

COLONIAL OFFICE

Native Administration  
in the  
British African  
Territories

*by*

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Part III. West Africa:  
Nigeria, Gold Coast,  
Sierra Leone,  
Gambia



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## PREFACE TO PART I

IN 1941, following on journeys undertaken in 1939 and 1940, I wrote a Report on the working of the systems of local rule in Africa which was issued for official use under the title of "NATIVE ADMINISTRATION AND POLITICAL DEVELOPMENT IN BRITISH TROPICAL AFRICA." It was suggested in 1947 that I should bring that Report up to date by including a reference to the considerable number of changes which had taken place in the interval since it was written. But a journey undertaken by me in the latter half of 1947 and in the first half of 1948 convinced me that it would not be adequate merely to revise the Report in this manner. The scope of the enquiries made by me in 1939 and 1940 had been restricted by the existence of War conditions; the material was incomplete in respect of certain of the territories; and the changes made in the interval had in some cases involved issues not merely of practice but of policy.

The present Report has therefore been drawn up on a different basis. It is more limited in scope, in that it is confined to matters relating directly to the agencies employed for administrative purposes in local rule, including the creation of institutions of local government, and it refers only indirectly to political or constitutional developments. It is on the other hand more comprehensive, in so far that it embodies a detailed statement of the working of the system adopted in each of the Provincial units comprised in the ten Colonial territories concerned. It gives detailed information on the same scale regarding the procedure for the administration of justice through the native tribunals, and examines the evidence available of changes in the African law and custom which regulates the system of landholding.

The present survey is being issued in four Parts. The first deals with the East African territories, Uganda, Kenya and Tanganyika; the second with Zanzibar and the two Central African territories, Nyasaland and Northern Rhodesia; the third deals with the West African territories, Nigeria, the Gold Coast, Sierra Leone and the Gambia. The problems of a general nature which emerge as the result of the survey are discussed in a final Chapter, issued separately as Part IV. The facts and figures embodied in the survey are in the main those elicited by the local enquiries made in 1947 and 1948, but account has also been taken of any later information that has come to hand at the time of going to Press early in 1950. This has led to some irregularity in the dating of the material, but where so large a number of territories are concerned and local changes are so continuous, it is difficult to achieve uniformity in this respect.

In presenting this considerable volume of factual material, the primary consideration has been to meet the need felt by officers of the African Administrations for information regarding the practice followed in areas other than those with which they are personally acquainted. The development of a viable procedure of local administration involves a continuous process of adjustment to conditions which are not merely of very great diversity, but are being constantly modified in response to social and economic changes. It is here that the experience gained in other areas can be of value; and perhaps the outside observer can render greater service by the systematic collation of

information than by seeking to formulate principles or by offering counsel to those who are actually responsible for taking action. And it is pertinent to add here, that the range of matters with which the information thus provided deals is of more intimate concern to a very large proportion of the African population than is the course of political development or constitutional change.

I am indebted to the Governors of the Colonial territories and to the numerous officers who not only extended their hospitality to me in the course of my enquiries in 1947 and 1948, but have given me the most generous assistance in assembling the material on which this survey is based. I am much indebted also to Mr. A. H. Cox, C.M.G., who accompanied me throughout my journeys and gave me valuable help in collecting and arranging this material. In spite of the assistance I have received from many quarters, it is inevitable that a work involving so much detail should contain many errors, but for them I must take the sole responsibility, and I must add also that any opinions which may be expressed are not those either of the Colonial Governments or the Colonial Office. I am solely responsible for them.

HAILEY

*London, 1950.*

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## CHAPTER VII

# Nigeria

### SECTION I

### GENERAL

If the estimates made by the Statistical Department of Nigeria are correct, the population of Nigeria, which was recorded in the Census of 1931 as 19,928,171, now stands at 25,075,000, in an area amounting to 372,674 square miles. These figures include the portion of the Cameroons which is administered as part of Nigeria,<sup>1</sup> and which accounts for a population of 1,005,000 and an area of 34,081 square miles. Both in population and area therefore Nigeria stands out as the largest of the British Colonial dependencies and though its public revenue is less than that of Malaya, it largely exceeds that of any of the other territories, either in Africa or elsewhere. It is noteworthy that in this last respect, the development has been unusually rapid during the last ten years. In 1938 the public revenue stood at only £5,811,000, but amounted to £22,110,000 in the budget of 1948.

Where a country and population of this extent is concerned, it would not be possible to give any comprehensive account, covering the whole territory, of matters such as the ethnic distribution of the people, or the character of the social structures which form the background of the system of native administration. These will therefore be left for treatment in the succeeding Sections, dealing with the Colony and the three different Regions into which the Protectorate is divided, and this Section will deal only with those constitutional or legislative developments relating to Nigeria as a whole which have a direct bearing on the system of native administration now in force.

### THE PROCESS OF ADMINISTRATIVE AND LEGISLATIVE UNIFICATION

There are many nations in the world which, originating as collections of peoples of diverse sources and culture, have had a unified administrative or political control imposed on them by an alien conqueror or by a predominant section within their own area, and have owed to this fact the integration of interests which has subsequently given them the distinctive character of nationhood. There is no natural affinity either of ethnic origin or of culture between the major groups which comprise the present population of Nigeria, and if ever she becomes a nation, in the sense in which this term is most commonly used, she will owe it to the political unity imposed on her by British

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<sup>1</sup> The Mandate for this portion of the Cameroons was accepted by the British Government on 20 July, 1922, and the continuance of the arrangement by which the Cameroons area was administered as part of Nigeria was confirmed in Article 5.A. of the Trusteeship Agreement of 13 December, 1946. It was affirmed in domestic legislation by the Nigeria (Protectorate and Cameroons) Order in Council, 1946.

rule. The stages by which political unity has been achieved, short as they are in terms of history, might have been still shorter had the extension of British authority been the result of any consistent policy of expansion. That however was not the case ; the extension of British rule has had all the appearance of a series of disconnected and reluctant concessions to circumstances which the Government could not ignore but was unable to meet in any other way.

The story can be very shortly told. The most significant dates are 1849, when a Consul was appointed for the Bights of Benin and Biafra ; 1862, when Lagos was annexed as a " Colony and Settlement " ; 1891, when a Protectorate was declared over the Oil Rivers and Niger Coast ; 1900, when this Protectorate took a new form as the Protectorate of Southern Nigeria, and a Protectorate was at the same time declared over Northern Nigeria ; 1914, when Northern and Southern Nigeria, hitherto two separate Protectorates, were amalgamated ; and finally, 1947, when the constitution came into force which provided for the legislative union of the whole of Nigeria. Two of these events are of special significance in their bearing on the development of the system of native administration—the amalgamation of Northern and Southern Nigeria in 1914 and the enactment of the constitution of 1947.

#### THE RESULTS OF THE AMALGAMATION OF 1914

The amalgamation carried out in 1914 was primarily an act of administrative expediency, designed, among other things, to give to Southern Nigeria the benefits of the system of local rule which had been established in the North, where circumstances had allowed a far greater freedom in the development of a coherent policy of native administration than in the South. But it had also some financial implications. While the South had considerable revenues derived from import duties, the revenue drawn by the North from this source was negligible (it amounted in fact to only £28,000 in 1912 against £1,446,583 received by Southern Nigeria) and the Administration of Northern Nigeria had to rely on subsidies from the Home Government. During the 11 years ending March, 1912 it received from this source grants averaging £314,500. As a result of the amalgamation, some of the resources of the South could be made available for the development of the North.

In the field of native administration the first result of the amalgamation was seen in 1914, when the judicial system which had been for some years in force in Northern Nigeria was applied to the whole of the Protectorate by the Native Courts Ordinance No. 8 of that year. This was followed by Ordinance No. 14 of 1916, which applied to the whole of the Protectorate the substance of the Native Authority legislation which had previously applied to the Northern Provinces. Up to this time there had been no direct taxation in Southern Nigeria, and the system of the Direct Tax, which had been in force for some 10 years in the Northern Provinces, was introduced in the Western Provinces of Southern Nigeria in 1916 and in the Eastern Provinces in 1928, with its corollary in the establishment of the system of Native Treasuries.<sup>1</sup> There has thus been for a considerable period a body of legislation applying to the whole of the Protectorate, which regulates the system of Native Authorities, Native Courts, and Direct Taxation. If there is now any difference in the legislation applying to Northern and Southern Nigeria, it is mainly in respect of the land law, for the enactment which determines the position of the Government in

<sup>1</sup> Pages 112 and 159.

regard to land in the Northern Provinces (the Land and Native Rights Ordinance No. 1 of 1916) has not been applied to Southern Nigeria.<sup>1</sup>

The story of the difficulties encountered in adjusting the Native Authority and Native Courts system of Northern Nigeria to the very different conditions of the Western and Eastern Provinces of Southern Nigeria will necessarily occupy a prominent place in the succeeding Sections. The difficulties presented by the Western Provinces have been considerable ; but, as will be seen, they have been far greater in the Eastern. The process has indeed been so difficult there, that changes are now impending which will amount to a practical abandonment both of the principles and the procedure of the system in force in the Northern Provinces. The Secretary of State stated in 1945<sup>2</sup> that the Northern Provinces system had been successfully extended to both the Western and the Eastern Provinces ; but in view of recent developments this statement now needs to be qualified in respect of the Eastern Provinces.

It will be convenient, however, to leave these matters for further explanation in the succeeding Sections and to revert here to the second of the historical landmarks above referred to, the enactment of the constitution of 1947. From 1914 onwards Nigeria had unity in respect of administrative control. The existence of the separate conditions and separate interests of the three major groupings in the Protectorate was recognized by the maintenance of the three posts of Chief Commissioner in the Northern, Western and Eastern Provinces, but though they exercised considerable delegated powers, especially in connection with the system of native administration, in other respects administration was centralized. Up to 1947 however Northern Nigeria remained a separate entity for legislative purposes.

### THE CONSTITUTION OF 1947

The modern history of the legislative institutions of Nigeria, as apart from the Lagos Colony, may be said to start from 1906, when a Legislative Council was established with power to legislate for the Colony and Southern Nigeria. In 1913 a Nigerian Council was instituted which included representatives of African communities in both the Northern and Southern Provinces, but this had no legislative powers, and was purely advisory, debating matters which were put before it by the Governor or raised by its own members. In 1922 these Councils were replaced by the Nigerian Legislative Council.<sup>3</sup> This had a more extensive membership than the Council of 1913, including four elected members, but its legislative powers extended only to the Colony and the Western and Eastern Provinces of Southern Nigeria, the Governor in Council being the legislative authority for the Northern Provinces. The annual budget, however, which included Northern Provinces expenditure, was passed by the Council, and such legislation as that which imposed customs duties also affected the North. The Chief Commissioner of the Northern Provinces was an ex-officio member of the Council, but the North had no unofficial representation on it, except of persons specially nominated to represent commercial and mining interests.

It is unnecessary to enlarge here on the defects of this system, judged from the political and constitutional standpoint. They were not limited to the fact

<sup>1</sup> Pages 139 and 176.

<sup>2</sup> Para 9 of Cmd. 6599 (1945).

<sup>3</sup> Nigeria (Legislative Council) Order in Council 1922 as amended by the Nigeria (Legislative Council) Orders in Council of 1928 and 1941.

that, though the population of the Northern Provinces was affected by a considerable part of the legislation passed by the Legislative Council, the North had no direct representation on it. In view of the advance made in the Western and Eastern Provinces, the representation provided for them in the constitution of 1922 was on an unduly narrow basis, with an inadequate element of unofficial membership.<sup>1</sup> There was a general agreement therefore that the composition of the Council required revision, and that provision should be made at the same time for the inclusion of the Northern Provinces within its legislative jurisdiction. But this latter point presented a problem of special difficulty. As explained by Sir Arthur Richards (afterwards Lord Milverton) in 1944, it seemed essential that the new constitution, while providing for unity of legislative authority, should also ensure a reasonable measure of autonomy for the three regions whose separate interests had been recognized in the administrative organization of the territory.

The constitution of 1947<sup>2</sup> was designed to meet both these requirements. The new Legislative Council of Nigeria legislates for the whole of Nigeria, and the law prescribing its membership specifically provides for representation from the Northern Provinces. The Council has an unofficial majority, namely 28 unofficials as against 16 officials, and of the 28 unofficial members four are members of the Northern Provinces House of Chiefs,<sup>3</sup> being appointed by that House, and five are appointed by their unofficial colleagues in the Northern House of Assembly. As regards the Colony and the Western and Eastern Provinces, four of the remaining 19 unofficial members of the Legislative Council are elected, representing Lagos and Calabar. The Western House of Assembly appoints four of its members for inclusion in the Council, and two Chiefs are appointed by the Governor from Chiefs who are members of the Assembly. The unofficial members of the Eastern House of Assembly appoint five of their colleagues; one member is appointed by the Governor for the Colony area after consulting the Native Authorities concerned, and three members are appointed by him to represent interests or communities whom he considers to be otherwise inadequately represented. Twenty-five of the 28 unofficial members will normally be Africans, and 20 of them cannot be other than Africans.

The Executive Council, which at present has 14 members, includes four nominated unofficials. Since 1949 all of these have been Africans, one coming from each of the three Regions and one from Lagos. The member coming from the Northern Provinces is a traditional Native Authority, the Emir of Katsina.

It would appear that the final act of legislative unification taken in 1947 was well accepted in the Northern Provinces, though it is of interest to recall that there had at one period existed a school of thought which favoured political separation for the North, some of the strongest advocates of which were officers of the Northern Administration. The matter has special relevance here, because of the part which these officers saw for the Native Administrations in the constitutional development of the Northern Provinces. In their view, the Native Administrations, which were to be given a growing measure of autonomy in the management of their own affairs, would combine to provide

<sup>1</sup> See on these points the address of the late Sir B. Bourdillon to the Royal Empire Society, 30 January, 1946, and the despatch of Sir A. Richards (Lord Milverton) dated 6 December, 1944, in Cmd. 6599 (1945). The latter is reproduced in the Nigerian Sessional Paper No. 4 of 1945.

<sup>2</sup> The Nigeria (Protectorate and Cameroons) Order in Council and the Nigeria (Legislative Council) Order in Council 2 August, 1946; the Nigeria Letters Patent of the same date.

