OVERSEAS

33. The Conference noted that under the existing constitutional provisions the procedure for appointment to overseas posts is the same as that for appointment to posts within Nigeria. It was recognised that in view of the importance and dignity of the position of chief representative of a country

overseas—Ambassador or High Commissioner—it might from time to time be best to fill such posts not by career officers in the Public Service, but by distinguished citizens appointed for broad reasons of policy. It was accordingly agreed that while ordinary Public Service posts (including the less senior posts in the Overseas Service) should be filled on the advice of the Public Service Commission and without governmental intervention, the most senior overseas posts should be filled on the recommendation of the Government of the day. The Conference therefore agreed to recommend as follows:

(*a*) The appointment of persons to substantive posts as Heads of Mission of the Federation overseas should be vested in the Governor-General acting on the advice of the Prime Minister, and the appointment of the senior representative of a Region in London should be vested in the Governor acting on the advice of the Premier: provided that the Prime Minister or the Premier as the case might be, should consult the Public Service Commission before advising the appointment of a member of the Public Service.

(*b*) The removal of a person from a post of Head of Mission or senior Regional representative in London and the disciplinary control of persons holding such posts should be vested in the Governor-General or Governor acting, as the case might be, on the advice of the Prime Minister or Premier. But the Public Service Commission should retain its responsibilities in respect of the permanent appointment of any public officer holding such a post.

34. The Conference further agreed that there should be no Regional representative after independence in countries other than the United Kingdom, and that the title of a Regional representative in the United Kingdom should be changed from the present title of "Commissioner" to a title such as "Agent General", in order to distinguish him from the High Commissioner of the Federation who would be appointed on independence.

X. THE CREATION OF A NIGERIAN CITIZENSHIP

35. The Conference gave preliminary consideration to arrangements for the creation on independence of a Nigerian citizenship and to the qualifications for such citizenship. The Conference agreed to recommend—

(*a*) that the existing position concerning nationality and citizenship should remain unaltered until independence;

(*b*) that there should be included in the constitution for independence provisions governing the qualifications and disqualifications for citizenship of Nigeria;

(*c*) that the constitution for independence should provide that no Nigerian citizen should be liable to deportation or exclusion from Nigeria.

The Conference further agreed to refer consideration of Nigerian citizenship to an *ad hoc* committee of the Conference to meet in Nigeria under the chairmanship of the Governor-General, at which the various Delegations attending the Conference would be appropriately represented. The United Kingdom delegation was invited to submit to the *ad hoc* committee material to assist them in their deliberations, which should take account of the memoranda submitted to the Conference. It was agreed that the Committee should if possible complete its work by the end of April, 1959.

XI. REPORT OF THE FISCAL COMMISSION

36. It was agreed at the 1957 Conference (paragraph 57 of Cmnd. 207) that the Secretary of State should appoint a Commission to examine the present division of powers to levy taxation in the Federation of Nigeria and the present system of revenue allocation, and to consider what fiscal arrangements would be most appropriate for the Southern Cameroons and the present arrangements for the co-ordination of loan policies and governmental borrowings. The Commission was also to be asked, pending submission of their final report, to consider what interim amendments, if any, of the financial provisions of the Nigeria (Constitution) Order in Council, 1954, as amended, should be made in order to reflect more accurately the principles to which they were designed to give effect. The Commission, under the chairmanship of Sir Jeremy Raisman, submited in December, 1957, a Preliminary Report which was published in Lagos. The major recommendation of this Preliminary Report was that, with effect from the 1st April, 1958, the Southern Cameroons should be treated as if it were a Region for the purposes of revenue allocation, and that 2 per cent of " other import duties " should be deemed to be attributable to the territory. The Preliminary Report was endorsed by the Secretary of State and accepted by the Nigerian Governments. Constitutional amendments were made to bring into operation its main recommendations on the 1st April, 1958.

37. The Conference considered in detail the main Report of the Commission which was published in July, 1958, as Cmnd. 481. Representatives from the Regions and the Southern Cameroons described the financial situation of their parts of the country and commented on the extent to which the recommendations in the Report would meet that situation. The Federal Minister of Finance, in making a similar statement on behalf of the Federal Government, undertook to recommend to the Federal Government that, in addition to accepting the recommendation of the Report that the balance of the working capital advanced by the Federal Government to the Southern Cameroons should be converted into a grant, the Federal Government should also waive the interest due on this working capital.

38. The Conference noted that the Federation was already empowered by section 55 of the Nigeria (Constitution) Order in Council, 1954, as amended, to make such grants or loans as it decided to Regional Governments, and agreed that with the approach of independence and the increased Federal burdens this would bring it was undesirable that the financial position of the Federal Government should be weakened by varying the allocations of revenue recommended in the Report in favour of the Regional Governments. The Conference accordingly agreed to accept as a whole the recommendations of the Fiscal Commission, and asked for an expression of thanks to be conveyed to the Commission for their comprehensive and expert analysis of Nigeria's fiscal problems. The Conference agreed that it was necessary to ensure complete freedom of internal trade throughout Nigeria and invited the legal draftsmen to frame a suitable provision in the constitution accordingly.

39. The Fiscal Commission in paragraph 64 of their Report stated that a sales tax on motor fuel in the Western Region would be effective only if a similar rate of tax were imposed by the Federal Government in Lagos. They did not, however, recommend any specific constitutional provision to ensure the settlement of any conflict of opinion that might arise between the two Governments on this score. The Conference recognised that because of the significance in relation to the independent revenues of a Regional Government of the power to impose a sales tax on motor fuel, and because of the significance of the sums involved to the revenues of the Western Region, the

interest of the Regional Government should in normal circumstances be allowed to predominate in determining whether such tax should be imposed in the Western Region and in Lagos, and if so at what level. Consequently the Federal Government should not withhold its agreement to a proposal by the Western Regional Government for the imposition of such a tax or a particular rate of tax in the Western Region and in Lagos unless the Federal Government were satisfied that imposition of the tax or the rate of tax in Lagos would be contrary to the overall national interest of Nigeria. In recording these views, the Conference had in mind the recommendations of the Fiscal Commission that to avoid disputes there should be the closest possible consultation between Governments over taxation matters, and that consultation could best be achieved through the machinery of the National Economic Council. The Conference agreed that in the event of a disagreement between Regions or between any Region and the Federal Government on a question concerning the imposition of a sales tax the Government concerned should have the right to refer the matter to the National Economic Council or to a restricted Committee of that Council.

40. The Conference considered the difficulties experienced by Regional Governments in seeking to impose a produce sales tax on commodities which are not sold before being shipped from Nigeria. It was the Fiscal Commission's view that the only solution would lie in the field of export duties with the full proceeds returning to the Region of origin. The Conference agreed to recommend that there should be no further specific constitutional provision in respect of export duties on produce. But in view of the particular interest of the Regions in this source of revenue and the importance that full weight should be given by the Federal Government to Regional views on this matter, the Conference expressed the view that the Federal Government should only decline to act on a suggestion by a Regional Government for the imposition of an export duty on produce originating in that Region if it were fully satisfied that the suggestion would be against the overall national interest of Nigeria, or would lead to serious administrative difficulties. The Conference agreed that in the event of disagreement on such a matter between Regions or between any Region and the Federal Government, the matter should be referred to the National Economic Council or to a restricted Committee of that Council, and that the Committee of the National Economic Council dealing with questions of the imposition of sales taxes or export duties should normally consist of the Federal and Regional Ministers of Finance.

41. The Conference took note of a statement by the Federal Minister of Finance concerning representations made to him on the subject of the taxation of expatriate public officers and staffs of business concerns. It was widely feared that such persons would run the risk of suffering financial disabilities if they were transferred to a Region which imposed much higher rates of personal income tax than the part of the country in which they were currently residing. The question arose as a consequence of the recommendation of the Fiscal Commission that the Regional Governments should be empowered to tax non-Africans. It would not encourage expatriate public officers or the expatriate staff of business concerns to remain in Nigeria if they were liable to suffer from excessive disparities in the rates of personal income tax as between Regions and the Federation. The Federal Minister of Finance expressed the hope that it would be possible for the Regional Governments to discuss their proposals with regard to the imposition of personal income tax in the National Economic Council before coming to any final decision.

