

The Willink Commission Report

Conclusions and Recommendations

7/1/1958

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NIGERIA

Report of The Commission Appointed to Enquire into The
Fears of Minorities and the Means of Allaying Them

*Presented to Parliament by the Secretary of State for the Colonies
by Command of Her Majesty
July 1958*

LONDON
HER MAJESTY'S STATIONERY OFFICE
Price 9s. 6d Net

PART VI

CONCLUSIONS AND RECOMMENDATIONS

CHAPTER 14. CONCLUSIONS AND RECOMMENDATIONS

Section I. *General Considerations*

In each of the three Regions of Nigeria we found either a minority or a group of minorities who described fears and grievances which they felt would become more intense when the present restraints were removed and who suggested as a remedy a separate state or states. We were instructed, in the second clause of our terms of reference, to recommend safeguards in the Constitution; the third clause instructed us to make recommendations for the creation of new states "if but only if, no other solution seems to meet the case". It would therefore have been logical, and in accordance with our instructions, to consider first the constitutional safeguards and to discuss the creation of new states only if the constitutional safeguards seemed insufficient. But this would certainly not have satisfied the minorities who appeared before us; in each Region, it was the case for a new state that they wished to argue. In our report, we have followed the arrangement which the evidence suggested and have first considered the creation of new states, not so much as a last resort as on their own merits.

2. In each Region, we came to the conclusion that - on its own merits - a separate state would not provide a remedy for the fears expressed; we were clear all the same that, even when allowance had been made for some exaggeration, there remained a Body of genuine fears and that the future was regarded with real apprehension. In this chapter, we put forward remedies which we believe will meet the situation. But there are certain general considerations affecting all these remedies which require to be stated.
3. In considering the problem within each Region, we were impressed by the fact that it is seldom possible to draw a clean boundary which does not create a fresh minority; the proposed state had in each case become very small by the time it had been pared down to an area in which it was possible to assert with confidence that it was desired. This was in every case an important factor in our recommendation but it was not the only consideration which we took into account. The powers left to the Regions by the decision of 1953 are considerable and, as we have said elsewhere, we do not regard it as realistic to suppose that any of the Regions will forgo the powers they now have. Some years ago, before the relations between the Federation and the Regions had crystallised, it was possible to conceive a larger number of states with smaller powers, but a new state created today would have to compete with the existing Regions and the cost in overhead, not only financial but in resources-panicularly of trained minds-would be high. This consideration, when combined with the difficulty of finding a clean boundary, was in each particular case to our minds decisive.
4. But there is also a general consideration of the first importance, which we should have had to take into account if there had otherwise been sound arguments in favour of a particular state. Until the last few years when the prospect of independence came close, the tendency within Nigeria (as in other parts of Africa) was for tribal differences to become less acute: this was beginning to happen to some extent even among the uneducated in the big towns, much more in the secondary schools

and higher places of education and in general among those who had reached a higher level of education.

5. With the approach of independence, the tendency has been reversed and there has been a sharp recrudescence of tribal feeling. But it does not necessarily follow that this will continue; in a few years' time, a Nigeria which has to face the outer world may find within herself forces working strongly for unity. It would be a pity if, at the moment when Nigeria achieved independence, separate states had been created which enshrined tribal separation in a political form that was designed to be permanent. In such circumstances, it seems likely that differences would grow steadily stronger. In Nigeria at the moment thought is directed to the defence of local rights, but it might be as well to bear in mind the example of East Africa; a Royal Commission has there reported that what stands in the way of full productive capacity and a higher standard of living is the existence between tribal areas of boundaries which were meant to protect but have come to confine. It is of the first importance to find means of allaying fears which do not perpetuate differences that might otherwise disappear. This is the reason why we do not accept in its entirety the principle of ethnic grouping, that is, the principle that a recognisable ethnic group should whenever possible form a political unit.
6. The minorities who have appeared before us have thought of separation as a remedy for their troubles. But unity might have the same effect, and though unity cannot be manufactured by a Commission" machinery can be devised which aims rather at holding the state together than at dividing it. We believe that while the first object of our " recommendations must be to allay fears, with this should be combined a second, to maintain the unity of Nigeria and thus enable the Federation to play a great part in world affairs; this, we think, can best be done by balancing power within the country so that a majority may be less tempted to use power solely for its own advantage. With these objects in view we have, as we indicated in the introduction, borne in mind throughout our enquiry the thought of the Federal Government as the successor to those restraining - functions, the prospect of whose disappearance has been so fruitful a source of fear.
7. In the course of our discussions we found fairly widespread the belief that in the new constitution there can be some fulcrum or fixed point outside and above politics from which absolute impartiality can be exercised. There were for instance frequent references in our conversations to the Governor General or the Governor retaining certain powers in his discretion. But it is important that there should be no illusions about this. In the new constitution there will be no point outside Nigeria from which power of this kind can be exercised within the country; ultimately, power within the country will be derived from parliamentary majorities, which are responsible to an electorate and are organised by Political parties. The Governor-General and Governors will act on the advice of Ministers. All that can be done is to distribute powers and functions in such a way that it may be to the interest of the party in power to pay due attention to the interests of others. To make recommendations with these aims in view does not argue mistrust of Politicians in general, nor of Regional Politicians in particular, but a belief that in Politics self-interest is liable to prevail over altruism unless some balance is provided. If, therefore in the course of our report we imply that the Regional Governments are more to be feared by minorities than the Federal Government, this proceeds from the fact that in each of the Regions there is at present an assured majority with one main interest; in the Federation, on the other hand, it seems more likely that there will be a balance of interest between different groups.