<sup>3</sup> For the Regional Councils, see page 5.

the final authority for legislative and executive purposes ; they would, in short, become the Government of Northern Nigeria, and Northern Nigeria would remain constitutionally independent of the South. It is unnecessary to discuss here the merits of that scheme, for with the enactment of the constitution of 1947 it has ceased to possess any practical interest. But in one respect it rested on a solid foundation. There can be no question of the strength of the feeling among the people of the North that they have interests materially different from those of the South, and it is also true to say that the people of the Western Provinces have felt themselves to have interests different from those of the Eastern Provinces, though this feeling may have been less openly expressed. If the difference in outlook could be summarized in any one formula, it might be said that each Region had in particular its own views about the tempo of political and cultural development, and the tempo of development is (as all experience shows) liable to be a more fruitful cause of difference than the objective to which development points.

The administrative division of the Protectorate into each three Regions, under a Chief Commissioner, had recognized this diversity of interest and had indeed to some extent served to minister to it. It is true that the administrative organization into three Regions was incomplete, in the sense that the machinery at the disposal of the Chief Commissioners was inadequate. While they exercised a wide range of delegated powers in administrative matters, the direction of the important technical and professional departments of Government continued to be centralized, and indeed, in the view expressed by more than one Governor, over-centralized. But the recognition of this fact added to the apprehension felt in many quarters lest constitutional unification should fail to make allowance for the diversity between the different Regions which had been reflected in the administrative organization.

### THE INSTITUTION OF THE REGIONAL COUNCILS

From this standpoint, therefore, the most important feature of the constitution of 1947 was not the provision made for political and legislative integration in the Legislative Council, but the creation of the three Regional Councils for the discussion of local affairs on a different and more familiar plane, accompanied by the provision made for the implementation of the regional principle by the addition of adequate machinery at the headquarters of each Chief Commissioner. This involved the appointment of regional Deputies to the Heads of all the principal Central Departments, in order to enable the Chief Commissioners, in consultation with these Deputies, to settle all local matters in the Regions, only referring to Government or to Departmental Directors on questions of policy or major departmental issues.

The three Regional Councils are the House of Chiefs and House of Assembly in the Northern Region, and for the other two Regions, the Western and Eastern Houses of Assembly. For the present these bodies have no legislative powers, but have a definite function in regard to legislation in so far that before Bills are put forward in the Nigerian Legislative Council they are laid on the table of the Regional Councils for discussion on the lines of a second reading debate, and for the submission of advice by resolution should any amendments be desired. The Regional Councils have at the same time financial functions, the character of which will be more fully described in a subsequent paragraph.



Meanwhile there is one feature in the composition of the Regional Councils which has special relevance in the present connection. They have been purposely designed to provide the link which was hitherto missing between the Legislature and the Native Authority organizations.<sup>1</sup> The Northern House of Chiefs consists only of Chiefs, and the majority of these are (as will subsequently be seen) "sole" Native Authorities. In the Northern House of Assembly, out of the unofficial members, who number not less than 20 or more than 24, 14 to 18 are selected by the Native Authorities from their own members (other than major Chiefs) and six are nominated by the Governor to represent various other communities or bodies, among them the smaller Native Authorities. In the Western House of Assembly, out of the unofficial members, numbering not less than 15 or more than 19, three are Head Chiefs and seven to 11 are members chosen by the Native Authorities among their own members (other than major Chiefs), five members being appointed in addition by the Governor to represent communities not otherwise represented. The Eastern House of Assembly has not less than 15 or more than 18 unofficial members; of these not less than 10 or more than 13 are members selected by the Native Authorities, and five members are in addition appointed by the Governor. But the relation borne by the Native Authorities to the Regional Councils is something more than that of electoral colleges for the Councils, since one of the chief functions of the latter is to provide a forum for the discussion of matters which lie specifically within the range of the powers vested in the Native Authority organizations.

#### REGIONAL FINANCE AND THE REALLOTMENT OF SHARES IN THE DIRECT TAX

The recognition given to the three Regional units in the constitution was accompanied by two measures, both of which have a direct bearing on the operation of the system of native administration. The first was the fixation of a new basis for the allotment of the respective shares of taxation taken by the Government and the Native Authority Treasuries; the second was the more systematic determination of the functions of the Government and the Native Authorities respectively in the provision of local services. Both of these measures are of more than local interest, for they deal with problems in native administration which are common to most of the British territories in Africa.

The first of these measures is closely connected with the steps taken for the regionalization of finance. Finance has been regionalized to the extent that the Regional Councils now have their own budgets, which they debate and on which they vote. Their revenues are derived from two heads, (*a*) the revenue estimated to be derived from the Region's share of the Direct Tax (previously paid to the Central Government), plus any receipts from fees, licences, etc., declared to be Regional; and (*b*) a block grant from Central Revenue, or in technical terms "the non-declared revenues of Nigeria." The expenditure for which provision is made in the Regional Estimates includes the cost of all Government services in the Region, including the salaries of Government personnel, the only exception being the cost within the Region of services declared to be Central, such as the Railway, Posts and Telegraphs, Income Tax or Audit. This cost of these services is carried on the Nigeria Estimates, together with the expenditure on the central organization of Government, the central staff of all Departments, and charges such as interest on public debt or pensions.

<sup>1</sup> See para 3 of Sir A. Richard's despatch of 6 December, 1944, at page 6 of Cmd 6599. (1945).

The normal budgetary procedure is for the Regional Estimates of revenue and expenditure, after final discussion by the Regional Councils, to be submitted for the approval of the Governor, and if sanctioned by him, they appear in the Estimates of the Legislative Council as block grants to the Regional units. The Legislative Council is discouraged from discussing the items of Regional Expenditure.<sup>1</sup> The practical operation of this procedure may be illustrated from the figures of the Estimates for 1948-49. From the total Nigerian revenue (excluding Colonial Welfare and Development Grants) amounting to £19,568,810, the following allocations were made to the Regions (excluding grants for the Regional services and works comprised within the Ten Year Plan of Development and Welfare) :—

	£
Northern Region . . . . .	2,221,280
Western Region . . . . .	1,330,830
Eastern Region . . . . .	1,763,450
	<hr/>
Total . . . . .	5,315,560

The feature of this arrangement with which we are most concerned at the moment is the manner in which the Region secures its share of the Direct Tax. As will subsequently be shown, the history of the levy of the Direct Tax is closely linked up with that of the development of the Native Authority system.<sup>2</sup> The Tax was in its origin only the continuation in a simplified form of a series of taxes imposed by the Hausa States of the Northern Provinces, and was regarded mainly as the regularization of dues paid under native custom to the Ruling Chief. The Native Authority continued to collect the tax at rates approved by the Government, but the Government, as the tax-imposing authority, took for its own purposes a share of the collections. The remainder left with the Native Authorities formed the main basis of the revenue available to the Native Treasuries for expenditure on Native Authority administration and the provision of local services.

The share taken by the Government was for a number of years one half of the net collection, but in 1926 the Nigerian Government, considering that the half share "might prove insufficient to allow for the steady and vigorous development by the Native Authorities of their own services," obtained approval to a proposal that the "fully organized" Native Administrations should be allowed to retain up to 70 per cent. of the Tax as their share. The qualifications for the status of a "fully organized" Administration were not defined, but in 1927, there were 24 Native Administrations in the Northern Provinces and five in Southern Nigeria that were regarded as "fully organized."

There followed in 1926 and 1929 a series of discussions which turned on the question whether the Direct Tax was to be regarded as one levied by the Rulers from which a share was apportioned to the Government, or whether it was a tax levied by the Government of which the Native Authorities were allowed to retain a share. The point has now no practical interest, but it had its meaning at the time for the advocates of the school of thought which, as explained in a previous paragraph,<sup>3</sup> envisaged the Native Authorities as destined ultimately to form the Government of the country. In 1933 the Government,

<sup>1</sup> For fuller details of the procedure involved see Annexure I to the despatch of 6 December, 1944 quoted above, and Appendix A to Annual Report for Nigeria, 1948.

<sup>2</sup> Pages 75 and 112.

<sup>3</sup> Page 4.

forced into undertaking a severe course of retrenchment by the depression period of the early 'thirties, reduced the share to be retained by the "fully organized" Native Administrations to 60 per cent. It further relieved the strain of the depression on its own finances by transferring to the Native Administrations certain Government services and Works and by arranging for them to take over on secondment a considerable number of officers of the Public Works Department employed on these works. But it announced that when the situation improved, each Native Administration would receive a share of the Direct Tax which it could usefully employ and not a percentage arbitrarily fixed, a decision which seemed to imply the abandonment of the principle by which a preferential share of the Tax was credited to the "fully organized" Native Administrations.

In 1935 there occurred a further change of policy, for two Native Authorities in the Borgu Division of the Northern Provinces, which did not fall into the category of "fully organized" Native Administrations, were allowed to raise their share of the Tax from 50 per cent. to 60 per cent. on the ground of their poverty. At a later stage, in 1938, financial relations were further complicated by the acceptance by the Government of responsibility for the salaries of officers hitherto seconded to Native Administrations for employment on Works (other than works producing revenue), a measure which resulted in a net relief of some £50,000 to the Native Treasuries in the Northern Provinces and £4,000 to those in the Western Provinces.<sup>1</sup>

Apart from the difficulties caused by the changes in policy just mentioned, the principle by which the Direct Tax was shared had certain inherent defects which were becoming increasingly obvious. There was always the possibility of friction arising from the feeling of Native Authorities that the Government was taking an undue share of what they—not without some encouragement from local officers—had come to regard as "their own" tax. But more important than this was the fact that so long as some of the Native Authorities could hope to succeed in obtaining a larger apportionment of the Tax for the benefit of their own Treasuries, there was no inducement for them to increase their resources by other means, as for example by the levy of the Local Rate for which the Native Authority Ordinance makes provision.<sup>2</sup>

It was the recognition of the difficulties arising from this situation and from the previous changes of policy which led Sir B. Bourdillon to make the comprehensive review of the subject of Native Administration finance in relationship to that of the Government, which formed part of his Minute on "The Apportionment of Revenues and Duties as between the Central Government and the Native Administrations," published in 1939. But before effect could be given to the views he expressed, the position was again complicated by the consequences of the outbreak of the War, which caused the Government to accept a grant (subsequently repaid) from the Native Authority Reserve Funds in order to balance its budget, and later by a decision of the Government, taken without consultation with the Native Authorities, requiring them to make a substantial increase in the salaries of their employees. This placed on them a burden which meant that, for the first time, many of the Native Authorities were unable to meet their commitments. Native Authorities were not however required to meet the whole cost of this measure or of the Cost of Living Allowance which was added in 1941, and between 1941 and 1945 the

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<sup>1</sup> Page 127.

<sup>2</sup> Section 25 (1) (u) of The Native Authority Ordinance No. 17 of 1943.

Government made grants to the Native Administrations equivalent to the charges incurred by them in paying the Allowance.

The situation, thus aggravated by the War, led the Government to put forward in 1943-1944 a new formula for the apportioning of the Direct Tax which was simple in appearance but proved difficult to apply in practice, and the attempt to put it into operation increased the dissatisfaction with which many Native Authorities had begun to view the action taken by the Government in relation to Native Authority finance. For reasons which will be obvious in the light of the attitude of the Native Authorities in the Eastern Provinces, as described in Section IV,<sup>1</sup> these feelings found the most outspoken expression in that quarter. A further decision made in May 1945, produced the result that in the Northern and Western Regions the Native Administrations paid the Cost of Living Allowance, retaining an equivalent share of the Direct Tax, and receiving in some cases grants from the Government to enable them to balance their budgets, while in the Eastern Provinces the Native Administrations received direct reimbursements of the Allowance.

The circumstances which had forced the Government to take these steps were in great measure beyond their control, but by general agreement the results were unfortunate. The responsibility of the Native Authorities for the management of their own finances had been gravely impaired. The burden falling on poorer and wealthier Authorities was disproportionate; the more advanced Native Administrations of the Western Provinces were, for example, contributing materially less to general revenue from direct taxation than did the poorer Administrations. The arrangements threw on the Central Government itself a responsibility which could not be effectively exercised.<sup>2</sup> The position was by this time very different to that originally envisaged by Lord Lugard. "The revenue of a Native Administration" he wrote, "consists not of an arbitrary sum fixed by the Governor, but of a fixed proportion of a statutory tax collected by its agency, together with the fines and fees from the Native Courts, market dues or similar receipts assigned by the Governor."<sup>3</sup>

The enactment of the constitution of 1947 and the measures taken for providing the Regions with finance afforded an opportunity for placing the relations of the Government and the Native Administrations on a more logical and coherent basis. That it has been possible to effect this is largely due to the recommendations made by Sir S. Phillipson in his Report on the Administrative and Financial Procedure under the New Constitution, a contribution of outstanding value to the study of this aspect of Colonial finance.<sup>4</sup>

The chief features of the system as recommended by him and now being put into operation are as follows. The portion of the Direct Tax to be credited to the Regional Revenues is fixed by statute, and is expressed in terms of a Capitation Share to be paid by each taxpayer assessed to Direct Tax, the remainder of the Tax paid by him being credited to the Native Treasury. The Capitation Share is not a proportion of the total sum due from the taxpayer, but an amount uniform throughout particular localities. The figure fixed for each locality is determined in reference to the desirability of (a), conserving for each Region at least as much as the net amount previously derived as the

<sup>1</sup> Page 183.

<sup>2</sup> See the Government Memorandum explanatory of the Bill which was afterwards passed as Ordinance 2 of 1948, amending the Direct Taxation Ordinance 4 of 1940.

<sup>3</sup> The Dual Mandate, page 207.

<sup>4</sup> The Report was submitted in 1946 and published in 1947.

share of Government taxation for that Region ; (b) enabling the Native Administrations in the less developed areas to undertake measures of local benefit ; and (c) providing finance for a system of Regional grants-in-aid on "approved" schemes of local improvement. These grants-in-aid should normally amount to not less and if possible to more than the sum represented by the Regional share of the proceeds of the Direct Tax. As a corollary to this last provision, the previous system by which subsidies or grants had been made in order to enable Native Administrations to balance their budgets would come to an end. Effect has now been given, by the passing of the Direct Taxation Amendment Ordinance No. 2 of 1948, to the recommendation that the amount of the Capitation Share should be fixed by law. The Schedules to that Ordinance show that the Capitation Share varies according to locality from 6d. to 2s. per taxpayer in the Northern Region, and from 8d. to 2s. and 4d. per taxpayer in the Eastern Region. It is 6d. in the Western Region and 3d. per taxpayer in the Colony area.