42. The Conference considered a memorandum on the division of mineral royalties and rents derived from the Continental Shelf. It agreed to recommend that the exploration and exploitation of the Continental Shelf adjacent

to the coast of Nigeria, including that of the Trust Territory of the Cameroons under United Kingdom administration, should be a Federal matter. The Conference also agreed that the formula for the distribution of mining and mineral royalties and rents derived from the exploitation of the resources of the Continental Shelf should be analogous to that proposed by the Fiscal Commission, i.e. 50 per cent. to the contiguous Region, 20 per cent. to the Federal Government and 30 per cent. to the Distributable Pool.

43. The Conference took note of the recommendation of the Fiscal Commission that the first Review Commission should be set up not less than three or not more than five years from the date of introduction of the new system of revenue allocation, and agreed that the principles set out by the Fiscal Commission regarding population, balanced development and minimum responsibility tempered by the principle of contiguity, were factors of which account should be taken by Review Commissions.

XII. REPORT OF THE MINORITIES COMMISSION

The Question of New States

44. The Conference had before it the Report (Cmnd. 505) of the Commission appointed by the Secretary of State, pursuant to the agreement reached at the 1957 Conference, to enquire into the fears of minorities and the means of allaying them. The Commission, under the chairmanship of Sir Henry Willink, spent some months touring Nigeria and receiving evidence and representations from a large number of persons and parties, as well as from the Federal and Regional Governments. The Conference expressed its thanks for the Commission's careful analysis of Nigeria's minority problems. A major conclusion of the Commission was that while there remained a body of genuine fears the creation of separate states would not provide a remedy for the fears expressed. The Commission placed in the forefront of its recommendations to meet this situation comprehensive provision in the constitution concerning human rights and the maintenance of a single Police Force for the country, with arrangements to enable the Regional Governments to participate in the management of the Force. Both these matters were considered by the Conference separately from their consideration of the Minorities Report as a whole, and agreement was reached (see sections III and IV above) on lines similar to those recommended by the Commission.

45. The Conference discussed at length the Commission's conclusion that a case for the immediate creation of new states had not been made out. In the course of this discussion some of the minority representatives from the Eastern Region raised the question of the treaties concluded towards the end of the 19th century between the Crown and the Oil Rivers Chiefs. In reply the Secretary of State made the statement which is contained in Annex II.

46. The representatives of those parties and groups which had argued at the Commission's hearings in Nigeria in favour of the creation of new states renewed their arguments and expressed their dissatisfaction with the Commission's conclusions in this respect. The representatives of the parties which are not in favour of the immediate creation of new states replied and there were considered statements of their position by the leaders of all the major delegations.

47. After careful examination of all these representations and some preliminary consultation with the leaders of the major delegations, the Secretary of State made a statement of the United Kingdom attitude. He

said that it was clear that strong views on this issue were held and would continue to be held. But if the Federation was to settle down to deal with the huge problems which confronted it the Conference must reach some conclusion in the form of a compromise. He reaffirmed that in his view the Conference could not lightly disregard the unequivocal conclusions of the Minorities Commission that the case for new states had not been made out. By their conclusions on the questions of fundamental rights and the police the Conference had recognised the need to take steps to allay minority fears, and other steps in train or proposed were the implementation by the Government of the Northern Region of the report of the Panel of Jurists, the arrangement for a Mid-West Advisory Council and the proposals by the Governments of the Northern and Eastern Regions to establish Provincial Councils or Assemblies. These efforts had not yet satisfied the representatives of the minority groups, who continued to demand the early creation of new states. But he had to take account of the fact that these representatives, together with the representatives of the other Nigerian delegations, were at one in pressing for the grant of independence in 1960. These two requests did not appear compatible. If the United Kingdom were asked after the elections next year by majority opinion in Nigeria to provide for the creation of new states forthwith he could not regard it as consonant with his responsibilities to transfer power in 1960 while small new Governments, lacking experience, trained staff, and a proper framework of administration were as yet unestablished. Furthermore, according to the Minorities Commission the case for new states was weakest in the Northern Region. Even if fresh elections showed that the demand in the North was greater than the Commission found it to be, it was unlikely that such a demand would make possible the creation of a coherent new state in any area of the North which could hope to stand alone with full Regional status. If, therefore, new states were created in the southern part of Nigeria alone, this would bring about a still greater imbalance in the Federation, with an overwhelmingly powerful North facing four or five smaller states in the South.

48. The Secretary of State said that the Conference seemed to have two choices: on the one hand to abandon the request for independence in 1960 and instead to put the question of new states to the test at the next elections or at a series of plebiscites next year, followed by a fresh Conference thereafter to consider whether new states should be created and, if so, what provision for them was needed; on the other hand to accept that if there was to be early independence no new states could be created either now or as a result of next year's elections, so that the present structure of the Federation would continue in existence at least until after the strains of independence had been taken. But he recognised that the present Regional boundaries and number of Regions could not be regarded as standing for all time and accordingly commended to the Conference proposals which he tabled for a procedure to be included in the constitution for independence for effecting boundary changes and creating new Regions.

49. When the Secretary of State's statement was considered by the Conference a further series of statements was made by the leaders of all the major delegations, commenting from different points of view on the United Kingdom statement, but reaffirming their wish for early independence. A statement was also made on behalf of the minority representatives recording their regret that no new states were to be created and their view that the creation of such states would not be incompatible with the grant of independence in 1960. In acknowledging these further statements the Secretary of State said that if the Federal Government which would come into power following the

elections to be held late in 1959 were to ask for new states to be created before independence it would be necessary to have a further Conference with the same composition as the present Conference in order to review the situation before independence was granted. The holding of such a Conference, if it proved necessary, should not be regarded as an unreasonable or retrograde step since it was clearly not within the power of the present Conference to agree that the United Kingdom Government should reach a unilateral agreement with the new Federal Government to be elected next year to create new states without consulting any of the other parties or Governments in Nigeria.

50. In concluding their discussion of this question, the Conference took note—

(1) of the various points made in discussion,

(2) of the Secretary of State's view that the early creation of new states was not for practical reasons compatible with the request for independence in 1960 and

(3) that if the matter were reopened by the Federal Government which would be formed after the next Federal elections a new situation would be created which would, in the view of the Secretary of State, necessitate a further Conference in London to review the situation before independence was granted.

Procedure after Independence for Changing Regional Boundaries and Creating New Regions

51. The Conference then turned to consider what provision should be made in the constitution for independence for a procedure to change Regional boundaries and create new Regions. The Conference agreed to recommend as follows:

(a) *Minor Changes of Regional Boundaries*

A boundary between two or more Regions may be altered so as to transfer an area of not more than 1,000 square miles and with not more than 100,000 inhabitants, by means of a law enacted by the Federal Legislature amending the provisions of the Federal Constitution defining the Regional boundaries. This law should not be brought into operation unless approved by resolutions passed by each House of the Legislatures of both or all of the Regions directly affected by the change.

(b) *Major Changes of Regional Boundaries*

A boundary between two or more Regions may be altered so as to transfer an area from one Region to another Region or Regions by means of the following procedure:

(i) Each House of the Federal Legislature must pass by a two-thirds majority of all the members a resolution approving the proposal.

(ii) The proposal must then be submitted to each House of all the Regional Legislatures and must be approved either

(1) by resolution passed by each House of the Legislatures of both or all the Regions directly affected by the proposal; or

(2) by resolution passed by each House of the Legislatures of a bare majority of the Regions, which must include the Region or Regions to which the area is to be transferred.

(iii) The Federal Legislature may then enact a law providing for such amendments to the Federal constitution as are necessary or expedient to give effect to the proposal and this law should be submitted to the Legislative Houses of all the Regions and should require the approval by resolution of the Legislative Houses of at least two Regions.

(iv) Thereafter before the law can come into operation a referendum must be held in the area which it is proposed to transfer, at which all inhabitants of that area who are entitled to vote at elections to the House of Representatives shall be entitled to vote, and at which at least 60 per cent. of those who in fact vote are in favour of the proposal.

This procedure should apply to the alteration of the boundaries between a Region and Lagos or any other Federal territory.