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8. The fears expressed before us were based on certain assumptions, that voting would always follow the lines of the present major groupings that the majorities would always seek to use power to their exclusive advantage, and that the Federation would continue to play the comparatively minor part in the Nigerian scene which it does to-day. None of these assumptions seems to us to form a firm basis for plans which look far ahead.
9. In the Western Region, voting is already divided among the Yorubas on party lines and, though no one can expect a party system to grow up overnight, once a party system is established neither party can afford to neglect minorities. Again, the Federal Government is likely to become more important when it exercises for the first time three functions at present reserved to the Governor-General. These are defence, external affairs and ultimate responsibility for law and order throughout the Federation. With the assumption of these powers, the Federal Government will become a far more attractive field for a man of ability and ambition. National leaders will look to the Federal ministries; each of the great national parties will need to win as many votes as it can in the Federal House of Representatives, and it is to be expected that it will therefore consult the interests of its minorities.
10. As to the assumption that power will only be used to the exclusive advantage of the party in office, it would be a rash Commission that made prophecies. But, as we have said, there are possibilities in the political scene that would make it to the interest of any party to woo the minorities, and there is one further point. The whole structure of the proceedings leading to independence is based on the belief that Nigeria means to follow the road of liberal democracy and parliamentary government; to base parts of the structure on the opposite assumption is to invite governments to do their worst. But if that road is followed, votes will count and in the last resort it is the votes that will win fair treatment for minorities.
11. We have spoken of liberal democracy and have used such words as freedom and fair treatment. If we are asked to define these concepts, we cannot clarify them better than by the following quotation:
" ...It has been said that the price of freedom is eternal vigilance. The question arises, What is freedom? There are one or two quite simple, practical tests by which it can be known in the modern world in peace conditions, namely:
Is there the right to free expression of opinion and of opposition and criticism of the Government of the day?
Have the people the right to turn out a Government of which they disapprove, and are constitutional means provided by which they can make their will apparent?
Are their courts of justice free from violence by the Executive and from threats of mob violence, and free of all association with particular political parties?
Will these courts administer open and well-established laws which are associated in the human mind with the broad principles of decency and justice?
Will there be fair play for poor as well as for rich, for private persons as well as for Government officials?

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Will the rights of the individual, subject to his duties to the State, be maintained and asserted and exalted?

Is the ordinary peasant or workman who is earning a living by daily toil and striving to bring up a family, free from the fear that some grim police Organisation under the control of a single party will tap him on the shoulder and pack him off without fair or open trial to bondage or ill-treatment?"

(Winston Churchill: The Second World War: Vol. VI. p. Ill.)

Section 2. Police Forces

12. We have referred in other chapters to a situation which already arises when a detachment of the Nigeria Police meets a "strong arm group" who support the party in power in the Region and who mean to use force, to intimidate political opponents. This use of physical force constitutes perhaps the most serious threat to democracy of which we were told it is a serious and well-founded cause of fear to minorities. The Nigeria Police, the Magistrates and the Judiciary are the only Protection against these party gangs and the Police are not only the first line of defence but essential to the operation of the other two; if the Police became a solely Regional Force, this protection would disappear. We therefore place the subject of Police in the forefront of our recommendations.
13. We cannot, however, suggest that the problem is easy. It was discussed at considerable length at the 1957 Conference. Their conclusions may be quoted in full. The Conference :-
 - (1) Agreed that no police force in Nigeria should, so far as its use and operational control were concerned, at any time come under the control of political parties. To this end, for example, at the stage when the use and operational control of the Nigeria Police ceased to be vested in the Governor-General acting in his discretion, the appointments of the Inspector-General of Nigeria Police and of the Regional Commissioners of Police, whether or not they were at that time subordinate to the Inspector-General, should be strictly safeguarded by special constitutional provision.
 - (2) Recognised that the Federal and Regional Government would always have a concurrent responsibility for law and order throughout the Federation and that after independence the ultimate responsibility for this, at present vested in the Secretary of State, would be inherited by the Federal Government.
 - (3) Expressed the view that it would always be necessary to have a Federal Police Force and a Federal Police organization to discharge the Federal Government's responsibility throughout Nigeria, to co-ordinate the training and equipment of all Police Forces in the Federation and to be responsible for the Federal CID.
 - (4) Took note of the professional view that the Nigeria Police could not for administrative reasons be regionalised during the next three years.
 - (5) Agreed that during the transitional period every effort should be made to strengthen the contingents of the Nigeria Police stationed in the Regions, so that they could become the nucleus

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of Regional forces.

- (6) Recognised the value and importance of local Police forces free from political control and agreed that every help should be given by the Inspector-General of Police towards their development.
- (7) Agreed 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 forces.
- (8) Agreed that, in the meantime, Item 30 of the Exclusive Legislative List should be deleted and an item on the following lines should be inserted in f the Concurrent Legislative List:

"Police, provided that the Legislative of any Region shall not enact any law in pursuance of this item unless the Secretary of State has, after consultation with all the Nigerian Governments, decided that Regions should set up their own police forces.