### THE DISTRIBUTION OF FUNCTIONS BETWEEN THE GOVERNMENT AND NATIVE ADMINISTRATIONS

The question of the division of functions as between the Government and the Native Authorities is of course closely linked up with that of the apportionment of the proceeds of the Direct Tax, and the matter formed an essential part of the review made by Sir B. Bourdillon in his Minute published in 1939. The subject is of special importance in Nigeria, where, as will be shown in the Sections dealing with the Northern and Western Provinces, some of the Native Authorities have undertaken the provision of services on a more extensive scale than in most other territories, and in certain cases have acted as agents of Government for the execution of Works that are normally carried out by Government Departments.<sup>1</sup>

As all students of the subject agree, there can be no logical criterion for distinguishing the services which can be most appropriately provided by Government from those which are the proper function of Local Government bodies, and the practice has been determined in every country by expediency or usage.<sup>2</sup> But even so, it is obviously desirable to provide such clarification of the matter as will leave the local bodies in no doubt as to the range of their responsibilities within the field assigned to them by current practice.

Sir S. Phillipson made a careful study of this subject in the Report submitted by him in 1946, and there will be found at pages 93 to 123 of his Report a detailed analysis of the various services which the Government and Native Authorities have taken part in providing. The position in regard to Education in particular was further examined by him in a subsequent Report on the system of Grants in Aid for Educational Purposes.<sup>3</sup> In a Memorandum published in 1947<sup>4</sup> the Government accepted in principle the recommendations made by him, while emphasizing at the same time that the great diversity in the circumstances of the Native Administrations made it impossible to go further than to state the general principles which must guide the allocation of their responsibilities.

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<sup>1</sup> Page 74.

<sup>2</sup> See the references to standard works on the subject quoted at page 94 of the Report by Sir S. Phillipson.

<sup>3</sup> Report on Grants in Aid of Education in Nigeria, Lagos, 1948.

<sup>4</sup> The Apportionment of Duties between the Government of Nigeria and the Native Administrations ; Statement of Policy ; Lagos, 1947.

The Memorandum of the Government provides in consequence for a considerable measure of latitude in the application of the principles thus accepted. It does not consider, for example, that the provision of Prison services is normally a proper charge against Native Administration funds, but it will not interfere with the position in cases where there is a well established practice by which Native Authorities have their own Police and Prisons. It considers that Hospitals (other than "Cottage Hospitals") are a proper charge on the Government, but will not compel Native Authorities to transfer existing Hospitals to its charge unless they desire to do so. Generally speaking, it is contemplated that in the major departments of work, such as the Medical, Agricultural or Veterinary services, the Government will be responsible for the superior technical and supervisory staff, and for major institutions such as Hospitals, Research Institutes, Laboratories and Stock Farms, and the same principle holds good for Educational work. Native Administrations will be responsible for dispensaries and maternity centres, extension work in Agriculture, Demonstration Farms, and local work in the Veterinary Service. In the same way, the Government will be responsible for Trunk Roads A and for the construction and part maintenance of Trunk Roads B, leaving Native Administrations the part maintenance of Trunk Roads B and the construction and maintenance of feeder roads, tracks and paths. It is obvious that the practical application of these principles can only be a gradual process, and it will moreover be materially influenced by the recent revision of the financial relations between the Government and the Native Administrations.

#### LEGISLATION REGARDING NATIVE ADMINISTRATION WHICH IS APPLICABLE THROUGHOUT NIGERIA

It has been mentioned that the legislation regulating the system of Native Authorities, Native Courts and the Direct Tax has for a considerable time been uniform throughout the three Regions, and (with some exceptions) applies to the Colony area also. There will be found in the four succeeding Sections an account of the previous course taken by the law applying in the different areas, but it will be convenient to give here a summary of the existing all-Nigerian Ordinances regulating those three subjects, in order to avoid the need for subsequent repetition.

(i) *The law relating to the Native Authorities*

The "principal Ordinance" regulating the functions and powers of the Native Authorities is No. 17 of 1943. It applies to the whole of Nigeria other than the township of Lagos, though the provisions regarding the composition of the Native Authorities in the Colony Districts differ slightly from those relating to the Protectorate.<sup>1</sup> In view of the provisions contained in the legislation of some other territories, by virtue of which traditional Authorities recognized as such are treated automatically as Native Authorities for the purpose of the Native Authority Ordinance, it is noteworthy that in Nigeria a Native Authority is constituted solely by appointment from the Governor (Section 5). The Governor may appoint as Native Authority any Chief, or Chief associated with a Council, or a Council, or any group of persons, and he may prescribe the composition of the Council or group of persons or he may direct that this be regulated in accordance with the native custom of the community concerned (Section 6).

<sup>1</sup> For the difference in this respect see page 29.

Any Native Authority may with the prior approval of the Governor constitute a Subordinate Native Authority for any special area within its jurisdiction, and vest such Authority with all or any part of the powers which it may itself exercise. (Sections 12 to 14).

In defining the powers and duties of the Native Authorities, the Ordinance lays on them the primary duty of maintaining "order and good government" in the area over which its authority extends. In the discharge of this duty they shall exercise over the natives residing within their jurisdiction such powers as may be conferred by this Ordinance or any other Ordinance or by native law and custom, and all such natives shall be deemed to be subject to their jurisdiction (Section 19). The term "native" is defined as any native of Nigeria who is ordinarily subject to the jurisdiction of a Native Court (Section 2). The Governor may direct that the powers of the Native Authority may extend over persons other than natives, but this direction is subject to the approval of the Secretary of State, and in the case of the Colony and the Southern Provinces, to affirmative Resolution by the Legislative Council (Sections 20 and 21).

In pursuance of its duties for the maintenance of law and order the Native Authority is given powers to arrest persons suspected of being about to commit crime, if crime cannot otherwise be prevented, or persons known to have committed crime for which arrest can be made without warrant. These powers may be exercised by a Chief or by each individual member of a Council (Section 22).

As regards other matters than the maintenance of law and order, the Native Authority is empowered to issue Orders on a wide range of matters bearing on the welfare of the community, including matters with which the Native Authority has power to deal in virtue of any native law or custom, so far as this is not repugnant to morality or justice (Section 23). If in the opinion of the Resident it is expedient for the good order and government of the area that such an Order should issue, he may direct the Native Authority to issue and enforce it, or in default may issue it himself. He may revoke or suspend any such Orders (Section 24).

The Native Authority is further empowered to make, but in this case subject to the approval of the Governor, Rules on a variety of matters which the Ordinance schedules under 26 different heads, the general purport of which is to provide for the "peace, good order and welfare of the persons within the area of its authority." (Section 25). Many of these heads are general, relating to such matters as the control of trade, the regulation of traffic in liquor, the prevention of disease, or the maintenance of peace, but a considerable number have specific reference to the requirements of those Native Authorities which are in charge of urban areas. The powers conferred on them are in this respect equivalent to those normally vested in a Municipal body for the making of Byelaws, and it is especially provided in the Ordinance that where an urban area has formerly been a Township, and has subsequently passed under the control of a Native Authority, any Byelaws which had been made by the Local Authority of the Township shall continue to have the force of Rules made by the Native Authority, until replaced by the Native Authority Rules (Section 55).<sup>1</sup> Penalties may be provided for the breach of Orders or Rules, up to the limit of a fine of £25 or imprisonment for six months.

There are other provisions, as for example, those regulating the power of

<sup>1</sup> See on this point page 79.

Native Authorities to create and maintain a Police Force (Sections 65 to 74) or to maintain Prisons (Sections 75 to 90), but the preceding summary gives a sufficient indication of the range of the duties of Native Authorities and the powers vested in them by the principal Ordinance. There are however four further points calling for special notice.

It is noteworthy in the first place that though a system of Native Treasuries had been initiated in the Northern Provinces soon after 1906, the Native Authority Ordinance of 1943 makes no provision for their establishment or their procedure, nor does it contain any statement of the objects on which Native Authority funds may legitimately be expended. As a result however of the recommendations made by Sir S. Phillipson,<sup>1</sup> this defect has now been repaired by the passing of the Native Authority (Amendment) Ordinance No. 4 of 1948. Secondly, the Ordinance makes only an incidental reference in its Section 25 (i) (u) to the power of a Native Authority to impose general or other Rates "in respect of public services provided by it in any capacity." There is no substantive legislation either in this Ordinance or in the Direct Taxation Ordinance No. 4 of 1940 which regulates the procedure to be followed in imposing a Local Rate in general aid of the resources of a Native Treasury. The Native Authorities have (with some few exceptions) used this provision only for levying a Rate in the urban areas under their control, but the need for the expansion of local services in the rural areas may make it necessary to levy a General Local Rate for this purpose, and the law may require to be amplified either by amending legislation or by the issue of local Orders in Council.<sup>2</sup>

Thirdly, the Rule making powers vested in a Native Authority by the Ordinance made, until recently, no reference to the power, which is found in the Native Authority Ordinances of a number of other territories, to make a declaration or Rule defining or modifying native law and custom. This power was attached to the Native Councils which functioned as Courts under older Ordinances in the Western and Eastern Provinces,<sup>3</sup> but ceased to be operative when they were replaced by the system of Native Courts as constituted after the amalgamation of 1914. It has, however, recently been added as one of the functions of the Native Authorities under the Native Authority (Amendment) Ordinance No. 3 of 1945.

Fourthly, the Rule making function was extended in another direction by an Amending Ordinance No. 73 of 1945, which may prove to be of great importance in respect of the control to be exercised by Native Authorities over the use of land or the disposal of rights over it. This matter will be dealt with more fully in the parts of Section IV and V which discuss the problems arising in connection with the native lands.<sup>4</sup>

(ii) *Legislation regarding native taxation*

There will be given in the following Sections a history of the original form taken by taxation in the different Regions and of the procedure adopted for its assessment and collection.<sup>5</sup> All taxation on natives is however now levied under the provisions embodied in the Direct Taxation Ordinance No. 4 of 1940, which has taken the place of the earlier legislation, such as the Native Revenue Proclamations of 1904 and 1906 and the Native Revenue Ordinance No. 1 of

<sup>1</sup> See page 128 of his Report.

<sup>2</sup> See page 185 for proposals regarding the levy of Rates in the Eastern Provinces.

<sup>3</sup> See pages 135 and 158.

<sup>4</sup> Pages 143 and 179.

<sup>5</sup> Pages 76, 130 and 169.



1917. It is from these laws that the Native Authorities have derived their legal powers as collectors and assessors of tax, not from the Native Authority Ordinance, which contains no mention of the matter.

The form taken by the Direct Taxation Ordinance of 1940 is due to the fact that the original legislation (and notably the Ordinance of 1917) referred mainly to conditions in the Northern Provinces, and that considerable revision was felt to be required in order to meet the conditions of other areas. The consideration given to this question coincided with that being given to the revision of the Income Tax Ordinance, and it was proposed to apply the principles of the Income Tax law (which largely affected non-natives) to those regulating the payment of Direct Tax by natives, with the general result that all natives earning not less than £200 a year would be assessed to Income Tax. Various considerations led however to these proposals being modified, and taxation is now regulated by two Ordinances, the Income Tax Ordinance of 1940, which applies to all persons in the township of Lagos and to all non-natives elsewhere, and the Direct Taxation Ordinance of 1940, which applies to all natives in Nigeria elsewhere than in the township of Lagos.<sup>1</sup>

The flexible form of the Direct Taxation Ordinance has made it possible to make use of a variety of procedures of taxation, such as the "flat rate" (which is practically identical with the poll-tax of other territories); the collective assessment imposed on a village or unit with a view to its being subsequently distributed over individuals according to their capacity to pay; the "jangali" tax on cattle; the tax on "ascertainable incomes" and the tax on wealthy traders, both of which approximate closely to a graduated Income Tax; and finally the Land Revenue or "Farm" Tax applied to certain areas in Kano.<sup>2</sup> There is an additional element of flexibility in the fact that the law makes the Resident the authority, under the direction of the Governor, for fixing the amount of tax or for regulating its assessment. It is only necessary to add here that in Nigeria there has from the first been a tendency to move away from the system of a general poll tax, and to adopt the principle of the assessment of tax on income. As the subsequent treatment of this subject will show, though in many cases the actual practice falls short of this principle, there is in fact a greater element of graduation in the taxation of Africans than is to be found in most other African territories.

### (iii) *Legislation regarding the Native Courts*

The "principal Ordinance" regulating the system of Native Courts is The Native Courts Ordinance No. 44 of 1933,<sup>3</sup> which applies to the whole of the Protectorate; that regulating the system of Native Courts in the Colony area outside Lagos is the Native Courts (Colony) Ordinance No. 40 of 1937.<sup>4</sup> The difference in the provisions applying to the Colony Districts will be explained in Section II dealing with that area,<sup>5</sup> and the following paragraphs will be confined to an analysis of the provisions of the main Ordinance.

It is a cardinal principle of the Ordinance that the Native Courts are not, as in some other territories, stated merely as the tribunals recognized by native law and custom, but must in every case be established by Warrant

<sup>1</sup> The Direct Taxation Ordinance of 1940 has been amended by Ordinances Nos. 10 of 1941; 2 of 1943; and 2 of 1948.

<sup>2</sup> Page 77.

<sup>3</sup> The Ordinance of 1933 has been amended by Ordinances Nos. 16 of 1936; 8 of 1938; 11 of 1940; 22 of 1942; First Schedule to 23 of 1943; 18 of 1945; 27 of 1948 and 36 of 1948.

<sup>4</sup> This Ordinance has been amended by Ordinances 40 of 1941; 7 of 1943; 36 of 1945; 41 of 1946; 28 of 1948.

<sup>5</sup> Page 32.

specifying their powers and determining their constitution (Sections 2 and 3). Subject to this, a Court may consist either of (a) Head Chiefs or a Head Chief, Chiefs or a Chief, or any other person or persons (who may include non-natives) or a combination of such authorities and persons, or (b) in the case of the Northern Provinces, the Court of an Alkali, with or without assessors.<sup>1</sup> (Section 4). The succeeding Sections of this survey will explain how far it has been possible to observe the principle that the composition of the Courts should be definitely specified in the Warrant, and it will be seen that in some instances, as for example in the lower Courts in the Eastern Provinces, their composition is in practice that prescribed by local custom.