(c) *The Creation of a New Region*

An area forming part of one or more Regions may be converted into a new Region by means of the following procedure:

(i) Each House of the Federal Legislature must pass by a two-thirds majority of all the members a resolution approving a proposal that the procedure for creating a new Region should be set in motion.

(ii) The proposal must then be submitted to each House of all the Regional Legislatures and must be approved either

(1) by resolution passed by each House of the Legislatures of two Regions, provided these include the Region or Regions out of which the new state would be created, or

(2) by resolution passed by each House of the Legislatures of a bare majority of the Regions.

(iii) The Federal Legislature may then enact a law providing for such constitutional amendments as are necessary or expedient to give effect to the proposal. This law should then be submitted to the Legislative Houses of all the Regions and should require the approval by resolution of the Legislative Houses of at least two Regions.

(iv) Thereafter before the law can come into operation a referendum must be held in the area which it is proposed to convert into a Region, at which all inhabitants of that area who are entitled to vote at elections to the House of Representatives shall be entitled to vote, and at which at least 60 per cent. of those who in fact vote are in favour of the proposal.

The Conference agreed to recommend that the Federal Electoral Commission should be charged with the responsibility of administering any referendum which may take place in the course of the procedure for altering Regional boundaries or creating a new Region.

Minority Areas

52. The Conference considered the recommendations of the Minorities Commission for the establishment of certain Minority Areas as one means of allaying the fears of minorities. The Commission had noted the establishment by the Government of the Western Region of a Mid-West Advisory Council and had made recommendations concerning the area covered by the Council and its composition and functions.

The Conference agreed that—

(*a*) A Minority Area should be created in the Western Region and should consist of the whole of the Benin and Delta Provinces, excluding Warri Division and Akoko-Edo District, on the understanding that the position of Warri Division in relation to the proposed area should be further considered locally by the Government of the Western Region.

The Conference took note of the undertaking by the Western Regional Government that they would discuss the question further with all interests concerned on their return to Nigeria.

(*b*) The proposed Council should be composed of members of the House of Assembly, House of Representatives and House of Chiefs elected or appointed from within the area.

(*c*) The functions of the proposed Council should be broadly to foster the well-being, cultural advancement and economic and social development of the Minority Area, to bring to the notice of the Western Regional Government any discrimination against the Area and to exercise such executive powers as might be delegated to it from time to time by the Regional Government.

53. The Commission had also recommended that the former Province of Calabar should be made a Minority Area and that a Calabar Council should be appointed. The Conference agreed that there should be a Calabar Minority Area consisting of Calabar Province, subject to subsequent enquiry by the Governor of the Region and decision in his discretion as to whether any or all of the Annangs and Aro-Ibos should for this purpose remain in or be excised from the Area. The Conference also agreed that the principles governing the functions and composition of the Calabar Minority Area Council should be the same as those agreed in respect of the Mid-West Council in the Western Region.

Provincial Administration

54. Although the Minorities Commission did not recommend that there should be any Minority Area in the Northern Region the Conference next discussed a memorandum by the Government of the Northern Region on Provincial Administration in the Region. The Conference noted that the Regional Government had not so far found it possible to establish Provincial Administrations in the form for which permissive provision was made in section 234 of the Nigeria (Constitution) Order in Council, 1954, as amended. The Regional Government had decided, as a first step towards a provincial organisation, to establish Provincial Councils with elected members, and committees to direct individual services in each Province. The committees, which would be Native Authority Committes, would preferably be Joint Committees for all the Native Authorities in a province but, if this did not prove possible, Joint Committees of some of the Native Authorities in a province. If it proved impracticable for some of the larger Native Authorities to be linked on Joint Committees for particular services with the smaller Native Authorities, they could establish their own individual committees for these services. Government officers would be members of the committees to co-ordinate action and to ensure that the Government's policy was being carried out. The staff employed by each committee would be under the general direction of a Government officer on the committee.

55. The Conference took note that the Government of the Eastern Region proposed to establish a Provincial Assembly, comprising representatives of local council areas and recognised Chiefs, as a deliberative and consultative

body in each Province of the Eastern Region. Members of the House of Chiefs and House of Assembly from the Province should be *ex officio* members of the Assembly. The Regional Government proposed to appoint a Provincial Commissioner, who would not be a public officer, to preside over the Assembly, and a Provincial Secretary to act as a liaison between the Regional Government and the local councils within the Province. The Conference took note that before the Ogoja Provincial Assembly was set up the Regional Government would give careful consideration to points made in the course of discussion concerning the area and peoples with which this Assembly should be concerned.

The Establishment of a Niger Delta Development Board

56. The Conference noted the recommendation of the Minorities Commission that there should be established a Special Area Board for the delta area on the coast between Opobo and the mouth of the Benin River. The Conference agreed to recommend as follows:

(*a*) There should be constitutional provision for the establishment of a Niger Delta Development Board for an initial period of 10 years, after which the Federal and Eastern and Western Regional Governments should consider, in consultation with the Board itself and the local authorities in the area, whether it should continue in existence.

(*b*) The Board should consist of a Chairman appointed by the Federal Government, one representative each of the Eastern and Western Regional Governments, and a number of representatives of the inhabitants of the area. The number of representatives from the Eastern and Western parts of the area should be roughly in proportion to the number of people living in the area belonging respectively to the two Regions. The Chairman and Secretary of the Board should be full-time and the other members part-time.

(*c*) The Board should be concerned solely with the physical development of the area and should have the following functions:

(i) To carry out a survey of the area to ascertain what development is needed in land improvement and drainage and in the improvement of communications; and to investigate questions of agriculture, fisheries, land tenure and forestry involved in this survey.

(ii) To draw up schemes of development based on the findings of the survey, and estimates of cost for these schemes.

(iii) To prepare the initial survey and then an annual report on its work and on progress in implementing its proposals. The survey and reports would be presented to the Federal and Regional Government who should lay them, with their comments, before their legislatures.

(iv) To advise the Federal and the Eastern and Western Regional Governments as required on the planning and execution of development in the area.

(*d*) The funds for carrying out these functions should be provided by the Federal Government.

It was agreed that there need be no amendment of the Legislative Lists.

The Ilorin and Kabba Boundary Dispute

57. The Minorities Commission described at length the history and present circumstances of this dispute. They concluded their examination of

the problem by recommending that there should be no change in the boundary except as the result of a plebiscite, that the plebiscite should be held if there were general agreement to it at the Conference, and that in any area transferred at least 60 per cent. of the votes cast must have been in favour of transfer. The Conference considered these recommendations in detail and statements were made by representatives of the main parties. It was clear from these statements that there was no prospect of the general agreement to a plebiscite which the Commission had recommended as a prerequisite to holding one. The Conference took note of this position and of a statement by the Secretary of State that, since the Commission's conditions for holding a plebiscite were not fulfilled, he could not regard himself as entitled to require a plebiscite to be held before independence, and that after independence the constitutional procedure recommended by the Conference for effecting changes in Regional boundaries (paragraph 51 above) would apply to this dispute.

XIII. CHIEFS

58. The Conference considered a number of papers concerning the position of Chiefs throughout the country, and the composition and powers of the Houses of Chiefs. The Conference took note of the intention of the Government of the Northern Region to secure wider representation in the Northern House of Chiefs, and agreed to recommend that the members of the Northern House of Chiefs should be all First Class Chiefs, and 95 Chiefs, other than First Class Chiefs, selected for membership of the House in accordance with regulations made under section 18 of the Nigeria (Constitution) Order in Council, 1954, as amended. The membership would also include as at present an Adviser on Moslem Law, and those members of the Executive Council of the Northern Region who are members of the Northern House of Assembly.

59. The Conference agreed to recommend that in the West:

(*a*) The membership of the House of Chiefs should be increased to 124 Chiefs.

(*b*) The power to recognise and grade Chiefs for the purpose of the constitution should be vested in the Governor in Council.

(*c*) In place of the present arrangements for resolving disagreement between the Legislative Houses of the Region by means of a joint sitting, there should be provision under which the House of Chiefs has delaying powers in respect of legislation over which there is disagreement with the House of Assembly, similar to those possessed in the United Kingdom by the House of Lords.