14. The Conference, it will be seen, did not reach a final decision; they registered their belief that the Federal Police Force should remain and that the ultimate responsibility for law and order required the Federal Government to maintain its own police force; they recognised also the desire of two of the Regional Governments to set up their own Regional police Forces but did not reconcile these two considerations. And it should be noted that they agreed that it would rest with the Secretary of state to exercise his constitutional right and to decide whether Regional Forces should be set up.
15. The Police in Nigeria are concerned not only with the prevention and detection of crime but (much more frequently than is usual in England) with the maintenance of law and order, with the control of public meetings and political processions and the like. The situation which arose in Ibadan during our stay in Nigeria on the death of Alhaji Adelabu, the riots in Kano in 1953, and the disturbances in the Eastern Region in March of this year are examples of the kind of situation against which the police have continually to guard. And in respects of public order there are to be two constitution responsibilities. The Federal Government has the ultimate responsibility for law and order throughout the country but the Regional Government also has a responsibility for law and order within its own territories. Its police responsibilities are not confined to enforcing its own domestic legislation, in, for example, such matters as proper arrangements for markets, control of motor traffic, and the like; the Regional Government has also within its own territory a concurrent responsibility for law and order in general. This extends beyond the police sphere - which includes for example guarding against riots and preventing them - to a much wider responsibility for conducting the affairs of its Region in such a way as not to provoke disturbances and demonstrations. The problem is thus to provide a force or forces which will work smoothly and which will enable both the Federal and Regional Governments to meet their responsibilities.
16. There is also a second division of responsibility to be borne in mind. The Conference has recorded its decision that no police force in Nigeria should at any time "come under the control of political parties". It is certainly desirable that a police force should normally be left to conduct its affairs in terms of its own professional responsibilities and that it should not be subject to the day-to-day interference of Ministers; this is particularly so where there are "strong arm groups" operating to enforce political obedience. But while on the one hand the day-to-day control of a Minister who is

a member of a party is to be avoided, a police force not ultimately responsible to a Minister would surely be just as dangerous. What is desirable is that there should be such an understanding between the professional head of a police force and the Minister whom he serves that there is a large field in which the professional head exercises his responsibility in accordance with his own conscience and professional standards, while he remains subject to the ultimate control of the Minister, who in his turn is responsible to the House and the electorate for the expenditure of public money and the maintenance of public order.

17. It is not easy to define these two spheres of responsibility, particularly in a new country, and particularly in a Federation, where it is complicated by the division of responsibilities between Federal and State Governments. The solutions found will inevitably vary from one country to another. We suggest however that the Federation of Nigeria should be extremely careful to avoid a situation such as that which arose in the United States of America within recent memory, when over a large field the Federal Police found themselves powerless to intervene except on technical grounds which were irrelevant to the real cause of action, as when notorious gangsters with many murders to their discredit had to be prosecuted for evasion of income tax.
18. We do not believe there is any easy solution to this problem. A decision which is clear cut and places responsibility entirely in the hands either of the Federal or the State Government and which leaves the other powerless must be wrong; there is an overlapping responsibility between the two Governments and there must therefore be a dual allegiance on the part of the police officers. Since it is impossible to provide a clear cut division of fields of duty in which one may act and the other may not, it would be wrong to envisage Federal and Regional police forces which were separate and under separate control. And as in other concurrent fields the Federal Government's view must prevail in a clash.
19. There is another factor to be brought into consideration. In the Northern Region the Nigeria Police are at present comparatively few and there are a number of Native Authority Police who perform many ordinary police functions, though they are in some respects organised and trained less as police than as second line troops. In the Western Region also there are Local Government Police, though they form a smaller proportion of the total police forces in the Region than in the North; there is no such local police force in the East. Local police forces vary considerably in the quality of their training; the difficulty of ensuring that they shall be regarded as impartial is even greater in their case than it would be in the case of Regional Police. In the North and the West, the kind of dual responsibility to which we have referred above is at present already exercised by officers of the Nigeria Police, who are sometimes advisers to the Native Authority Police and are sometimes temporarily in command of them.
20. The efficiency of a police force depends on the quality of the officers and on the loyalty of the constables and lower ranks to their officers. If the force is to function adequately, a consciousness of its unity and of its responsibility within its own limits of action must permeate the whole force; that consciousness must not be confined to the Inspector-General and the Commissioners. We believe that at present such a sense of responsibility does extend in varying degrees throughout all ranks of the Nigeria Police today. It would be a waste of a valuable asset if this were to be destroyed.
21. From the point of view of allaying the fears of minorities, a first essential of any scheme is that

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there should be in each Region a body of police of sufficient strength and independence of outlook to deal, for instance with political "strong arm groups". Its independence would be helped if it were a purely Federal force, but if this meant that it was separated from the day-to-day running of the Region, the object would be defeated; it is only by the force's intimate concern with the normal arrangements for Regional law and order that the minorities will gain any security by its presence. At the same time, its own efficiency would be seriously impaired if it was merely a reserve with no active role to fill from day to day.