The Native Courts exercise jurisdiction "over causes and matters in which all the parties belong to a class of persons who have ordinarily been subject to the jurisdiction of native tribunals," but the Governor may, with the sanction of the Secretary of State, order that other classes of persons may be brought within the jurisdiction of any particular class of Native Courts, though in the case of the Southern Provinces such an Order shall not come into force unless approved by Resolution of the Legislative Council (Section 8).

The Courts, besides administering native law and custom and the provisions of Rules and Orders made under the Native Authority Ordinances, also administer the provisions of a wide range of statutory law. Their powers in this respect are set out in detail in the Native Courts (Jurisdiction in Miscellaneous Criminal Offences) Order in Council No. 1 of 1945,<sup>2</sup> and include a large number of sections of the Criminal Code. The legal complication which has arisen in connection with their administration of the statutory Criminal law, and which has made it necessary to enact the Amending Native Courts Ordinance No. 36 of 1948, is noticed in dealing with the administration of justice in the Western Provinces.<sup>3</sup> There are two important provisions regulating their powers of imposing sentences in criminal cases; no capital sentence can be carried out unless or until it has been confirmed by the Governor (Section 13), and no sentence of corporal punishment can be carried out until it has been confirmed by the Emir or other corresponding authority if imposed by a Native Court of Grade A or by the District Officer if imposed by a Native Court of other than Grade A (Section 14).

No native practitioners are to appear in Native Courts.<sup>4</sup> The Resident and District Officer are to have access to all proceedings of the Courts and may review any of their proceedings (save a sentence of death) and make such order as the Native Court could have made, but may not increase a sentence or vary the order to anyone's prejudice without giving him a chance to be heard. Alternatively, they may transfer the case to another Native Court, to a Magistrate's Court, or to the Supreme Court (Section 25).

The Native Courts are of four Grades, with the powers noted below in each Grade, but it must be remarked that a Court need not—and indeed frequently does not—have conferred upon it by its Warrant the full powers attached to its grade. Nigeria, it may be noted, is the only African territory in which Native Courts are empowered to deal with criminal cases involving the death penalty, but the use of this power is limited to 17 Courts in the Northern Provinces.

*Grade A*—Full judicial powers in all civil actions and criminal causes and

<sup>1</sup> For the Alkalis' Courts see page 84.

<sup>2</sup> Amended by Orders in Council 3 of 1945; 6 of 1946; 31 and 34 of 1947.

<sup>3</sup> Page 146.

<sup>4</sup> See on this point page 135.

in all criminal cases. Full jurisdiction in all matrimonial causes other than those arising from or connected with a Christian marriage as defined in Section 1 of the Criminal Code.

*Grade B*—Civil actions in which the debt, demand or damages do not exceed one hundred pounds. In the Southern Provinces such jurisdiction in causes concerning land, or in which the title to land or any interest therein comes in question, as may be stated in the Warrant or annexure thereto. Full jurisdiction in causes relating to inheritance, testamentary dispositions and the administration of estates and in causes in which no claim is made for and which do not relate to money or other property, and full jurisdiction in all matrimonial causes other than those arising from or connected with a Christian Marriage as defined in Section 1 of the Criminal Code.

Criminal causes which can be adequately punished by imprisonment for one year, 12 strokes or a fine of £50 or the equivalent by native law and custom.

*Grade C*—Civil actions in which the debt, demand or damages do not exceed £50. In the Southern Provinces such jurisdiction in causes concerning land, or in which the title to land or any interest therein comes in question, as may be stated in the Warrant or annexure thereto. Jurisdiction in causes relating to inheritance, testamentary dispositions, the administration of estates and matrimonial causes as for Courts Grade B.

Criminal causes which can be adequately punished by imprisonment for six months, (or in the case of theft of farm produce or live stock by imprisonment for 12 months), 12 strokes or a fine of £10, or the equivalent by native law and custom.

*Grade D*—Civil actions in which the debt, demand or damages do not exceed £25. Jurisdiction in land, inheritance, testamentary disposition, administration of estates or matrimonial causes as for courts Grade B.

Criminal causes which can be adequately punished by imprisonment for three months, (or in the case of theft of farm produce or livestock for six months,) 12 strokes, or a fine of £5, or the equivalent by native law or custom.

The procedure for Appeal is complicated, but the matter is of importance in view of the history given later of the change of judicial system which came into effect in 1934, whereby the trial of a certain range of cases and the power of appeal from the Native Courts in certain circumstances was withdrawn from Officers of the Administration and transferred to Judicial Officers presiding over Courts subordinate to the Supreme Court.<sup>1</sup> The Resident may appoint the Court of an Alkali or a Native Court presided over by a Head Chief or one composed of not less than three Chiefs or Headmen in a Division to be a Court of Appeal, and if the Court of Appeal is presided over by a Head Chief it may be designated as a Final Native Court of Appeal (Section 26). These provisions for Native Courts of Appeal had their origin in the conditions prevailing in the Northern Provinces, and, as will be seen, have not been easy to adapt to the circumstances of the Eastern Provinces.<sup>2</sup>

Appeal lies from a Native Court of first instance to a Native Court of Appeal within 30 days, but if there is no Native Court of Appeal or if the Warrant so directs, then the appeal is to the Final Native Court of Appeal, the Magistrate's Court or the Supreme Court according to the endorsement. But if the endorsement prescribes a Magistrate's Court the appellant may never-

<sup>1</sup> Page 82.

<sup>2</sup> Page 173.

theless direct his suit to a Native Court of Appeal (other than a Final Native Court of Appeal) if one exists. Appeal lies to the District Officer only when there is no Native Court of Appeal and no right of appeal to other Courts is prescribed. It is important that appeal lies exclusively to Native Courts of Appeal (unless the Warrant is endorsed to the contrary) in suits concerning marriage, family status, guardianship of children, inheritance, testamentary disposition or the administration of an estate.

From a Native Court of Appeal a further appeal lies within 30 days to a Final Native Court of Appeal if one exists or to a Magistrate, according to the prescription of the Court's Warrant, but if no such line of appeal is prescribed, then to the District Officer. Where an appeal has gone to a Magistrate there is a further appeal within 30 days to the Supreme Court, but not without leave of the Magistrate in civil cases where the cause in dispute is of less value than £10. From the Supreme Court appeal lies to the West African Court of Appeal, subject to the provisions of the West African Court of Appeal Ordinance 1933. Where it is provided that the appeal lies to the District Officer, appeal from his decision lies within 30 days to the Resident and from him to the Governor.

#### IMPENDING CHANGES IN THE CONSTITUTION OF 1947

The constitution of 1947 was well accepted in the Northern and Western Regions, where the Native Authorities in particular appreciated the creation of the Regional Councils, but it met with opposition from more advanced sections in the Eastern Provinces and in Lagos. The three elected members for Lagos indeed refused to take their seats during the first session of the new Legislative Council, but they subsequently reconsidered their position, and took their seats at the second session at Kaduna in March 1948, with the expressed intention of co-operating "in order to hasten the day when this country shall have attained to a state when her indigenes shall exercise responsibility."<sup>1</sup> It had been proposed at the outset that the constitution should remain in force for nine years and then be reviewed, but that at the end of the third and if necessary the sixth years there should be reviews of the system of direct nomination by the Governor for membership of the Houses of Assembly and the Legislative Council, with a view to substituting a form of nomination by choice of the people wherever this might be found to be practicable.<sup>2</sup> In 1948 however it was proposed to go further than this and to consider revision of the constitution in 1950.<sup>3</sup> A Select Committee of the Legislative Council was set up in March 1949 and reported in favour of a wide measure of consultation with the people throughout the different Regions, to be followed by a General Conference consisting of all the unofficial members of the Legislative Council and representatives from the Regional Councils, under an independent Chairman.

One is not concerned here with the considerations which led to this decision, but with its possible effect in the field of native administration. The opposition offered to the constitution of 1947 dwelt, among other matters, on the preference given to the Native Authorities in representation on the Legislative Council, and though criticism took the formal point that the Chiefs could not be properly regarded as unofficials—a claim also advanced during the discussions

<sup>1</sup> Nigerian Legislative Council Debates, Second Session (1948), Vol. I, page 404.

<sup>2</sup> Cmd. 6599, pages 13-14.

<sup>3</sup> Nigerian Legislative Council Debates, 17 August, 1948.

on the constitution of the Gold Coast<sup>1</sup>—it reflected in fact the fundamental objection of the more progressive elements to the inclusion of so large a proportion of conservative elements in the Legislature. This attack will doubtless be repeated in the discussions on the revision of the 1947 Constitution. It is, however, a matter for speculation how far it is likely to go beyond the strictly constitutional issue, and to lead to demands for fundamental changes in the present organization of the Native Authority system. If such a movement arose, it would inevitably gain additional force from the support given by the Regional Authority to the pending scheme for the radical reorganization of the Native Authority system in the Eastern Provinces,<sup>2</sup> and it would probably receive the support also of a considerable part of the residents of the large towns which are now administered by Native Authorities as part of their normal jurisdiction.<sup>3</sup> This latter matter is indeed one in which the Government itself may find it necessary to initiate reform, apart from the influence exercised by political movements.<sup>4</sup>

Conjecture on these points is rendered difficult by the fact that in existing conditions there are no means readily available for estimating the true strength of general feeling on any matter that comes into the field of public discussion. The representatives in the Legislature of the more progressive, or at all events more radical-minded sections of the population are at present relatively few, and it is not certain how far they themselves can claim to have a wide support for the views they may put forward. Nevertheless there is evidence of a significant growth in recent years of the support given to what is generally described as a "nationalist" programme, which has mobilized a standing opposition to the Government, not merely in constitutional matters, but in the field of administration generally. In Nigeria, as in the Gold Coast, the most forward advocates of this programme are in principle opposed to the present system of native administration. "Indirect Rule" has for them a sinister meaning; as one of them expressed it in a Conference held in 1946, "the introduction of Indirect Rule is not only an instrument of oppression but an encroachment on the rights of African natural rulers."

It may therefore be of convenience to give some account of the political or other Associations which are now most prominent in the expression of views bearing on the present system of administration. Nigeria, like other parts of West Africa, abounds in Associations, Unions, and Societies of every description and serving a great variety of purposes. It is unnecessary to notice here the very large number of bodies formed mainly for social, trade, or similar purposes. The bodies which are important in the present connection fall roughly into two classes; the local Progressive Unions or Unions of similar names, including the "Tribal" Unions, which are partly political and partly serve other purposes, and the Associations formed on a "national" basis, which are essentially political.

### THE SEMI POLITICAL ASSOCIATIONS

The majority of the "Progressive" Societies and Unions and the "Tribal" Unions are to be found in the Western and Eastern Provinces, where they have achieved considerable importance in the last fifteen years. In the Western

<sup>1</sup> See The Legislative Council in the Gold Coast, M. Wight, 1946, page 167.

<sup>2</sup> Page 184.

<sup>3</sup> Page 132.

<sup>4</sup> Page 133.

Provinces their membership usually consists of the younger and more educated men, and they are, as a general rule, devoted to objects of common welfare and improvement rather than to major political purposes. In this capacity they form useful organs for the strong local patriotism of the Yoruba. Many have contributed to such objects as the building of new roads and schools, and some have representatives on Native Authority Councils or Advisory Councils where a number have done useful work. On the other hand they have been the cause of a number of difficulties. The branches in the larger towns are often out of touch with their home centres and their interests clash. They interfere at times in the selection of Chiefs, a process in which they have by tradition no concern. Among these Unions there are some which have a more general or "tribal" range of interest, as for instance the Edo National Union, the Urhobo Progress Union, operating mainly in the Warri Province, and the Ishan Progressive Union. Of these the Edo National Union is in some sense a counterweight to the conservative Benin Native Authority Council, but in general it co-operates with the Native Authority and has the Oba of Benin as its Patron.

In the Eastern Provinces there are, in the words of one official Report, "Improvement Unions, Improvement Leagues, Welfare Leagues, Community Leagues, Tribal Unions, Patriotic Unions and Progressive Unions too numerous to mention." It is among the Ibo that the growth of such bodies has been most marked. By Ibo custom, a man retains his rights and interests in his home community wherever he may be; and the Ibo, so often described as an individualist, has nevertheless a highly developed sense of his responsibilities to his "countrymen" or "townsmen." Ibos in Lagos, Calabar, Jos or the Gold Coast accordingly organise themselves into "Unions" according to the area or clan from which they come, regardless of whether there is or is not a parent Union at home. These Unions are recognised as units for the purposes of tax collection; they assist their members in the celebration of social occasions; and they care for any of their "townsmen" who may become destitute. Many of the members of these Unions are among the best educated men in their communities, holding good posts in Government departments or the commercial houses.

These external Unions join with numerous local bodies in the Ibo country in forming the Ibo Union, though in this case the activities of the local bodies are more important than those of the Union itself, for its organization is loose and it exercises little control over the local Unions. It has however interested itself in the provision of educational facilities for Ibos, and has provided money for scholarships for academic or other advanced education. Many of its more progressive members are active in the political Associations formed on a "national" basis which will be subsequently referred to, and it is these Associations rather than the Ibo Union itself which now voice the political sentiments of the Ibo. It is the local Unions, whether under the name of Progressive Unions or otherwise, that have taken the largest part in the movement for the reorganization of the Native Authority system of which a description is given in Section V.<sup>1</sup>

There are two local Unions which have had especial prominence in the Ibo country, the Mba Ise Federal Union, representative of the Mba Ise clan and the Ngwa Clan Union, both being in the Owerri Division. The latter is well organized and has close relations with the Native Authority, and on the

<sup>1</sup> Page 166.

cultural side has interested itself in providing scholarships for study in the United Kingdom.

Outside the Ibo country, the most prominent of the Unions is the Ibibio Union in the Calabar Province. As an organization it is relatively wealthy; it finances a secondary school, the Ibibio State College, and has sent a certain number of students abroad. It has however fallen recently into financial difficulties and has not been able to account for the large sums of money it has collected. There are at the same time many men of ability among its members, and it is fair to say that on the whole it is more concerned with matters of social and cultural importance than with political objectives. There are in the Cameroons Province few bodies of any prominence. The chief are the Bafaw Union and the Ngolo-Batanga Union in the Kumba Division and the Ejagham Union in the Mamfe Division; they have taken a considerable part in promoting local education, but have shown little if any political activity.