(*d*) The principles governing the selection of members of the Western House of Chiefs should be incorporated in the constitution when a decision on the future of the *ex officio* members had been reached.

60. The Conference took note of a statement by the Government of the Western Region that, after careful consideration of a suggestion by the Minorities Commission that in dealing with the appointment and removal of Chiefs they should normally act on the advice of an intermediary body and after consultation with leading Chiefs of the West, they had decided that the Governor in Council, after consultation with the President of the Western House of Chiefs, should set up a Council of Obas and Chiefs consisting of the President of the House of Chiefs as Chairman and not more than six other members. The members would hold office for two years only. The functions of the Council would be to advise the Government on all matters relating to the discipline of Chiefs and on any other matter

that might be referred to them by the Minister responsible for matters concerning Chiefs. The Conference also noted that, in considering the questions of the inclusion in the constitution of provisions similar to the present regulations concerning the selection of Chiefs for membership of the House of Chiefs, and the question of the designation in the constitution of certain Head Chiefs as permanent members of the House of Chiefs, the Regional Government would hold local consultations and then communicate their proposals to the Secretary of State.

61. The 1957 Conference agreed to recommend (paragraph 23 of Cmnd. 207) that there should be a House of Chiefs in the Eastern Region, but that before constitutional provision for it was made, a satisfactory formula for the classification of Chiefs should be evolved and should be the subject of Regional legislation. The Conference took note that the Government of the Eastern Region and the opposition parties in the Region have evolved a formula for the classification of Chiefs and that the Governor has accepted this as satisfactory. They have agreed that there shall be 17 First Class Chiefs, as set out in Annex IV, of whom eight are traditional Paramount Rulers, and the remaining nine represent the nine provinces proposed by the Eastern Regional Government for the Region. The Second Class Chiefs are to be selected by and from among the Clan Heads, Village Group Heads and Village Heads to represent all Divisions of the Region according to their population. The Conference agreed to recommend that a House of Chiefs should be established in the Eastern Region with a total membership of not more than 80, consisting of 17 First Class Chiefs, 58 Second Class Chiefs and five Special Members. The Conference took note of an undertaking by the Government of the Eastern Region to establish the House of Chiefs either immediately before or after the Budget Session in the spring of 1959.

XIV. PROCEDURE FOR THE AMENDMENT OF THE CONSTITUTION AFTER INDEPENDENCE

62. It was agreed at the 1957 Conference (paragraph 70 of Cmnd. 207) to consider at the present Conference the procedure for the amendment of the constitution after independence. The Conference agreed that since the units of a federal structure are interdependent, no single unit, including the Federation, should be able to amend its constitution in a way contrary to the general interests of the whole of Nigeria. Those parts of the Federal and Regional constitutions which were primarily of internal interest should therefore be amendable by a comparatively easy procedure not requiring the concurrence of any other unit of the Federation. But the parts of the Federal and Regional constitutions which were of general concern should be entrenched and the procedure for their amendment should require the concurrence of other units of the Federation. In accordance with these principles the Conference agreed to recommend the following procedure:

(*a*) **The Federal Constitution**

(i) *Entrenched provisions*

Amendment should require a two-thirds majority of all the members in each House of the Federal Legislature and the concurrence, by simple majority, of each House of the Legislatures of at least two Regions.

(ii) *Ordinary provisions*

Amendment should require a two-thirds majority of all the members of each House of the Federal Legislature.

(*b*) **The Regional Constitution**

(i) *Entrenched provisions*

Amendment should require a two-thirds majority of all the members of each House of the Legislature of the Region concerned, with the concurrence of a two-thirds majority of all members of each House of the Federal Legislature.

(ii) *Ordinary provisions*

Amendment should require a two-thirds majority of all the members of each Legislative House of the Region concerned.

63. The Conference agreed to recommend that the following provisions in the Federal and Regional constitutions should be entrenched:

(*a*) The establishment of the Legislative Houses, the powers of the Governor-General or the Governor, as the case may be, to make laws with the advice and consent of the Legislative Houses, and the prescription of the extent of the executive authority of the Federation and the Regions.

(*b*) Provisions which affect the basis of representation in either of the Legislative Houses of the Federation. It was confirmed as the understanding of the Conference that the constitution for independence should provide that the Regions shall have equal representation in the Senate and that the seats in the House of Representatives shall be allocated among the Regions and Lagos in proportion to their respective populations.

In addition to the entrenchment of these provisions it should be provided that—

(i) an amendment which would reduce the proportion of seats in the Senate allocated to any Region or reduce the seats allocated to any Region in the House of Representatives to a number less than that which is proportionate to the population of the Region shall not take effect until the Region in question concurs in the amendment;

(ii) an amendment which would proportionately reduce the representation of Lagos in the House of Representatives shall require the concurrence of a majority of the representatives of Lagos in each of the two Federal Houses.

(*c*) Provision that Legislative Houses shall have at least one session a year.

(*d*) The duration of each Legislative House; it should, however, be possible for the Federal Legislature to extend the life of the House of Representatives in time of war.

(*e*) Provision concerning the dissolution of the Legislative Houses.

(*f*) Provision that a general election shall be held within ninety days of each dissolution.

(*g*) The Legislative Lists and other provisions conferring legislative powers.

(*h*) The procedure for the compulsory acquisition of property.

(*i*) The establishment of a Consolidated Revenue Fund, the procedure for the authorisation of expenditure, the charging of the Public Debt and the audit of accounts.

(*j*) The fiscal provisions covering revenue jurisdiction, the allocation of particular Federal taxes to the Regions, and the size, composition and distribution of the distributable pool.

(*k*) The procedure for appointment in the Public Service, the establishment and protection of the Public Service Commissions, and the making of regulations regarding the Public Service Commissions.

(*l*) The establishment of the Federal Supreme Court and the High Courts of the Regions and Lagos, the qualifications for appointment as a Judge, the provisions concerning a Judge's terms of service and tenure of office, the establishment, functions and protection of the Judicial Service Commissions, and the prescribed minimum number of judges.

(*m*) The office of Director of Audit and the tenure, salary and conditions of service of this office.

(*n*) The office of Director of Public Prosecutions and the tenure, salary, conditions of service and functions of this office.

(*o*) The agreed provisions regarding the Police, including the establishment and functions of the Police Council and the Police Service Commission, and the responsibilities of the Inspector-General of Police and his ultimate responsibility to the Prime Minister of the Federation.

(*p*) The establishment and functions of the Electoral Commission.

(*q*) All fundamental rights provisions.

(*r*) The procedure for amendment of the constitution.

(*s*) The provisions concerning emergency powers.

(*t*) The rights of appeal conferred under the constitution.

(*u*) The rights of appeal to the Judicial Committee of the Privy Council in matters concerning the interpretation of the constitution, and also the existing rights of appeal to the Judicial Committee.

64. The Conference agreed to recommend that the procedure for the amendment of ordinary provisions would be the passage of a Bill by normal stages, but with the special majorities prescribed, through the Legislative Houses of the Government concerned. The assent would be given in the normal way. The Secretary of State's advisers were asked to consider for the amendment of entrenched provisions a procedure on the following lines: the Government initiating the amendment would introduce a Bill providing for it in its own Legislative Houses and pass the Bill through the normal stages in these Houses with the majorities prescribed above; the Bill so passed might then be laid on the table of the other Legislative Houses concerned and they would be required to vote upon it within a specified period. Once it had received the minimum number of affirmative resolutions the Bill could receive assent.

XV. THE SOUTHERN CAMEROONS

65. Before Southern Cameroons affairs were considered by the full Conference, the Secretary of State held preliminary discussions with all delegates and advisers from the Southern Cameroons. The representatives of the Kamerun National Congress and the Kamerun People's Party stated that the major political objective of their parties was the attainment by the Southern Cameroons of the status of a region equal in all respects with the other regions in an independent Nigeria. They were accordingly anxious to achieve rapid constitutional progress to prepare themselves to take their place in an independent Nigeria.

66. The representatives of the Kamerun National Democratic Party said that their party did not wish the Southern Cameroons to become a permanent

part of an independent Nigeria. Their objective for both the northern and southern sections of the British Cameroons was secession from the Federation of Nigeria. They were therefore opposed to further constitutional advance for the Southern Cameroons in any form which led to, or had as its objective, closer association with Nigeria.