22. Again, a Regional Government must wish to have available a force on which it can call in order to deal with any danger that may arise in a particular area. It also requires a force on which it can call in matters such as the provision of guards and ceremonial escorts.
23. In any solution put forward to allay the fears of minorities, it is essential, we suggest, to take into account the necessity of maintaining the unity of Nigeria and of enabling the Federal Government to discharge its responsibilities for law and order throughout the Federation; it is hardly less important to protect the police forces from interference in that sphere of their operations in which it is proper that they should act solely in accordance with professional standards and without political direction. It is also important to recognise the responsibility of the Regions for law and order within their own territories. Finally, it is essential that -disagreement should not prevent swift action, and it is therefore necessary to be clear where responsibility lies and by what channels orders must be conveyed.
24. We do not think it is possible to devise a system which will fully satisfy all these requirements, this incompatibility is inherent in the constitution and indeed is present to some extent in all federal constitutions; it is still causing difficulty in the United States of America. The best that can be done is to meet these requirements as far as possible, recognising that some must give way to others. With these considerations in mind, we put forward certain broad principles, which we regard as of the first importance if the fears of minorities are to be allayed. We do not consider that it comes within the scope of our terms of reference to make more detailed recommendations, but we do recommend that the following principles should be embodied in any decisions regarding the future of the police in Nigeria:
 - (1) The dual responsibility for law and order of the Federal and Regional Governments should be recognised, and as between these two the Federal must prevail.
 - (2) A division of subjects between Federal and Regional police, and even the existence side by side of two forces each responsible to a different Government will lead to confusion and inefficiency.
 - (3) No police force can be fully effective unless it is concerned with the day-to-day running of the area in which it has jurisdiction. Therefore no force should be retained purely as a reserve with no active day-to-day role.
 - (4) There should therefore be one Nigeria police Force, which should serve both Federal and Regional purposes.
 - (5) There should be no Regional Police Force although in our view it is desirable that the Regional Government should share financial responsibility for the Nigeria Police with the Federal Government.

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(6) There should no exclusively Federal Police Force, although parts of the police organisation will be used exclusively for Federal purposes.

(7) Machinery should be devised which will enable the Federal Government and the Governments of the Regions jointly and regularly to consult as to the raising, payment and administration of this force, as to the division of financial responsibility between the Governments and as to the size and composition of the detachment normally posted to each Region. But in the event of disagreement the views of the Federal Government must prevail.

(8) While the police should be left as far as possible to carry out their duties in accordance with their own professional standards, they must ultimately be under the control of a Government.

(9) There must be only one channel by which instructions can be conveyed either to the senior police officer of the Federation or to the senior officers of each Region. They must emanate from the Federal Government. But the senior police officer in each Region will have to bear in mind that the Regional Government has a responsibility for law and order in its own area. He must therefore keep in close touch with the Regional authorities and meet their wishes whenever possible. His position, together with that of the senior police officer in the Federation, will be strictly safeguarded by special constitutional provision, as was agreed at the Conference of 1957.

(10) It should be the object of policy to absorb local forces gradually into the Nigerian Police Force

(11) There should be uniformity of training and discipline throughout all police forces in Nigeria; to this end, local police forces until their absorption should have the benefit of the advice and training facilities of the Nigeria police and every opportunity should be taken for the exchange of officers.

(12) Questions of first appointment, promotion and discipline of officer cadre should be dealt with by a Police Service Commission.

25. We wish to emphasise once more and in the strongest terms that no better means of allaying the fears of minorities can be found than the retention of a single strong police force not subject to purely Regional control. We believe that a force which was so organised as to meet the twelve principles we have recommended above would substantially reduce the fears of minorities and effectively remove many of their causes.

Section 3. Special Areas

26. We were impressed, in both the Western and Eastern Regions, with the special position of the people, mainly Ijaw, in the swampy country along the coast between Opobo and the mouth of the Benin River. We were confronted, first, with their own almost universal view that their difficulties were not understood at headquarters in the interior, where those responsible thought of the problems in quite different physical forms from those they assumed in those riverain areas; secondly, with the widespread desire of the Ijaws on either side of the main stream of the Niger to be united. We cannot recommend political arrangements which would unite in one political unit the whole body of Ijaws; we do however consider that their belief that their problems are not understood could be largely met without the creation of a separate state which we have rejected for

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the reasons mentioned elsewhere.

27. This is a matter which requires a special effort and the co-operation of the Federal, Eastern and Western Government; it does not concern one Region only. Not only because the area involves two Regions, but because it is poor, backward and neglected, the whole of Nigeria is concerned. We suggest that there should be a Federal Board appointed to consider the problems of the area of the Niger delta. In this we would include the Rivers Province without Ahoada or Port Harcourt and would add the Western Ijaw Division.
28. We suggest that there should be a Chairman and Vice-Chairman appointed by the Federal Government, one representative of the Eastern Region Government and one of the Western Region Government, preferably Ijaws, together with four representatives of the people of the areas, who might conveniently be one from the Western Ijaws and three from the Eastern Ijaws, who would be chosen by local bodies. We think that the members of this Board should be appointed for, say, five years in the first place. It should be concerned to direct the development of these areas into channels which would meet their peculiar problems. It should be set up by statute. Its first task would be to conduct a survey of the entire area, which would be carried out by a doctor, an agriculturalist, an educationalist, an expert on communications and such other experts as are required. Statutory provision should be made enabling the Board to call on the Federal Government, the Eastern Regional Government and the Western Regional Government for the staff and the finance for this operation. It would be on receipt of the detailed information that would arise from this survey that the Board would decide how to plan its operations; it may be that little permanent staff would be required once the survey was complete, though it would require to be brought up to date periodically. On the basis of the survey, the Board would draw up its recommendations for special schemes to supplement or extend existing plans for development; such schemes would be financed exclusively from Federal funds if they concerned Federal subjects, such as ports or major waterways; if, however, they concerned Regional subjects, we propose that they should be financed by the Regional Government (or if both Regional Governments are concerned, by both, in proportion to the population involved) with a Federal contribution of one-third of the capital cost plus one-third of the recurrent expenditure for a period which might extend to ten years.
29. We suggest that constitutionally it would be necessary to place on the concurrent list a new subject, which might be "The Development of Special Areas". It would be open to the Federal Government to announce in the Gazette that a certain area had been classified as "Special" and from that moment special plans for its development would become a Federal as well as a Regional responsibility. The Board would be required to submit its annual reports to each of the three Governments, Federal, Western Region and Eastern Region, and it would be necessary to make provision of time in each House for discussion of the report of this Board. We do not contemplate that the Board should carry out the works which it recommends; this would be left to the Regional Government (except in the case of exclusively Federal schemes) and the annual report of the Board would include a report on actual progress. We consider that this arrangement should be temporary and that it should be the object of the Board to conclude its work within ten or twelve years when provision for development had gone far enough to make it possible for this arrangement to be abandoned. It would then be for consideration whether the Area should become a Minority Area, as described below.