In the Northern Provinces the Ibo Union has branches in several towns, of which the Makurdi Union is said to be the strongest, and there are in Kano, Sokoto, Zaria and Ilorin branches of other Associations which have their centres mainly in Southern Nigeria. They are however mainly representative of immigrant traders and employees, and there are in the Emirates few indigenous Associations of any importance. It is for the most part the members of the immigrant communities who have shown themselves critical of the jurisdiction of the Native Authorities.<sup>1</sup>

Among the Tiv<sup>2</sup> the Tiv Progressive Union attained at one time a certain prominence. It was founded at the instance of Tiv domiciled in other Provinces, and came in 1945 into the hands of agents of the National Council of Nigeria and the Cameroons. Its leaders were however discountenanced by the Tiv Tribal Council, and with their disappearance the Union has ceased for the time to have any political importance.

As has been explained, it is characteristic of the majority of these bodies that they have attracted the interest of the younger and more advanced elements in local society, and that most of them show a real concern for matters making for the social advance of their communities. It is true that their objectives are often stated in exaggerated terms, and that they are apt to make claims to a far wider range of support than they actually command. Their sense of organization and discipline is often poor, and they are frequently in trouble owing to the neglect shown by their office bearers for the normal standards of financial morality. It is true again that they tend to reflect largely the outlook of educated or urban people, and show far less concern for the interests of the countryside. But these are symptoms familiar to those who have seen the growth of similar bodies in other parts of the African and Asiatic worlds, and it would be wrong to underrate the force which the Unions represent, or the strength of the influence which they can on occasion exert. As recent developments in the Eastern Provinces have shown, their co-operation can be of great value in securing reforms in the Native Authority system or the composition of the Native Courts, and where they are in opposition they can prove a source of standing embarrassment to the course of good administration.

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<sup>1</sup> Page 88.

<sup>2</sup> Page 44.

## THE POLITICAL ASSOCIATIONS

The Associations which have been referred to as founded on a "national" basis fall into a different category, as their objective is primarily political. One of the earlier bodies of this class was the Nigerian National Democratic Party, formed to put forward candidates at the elections which followed the introduction of the constitution of 1922. The Party was reconstituted in 1947, in order to provide a platform for the three candidates who contested the Lagos elections in that year. But its membership is now difficult to distinguish from that of the National Council of Nigeria and the Cameroons (generally known by its initials as the N.C.N.C.), which will shortly be referred to.

Another political Association, originally known as the Lagos Youth Movement but subsequently as the Nigerian Youth Movement, was started in 1935, and at the outset represented sober and responsible views. It subsequently became a more active political body, advocating, among other things, the abolition of the system of Indirect Rule, (which it labelled as reactionary), the development of a united Nigeria and the early attainment of self-government within the Commonwealth. It became very popular in the South, with numerous local branches, and took a considerable part in the Municipal and Legislative Council elections of 1938 and 1939. It opposed the constitution of 1947 and supported the boycott observed at one time by the Lagos elected members. Recently, however, it has been overshadowed by the N.C.N.C. and has passed into the hands of a section of its Yoruba members who are prominent in the control of the Yoruba Association, the Egbe Omo Odudua. Its paper, the "Daily Service" might now be regarded as the organ of that Association.

The two Associations which now occupy the most prominent position in the political field are the N.C.N.C. and the Egbe Omo Odudua. The former is mainly associated with the activities of its first President, Dr. Nnamdi Azikiwe, who is generally credited with being the founder of what is known as the "Zik" movement. The West African Press refers so constantly to "Zikism" as the new gospel of Nigerian nationalism that it is worth while tracing the origin of the term and its connection with Dr. Azikiwe. He himself is an Ibo, born in Onitsha in 1904, who went to the United States in 1924, where he became a lecturer at Lincoln University. He published there his first book, "Liberia in World Politics," a serious though not an objective study. He returned to the Gold Coast in 1934, and wrote there a book "Renascent Africa" which speedily attained great popularity among the younger Africans of the West African coast. He came back to Nigeria in 1937 and established the Zik Press, publishing among other papers the West African Pilot, which became afterwards the chief organ of the N.C.N.C. The term "Zikism," as indicating "a new religious, political, social and economic philosophy" was given currency in a book titled "Without Bitterness," by A. A. Nwafor Orizu, published in America in 1944. It is however difficult to gather from this work the precise contents of the philosophy of Zikism, and indeed the author has found cause to complain that Dr. Azikiwe himself seemed unaware of its meaning.<sup>1</sup> Though Nwafor Orizu asserts that Zikism is something different from and wider than the teachings of Dr. Azikiwe, one is nevertheless left with the impression that in substance it really represents little more than a faith inspired by a belief in the Messianic value of Azikiwe's "anti-imperialist" mission.

<sup>1</sup> Without Bitterness, Statford Press, New York, 1944, page 298.



The N.C.N.C. held its inaugural meeting in August 1944 and during 1945 was very active in opposition to the constitutional scheme which ultimately took shape in the constitution of 1947. Membership of the Council is open only to organizations not individuals, and consists of several of the Trade Unions, representatives of 11 professional Associations and about 90 "Progressive" or Tribal or Community Unions. There are branches in most of the larger towns, but the actual direction is in the hands of Dr. Azikiwe and a small body of his associates.

The objective of the N.C.N.C. is difficult to define, for it is badly served by its organs in the Press, whose constant outpouring of invective and bombast give little concrete indication of policy. It is perhaps best characterized as a movement which has for its avowed object the achievement of complete political independence for Nigeria within a limited period,<sup>1</sup> and is meanwhile ready to exploit any incident that can support its allegation that the country is "in the grip of rapacious imperialist exploiters." It maintains the attack on the Native Authority system which was formerly led by the Nigerian Youth Movement. Its influence has been most strongly felt in the Eastern Provinces, and in the north its membership is mainly confined to Southerners living in the urban centres. It attained in 1947 and 1948 a position far greater than that hitherto reached by any political Association in Nigeria, but has since then lost some of its influence, for a variety of causes, among which is the inevitable charge of misuse of funds by some of its leaders. But it has also been weakened by the apprehension felt by many non-Ibos that its Ibo leaders are endeavouring to secure priority over all other communities, and a number of its non-Ibo supporters have resigned on that account.

This latter fact has added importance to the position of the Egbe Omo Ododua, an Association mainly representative of Yoruba interests, which was originally started in London in 1945 as a Society for promoting the interests of Yoruba as against other African students. Its name means the "Society of the descendants of Odudua," the mythical founder of the Yoruba race, and its membership is open to all who come within the circle of Yoruba affinities, including the Bini. It has had the patronage of the Oni of Ife, and may be said to have as one of its objects the closing of Yoruba ranks against Ibo influences. In their public utterances, its leaders disclaim any intention of attacking the Ibo, but these have in fact contained strong attacks on the N.C.N.C. and Dr. Azikiwe. Though the Society is at times critical of Government policy, it is not in any sense anti-Government, and the aspirations it has expressed for the attainment of self-government in Nigeria are framed in moderate terms. It may be expected to oppose any change in the present system of native administration which may seriously affect the position of the Native Authorities in the Western Provinces. It is not however easy to foresee the political future of the Society, as its strength lies in the tribal feeling underlying its foundation; and this may lead to the development of internal differences on purely political issues.<sup>2</sup>

<sup>1</sup> The West African Pilot of 16 December, 1949, speaks of the future of Nigeria as a Republic.

<sup>2</sup> The account given in the text refers to the position of the Associations towards the end of 1949. The position constantly changes.

## SECTION II

# THE COLONY

### GENERAL CHARACTERISTICS

THE Colony consists of a narrow coastal belt, about 110 miles in length and 4 to 20 miles in breadth, with an area of approximately 1,381 square miles. No general census has been taken since 1931, when the population was shown as 327,000; it is now estimated to be about 420,000, of whom 250,000 are in the Lagos Township. The economic importance of the Colony lies almost entirely in its possession of the port and trade depot of Lagos and of the protected waterways and creeks which afford communication with Dahomey and the Benin delta. Its own agricultural production adds little to the resources of the territory. Most of the land barely rises above sea level, though north of Lagos the country is somewhat higher, and there is a good red loam soil in Ikeja and part of the Epe District. There is in this area some production of cocoa, kola and citrus, and the lower coastal strip produces coconuts. But for the rest, production is confined to subsistence crops, and cultivation is for the most part of a primitive type.

### THE PAST HISTORY OF THE COLONY

As a unit of government, the Colony dates only from 1862, and its establishment takes therefore a somewhat late place in the sequence of events which led to the establishment of British rule over Nigeria. So far as can be now ascertained, the area comprised in the Colony was uninhabited until a band of Yoruba hunters and fishermen, led by the Olofin, a member of the Yoruba ruling family, reached Ishin, and thence penetrated to Ebute Metta on the mainland opposite Iddo Island. This settlement was however subsequently abandoned, a move being made to Iddo itself, and shortly afterwards farms were cultivated on the island of Lagos. It is from the family of the Olofin that there sprang the Idejo order of "White Cap Chiefs," who have, as will subsequently be seen, claimed the original rights over land in Lagos and the vicinity.<sup>1</sup>

During the Olofin's lifetime the settlement had been unsuccessfully attacked from Benin, but after his death there followed a period of peaceful penetration from Benin, as the result of which the Bini settlers came to outnumber the Yorubas. Subsequent attacks and intrigues led to the Lagos area being subjugated to Benin, and placed under the rule of a member of the Yoruba ruling house as viceroy to the Oba of Benin. Contact had by this time been established with the Portuguese, whose vessels had first reached the Bight of Benin in 1472, but as they found a number of safe anchorages in the Niger Delta, they did not build trading forts such as those which form so prominent a feature in the history of the Gold Coast. During the period of Benin ascendancy Lagos gradually grew in importance, and the swampy lagoon areas to the east and west were inhabited partly by refugees from the

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<sup>1</sup> See page 35.

powerful kingdom of Dahomey in the west, and partly by Binis moving out into the mainland from Lagos. This process gained momentum as the result of the civil strife which caused the breakup of the Yoruba kingdom in the early nineteenth century, and at the beginning of that century Lagos became one of the major centres of the Slave Trade on the West Coast.

It was the Slave Trade which created the first interest of the British in the port of Lagos, but this interest began to decline after the passing of the Abolition Act of 1807, and they turned their activities towards the channels of legitimate trade, chiefly concentrated in the region of the Oil Rivers. Their naval forces, however, which were engaged in the suppression of the Slave Trade, encountered active opposition from Kosoko, who had ousted his uncle Akitoye in 1845 as ruler of Lagos, after a massacre which involved over 2,000 of Akitoye's family and relations. In 1851, as the result of Kosoko's refusal to accept a treaty for the abolition of the Slave Trade, Lagos was attacked by a British naval force, and Akitoye was restored to the throne. In the following year Akitoye signed a treaty for the abolition of the Slave Trade, and in 1853 a British Consul was appointed for Lagos and the Bight of Benin. Akitoye died in 1853 and was succeeded by his son Docemo, or as the name seems to be more correctly spelt, Dosumu.

The new ruler of Lagos proved to be unable to control those who were in favour of the maintenance of the Slave Trade. As the result of the pressure placed on him, Docemo signed a treaty in 1861 transferring the sovereignty of the port and island of Lagos to the British Crown,<sup>1</sup> receiving in return a personal allowance of 1,200 bags of cowries, equal at that time to about £1,030. The subsequent fortunes of the House of Docemo will be referred to in dealing with the position occupied by the "White Cap Chiefs." The conclusion of the Treaty of 1861 was followed at once by the formal annexation of the port of Lagos as a "Colony and Settlement," and it is noteworthy that this step was held at the time to amount to no more than the grant of formal authority to a Government "which for 10 years had already been in the hands of the British." The area thus annexed grew subsequently in a variety of ways. Kosoko, who had in 1854 surrendered his claim to Lagos in return for his recognition as ruler of Palma and Lekki, was allowed to return to Lagos in 1863, ceding Palma and Lekki in return for a money allowance. Badagry, Ado and Oke-Adan were acquired in the same year, and at various dates between 1883 and 1895 Appa, part of the Jekri country, Ogbo Mahin, Ijebu-Ro, Itebu, Aiyesan, Igbessa, Ilara and Koton were annexed. The last was exchanged with the French for the Pokra area.

After its recognition as a Colony of Settlement in 1862, Lagos was first administered by a Governor who was for a time also Consul for the Bight of Benin. There were various subsequent changes, as the result of which Lagos was at one time placed under the Governor of the West African Settlements, resident at Sierra Leone, and during the years 1874 to 1880, under the Governor of the Gold Coast, but it was again constituted a separate Colony in 1886. In the closing years of the nineteenth century the extension of British rule over Yorubaland and the establishment of settled conditions in the hinterland saw considerable material progress in Lagos Township, and conditions were further improved when the Lagos Colony was amalgamated for administrative purposes with the Protectorate of Southern Nigeria in 1906. In 1914, on the

<sup>1</sup> The treaties of 1952 and 1861 are reproduced at pages 286 and 289 of Sir A. Burns' *History of Nigeria*, 1948.

amalgamation of Northern and Southern Nigeria, the boundaries of the Colony were formally defined.<sup>1</sup>

### THE WHITE CAP CHIEFS

The question whether the traditional Lagos chiefs might not with advantage be formally associated in the administration of Lagos has formed so frequent a subject of controversy,<sup>2</sup> that it is convenient to explain here the position which they now occupy. The term "White Cap" is derived from the custom of wearing white caps, originally introduced by the sons of the Olofin who led the first band of Yoruba settlers to Ishri and Iddo. In the sense in which the term is now used there are four grades of White Cap Chiefs, the first being representative of the House of Docemo, the second the Idejo, descendants of the first Olofin, and the traditional claimants to the ownership of the lands in Lagos.<sup>3</sup> The third and fourth classes are representatives of the original religious heads and certain war chiefs.

When Docemo died in 1885, his son Oyekan was recognized as "King" of Lagos, and was given a personal allowance of £400 as an act of grace, it being made clear at the same time that he occupied no official position and was not entitled to exercise judicial functions. When he was succeeded in 1900 by his brother Eshugbayi Eleko, generally known as the Eleko, an allowance of £300 was sanctioned for him on the same understanding. The position of Eshugbayi became a constant source of embarrassment to the Government, partly because of the constant quarrels in which he was involved with the White Cap Chiefs, and partly because he allowed his position as the titular "King of Lagos" to be exploited by those who for various reasons were interested in agitation against the Government. Owing to his activities in this direction, his allowance was stopped in 1920, and all official recognition withdrawn; but it is noteworthy that a petition, which claimed to have 17,000 signatures, demanded his reinstatement. He was deported in 1925, but allowed to return in 1931, and when he died in the following year his successor Falolu was recognized as Oba of Lagos with a small stipend.