67. The Secretary of State took note of the difference of view expressed. He said that, although the undertaking given in 1953 to accord self-government to any Region that requested it had applied only to the Regions existing at the time and there was therefore no commitment on the United Kingdom to agree to further constitutional advance, he was nevertheless prepared to accept in principle that the Southern Cameroons should become, at the appropriate time, a Region fully equal in status to the other Regions of Nigeria. Such a development, by preparing the people for full self-government, would be in fulfilment of one of the basic objectives of the Trusteeship Agreement while it would in no way commit the Southern Cameroons to permanent association with Nigeria, about which it would be for the people of the territory to express their wishes at the right time. In view of the Trusteeship Agreement it would be necessary for the United Kingdom to retain in the hands of a representative of Her Majesty reserve executive and legislative powers in respect of the Southern Cameroons.

68. It was accordingly agreed with the Southern Cameroons representatives, and subsequently approved by the Conference that no immediate constitutional changes should be made but that it should be open to the Southern Cameroons Government which would be formed after the elections to be held in January 1959, to request the United Kingdom to bring into effect all or any of the following changes. The Secretary of State undertook that the United Kingdom Government would then give effect to these changes forthwith insofar as they could be made without constitutional amendment, and that the necessary legal instruments should be prepared as soon as possible.

(a) *The Executive Council*

(1) The Deputy Commissioner should cease to be a member of the Executive Council and the House of Assembly.

(2) The Legal Secretary (or Attorney-General) should continue to be a public officer and to be a member of the Executive Council and the House of Assembly.

(3) At a convenient time after the 1959 budget the post of Financial Secretary should be abolished and instead a Minister of Finance should be appointed.

(4) There should be provision that the number of Ministers, in addition to the Premier, should be not less than 4 nor more than 7. Provision should be made for the appointment in addition of not more than three Parliamentary Secretaries.

(5) The Commissioner should appoint the Premier and should, on his recommendation, appoint other Ministers and Parliamentary Secretaries.

(6) The Commissioner should continue to preside over the Executive Council, but this arrangement should be reviewed towards the end of 1959. The legal instruments should be so drawn as to make this possible without further amendment.

(b) *The reserve legislative and executive powers*

These should be directly vested in the Commissioner, although there should continue to be provision empowering the Governor-General as

High Commissioner for the Southern Cameroons to give the Commissioner directions as to the exercise of the powers vested in him. If and when the Southern Cameroons becomes a self-governing Region the position of its constitutional head would be similar to that of the Governors of the existing Regions in an independent Nigeria.

(c) *Assent to legislation*

Subject to the High Commisioner's power to give him directions the Commissioner should assent to legislation.

(d) *The Judiciary*

One of the judges appointed for the High Courts of Lagos and the Southern Cameroons should be specifically assigned to the Southern Cameroons so that he would spend as much of the year as was necessary in the Southern Cameroons and be available in Lagos only for such time as he was not required in the Southern Cameroons.

(e) *The Public Service*

There should be a separate Public Service for the Southern Cameroons. All Southern Cameroonians serving in the territory would automatically be transferred to this Service. The remaining officers serving in the Southern Cameroons, both overseas and Nigerian, should remain on the Federal establishment and be seconded to the new Public Service. They should be given the option if they so wished of transferring to the new Public Service. All new recruits, whether from overseas, from Nigeria or from the Southern Cameroons itself, would be appointed to the new Public Service. It should thus be possible in the course of the next two years or so for the Southern Cameroons to build up the nucleus of a separate Public Service, even though it might have to rely in part after that period on officers from outside the Cameroons. It would of course be open to any Cameroonian now serving anywhere in Nigeria, either in the Federal or a Regional Public Service to apply for transfer to the Cameroons Service.

(f) There should be an Advisory Public Service Commission for the Southern Cameroons, exercising the same functions in relation to the members of the Southern Cameroons Public Service as the Federal Public Service Commission now exercises in relation to the Federal Public Service.

69. The Conference agreed to recommend that the Southern Cameroons House of Chiefs should for the present continue to be an advisory body and that its members should continue to be appointed by the Commissioner of the Cameroons acting in his discretion, but that these arrangements should be reviewed between the Secretary of State and the Southern Cameroons Government towards the end of 1959.

70. The Conference noted that the 1957 Conference, in recommending the full representation of the Southern Cameroons in the new Federal Legislature and in particular in recommending that the Southern Cameroons should be equally represented in the Senate with the Nigerian Regions had given implicit approval to the attainment by the Southern Cameroons of full Regional status. The Conference also noted that its endorsement of the Fiscal Commission's proposals and the helpful waiver by the Federal Government of interest on the advances made to the Southern Cameroons would result in a considerable improvement in the financial position of the territory. The Conference accordingly confirmed that, if this proved to be the wish of the people of the territory, Nigeria would welcome the Southern Cameroons as

part of the Federation with the status of a fully self-governing Region equal in all respects with the other Regions in an independent Nigeria.

XVI. THE APPELLATE JURISDICTION OF THE FEDERAL SUPREME COURT

71. The Conference agreed to recommend that there should be provision in the constitution for a right of appeal from the High Courts to the Federal Supreme Court in the following cases:

(1) Interpretation of the constitution, including the interpretation of fundamental rights.

(2) Questions regarding denial or enforcement of fundamental rights (as distinct from interpretation of those rights).

(3) Questions of citizenship of Nigeria.

(4) All capital cases.

(5) Criminal cases tried originally in the High Court—

(*a*) on questions of law;

(*b*) on questions of fact, mixed law and fact or quantum of sentence, but only with the leave of the High Court or the Federal Supreme Court.

(6) Criminal cases tried in any court inferior to the High Court in which an appeal has been brought to the High Court, but only

(*a*) with the leave of the High Court or of the Federal Supreme Court, or

(*b*) if a right of appeal to the Federal Supreme Court is conferred by law enacted by the appropriate legislature or having effect as if it had been so enacted.

(7) Civil cases tried originally in the High Court.

(8) Civil cases tried by any court inferior to the High Court in which an appeal has been brought to the High Court, but only

(*a*) with the leave of the High Court or of the Federal Supreme Court, or

(*b*) if a right of appeal to the Federal Supreme Court is conferred by law enacted by the appropriate legislature or having effect as if it had been so enacted.

The Conference agreed to recommend that the Federal Supreme Court should be empowered to decide applications for leave to appeal from the High Court in cases referred to in (6) and (8) above on the paper record of the proceedings if the Court was of opinion that the interests of justice did not require an oral hearing.

72. The Conference also agreed to recommend that there should be provision in the constitution for a right of appeal from inferior courts to the High Court, either direct or through an intermediate court, in the following cases:

(*a*) civil cases involving fifty pounds or more;

(*b*) criminal cases in which there is no right of appeal to any other court;

(*c*) criminal cases in which there is a right of appeal to another court—

(i) on questions of law where the sentence exceeds three months' imprisonment or a fine or forfeiture exceeding twenty-five pounds or corporal punishment exceeding six strokes;

(ii) on all other questions, but only with the leave of the High Court.

It was agreed that these should be the minimum rights of appeal. It would be open to the appropriate legislatures to add to these rights.

XVII. ELECTORAL ARRANGEMENTS

73. The Conference considered electoral matters left over from the 1957 Conference and from the *Ad Hoc* Meeting of the Conference held in Lagos in February, 1958. The Conference appointed an Electoral Committee consisting of the Prime Minister and the Premiers under the Chairmanship of the Governor-General to advise on a number of questions. After consideration of the conclusions of this Committee and of memoranda before it the Conference agreed to recommend as follows:

(*a*) The qualifications for voters for elections to the Regional Houses of Assembly should in future be the same as for the Federal House of Representatives.

(*b*) The membership of the Western House of Assembly should be increased to 124. It was noted that for this purpose each Federal constituency would be divided into two parts of approximately equal population.

(*c*) The membership of the Eastern House of Assembly should be increased to 146. It was noted that for this purpose each Federal constituency would be divided into two single member constituencies.

(*d*) The Chairman and members of the Federal Electoral Commission should, after independence, be appointed by the Governor-General in his discretion after consultation with the Prime Minister. The membership should include one member chosen to represent each Region.