30. We, consider that when the Board has drawn up the schemes it considers desirable and possible, it should place them in an order of priority and endeavour to obtain the agreement of the Governments concerned. We do not recommend powers of compulsion, which we believe would defeat their own object. Our proposal would provide some financial inducement to the Regional Government, but its sole ultimate sanction is the working of the democratic machine and the value of votes; it is more likely to be successful if there is such a balance in the Federal House of Representatives that every seat is of importance. The declaration of the Ijaw country as a Special Area would direct public attention to a neglected tract and give the Ijaws an opportunity of putting forward plans of their own for improvement. It would be difficult for either Government to justify to the electorate either a blank refusal to accept a plan recommended by the Board or a failure to implement an accepted plan; in this, as in all our recommendations, we assume a desire to continue with democratic institutions; it is on this assumption that all the steps leading to independence are based.

Section 4. *Minority Areas*

31. In the Western Region, a step to which we have already referred has been taken towards allaying the fears of a minority. This is the setting up of a Mid-West Advisory Council with the Minister for Mid-West Affairs, Chief Anthony Enahoro, as the Chairman. We were impressed with the effort which the Western Region had made in this matter and with the trouble which Chief Enahoro had taken to consult the many interests involved. It cannot however be said that the Council yet inspires confidence- partly no doubt because when we were in Nigeria it had not yet met- and we feel that it might be possible to create greater confidence in the Council if certain modifications were made in the present arrangements.
32. In the first place we suggest that the Council should be made more representative of opinion in the area with which it is concerned. It is not, we think, enough that the Government should nominate persons from the area; they must include men who are ready to criticise, and we consider that an element in the Council should be elected or nominated by local bodies in the area. We do not think that it is necessary that special elections should be held.
33. It is also worth considering whether "the Mid-West Area" should be the field for the Council's activities. We have already suggested other arrangements for the Ijaws and would therefore exclude the Western Ijaw Division from the area for which the Council is responsible. Nor do we think that the Warri Division should be included, since this is a mixed area in which a considerable element look to the headquarters of the Region rather than to Benin; for the same reason, the Akoko-Edo district of Afenmai Division might wish to be omitted. It is with less certainty that we would exclude Asaba and Aboh Divisions but we feel that it is mainly on account of the presence of an Edo-speaking minority that the problem has arisen, and on the whole we would confine the operation of the Council to the Edo-speaking districts, that is to say, Benin Division, Urhobo Division, the two remaining districts of Afenmai and the Ishan Division. As we have already explained we do not consider that this area could suitably be made into a separate state but we do think that it has special problems and that an Edo Council presided over by the present Minister for Mid-West Affairs, who would thus become Minister for Edo Affairs, should continue, with an advisory responsibility for the development and welfare of the Edo-speaking peoples and in particular for the preservation of Edo culture.

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34. We consider that the Council should be required to produce an annual report which should be debated in the Western Region Assembly, but we would go further than this. The general responsibility of the Federation will extend to the preservation of law and order throughout Nigeria; it is the responsibility of the Region to govern in such a way that law and order is preserved in its Region. These two aspects of the constitutional position read together give the Federation a concern in minority areas; to put the point baldly and at its worst if a minority area is so neglected or oppressed that it rebels, the Federal Government will probably be asked to send troops and police. We suggest therefore that the report of the Council for Edo Affairs should also be laid on the table of the House of Representatives and that an opportunity should be given there for debate. It may be difficult for a Council such as we have in mind to produce a report which will be unanimous. We consider that the report, with or without a minority report appended, should in any case be placed on the table of both the Houses, Federal and Regional.
35. In Calabar a very similar situation exists. The former Province of Calabar is the centre of a distinguishable culture and a similar arrangement might there be made. We suggest that a Calabar Council also might be appointed, with a local chairman nominated by the Regional Government, the members being partly nominated by the Government, while others would be chosen by local councils. Its powers and duties would be similar to those of the Council for Edo Affairs. Its functions and duties would be quite different from those of Local Government Councils and it should, we think, come into operation whatever decisions are reached regarding Sessional Paper No.2 of 1957.
36. It may be that after independence the Federal Government and the Regional Governments will agree that other areas too should be declared minority areas in this way. We do not however feel justified in making other recommendations of this kind at this stage. These two are the areas in which, it seems to us, there is the strongest and most united local sentiment and the most clearly distinguishable culture. Our suggestion, quite simply, is that the limelight should be turned on to these areas and the normal sanctions of democracy brought into play.