Though the Oba's stipend was suspended in 1947, as the result of a dispute between him and other Chiefs, the matter was not deemed to be of any serious importance, and the stipend was restored in 1948. Besides the stipend paid to the Oba, small allowances are also given to three of the White Cap Chiefs, but they are personal to them, and may cease at their deaths.

There can be no doubt as to the traditional respect felt by large numbers of the population of Lagos, and particularly the Yoruba, for the descendants of the House of Docemo and the Idejo order of Chiefs. That remains true, even though it may at times have been difficult to distinguish between the natural respect felt for them, and the position claimed for them by parties who found them a convenient focus for political agitation. At an earlier stage, it might have been politic to assign them some position of authority in the administration of Lagos, but the policy current at the time had not yet seen the advantage of utilizing indigenous institutions as agencies of local rule. At a later date, when the utilization of these institutions became part of current

<sup>1</sup> Colony of Nigeria Boundaries Order in Council, 1913.

<sup>2</sup> See for example pages 264 to 271 of *Native Administration in Nigeria*, Miss M. Perham, 1937. See also page 666 of Vol. I of *Native Problems in Africa*, R. Buell, 1928, and page 224 of *The History of Nigeria*, Sir A. Burns, ed. 1948.

<sup>3</sup> For this claim see page 35.

policy elsewhere in Nigeria, the Government was deterred from associating the Lagos Chiefs in the administration of municipal affairs by the constant intrigues and dynastic disputes in which they were involved. To-day, with the growing complexity of municipal administration, it is even more difficult to assign to them any share in the management of the affairs of the Town. When in 1901 the then Governor of Lagos set up a small Central Native Council for the Colony he appointed Eshugbayi and some of the White Cap Chiefs to be members of it. The Council was however only an advisory body, and died a natural death some time before the amalgamation of Northern and Southern Nigeria in 1914. At present one White Cap Chief represents this body on the Town Council, but otherwise they remain without any official functions.

### THE LAGOS TOWNSHIP

Lagos is now the most important urban area of British West Africa, though its population, estimated at 250,000,<sup>1</sup> is less than that of Ibadan, which is estimated at 335,000. Some account has already been given of the history of its creation; to which it need only be added here that a visitor between the years 1786 and 1800 estimated its population at only 5,000, and that at the time of the annexation of the port in 1861 it was estimated at 30,000. Though it now contains a large proportion of Africans from other parts of Nigeria and elsewhere, including the descendants of liberated negro slaves from Brazil, it has retained its character as a predominantly Yoruba city. In the census of 1931, out of the then population of 122,747, over 100,000 were Yoruba or members of closely associated tribes.

The administration of the town was conducted up to 1919 by a Board of Health, which had been established some fifty years previously. In 1919 this was replaced by a Township Council,<sup>2</sup> with a proportion of elected members, and this in turn received a new constitution by virtue of the Lagos Township Ordinance 9 of 1941.<sup>3</sup> Lagos is a First Class Township for the purposes of the Townships Ordinance (Cap. 57 of the Laws). Under its present constitution it has an official President, appointed by the Governor, three nominated official members, three nominated unofficial members and five elected members. The President is the Commissioner of the Colony. Of the two nominated unofficial members one is a woman, and one represents the White Cap Chiefs; of the five elected members, being one from each of the five wards, two are at present Europeans.

This constitution was in 1948 under review and representations were invited from a number of Associations and public bodies for the purpose. It has been forecast that Lagos will become a Municipality having extended powers, with a majority of elected members on the Council, and a wider franchise.<sup>4</sup> In this connection it is noteworthy that a recent Ordinance has made provision for a Council in Port Harcourt with an elected majority.<sup>5</sup>

At present the franchise extends to all adult males paying a rent of not less than £18 a year or owning property of roughly equivalent value, but the electoral principle has made slow headway here, as in many similar instances

<sup>1</sup> Annual Report on Nigeria, 1948, page 17.

<sup>2</sup> Lagos Township Ordinance, 1919.

<sup>3</sup> Subsequently amended in Ordinances 13 or 1942, 38 of 1943 and 65 of 1945.

<sup>4</sup> Proposals for the Revision of the Constitution of Nigeria, Cmd. 6599, and Nigeria Legislative Council Debates 17 August, 1948, page 38.

<sup>5</sup> See page 171. The new constitution for Lagos has since been enacted by Ordinance 17 of 1950.

in West Africa. It is estimated that between 14,000 and 15,000 persons are eligible to register, but only 1,090 had done so in 1947. At the election of June, 1944 there were 1,021 on the voters' lists; two wards were uncontested and in the others about 68 per cent. of the voters cast their votes. In June, 1947 all the wards returned unopposed members.

The Town Council levies an annual rate, which in 1946-47 was 4s. 8d. in the pound, and its finances appeared to be in a satisfactory position, with a revenue of £240,687 and expenditure of £214,396. Of the revenue the annual rate produced £85,906, but rate payments of £41,666 were also made by the Government and the Nigerian Railways, and Government Grants accounted for a further sum of £47,975. Moreover, the sphere of the activities of the Council is limited, for it is not responsible for such normal local government services as Hospitals, Education or Electric Light, and though it collects charges for the Water Supply, the installation is provided by the Government.

Nor is the Council responsible for town planning or slum clearance, this being the function of the Lagos Executive Development Board, on which the Council is represented. The growth of Lagos has been haphazard, it embraces considerable areas of unreclaimed swamp, and contains slum areas which are a discredit to the capital city of Britain's largest and most populous African Colony. The Executive Development Board, which has drawn its finances mainly from loan funds, has in the past effected some improvements, particularly in the reclamation of swamp areas, but it has a formidable task still before it. Its organization has lately been reconstituted, and a programme has been drawn up envisaging an expenditure of some £17,000,000 on slum clearance, reclamation, road widening, and the development of planned areas. An important feature of this programme is the reclamation and development of the Apapa area as a satellite town accommodating a population of approximately 18,000 persons.<sup>1</sup> An Ordinance was passed in 1948 to provide the Board with authority for the raising of loans for these purposes.<sup>2</sup>

A number of anti-malarial measures, mainly in the form of swamp drainage, have been in progress for some years, financed by grants from Colonial Development and Welfare Funds. These were in 1947 handed over to the Town Council for maintenance. The Social Welfare Branch of the Colony Administration has of late years undertaken a considerable range of activities in the urban area of Lagos, particularly in connection with the problem of juvenile delinquency, the provision of boys' and girls' hostels and the re-organization of boys' clubs. The provision of Education is, as already explained, in charge of the Government Department of Education, and though there has been a considerable advance in the provision of primary education, official Reports have commented on the inadequacy of the facilities afforded, the school buildings being described as particularly discreditable.<sup>3</sup> As there is no dominant vernacular, English is used in the schools from the start, and the progress of pupils is correspondingly retarded.

The Township of Lagos is excluded from the scope of the Native Authority Ordinance 17 of 1943 which applies to the rest of Nigeria and also from those provisions of the Native Courts Ordinance 40 of 1937 which relate to the establishment of Native Courts. All cases in the Township are tried by Courts subordinate to the Supreme Court, constituted under the Supreme Court Ordinance of 1923 and its amending Ordinances.

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<sup>1</sup> Annual Report on Nigeria, 1948, page 170.

<sup>2</sup> Lagos Town Planning (Amendment) Ordinance 13 of 1948.

<sup>3</sup> Nigerian Sessional Paper No. 17 of 1947.

### THE DISTRICT AREAS OF THE COLONY

In the rural areas of the Colony the population, estimated at about 170,000, is for the most part derived from a Yoruba or mixed Yoruba stock, representing either the Awori or the Ijebu branch, with the addition of small enclaves of "strangers" and also of Eguns in the west. The Awori, of Yoruba-Bini origin, arrived in the area mainly from the north and east. The Eguns are descended from peoples who were driven east from Dahomey, and obtained permission to settle from the Oba of Apa. The population was increased in the nineteenth century by refugees from the Yoruba wars and by the followers of Kosoko when he was driven from Lagos in 1851. Owing to the manner in which these areas have been settled, there is little in the way of tribal cohesion or any tradition of strong central authority, and the organization of a system of native administration has been rendered additionally difficult by the continuance of the political differences which were responsible for the movement of different sections into these areas. These have been intensified by the fact that many of the settlers from Lagos enjoyed in the past the patronage of one or other of the Lagos White Cap Chiefs, and political influences from Lagos still make themselves felt. "Heads of rural communities sought the favours of the Lagos Chiefs, and of others whom they believed to be in a position to influence the actions and decisions of Government, and thereby gave colour to notions, which are not yet wholly defunct, that Lagos Chiefs possessed traditional authority over the people of the Colony Districts."<sup>1</sup>

Though there are in these areas a certain number of traditional Chiefs they have now no recognized authority as such, nor is it indeed clear what extent of authority they had in the past, though some, such as the Oba of Apa, seem to have had a well-recognized position. Others, such as the Bales of Baiyeku or Epe were little more than village Headmen, and are still chosen by the people themselves from candidates of certain families possessing local prestige. Before the introduction of the system of Native Authorities shortly to be described, the Chiefs were paid stipends by Government in return for their services in tax collection. These payments are now made from Native Authority funds, and are personal to the present holders; they will not necessarily be continued to their successors. Their total present amount is £231 a year, paid to 11 Chiefs. Some 24 of these Chiefs are now members of the Native Authorities, holding the positions afterwards to be described.

The rural areas are now administered, under the Commissioner for the Colony, by District Officers in charge of three Districts, namely Ikeja, Badagry and Epe. Up to 1938 administration was conducted directly through village heads, and the conduct of village affairs was broadly left in their hands, the more important being, as shown above, remunerated by stipends for their services in the collection of tax. District Officers held Courts, though petty cases were settled by village Chiefs and Elders. Following on detailed investigations made in 1937, a system of Native Authorities (or to use the term now commonly employed, of Native Administrations) was inaugurated, based mainly on the town or village Councils, but embracing also the Chiefs above mentioned and certain other traditional elements.

The formation of these Native Administrations is not yet complete; thus in the Eti-Osa area of the Ikeja Districts, which is a scattered collection of independent villages near Lagos, the District Officer was in 1948 still Native

<sup>1</sup> A Report on the Lands of the Colony Districts, W. Fowler.

Authority, pending effect being given to a scheme for the federation of the villages as one unit with its Court and Council. The composition of the Native Authorities differs widely in respect of the extent to which it embodies a traditional personnel. In a number of cases provision is made for the inclusion of ex-officio members, who may be the 24 Chiefs above mentioned, but include also a few other traditional authorities ; in a few cases Chiefs are also found among the "elected" members. In every case the ex-officio members are in the minority, there being only 26 such members out of the total number of 743 members of the Native Authority Councils as at present constituted. The term "election" does not necessarily refer to any process of formal election and the procedure differs widely in the small towns and in purely rural villages. There is also a considerable difference in the position assigned to the traditional authorities who are included among the ex-officio members. Thus in the Ikeja Native Authority of the Ikeja District there are no ex-officio members, and the President of the Council is elected every six months, whereas in the Ikorodu area of the same District there are 13 ex-officio members, including the Oloja of Ikorodu as President of the Council.

The composition of the Native Authorities and Subordinate Native Authorities in 1948 is shown in the statement on the next page.

The Native Authorities were originally constituted under the provisions of the Native Authority (Colony) Ordinance of 1937, but this was subsequently modified under the terms of the Native Authority Ordinance 17 of 1943. This Ordinance applies to the whole of Nigeria other than the town of Lagos, but provides that as regards the Colony the Governor may appoint as Native Authority any Council or any group of persons (provided that such Council or group of persons is composed of not less than five persons), but no provision is made for the appointment of a Chief or Chief and Council, as in the Protectorate.<sup>1</sup> Alternatively, the Governor may appoint a District Officer as the Native Authority.

The Native Authorities as now constituted include, as will have been seen, a considerable number of townspeople, and they in particular have shown an interest in local affairs which, to quote a recent official report, "compares favourably with the apathy which formerly characterized these areas." The Councils have however a very numerous membership, and where they have been most effective, as for example the Ikeja Authority, they have made effective use of the Committee system. There has been a recent development in the form of a Conference of the Colony Native Authorities, the first having been held in February, 1946, and the proposals have been considered for giving the Conference a constitutional position with statutory powers.

## THE NATIVE TREASURIES IN THE COLONY DISTRICTS

Each of the eight Native Authorities shown in the Badagry and Epe Districts has a Native Treasury, but the four Native Authorities in the Ikeja District (including the Eti-Osa area above referred to) unite in using the Ikeja Treasury for accounting purposes. Each Native Authority has a Finance Committee, selected from among its own members, and it has been possible to find here a sufficiency of persons with some knowledge of accounts. A

<sup>1</sup> The Subordinate Native Authority for Apa consists of the Oba of Apa and his Council, but this position is saved by Section 16 of the Ordinance, which preserves Authorities already constituted under the 1937 Ordinance.



District	Native Authority	Subordinate Native Authority	Members of Native Authority including Subordinate Native Authority	Remarks
Ikeja .. ..	Ikeja	—	75	No ex-officio members. The 75 members are representatives of 19 different villages.
	Ikorodu	Ikorodu Town	102	13 ex-officio members. The remainder are representatives from 24 towns or villages.
	Ijede	—	28	4 ex-officio members. The remainder are representatives from four villages.
Badagry ..	Egun-Awori	4, namely Badagry Town and 3 other areas	32	No ex-officio members, but the Council includes 8 chiefs, plus other representatives from eight towns or areas.
	Awori	—	24	No ex-officio members, but the Council has four chiefs, plus other representatives from six areas.
Epe .. ..	Epe	Epe Town	149	Two ex-officio members, and two other chiefs, the remainder being representatives from the 15 wards in Epe Town; 29 representatives from the 16 Epe Village Councils; 24 from the 13 Lada-Oriba Village Councils; and 19 representatives from the nine Igbogun-Ise Village Councils.
	Ejinrin	Ejinrin Town	56	Two ex-officio members; 45 representatives from the 22 wards of Ejinrin Town, four from villages of Itoikin area; seven from those of Ketu area.
	Ikosi	—	61	Two ex-officio members; the remainder being representatives of the 11 wards of Ejinrin Town.
	Ijebu Clan	—	84	One ex-officio member; the remainder being representatives of 45 wards of Ijebu.
	Lekki	—	51	One ex-officio member; the remainder being representatives of 24 wards of Lekki.
	Eredo	—	81	One ex-officio member; the remainder being representatives of 23 wards of Eredo.

genuine interest is shown by them in the preparation of their estimates. The figures of revenue and expenditure for 1946-47 showed only a revenue of £33,492 in all the Treasuries combined, but this does not give a true picture of the local financial position, as reimbursements and Government Grants have been included. The major part of the revenue, namely £17,283, or 55 per cent. of the whole, came from direct taxation ; 19 per cent. from fees and licences, and 15 per cent. from reimbursements and Government Grants.