(*e*) There should be an Electoral Commission for each Region. The Chairman of the Federal Electoral Commission should be *ex officio* Chairman of each Regional Electoral Commission and the Regional representative on the Federal Electoral Commission should be *ex officio* a member of his Regional Electoral Commission. The other members of a Regional Electoral Commission should both now and after independence be appointed by the Governor of the Region in his discretion after consultation with the Premier.

(*f*) There should be constitutional provision, as recommended in paragraph 15 (3) of the Report of the Ad Hoc Meeting held in Lagos in February, 1958, that *ex officio* members of a House of Chiefs or of the Senate, when constituted, should be disqualified for standing for election to the House of Representatives.

(*g*) The qualification for candidature for election to the House of Representatives, contained in section 9 (1) (*b*) of the Nigeria (Constitution) Order in Council, 1954, as amended, should be amended to provide that a candidate or his father must have been born in Nigeria, or a candidate must have resided in Nigeria for a continuous period immediately before the date of election of at least three years.

The Conference took note that as the number of constituencies in the Northern Region was to be the same both for the Federal House of Representatives and the Regional House of Assembly the newly delimited Federal constituencies would, so far as practicable, be adopted for Regional purposes.

74. The Conference agreed:

(*a*) There should be single member constituencies for the purposes of election to the Regional Houses of Assembly.

(*b*) The Governor of each Region should in his discretion after consultation with the Premier appoint a Commission to delimit the boundaries of the Regional constituencies in accordance with Regional legislation.

(*c*) Once the Regional Delimitation Commission had completed their work, further revision of the Regional constituency boundaries should be the responsibility of the Electoral Commission.

(*d*) The Federal Government should be responsible for legislation concerning Federal elections and the Regional Governments for legislation concerning Regional elections. After independence the constitution should no longer provide that electoral legislation should be in the form of regulations made by the Governor-General and the Governors. Instead such legislation should be enacted by the appropriate legislatures. So far as possible Regional legislation should follow Federal legislation, since this would facilitate the administration of electoral procedure.

(*e*) The register of voters prepared for Federal elections should be available for those Regions which desired to use it for Regional elections.

(*f*) If a Region so desired, the Secretary and staff of the Federal Electoral Commission should, so far as practicable, be made available to serve a Regional Electoral Commission.

75. The Conference approved the proposals of the Electoral Committee contained in Annex III for amendment of the Federal Electoral Regulations.

76. There was a general discussion of arrangements for the conduct of the Federal Elections in 1959. It was recognised that the Federal Electoral Commission would need to rely in large measure on officers made available from the Regional Public Services. The Conference understood that the Regional Governments were prepared to co-operate to the full in this respect. The Conference took note of an assurance by the Governor-General that it would be his purpose to ensure that the widest possible latitude consonant with the maintenance of law and order would be afforded to all political parties to propagate their views throughout Nigeria, particularly in the periods preceding the registration of voters and the elections.

XVIII. POWERS TO SAFEGUARD THE NATION

77. The Conference agreed that after independence the Federal Government must possess adequate powers to ensure the safety of the nation against internal and external threats. It was noted that at present the Governor-General in Council has power, under the Emergency Powers Orders in Council, 1939 and 1956, to legislate during a public emergency on any matter, whether or not it is specified in the Legislative Lists set out in the Constitution Order. There is also provision under section 135 of the Nigeria (Constitution) Order in Council, 1954, as amended, empowering the Governor-General in his discretion to ensure that the executive authority of a Region is not so exercised as to impede or prejudice the exercise of the executive authority of the Federation or to endanger the continuance of federal government in Nigeria. The Conference accordingly agreed to recommend that the constitution for independence should provide that the Emergency Powers Orders in Council should cease to have effect in Nigeria

within six months after independence, and that in their place and in place of the existing section 135 of the Constitution Order, there should be provision in the constitution for independence on the following lines:

(i) The Federal Legislature may make laws (either specifically to deal with a particular situation or generally in anticipation of situations mentioned below) for the peace, order and good government of any Region or the Southern Cameroons with respect to any matter, whether or not it is included in the Legislative Lists, for the purpose of dealing with the situation prevailing during any period—

(*a*) in which a state of war or other public emergency has been declared to exist by the Federal Government; or

(*b*) in which the Federal Legislature is satisfied that democratic institutions in Nigeria are threatened by subversion; or

(*c*) in which the Federal Legislature is satisfied that the executive authority of a Region or the Southern Cameroons has been or is being exercised so as to impede or prejudice the exercise of the executive authority of the Federation or to endanger the continuance of federal government in Nigeria.

(ii) No such law shall have effect in relation to any matter not included in the Legislative Lists except at times when a resolution passed by both Houses of the Federal Legislature is in force. Such a resolution shall require—

(*a*) in the case of paragraph (*a*) above, a simple majority,

(*b*) in the cases of paragraphs (*b*) and (*c*) above, a two-thirds majority of all the members of each House.

Such a resolution shall remain in effect for twelve months or such shorter period as may be specified therein. It may be extended from time to time by further resolution for not more than twelve months at a time.

XIX. MISCELLANEOUS

The Transmission of Regional Laws

78. The Conference agreed to recommend that the Governments of the self-governing Regions should not, when submitting copies of Regional legislation to the Secretary of State, be required to furnish an explanation of the reasons and occasion for its enactment, unless requested to do so in any particular case in which it appeared to the Secretary of State that the law in question contained provisions that made it liable to disallowance by Her Majesty.

Censorship of Films

79. The Conference reaffirmed the recommendation of the 1957 Conference (Item 25 on page 22 of Cmnd. 207) that there should be constitutional provision to enable separate Boards to be established by the Governments of the Regions and the Southern Cameroons to sanction the exhibition of films in their areas, and that all films whether imported or locally produced should be initially scrutinised by a Central Censorship Board. The legal advisers were invited to examine the relevant provisions of the Nigeria (Constitution) Order in Council, 1954, as amended, and of Nigerian legislation on this subject with a view to their amendment if necessary to ensure that the recommendation of the 1957 Conference is fulfilled.

Ordinances on Concurrent Matters Enacted before 1st October, 1954

80. The Conference took note that the Federal Government have prepared a draft Order to be made under section 57 (6) of the Nigeria (Constitution) Order in Council 1954, as amended, containing a list of Ordinances which they consider should have effect as if they were laws enacted by the Federal Legislature. This draft Order has been submitted to the Regional Governments and the Government of the Southern Cameroons for their comments. The Conference understood that the Federal Government does not intend to make the Order until the comments of the other Nigerian Governments have been fully considered; and that if any of the Governments object to the inclusion of any particular Ordinance the Federal Government will not include it but will instead consider introducing in the House of Representatives a Bill to replace it by a new Federal Ordinance. The Federal Government have also agreed that when the terms of the draft Order have been settled and the Order has been duly made, they will submit a request to the Secretary of State for the amendment of the constitution at the next convenient opportunity by the deletion of section 57 (6) of the Constitution Order, with the result that no further Orders under that provision will be made.

Form of Constitutional Instruments

81. The Conference discussed the form of the new constitutional instruments referred to in paragraph 72 of the 1957 Conference Report (Cmnd. 207). It was noted that since the 1957 Conference the Secretary of State had by despatch informed the Nigerian Governments that it was proposed that the consolidating constitutional instruments should be in the form of a single Order in Council with a number of schedules, so that the constitution of each unit of the Federation would be contained in a separate schedule.

The Conference endorsed this proposal to which effect would be given in the constitution for independence. The Secretary of State undertook that early effect would be given to the agreements reached at the Conference concerning fundamental rights and the appellate jurisdiction of the Federal Supreme Court.

XX. INDEPENDENCE FOR THE FEDERATION OF NIGERIA

82. The Secretary of State reminded the Conference that at the 1957 Conference he had said that if, early in 1960, the new Nigerian Parliament passed a resolution asking Her Majesty's Government to agree to full self-government by a date in 1960, Her Majesty's Government would consider the resolution with sympathy and would then be prepared to fix a date when they would accede to this request. He said that since then there had been sixteen months' experience of Regional self-government in the Eastern and Western Regions, and changes in the North and in the Southern Cameroons, and the Conference had now agreed on the pattern of self-government for the Northern Region. All the Regional Governments would shortly have had experience in what he had called "taking the strain of Regional self-government". Since the last Conference there had also been the very helpful reports of the Commissions presided over by Sir Henry Willink, Sir Jeremy Raisman and Lord Menthyr. On these reports and on other matters the Conference, after much careful work, had reached certain agreed conclusions. In this task everyone had made concessions and there was no question of any person or party emerging the victor.