Section 5. *Fundamental Rights*

37. Although almost all the witnesses who came before us were insistent that nothing but a separate state could meet their problems, one group asked only for provision in the Constitution guaranteeing certain fundamental rights. These were the Christian bodies who appeared before us both in Lagos, on behalf of their organisations throughout Nigeria, and again in the Northern Region. Some other witnesses said they would welcome such provisions in the Constitution but were afraid that they would not be sufficient.
38. Provisions of this kind in the Constitution are difficult to enforce and sometimes difficult to interpret. Nevertheless, we think they should be inserted. Their presence defines beliefs widespread among democratic countries and provides a standard to which appeal may be made by those whose rights are infringed. A Government determined to abandon democratic courses will find ways of violating them but they are of great value in preventing a steady deterioration in standards of freedom and the unobtrusive encroachment of a Government on individual rights. We have therefore considered what provisions might suitably be inserted in the Constitution and have given particular attention to the Convention on Human Rights to which, we understand, Her Majesty's Government has adhered on behalf of the Nigerian Government. Where the matter

which we think, needs expression has already been provided for in the Convention on Human Rights, we simply place below the relevant provision in that Convention, but we do not necessarily recommend the exact wording of the Convention and it may be that constitutional lawyers will wish to draft in different terms.

39. We recommend that provision should be made in the Constitution for the following Fundamental Rights:-

Group A. Life and Liberty

- (1) *The Right of life*
- (a) Everyone's right to life shall be protected by law. 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.
- (b) Deprivation of life shall not be regarded as inflicted in contravention of this provision when it results from the use of force which is no more than absolutely necessary
- (i) in defence of any person from unlawful violence
- (ii) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained
- (iii) in action lawfully taken for the purpose of quelling a riot or insurrection.
(Convention on Human Rights, Article 2.)
- (2) *Inhuman Treatment*
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
(Convention on Human Rights, Article 3.)
- (3) *Slavery or Forced Labour.*
- (i) No one shall be held in slavery or servitude.
- (ii) No one shall be required to perform forced or compulsory labour.
- (iii) For the purpose of this provision the term "forced or compulsory labour" shall not include-
- (a) any work required to be done in the ordinary course of detention or during conditional release from such detention;
- (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 civil obligations. (Convention on Human Rights, Article 4.)
- (4) *Liberty*
- (i) 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 a procedure prescribed by law:
- (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or

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- detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed 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 of a person against whom action is being taken with a view to deportation or extradition.

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- (ii) Everyone who is arrested shall be informed promptly of the reasons for his arrest and of any charge against him.
- (iii) Everyone arrested or detained in accordance with the provisions of paragraph (i)(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 guarantees to appear for trial.
- (iv) 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.
- (v) Everyone who has been the victim of arrest or detention in contravention of the provisions above shall have an enforceable right to compensation.
(Convention on Human Rights, Article 5.)

(5) Private and Family Life

- (a) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (b) 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 necessary 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.
(Convention on Human Rights, Article 8.)

Note: This is the wording of the Convention on Human Rights but it is to be noticed that it puts on the courts the burden of deciding whether an act by a public authority is "necessary in a democratic society in the interests of national security" This places an improper burden on the courts and we

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think it may be desirable in drafting to define their responsibility, perhaps substituting" and in the eyes of a reasonable man would appear to be necessary in the interests of national security."

Group B. Administration of Justice

(6) Judicial Procedure

(a) In the determination of his civil rights obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time, by an independent and impartial 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.

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

(c) Everyone charged with a criminal offence has the following minimum rights: -

(i) to be informed promptly, in a language he can understand, and in detail, of the nature and cause of the accusation against him;

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

(iii) to defend himself in person or through legal assistance of his own choosing or if he has no sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

Note It may here be necessary to add a saving clause excluding native courts where under existing legislation no legal assistance is permitted.

(iv) 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;

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

(Convention on Human Rights, Article 6.)

(7) *Retrospective Effect* 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 the criminal offence was committed.

(Convention on Human Right Article 7.)

Group C. Social Freedom

(8) *Freedom of Expression (a)* 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 and regardless of frontiers. This provision shall not prevent Governments from requiring the licensing of broadcasting, television or cinema enterprises.

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- (b) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary 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 disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary,
(Convention on Human Rights, Article 10.)
- (9) *Freedom of Peaceful Assembly*
- (a) 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 unions for the protection of interests.

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- (b) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary 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.
(Convention on Human Rights, Article 11)

Note: Here too the same considerations apply as in (5) of these recommendations

- (10) *Freedom of Movement*
Subject to any freedom imposed by any law relating to the security of the country, public order, public health, or the punishment of offenders, every citizen has the right to move freely throughout the country 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.
(Malaya Constitution, Article 9 (2))
- (11) *The Right to Marry*
Men and women of marriageable age have the right to marry and to found a family, according to the laws governing the exercise of this right
(Convention on Human Rights, Article 12)

Note: This article might seem superfluous but marriage between specific classes of persons has been prohibited in certain countries.