The system of Direct Taxation has been explained in Section I.<sup>1</sup> Up to 1948 the local Treasuries received the whole of the tax collected, and the Government took no part in the process of collection other than the exercise of supervision by the District Officer. Under the revised system of Regional finance referred to in Section I the Capitation Share paid to the Government from the Colony areas is fixed at 3d. per adult male taxpayer, and it was estimated that the sum accruing to General Revenues from this source in 1948-49 would amount to £350.<sup>2</sup> In the District Areas of the Colony the Direct Tax, which is levied under the Direct Taxation Ordinance of 1940, is normally a flat rate, assessment lists being prepared by informal Village Councils. There is however the same tendency as shown in the Western and Eastern Provinces to utilize the provisions of the Ordinance in order to tax separately persons in receipt of "ascertainable" incomes on which tax at an "approved" rate would exceed the flat rate. In the Colony Districts the "approved" rate is the same as in the Eastern Provinces,<sup>3</sup> and assessment is made by a Central Assessment Committee which retains 10 per cent. of this part of the Tax for distribution among its members. Salaried Africans pay at the rate of 4½d. in the pound direct to the Native Treasury.

The expenditure amounted in 1946-47 to £28,649, of which 56½ per cent. was expended on Administration (of which Native Courts took 15½ per cent.), 14½ per cent. on Education, and 17½ per cent. on Medical charges. The resources available for local services were therefore small, and it is perhaps only the Ikeja Native Authority which could be said to make any noticeable contribution in this respect. It staffs two Native Authority schools and employs a few dispensary attendants and sanitary staff and midwives. It also maintains a citrus nursery.

The Ikeja Town Planning Authority established under the Nigerian Town and Country Planning Ordinance has, with the co-operation of the Ikeja Native Authority, projected improvements on a considerable scale at Ikeja, and progress has been made in the creation of a residential area which already has some of the appearance of a garden suburb. Its progress may have a marked effect on the composition and character of this Native Authority.

The Native Authorities have made some use of their power to make Rules and Orders, but usually in compliance with suggestions from Administrative or Departmental Officers. Seventeen Rules or Orders are recorded, dealing for the most part with market fees, licences, control of native liquor and similar matters.

### THE NATIVE COURTS IN THE COLONY DISTRICTS

Up to 1937 only Magistrates Courts existed in the District Areas, but in that year an Ordinance was passed providing for the establishment of Native

<sup>1</sup> Page 13.

<sup>2</sup> Estimates of Nigeria, 1948-49, page 11.

<sup>3</sup> Page 170.

Courts in the Colony, exclusive of the Town of Lagos.<sup>1</sup> It is in general from similar to the Native Courts Ordinances in force in the Protectorate.<sup>2</sup>

The jurisdiction of a Court is set forth in its Warrant, the maximum permissible civil jurisdiction being in causes in which the debt, demand or damages do not exceed £50, or £100 in cases of inheritance not involving English law. In matrimonial cases not arising out of the Marriages Ordinance there is unlimited jurisdiction, and there is jurisdiction in land cases when the parties to the cause agree to the Native Court hearing the case. Criminal jurisdiction is exercised over offences which can be adequately punished by imprisonment not exceeding six months or by corporal punishment not exceeding twelve strokes, or by a fine not exceeding £50. All sentences of corporal punishment must however be confirmed by a District Officer.

The Courts administer native law and custom together with Native Authority Rules, Orders and Bye-laws, the Direct Taxation Ordinance 1940, The Native Authority Ordinance 1943, and the Criminal Code and the Public Health Ordinance, less certain specified Sections.

The Commissioner and District Officers have powers of inspection and review similar to those held in the Protectorate. Review does not extinguish the right of appeal except from the party at whose instance review was made. Appeal from the decision of a Native Court lies to a Magistrate's Court, but there is no appeal to a Magistrate's Court in matrimonial cases or cases of inheritance or probate up to £50 value unless such right of appeal is specifically endorsed on the Court's warrant. From a Magistrate's Court an appeal lies within thirty days to the Supreme Court itself as of right in all criminal causes over £10 in value : for lesser civil causes the leave of the Supreme Court is required.

There are in the Colony area 19 Native Courts, but no Native Court of Appeal. A number of these Courts reflect the practice by which all members of the Native Authority or all members of the Village Councils are nominally members of the Courts, a panel of members being chosen by the Native Authority or Village Council to provide the bench which tries cases. Thus in the Epe Native Authority the 149 members select 20 members who serve for a month, the quorum being fixed as 12. In Ibeju the 84 members of the Native Authority select 15 members who serve for a month, with a similar quorum. There are, secondly, some instances in which all the Village Council members constitute members of the Court, with a quorum of four or six. Thirdly, there are cases, of which Ikeja, Ikorodu, Apa are typical, where the Native Authority selects a President and small bench (usually four to six members) to sit as a Court.

The remuneration of Court members varies. In Ikeja the President was in 1948 paid £2 a month and members £1 10s., in Ijede the figures were 10s. and 5s. respectively, but while in Ikorodu the members received £1 a month the Presidents were not paid, as they drew allowances as Chiefs. In the Badagry and Epe Divisions a fixed payment was made for each session and divided equally amongst the members sitting. This worked out at 2s. 6d. per member in Badagry and varied in Epe from £2 5s. amongst 20 members to £1 amongst 14 members.

<sup>1</sup> Native Courts (Colony) Ordinance, No. 40 of 1937, as amended by No. 40 of 1941, No. 7 of 1943, No. 36 of 1945 ; No. 41 of 1946 and No. 28 of 1948.

<sup>2</sup> See page 14.

The following figures give some indication of the number of cases heard :

	1943	1944	1945	1946
Total cases .. .. .	2,518	3,661	4,700	4,888
Reviewed .. .. .	10.66%	7.6%	5.76%	6.32%
Modified .. .. .	3.32%	3.3%	1.77%	2.23%

The 1946 figures may be further broken down as follows :—

Cases	Total	Reviews by Administrative Officers	Modified on review	Appeals to Magistrates	Modified on Appeal
Civil .. .. .	1,978	156	61	5	—
Criminal .. .. .	2,910	114	47	4	1
Total .. .. .	4,888	270	108	9	1

It is a noteworthy feature of the system in force in the Colony Districts, that except in cases of land or native marriage and inheritance the Magistrates' Courts have concurrent jurisdiction, and some criminal cases of a serious nature or involving detailed legal knowledge are specifically excluded from the jurisdiction of Native Courts. No legal practitioners are allowed to appear before the Native Courts. In view of these reservations it is necessary to accept with caution any assertion that the Native Courts are more popular than the Magistrates' Courts, but on balance it appears true to say that they are generally popular and respected, although there is no doubt some corruption. Since their institution the Native Courts have undoubtedly increased in popularity, and the improvement in their standard of work has been recognized in the Ordinances of 1941 and 1945 which extended their jurisdiction in both civil and criminal cases.<sup>1</sup>

### THE LANDS IN LAGOS TOWN

The character of the rights existing in the lands in Lagos town has been the subject of much discussion and much litigation, some of which has reached the Privy Council, with the result that one of its decisions (the Apapa case referred to below) has become a *locus classicus* in the literature relating to land rights in the African territories. The somewhat complex questions involved may best be simplified by explaining that they relate in fact to three issues ; first, the nature of the rights possessed by the Government in the Lagos lands ; second, the claim of the Idejo order of the White Cap Chiefs to "ownership" of these lands ; and third, the character of the rights now held by individuals in the properties they have acquired by grant, purchase, or other means.

As regards the first point, the history of the case shows that the Government acted for a considerable period on the presumption that the cession of 1861 entitled the Crown to a beneficial ownership over the lands which overrode any presumptive title of the natives. As early as 1863 the Government

<sup>1</sup> Native Courts (Colony) (Amendment) Ordinance 1941. Native Courts (Colony) (Amendment) Ordinance 1945.

began to issue documents of title, known as Crown Grants, to those who could show that they were in actual possession of land in Lagos, and "it is probable that the idea underlying this procedure was that it was actually giving away its own land to the then occupants as an act of grace."<sup>1</sup> This view is supported by the terms of Ordinance 9 of 1869. An earlier Ordinance of 1863 had appointed Commissioners charged to ascertain "the rightful owners of land within the settlement of Lagos" and to issue Certificates of Title to them. The Ordinance of 1869 substituted a procedure by which the Administration might "make grants" (subsequently known as Crown Grants) to persons who could prove valid possession.

The validity of these grants was admitted by the Courts of the time and in one case at least the right of the Crown was subsequently confirmed by legislation, namely in the Ikoyi Lands Ordinance of 1908. Though, however, this principle seems to have been generally accepted, the exact position of the Crown was somewhat confused by the fact that in several Ordinances, such for example as Ordinance 17 of 1863 and the Public Lands Ordinance 8 of 1876, provision was made for compensation to the "owners" of lands acquired for public purposes. In 1912 there occurred the Apapa case in which the Privy Council ruled, as against the Nigerian Courts, that though the Cession of 1861 conveyed, along with the Sovereignty, the radical or ultimate title to the land, it was made on the footing that the rights of property of the inhabitants were to be fully respected. "Where the Cession passed any proprietary rights, they were rights which the ceding King possessed beneficially and free from the usufructuary qualification of title in favour of his subjects."<sup>2</sup>

As a result it has not been possible since that date for the Crown to claim proprietorship over lands in Lagos Town, except over the foreshore, where however its property is subject to the rights of riparian owners. The Government ceased after 1914 to issue "grants" of land. Altogether some 2,500 Crown grants had been made up to 1878 and about 750 were made between that date and 1914. They were mainly confirmatory of titles claimed on the strength of possession, including some 67 titles derived from grants made by Docemo, which were called in for the purpose in 1863 and the following year. There is some doubt about the exact position regarding certain lands occupied by Government from an early date as offices, Public Works yards, hospitals or the like; but land now required for public purposes is acquired in the ordinary course under the provisions of the Public Lands Acquisition Ordinance of 1903.

During recent years a number of Ordinances have been passed, largely as the result of the recommendations made in 1939 by Sir Mervyn Tew, in the Report above referred to, the object of the more important of which was to validate the title conferred by the Grants made between 1863 and 1914. Other Ordinances have validated the Grants made to Arotas (persons attached to the household of a Chief), the Epetedo Grants vested in the Oshodi Chieftaincy family, and rights in lands held under "tickets" issued by the Governor, Commander J. Glover, in 1867 and 1868.<sup>3</sup>

The decision that the Crown had no proprietary rights in the Lagos lands did not, however, involve a clear decision on the claim advanced by the Idejo

<sup>1</sup> Page 4 of Report on Title to Land in Lagos, Sir Mervyn Tew, 1939, from which much of the information in the text has been derived.

<sup>2</sup> *Amodu Tijani (Chief Oluwa) v. Secretary, Southern Provinces*, 1921, 2 A.C. 399.

<sup>3</sup> Crown Grants (Township of Lagos) Ordinance 18 of 1947; the Arotas (Crown Grants) Ordinance 19 of 1947; the Epetedo Lands Ordinance 20 of 1947; the Glover Settlement Ordinance 21 of 1947.

section of White Cap Chiefs to "ownership," either active or residual, of the lands. A tradition seems to have been accepted at an early date that the first "King" of Lagos, the Olofin, divided the lands in Lagos between his sixteen sons, the ancestors of the White Cap Chiefs, who thus became absolute owners of the lands assigned to them. This theory was accepted in a despatch written by the Consul in 1862, and it formed the basis of a statement to the same effect made by the British Government in the House of Commons in the same year. That such a statement could have been made was due to an imperfect knowledge of African custom; the Chief was a trustee of land and had administrative control over it on behalf of the community, but he was not, in our sense of the term, an absolute "owner." Nor is there any evidence which would confirm the tradition that the Idejo Chiefs actually "owned" the Lagos lands. Had they possessed such rights one would have expected that early claimants for a Certificate of Title or "Crown Grant" would have based their claim on the possession of rights derived from them, but in the course of the enquiries made by the Commissioners from 1863 onwards not one claimant to a title asserted that he had acquired his land from an Idejo Chief, though some (as already shown) could claim grants from Docemo. The grants by Docemo, however, appear to have been made mainly to non-indigenous persons, as being beneficial to the community. The claim made by Chief Oluwa in the Apapa case was essentially a claim for compensation for land acquired; and the Privy Council decision emphasized that "the Chief is only the agent through whom the transaction (i.e. the payment of compensation) is to take place and he is to be dealt with as representing not only his own but the other interests affected." Since the date of the decision in the Apapa case the claim made by the White Cap Chiefs has had political rather than juridical significance, being one of the contentions advanced against the Government (though based on unsubstantial arguments) by the clique known as the National Democratic Party.<sup>1</sup>

There remains the third issue above referred to, namely, the nature of the private rights, either original or derivative, possessed by persons holding under Crown Grants or otherwise. Do they, in effect, hold in fee simple, or is their tenure qualified by the incidence of native law and custom, in particular as regards family rights or the residual right of the community? It would be out of place to attempt to analyse here the bearing of the considerable variety of the judicial decisions of this point. There was undoubtedly at one time a disposition to hold that the influence exercised by the spread of English law, and the fact that conveyances had been made in forms appropriate to that law,<sup>2</sup> had resulted in the practical extinction of rights originally based on native law,<sup>3</sup> but more recent decisions seem to hold that the assent of the family is ordinarily though not invariably essential to render valid an outright sale of property.<sup>4</sup>

In 1936 the Privy Council remarked that the wide differences of judicial opinion as to the title of lands in Lagos made it desirable to deal with these questions by legislation. The legislation of 1947 above referred to may be said to have determined the doubts previously existing in respect of the rights

<sup>1</sup> See page 21.

<sup>2</sup> For use of English conveyances, see J. J. C. Healy and T. C. Rayner, *Land Tenure in West Africa*, 1898.