83. Throughout the talks the Conference had been conscious of all the dangers confronting the free world today and it recognised that an independent Nigeria would be subject to new and heavy pressures. In this connection he was glad to tell the Conference that the Federal Prime Minister and the Premiers were at one with Her Majesty's Government in believing that there would be mutual advantage to Britain and Nigeria in co-operating in the field of defence and that they had exchange views and reached unanimous agreement on the facilities and help which each country will render to the other after independence.

84. The Secretary of State said that in the light of all these developments, and in response to the wishes of all the delegations, he was glad to be able to be more forthcoming than at the 1957 Conference on the question of independence. He understood that no special significance attached to the date they had suggested of the 2nd April, 1960, and he felt that the essential thing was to make sure that there was proper time to complete the preparations for the great event. 1959 would be a year of intense activity in Nigeria, with Regional self-government for the North and then Federal elections towards the end of the year. It would be generally agreed that when the new Federal Government was formed it would need to hold final discussions with Her Majesty's Government before the Act of Independence could be drawn up and the final Constitution Order in Council be drafted. A date in April would give the new Government and Her Majesty's Government only three or four months in which to complete satisfactorily these most important tasks. The Secretary of State said that with all this in mind he was authorised by Her Majesty's Government to say that if a resolution was passed by the new Federal Parliament early in 1960 asking for independence, Her Majesty's Government would agree to that request and would introduce a Bill in Parliament to enable Nigeria to become a fully independent country on the 1st October, 1960.

85. The Conference warmly welcomed the Secretary of State's statement. The Prime Minister and the Premiers made statements accepting the Secretary of State's statement, and expressing their desire that on independence Nigeria should become a full member of the Commonwealth and that there should continue to be close co-operation between Britain and Nigeria.

Signed on behalf of the Conference,

ALAN LENNOX-BOYD, *Chairman.*

I. P. BANCROFT,
Secretary-General.

Lancaster House,
London, S.W.1.
27th October, 1958.

ANNEX I

LIST OF DELEGATES AND ADVISERS

DELEGATES

ACTION GROUP

The Hon. Chief Obafemi Awolowo, M.H.A.: Premier, Western Region
The Hon. Chief S. L. Akintola, M.H.R.
Mr. L. J. Dosunmu, M.H.R.
Mr. E. O. Eyo, M.H.A.
Mr. S. O. Ighodaro
Mr. S. G. Ikoku, M.H.A.
Chief A. O. Lawson
The Hon. A. Rosiji, M.H.R.
The Hon. Chief F. R. A. Williams, M.H.A.

KAMERUN NATIONAL CONGRESS

The Hon. Dr. E. M. L. Endeley, O.B.E., M.H.A.: Premier, Southern Cameroons
Mr. P. A. Aiyuk, M.H.R.
Mr. J. T. Ndze

KAMERUN NATIONAL DEMOCRATIC PARTY

Mr. J. N. Foncha, M.H.A.

KAMERUN PEOPLES' PARTY

Mr. P. M. Kale

NATIONAL COUNCIL OF NIGERIA AND THE CAMEROONS

The Hon. Dr. N. Azikiwe, M.H.A.: Premier, Eastern Region
Mr. A. M. F. Agbaje, M.H.A.
The Hon. M. O. Ajegbo, M.H.A.
Mr. T. O. S. Benson, M.H.R.
The Hon. Dr. S. E. Imoke, M.H.A.
The Hon. R. A. Njoku, M.H.R.
The Hon. Chief F. S. Okotie-Eboh, M.H.R.
The Hon. Dr. M. I. Okpara, M.H.A.
Mr. D. C. Osadebay, M.H.A.
Mr. B. Olowofoyeku, M.H.A.

NORTHERN ELEMENTS PROGRESSIVE UNION AND ALLIED PARTIES

Malam Aminu Kano
Malam Abdulmumuni, M.H.A.
Malam Yerima Balla

NORTHERN PEOPLES' CONGRESS

Alhaji The Hon. Ahmadu, C.B.E., M.H.A., Sardauna of Sokoto: Premier, Northern Region
Alhaji The Hon. Abubakar Tafawa Balewa, C.B.E., M.H.R.: Prime Minister Federation of Nigeria
Alhaji The Hon. Aliyu, O.B.E., M.H.A., Makama of Bida
Alhaji The Hon. Isa Kaita, O.B.E., M.H.A., Madawaki of Katsina
Alhaji The Hon. Muhammadu Ribadu, M.B.E., M.H.R.
Alhaji The Hon. Inuwa Wada, M.H.R.

UNITED MIDDLE BELT CONGRESS

Mr. J. S. Tarka, M.H.R.

UNITED NATIONAL INDEPENDENCE PARTY

Dr. E. U. Udoma, M.H.R.

CHIEFS

Northern Region

Alhaji The Hon. Sir Muhammadu Sanusi, K.B.E., C.M.G., M.H.C.: Emir of Kano

Alhaji The Hon. Usman Nagogo, C.M.G., C.B.E., M.H.C.: Emir of Katsina

Western Region

Sir Adesoji Aderemi, K.B.E., C.M.G., M.H.C.: Oni of Ife

Oba Aladesanmi, M.H.C.: Ewi of Ado-Ekiti

Eastern Region

Chief S. E. Onukogu

Rivers

Mr. H. J. R. Biriye

THE GOVERNMENTS IN NIGERIA

Sir James Robertson, G.C.M.G., G.C.V.O., K.B.E.: Governor-General
Sir John Rankine, K.C.M.G., K.C.V.O.: Governor, Western Region
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ANNEX II

STATEMENT BY THE SECRETARY OF STATE FOR THE COLONIES ON THE TREATIES BETWEEN THE CROWN AND THE OIL RIVERS CHIEFS

These Treaties have been made from 1884 onwards with the Chiefs in areas which now form part of the Eastern Region.

Dr. Udoma and Mr. Biriye have spoken earnestly about these Treaties and I have given very careful consideration to what they said.

The Minorities Commission said that they did not feel called upon, nor indeed, they added, were they qualified, to form conclusions on any legal or moral obligations of Her Majesty's Government which might arise from these Treaties.

It is for me, as Secretary of State, to deal with these legal and moral obligations, and if I do so at some length you will I know forgive me. Matters arising from Treaties entered into by Her Majesty's predecessors demand careful and detailed consideration.

There were many of these Treaties, and they all followed one or other of two forms, a shorter version and a longer version. In each case the Chief concerned placed his people and his territory under the protection of the British Crown and undertook to refrain from entering into relations with foreign powers except with the sanction of Her Majesty's Government. Under the longer version the Chiefs concerned entered into a number of specific obligations, and in particular agreed to assist British officers in the execution of their duties and to act on their advice in matters relating to the administration of justice, the development of the resources of the country, the interests of commerce and in other matters relating to peace, order and good government and what was called the general progress of civilisation.

There has of course been a great alteration in the circumstances of Nigeria since these Treaties were entered into some seventy years ago. As I think we all know, the British Crown has for a great many years exercised without question full jurisdiction over all the areas comprised in the Protectorate of Nigeria, including the particular areas to which the various Treaties relate, and has made provision by various Orders in Council for the government of the whole country. At the time when the Treaties were made, the Chiefs concerned constituted the only form of government in their respective territories, but they have long since ceased to exercise the functions of government, and it is no longer possible to say that there now exist authorities who can be regarded as effective successors to the Nigerian parties to the Treaties. I do not think it is necessary for me to point out that the material and cultural circumstances of the inhabitants of what is now the Eastern Region have undergone enormous changes during these seventy years; indeed it would be no exaggeration to say that these circumstances have been transformed beyond recognition. With the march of time new institutions have come into being to replace the old authorities that entered into the Treaties, and the descendants of those who formerly were under their rule now look to the various legislatures and governments established by Her Majesty in Council as the source of their laws and as the authority responsible (subject to the ultimate authority of the United Kingdom Government) for the peace, order and good government of the various parts of Nigeria.