Group D. Rights Concerning Religion

- (12) *Freedom of Religion*
- (A) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom

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to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

- (b) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary 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.
(Convention on Human Rights, Article 9)

(13) *Religious Education*

- (a) 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.
- (b) 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.
(Pakistan article 13(1) and (2))

Note: The two paragraphs in this Group are believed to cover the provisions suggested to us by the Christian bodies whom we heard. It may however be wise to draft in such a way as to deal with these more specifically. What are required to be safeguarded are the following rights:-

- (a) freedom to hold and express freely any religious convictions or other beliefs and to publish them by any means not contrary to public order.
- (b) freedom to assemble peacefully for worship and for the peaceful and courteous proclamation of a religion or belief
- (c) freedom to sell and distribute literature which advances the teaching of any religion or belief provided that it is expressed with courtesy to other religions or beliefs.
- (d) freedom to change one's religion or belief
- (e) freedom to have one's children educated when possible in a religion of one's own choice or if that is impossible in no other.
- (f) freedom to conduct the affairs of one's religion or belief without state interference.

In all these respects the State should have the right to intervene in specific instances and for defined periods in the interests of public tranquillity or safety.

Group E. Discrimination

- (14) *The Enjoyment of Fundamental Rights without Discrimination*
The enjoyment of the fundamental rights set forth in the Convention 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.
(Convention on Human Rights, Article 14)

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Note: It may be necessary to make provision for an exception in times of war or other public emergency.

(15) Protection against Discrimination

- (i) 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.
- (ii) Nothing in this provision shall prevent the prescription of proper qualifications for the public service.

Note: It may be that in the Northern Region some proviso to the prohibitions in this clause may be necessary for a limited period.

(16) The Enforcement of Fundamental Rights

- (a) Any person may apply to the High Courts for Protection or enforcement of any of the provisions as to fundamental rights 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.
- (b) Any person may apply to a Magistrate to enquire into an alleged violation of one of the provisions for fundamental rights and to make a report on his enquiry to the High Court concerned.

Note: The provisions set out in (15) and (16) above are not to be found in the Convention on Human Rights. But we consider that both—or something similar are necessary in the present circumstances of Nigeria and they speak for themselves.

- 40. We have assumed that the independence of the judiciary will be entrenched in the Constitution. The recommendations in this section would be valueless without that assumption.

Section 6. Ilorin and Kabba

- 41. We have already made our recommendations regarding Ilorin and Kabba in Chapter 13, paragraph 27. These are repeated in the summary of our recommendation in Chapter 15.

Section 7. Muslim Law I

- 42. We have made certain suggestions regarding Muslim Law in Chapter 10, paragraph 18, and these are repeated in the summary of recommendations and suggestions below in Chapter.

Section 8. Other Suggestions

- 43. There remain a number of suggestions which we do not wish to put into the form of recommendations. They are in most cases matters for the individual Governments concerned, and we now put them forward in the belief that if they were accepted they would help to allay the fears which minorities undoubtedly feel. These 100 are included in Chapter 15.
- 44. Several of these points resemble each other in arising from a failure to consult or to conciliate. We should like to stress in general terms the extent to which a modern democratic system depends on

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the practice of consultation and compromise. Whenever a change is made and particularly in the distribution of power, consultation between the Government and the local authorities concerned is called for and will smooth the introduction of the new measure. This is more so than ever in Nigeria, where change is at the moment extremely rapid and local feeling very strong; indeed if progress is to be smooth consultation and conciliation are here essential.

CHAPTER 15. SUMMARY OF RECOMMENDATIONS AND SUGGESTIONS

Police

We recommend:

1. That the principles set out in paragraph 24 of *OlaIXer 14* should be embodied in any decisions regarding the future of police in Nigeria.

Special Areas

We recommend:

2. That the development of Special Areas should be placed on the concurrent list. (Chapter 14, paragraph 29).
3. That a Special Area be created in the Niger Delta to cover the Rivers Province except Ahoada and Port Harcourt, and including the Western Ijaw Division. (Chapter 14, paragraph 27.)
4. That a Board with a Federal Chairman should be created for the Special Area, to which the Federal, Western and Eastern Regions should contribute funds and staff for the purpose of a survey of the special problems of the Special Area, and which would draw up plans for its development (Chapter 14, paragraph 28.)
5. That the Board should initiate schemes to supplement the normal development of the Special Area which should be carried out by the Governments concerned, the Federal Government contribution being one-third of the capital cost and one-third of the recurrent cost for periods which may extend to ten years. (Chapter 14, paragraphs 28- 30.)
6. That a report regarding the plans made by the Board and the progress made in carrying them out should be laid annually on the tables of the Federal House of Representatives and the Western and Eastern Houses of Assembly (Chapter 14, paragraph 29.)
7. That the existence of any Special Area should be under continual review and that as soon as the need for its continued existence appears to have been reduced, consideration should be given to its termination or to the desirability of its becoming a Minority Area. (Chapter 14, paragraph 29.)

Minority Areas

We recommend:

8. That Benin Province with Urhobo Division but less Akoko-Edo and Asaba should be constituted a Minority Area to be known as the Edo Area. (Chapter 14, paragraph 33.)
9. That the Calabar Province should be constituted a Minority Area to be known as the Calabar Area. (Chapter 14, paragraph 35.)
10. That in each of the Minority Areas there should be a Council with a Chairman from the Area

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nominated by the Regional Government and a membership of which a substantial number shall be elected or nominated by local bodies. (Chapter I4, paragraphs 32 and 35.)

11. That the Council should make an annual report to be placed upon the table of the House of Assembly of the Region concerned and on the table of the House of Representatives and to be there debated. (Chapter I4, paragraphs 34 and 35.)
12. That the duties of the Council should be to foster the well-being, cultural advancement and economic and social development of the Minority Area and to bring to the notice of the Regional Government any discrimination against the Area. (Chapter I4, paragraphs 33 and 35.)

Fundamental Rights

13. We recommend that provision should be made in the Constitution for the protection of the following fundamental rights:
 - (1) The right to life.
 - (2) Protection against inhuman treatment.
 - (3) Protection against slavery or forced labour.
 - (4) The right to liberty.
 - (5) The right to respect for private and family life.
 - (6) The right to a public hearing and fair procedure in criminal charges.
 - (7) Protection against retrospective legislation.
 - (8) Freedom of expression.
 - (9) Freedom of peaceful assembly.
 - (10) Freedom of movement.
 - (11) The right to marry.
 - (12) Freedom of religion.
 - (13) Freedom of religious education.
 - (14) The enjoyment of fundamental rights without discrimination.
 - (15) Protection against discrimination.
 - (16) The enforcement of fundamental rights. (Chapter I4, paragraph 39.)

Ilorin and Kabba

We recommend:

14. (i) That there should be no change in the boundary between the Northern and Western Regions except as the result of a plebiscite;
(ii) That a plebiscite should be held if there is general agreement at the Conference that it should be held and that it should be binding;
(iii) That in any area transferred at least 60 per cent of the votes cast must have been in favour of transfer. (Chapter I3, paragraph 27.)

Muslim Law

15. We consider that the fears of minorities in respect of Muslim law would be reduced if the Government of the Northern Region were to adopt the following proposals, some of which they

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already have in mind:

- (i) Non-Muslims to have the option of being dealt with by non-Muslim courts;
- (ii) A Regional service of Alkalai to be instituted who would be appointed and administered by a Judicial Service Commission;
- (iii) Prisoners' Friends to be permitted and improved arrangements made to facilitate appeals and to ensure that copies of court records are not delayed. (Chapter 10, Paragraph 18.)

Suggestions

16. The suggestions that follow have usually taken their origin from a point raised in evidence in a particular Region and the reference placed in brackets after the suggestion is to the chapter and paragraph of our report where the question has been discussed. But in most cases the point applies in other Regions as well as that where it arose.
17. We suggest that it would be an act of wisdom for Governments to appoint a person from a Minority Area to a Board whenever a suitable candidate is available. Where such Boards are not instruments of Government policy, it would be wise to select members for their impartiality (Chapter 3, paragraphs 8-12 and Chapter 6, paragraph 17.)
18. There is a danger to democratic institutions in the creation of Boards and Corporations whose servants are neither protected nor restrained in the same way as Government servants. We suggest that consideration should be given to the possibility of bringing such servants under regulations governing conduct, appointment, dismissal, and disciplinary action similar to those which apply to Government servants. (Chapter 3, paragraph 12 and Chapter 6, paragraph 17.)
19. The question might be considered of subsidising the rehabilitation and replanting of old rubber plantations; the creation of a Rubber Marketing Board should be thoroughly explored. (Chapter 3, paragraphs 18 and 19.)
20. It would be wise to spend more per mile on maintenance of roads in the Mid-West than elsewhere in the Western Region. (Chapter 3, paragraph 23.)
21. A Commission for the conduct of elections should be created for both Federal and Regional elections. (Chapter 3, paragraph 29.)
22. Control of communal land should eventually pass to a democratic body, though it may in the meantime be desirable to associate traditional rulers with it. (Chapter 3, paragraph 37.)
23. An intermediary body of Chiefs not merely local should be created to consider questions of the appointment and removal of Chiefs. (Chapter, paragraph 44.)
24. It would be unwise to introduce or perpetuate restrictions on the sale of land to persons not native to an area. (Chapter 6, paragraph 20.)
25. Responsibility for appointments to County and District Courts should be vested in an independent body such as a Judicial Service Commission. (Chapter 6, paragraph 27)

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26. The introduction of trial by jury and of a "Public Defender" should be reconsidered in consultation with the Bench and the Bar. (Chapter 6, paragraph 29.)
27. A place should be found in the local administration for the smaller traditional leaders. (Chapter 6, paragraph 26 and Chapter 9, paragraph, 4.)
28. Emirs' bodyguards should be restricted to purely ceremonial functions. (Chapter 9, paragraph 14.)
29. It should be the aim of policy to centralise control of prisons. (Chapter 9, paragraph 16.)
30. Regional Governments should retain the power to supersede but should not have the power to pack a Native Authority. (Chapter 9, paragraph 24.)
31. Prerogative writs or some comparable procedure should be re-introduced if the administrative power of review disappears. (Chapter 9, Paragraph 32.)

HENRY WILLINK, Chairman,
GORDON HADOW
PHILIP MASON,
J.B. SHEARER
K.J. HILTON Secretary

London, 30th July 1958