Various arguments have been advanced, and advanced very strongly and capably, to the effect that, notwithstanding the radical changes in the circumstances of Nigeria between the eighties of the last century and the present day, and the fact that the tribal authorities that made them have long ceased to exist as such, the Treaties oblige the Crown, as a matter of law, to accord special treatment to the inhabitants of the areas concerned which the Crown is not obliged to accord to other inhabitants of Nigeria.

I ought at this stage to refer to the strict legal position. I am advised that Treaties of this kind have no standing in international law and it follows from this that it would be quite inappropriate to adopt the suggestion that the question of the proper interpretation of the Treaties should be referred to the International Court. I am also advised on the highest authority that such Treaties confer no rights that are enforceable in our Courts, and it seems clear therefore that the question of the interpretation of the Treaties is not one which could appropriately be referred (as had been suggested) to the Judicial Committee of the Privy Council.

In stating, gentlemen, as I must, that in the view of Her Majesty's Government these Treaties did not create obligations that could be enforced either under international law or municipal law, I do not of course wish to imply for one moment that these Treaties were merely worthless scraps of paper that created no obligations whatever. Her Majesty's Government has in fact both accepted and I think faithfully discharged the obligation to extend the protection of the Crown over the territories affected by the Treaties and their inhabitants and it is still discharging that obligation at the present moment. It should be remembered, however, that the inhabitants of the areas affected by the Treaties are not the only persons in Nigeria who are entitled to Her Majesty's protection. The people of the Colony of Lagos, who are British subjects, and the people of all the rest of Nigeria (whether Protectorate or Trust Territory), who are British protected persons, are all entitled to receive, and do in fact receive, the same degree of protection and consideration as do the inhabitants of those particular areas affected by the Treaties. I could not therefore accept the proposition that because under Treaties entered into many years ago the inhabitants of particular areas were given a right to protection, they are entitled to special treatment at the present day, when the circumstances are radically different, and when every inhabitant of Nigeria is entitled to Her Majesty's protection.

So in view of what I have said, it may be asked what obligations Her Majesty's Government regards the Treaties as creating at the present time. In my view there are moral obligations on Her Majesty's Government to secure justice and fair dealing on the matters mentioned in the Treaties. We have always sought to carry out these obligations and I certainly do not propose to repudiate them now. As I have said, under many of the Treaties the Chiefs agreed to accept the advice of the British authorities in matters relating to " peace, order and good government and the general progress of civilization ". This progress necessarily involves progress in constitutional development such as that on which we have for so long been engaged together and the inhabitants of the areas affected by the Treaties have of course participated in the various steps that have been taken towards self-government. They are, and have for long been, represented on the Federal and Regional legislatures.

The progress towards self-government has been a continuous process that leads logically to the position where Her Majesty's Government in the United Kingdom will soon be relinquishing its special responsibilities as the protecting Power. We intend therefore to pursue this policy to its logical conclusion, namely, the grant of full self-government, in the confident belief that there is nothing in the Treaties inconsistent with this course.

ANNEX III

FEDERAL ELECTORAL REGULATIONS

After considering proposals by the Federal Electoral Commission for amendments to sections 26–28 of the Federal Electoral Regulations, the Electoral Committee recommended the following amendments:

Regulation 7

The Electoral Commission would like to have Regional Electoral Officers. To permit this, but to give a little more elasticity in case a supervising officer is wanted in only part of a Region, it is proposed to add to Regulation 7 a second paragraph:

> " (2) The Governor-General may appoint in respect of any area or areas of Nigeria an officer or officers (by whatever name called) to exercise supervisory functions, under the directions of the Electoral Commission, over the process of registration or the conduct of an election or of elections generally, or over both such process and such conduct, and any such officer shall have such powers and duties as may be allotted to him by the Governor-General and these shall be notified in the Gazette."

Regulation 19

This Regulation deals with the ordinary residence of electors, and simple rules are provided in the First Schedule. With a view to adding a still more simple test of ordinary residence for the assistance of registration officers, such rules in the First Schedule should be amended by inserting a new Rule 1 as follows:

" 1. The place of ordinary residence of a person is that place where he usually lives or which has always or generally been his home, or which is the place to which he intends to return when away therefrom."

The present Rule 1 in the First Schedule would then be renumbered to be Rule 1A, and would have to start:

" 1A. Subject to the provisions of Rule 1, the place of ordinary residence etc....."

The following words should be omitted from the last two lines of Regulation 19 (2):

" but subject to such rules a person shall be deemed to be ordinarily resident at the address where he usually lives."

Regulation 21

Appeals have been pressed for more elasticity in the size of registration areas to provide for differences between urban and rural areas. To meet this the Electoral Commission should be given alternative methods of adapting registration to circumstances by the addition of the following proviso to paragraph (1) of Regulation 21:

" Provided that where the Electoral Commission considers it desirable it may either vary such number of 500 (but not to exceed 2,000) or such distance of 3 miles, or may authorise that one registration office and registration officer may serve for more than one (but not more than four) registration areas."

Regulation 23

For the purpose of greater elasticity a proviso be added to Regulation 23 as follows:

" Provided that different dates may be appointed in respect of paragraph (*b*) or (*c*), but the qualifying date referred to in paragraph (*a*) shall be the same throughout Nigeria."

Regulation 26

In order to lead to a greater proportion of registrations, and to utilise existing tax lists where it appears useful, there should be a new paragraph (1) to Regulation 26 (renumbering the present paragraph (1) as paragraph (1A)) as follows:

" (1) In order to assist persons eligible to register, a Registration Officer may, if so authorised by the Electoral Commission distribute application forms to persons whose names appear on any tax list or any other list prepared for official purposes and who appear to be so eligible."

Regulation 30

There should for convenience be inserted in Regulation 30, after the words "A copy of the Preliminary List " the words:

" or part thereof which relates to the registration area concerned."

Regulations 51, 55, 57 (2) *and* 60 (2)

Where the Electoral Commission has to take action itself under these particular Regulations, the Chairman of the Commission may himself take such action if he considers there is not sufficient time for the Commission to meet.

Regulation 57 (2)

In view of the amendment suggested in respect of the size of registration areas in some cases, there should be a proviso to Regulation 57 (2) to read as follows:

" Provided that the Electoral Officer shall, as far as appears to him to be practicable, ensure that not more than 500 electors are required to vote at any one polling station."

Regulation 63

The word " duties " in paragraph (2) of this Regulation should be amended to " powers ".

Regulation 65

The following addition should be made at the end of this Regulation:
" but any variation shall be approved by the Electoral Commission."

Regulation 80 (1)

There is a printing omission in this paragraph in the Regulations and it should read:

" Where compliance with paragraph (1) of Regulation 78 or with Regulation 79 is not practicable, but both polling stations concerned are within the same constituency, the Presiding Officer in charge of the polling station where such officer *is on duty shall issue a certificate of polling duties in the prescribed form for presentation to the Presiding Officer in charge of the polling station where such officer* is registered as being entitled to vote, and such latter Presiding Officer may issue in exchange a certified extract in the prescribed form of the Register of Electors or part thereof in his custody."

Regulation 114 (1) (*f*)

There are three minor errors—" is in possession of " should read " being in possession of," " wears " should read " wearing " and " has " should read " having".

ANNEX IV

THE FIRST CLASS CHIEFS OF THE EASTERN REGION

1. Eze Aro of Arochuku.
2. Amayanabo of Bonny.
3. Obong of Calabar.
4. Amayanabo of Kalabari.
5. Amayanabo of Nembe.
6. Obi of Oguta.
7. Obi of Onitsha.
8. Amayanabo of Opobo.
9. Representative of Aba–Bende Province.
10. Representative of Ahoada Province.
11. Representative of Annang Province.
12. Representative of Awgu–Nsukka–Udi Province.
13. Representative of Calabar Province.
14. Representative of Ogoja Province.
15. Representative of Onitsha Province.
16. Representative of Owerri Province.
17. Representative of Rivers Province.

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