<sup>3</sup> See references quoted at page 297 of *Land Law and Custom in the Colonies*, C. K. Meek, 1946.

<sup>4</sup> *Oshodi v. Balogan and others*, 4 W.A.C.A. 1 (1936).

derived from certain Crown Grants, but no legislation has been undertaken to clarify the nature of private rights acquired by purchase or succession in Lagos Lands. The Nigerian Government has however provided a system of Registration of Titles<sup>1</sup> which may go some way to reducing litigation arising from uncertainty of title. Previous legislation had been directed mainly to the ascertainment and confirmation of rights derived from earlier possession or from Crown Grants, as in the Ordinances 9 of 1863 and 9 of 1869 above referred to, or to the registration of instruments or conveyances affecting land transactions.<sup>2</sup> The Registration of Titles Ordinance of 1935 provided for the first time a system of registration of title, after full investigation by a Registrar of the nature of the rights on which title is claimed. Its effect is to confer only a possessory title on first registration, and an absolute title in fee simple can be acquired only by a purchaser from a registered owner. It is understood that this provision was due to the fear that, if an absolute title were conferred by first registration, the investigation of the claim made would throw too heavy a burden on the Registrar. It is noteworthy that where a property is shown to be "family land under native law and custom" a transfer in fee simple is not registered unless the family consents to registration (Section 10).

Up to the present, the operation of this Ordinance has been confined to the Colony. Registration is compulsory within two months if a sale takes place and also for leases and assignments of lands for 40 years or over. In other cases, however, registration is voluntary, so that the registration of titles is not in that comprehensive form which the conditions of Lagos have seemed to require.<sup>3</sup> Nevertheless, the Ordinance has undoubtedly been beneficial, and up to the end of 1947 some 1,700 titles had been registered, at an average rate of roughly 150 a year.

### THE LANDS IN THE COLONY DISTRICTS

In the Colony Districts the system of land holding is now in a state of transition. In the areas near Lagos the tendency is for holdings to become regarded as held in individual ownership, and transfer of rights effected, as in Lagos, by conveyances following the forms of European law. In the past land was often acquired in return for trifling gifts, and the granters often believed they were giving only usufructuary rights, though the grantees have contended that an assignment was made and have sometimes succeeded in the Courts. The traditional pledging of land for loans has developed in the direction of a system of formal mortgages, often leading to foreclosure and loss of all rights.

Alienation has gone furthest in the fertile Ikeja area, where it has been estimated that up to half the land has passed from family ownership and become the absolute property of individuals. Often these are absentee landlords who have planted the land to permanent crops (especially cocoa and kola) and are interested only in the revenue they derive from the produce. Similarly litigation has enabled individuals to obtain rights of individual

<sup>1</sup> Registration of Titles Ordinance No. 13 of 1935, as modified by Amending Ordinances 8 of 1936 and 46 of 1943.

<sup>2</sup> Registration Ordinances 8 of 1883, 5 of 1901, Land Registry Proclamations 16 of 1900 and 18 of 1901, Land Registration Ordinance 1907, Land and Native Rights Proclamation of 1910, the Land Registration Ordinances 12 and 29 of 1915, 12 of 1918, 15 of 1920, and 36 of 1924.

<sup>3</sup> For a discussion of the principles underlying systems of Registration of Title, see Chapter XXIII of Dr. C. K. Meek's work above quoted.

tenure contrary to custom in that part of the Awori area which adjoins Lagos and is therefore valuable for building purposes.

In the areas which have not come to the same extent under influences emanating from Lagos the system of tenures is still regulated by the local customary law. The fundamental conception is that land is the property of the first settler, living or dead.<sup>1</sup> The head of the extended family, as the representative of the first settler, became the custodian of the land for the family on the behalf of the dead, the living and the unborn; he was never considered as having any proprietary rights, but he was responsible for the allocation of the land amongst those entitled to it under local custom. This allocation conferred only usufructuary rights, which were inherited through both the male and female lines, and as a result a person may have such rights over several parcels of land in different localities. Among the Aworis there is a tendency to regard the usufructuary rights as a secure and permanent right of occupancy, and it is consequently fair to say that the rights of the family over the land are better preserved amongst the Ibeju than amongst the Awori. Land may be pledged with the consent of the family, but this only confers a usufructuary right, and the loan is indefinitely redeemable.

At an earlier period, individual rights were not recognized over sylvan produce and often not over oil palms. The growth of a money economy and the increased exchange value of such products have modified this situation as regards oil palms, but communal rights over sylvan produce normally continue. Strangers are not excluded from collecting firewood, etc., but have to pay a fee to the family head.

Formerly alienation appears to have gone no further than the grant of usufructuary rights to a stranger in return for a small initial gift followed by an annual repayment in kind. Security of tenure depended upon the retention of the family head's good will, and the planting of permanent crops was not normally permitted. But if a stranger married into the family his issue, and sometimes he himself, would acquire the full rights over land attaching to the members of the family. The customary payments in kind have however now normally been converted into an annual cash payment. An extreme case exists in the Awori area, where the Oba of Irewe, in his capacity as head of the Osalu lands, controls about 600 tenants paying 5s. tribute for the right to live on the land; they also have to pay 10s. for the right to clear the land. Those who wish to cultivate coconuts pay an annual rent of up to £1 for five years in advance, and thereafter an annual rent of 3d. per bearing tree. Stranger fishermen pay a canoe rent in addition to their 5s. tribute, and substantial payments are made for the right to cut wood in the swamps. All these fees accrue to the Oba as custodian of the land, and not to the Awori Native Authority.

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<sup>1</sup> Report on the lands of the Colony Districts, W. Fowler.



## SECTION III

# THE NORTHERN PROVINCES

### PHYSICAL AND MATERIAL CONDITIONS

THE Northern Provinces constitute both in area and population by far the largest of the Regional units in the territory. For administrative purposes they are divided into the twelve Provinces shown in the following statement, the twelve Provinces comprising in turn 39 Divisions. The Census of 1931 gave an area of 281,778 square miles and a population of 11,434,924. The figures in the statement below are the result of an estimate based on the tax count of 1947.

Province	Number of Divisions	Area	Population	Density per Square Mile
Adamawa	3	31,786	795,774	25·0
Bauchi	3	26,120	1,047,737	40·1
Benue	5	29,448	1,162,173	39·4
Bornu	5	45,733	1,175,844	25·6
Ilorin	3	17,644	479,005	27·2
Kabba	4	10,953	550,634	50·5
Kano	2	16,626	2,870,583	172·7
Katsina	1	9,466	1,186,763	125·4
Niger	4	28,666	578,790	20·2
Plateau	5	12,425	662,295	53·3
Sokoto	3	36,477	2,030,379	55·7
Zaria	1	16,488	554,295	33·6
<b>Total</b>	<b>39</b>	<b>281,832</b>	<b>13,094,272</b>	<b>46·3</b>

These figures include the portion of the Trust Territory of the Cameroons which is administered as part of the Adamawa, Bornu and Benue Provinces. Its area is 17,350 square miles, the greater part being in the Adamawa Province, and the population was estimated in 1948 at 540,100.<sup>1</sup>

The larger part of the Region consists of a vast undulating plateau of a general altitude of 2,000 feet, interspersed with granite and sandstone hills, rising in the more elevated Bauchi Plateau to an average of 4,000 feet, with another high plateau south west of Yola. To the north east the main plateau falls down to the plains of Bornu, which extend up to the swamps of Lake Chad. In the south (and it is easily overlooked that south of Lokoja the Northern

<sup>1</sup> See page 2. For a description of this area see Report on Cameroons under United Kingdom Trusteeship, Colonial No. 244 (1949).

Provinces almost reach to the latitude of Lagos) there is an area of thick forest, but as one travels north the country becomes more open, and as one approaches the borders of French West Africa it ends in areas of heavy loose sand.

Generally speaking the climate is much drier than in Southern Nigeria. A few of the more southern areas have a rainfall averaging between 60 and 70 inches yearly; then comes a belt with an average of 45 to 60 inches, but most of the rest of the area in the Northern Provinces lies within the 30 to 45 rainfall belt. In the most northern part the average falls to 25 inches, and the country is suited only for the production of the lighter and more drought resisting crops.

While, however, the physical conditions in a large part of the area limit the range of cultivable crops, the Northern Provinces nevertheless make an important contribution to the economy of the territory as a whole. The only part of this contribution which is due directly to European capital enterprise is derived from the working of the mineral deposits, the most important of which provide the tinstone and columbite mines on the higher Plateau. The export of tin ore (cassiterite), which in 1908 was 545 tons, rose to 15,035 tons in 1937. Production was stimulated during the War, and reached a peak of 17,463 tons in 1943; the production in 1948 was 12,740 tons, with a record high price of £569 a ton. The production of columbite amounted to 1,096 tons. Nigeria now ranks as the sixth most important source of tin ore in the world. Alluvial gold occurs in the Niger, Sokoto, Ilorin and Kabba Provinces, but the production is relatively unimportant and the greater part is consumed locally, only 414 ounces being exported in 1947 and 44 in 1948.

Apart from resources derived from the working of minerals, the contribution made by the Northern Provinces is derived entirely from African agricultural and pastoral production. There is now a large export of groundnuts from the Kano, Bornu and Katsina Provinces. From small beginnings in the early years of this century, the export in 1911 being less than 2,000 tons, purchases for export rose to 355,000 tons in 1934. They declined to 150,000 tons in 1939, but as the result of the War effort and of rising prices they rose to 323,000 tons in 1946-47 and 329,000 tons in 1947-48.<sup>1</sup> The total area under cultivation is estimated at over one million acres. The price paid to the producer varied between £3 7s. 4d. per ton and £8 os. 8d. per ton in the years 1930 to 1938, and £5 7s. 6d. to £9 os. od. a ton in the years 1939 to 1943. In 1944 it rose to £12 os. od. a ton, and in 1949 to £21 4s. od. a ton.<sup>2</sup> The West African Oilseeds Mission of 1947 has recommended the introduction of mechanized groundnut cultivation in two areas in the Bornu and Niger Provinces, at a capital cost of £12,269,000 and it estimated that 224,000 acres might be brought under mechanized cultivation by 1955.<sup>3</sup> This scheme is now under consideration.

In Benue and the east of the Kabba Province there is considerable production of benniseed; the record export was 13,000 tons in 1935, after which it declined heavily, but rose again to 9,300 tons in 1948, with a price of £18 a ton as against £7 in 1945-46. Cotton is produced in parts of the Zaria, Katsina and Sokoto Provinces; the total crop in the Northern Provinces was 29,600 bales in 1946-47 and 16,500 bales in 1947-48. There has hitherto been only a small production of rice, but the British West African Rice Mission has made

<sup>1</sup> Actual exports have frequently been less than purchases for export, owing to delays in rail evacuation to the coast. The position regarding groundnuts has been well surveyed in No. 4 of the Statistical and Economic Review of the United Africa Company, September, 1949.

<sup>2</sup> These are the average prices paid at Kano for decorticated ground nuts "naked ex scale."

<sup>3</sup> Report of West African Oilseeds Mission, 1948, Colonial No. 224.

recommendations which envisage the cultivation of large areas, notably in the Maiduguri Division and the Benue Flood Plain. These schemes would, however, involve the provision of over two million pounds capital expenditure on hydroelectric and flood control measures.<sup>1</sup> The Report of the Rice Mission, like that of the Oilseeds Mission, is still under consideration.

The grazing provided by parts of the Plateau has from early times proved an attraction to the pastoral tribes, of whom the Fulani<sup>2</sup> are the most prominent, and the greater part of the cattle population of Nigeria (estimated at about 5,000,000 in all) is to be found in the Northern Provinces. The higher areas of the Plateau are free from tsetse, but it is widespread elsewhere, and the continual movement of some 600,000 head of cattle a year, mainly on the hoof, to supply the markets of Southern Nigeria has required special precautions for safeguarding the main cattle tracks.<sup>3</sup> Besides the large export of cattle to the urban markets of South Nigeria, the Northern Provinces have an important external export of hides and skins, including the red goat skins of Sokoto, which have a special position in the world market. The value of the trade in hides and skins has risen from £712,000 in 1939 to £3,102,476 in 1947.

The fact that cattle are readily available has been utilized by the Administration to encourage the practice of mixed farming, which has appeared to provide a remedy for the comparatively arid areas of the northerly part of the Region, for the use of even a small amount of cattle manure has been found to effect a marked increase in production. The provision of cattle and ploughs has been mainly financed by loans made by the Native Authorities. In 1948 it was stated that the number of "mixed farms" thus established was 4,729.

### THE SOCIAL SERVICES

The resources available to the population of the Northern Provinces have therefore expanded very largely in the last quarter of a century, and they should be further increased not only if the schemes recommended by the Oilseeds and Rice Missions can be implemented, but by the extension of communications, rural water supplies and Agricultural and Veterinary services which form part of the Ten Year Plan for Development approved by the Legislative Council in 1946.<sup>4</sup> In some other respects, however, development has been less marked than in the more southerly areas of Nigeria, as for instance in the provision of educational facilities. At an earlier stage in the history of the Northern Provinces, the Missions were not given as wide a field of operation as elsewhere, in deference to the religious susceptibilities of the Muslim population.<sup>5</sup> Apart from schools mainly designed for the education of the children of traders and other immigrants from the South, missionary effort has been largely confined to the "pagan" areas, some 300 of the Mission schools being in the Benue Province. The place which is occupied by the Missions in the South has in the Northern Provinces been filled to some extent by the Native Authorities,<sup>6</sup> but progress has been slow, being further retarded by the general desire in the Muslim areas to begin by learning the Arabic script in order to

<sup>1</sup> British West African Rice Mission's Report, 1948, pages 32-42.

<sup>2</sup> See page 43.

<sup>3</sup> Native Economics of Nigeria, D. Forde and R. Scott, 1946. Page 275.

<sup>4</sup> Sessional Paper No. 24 of 1945.

<sup>5</sup> See Lord Lugard's observations in the Report on the Amalgamation of Northern and Southern Nigeria, 1912-19, paragraph 189.

<sup>6</sup> See page 41.

read the Koran. A measure of the insistence on this requirement is the existence of a very large number of Koranic schools, where some 400,000 pupils receive instruction. Excluding these schools, only some 70,000 children were till recently receiving school instruction, being roughly 3.5 per cent. of the potential school-going population.

The total number of schools and the enrolment is shown in the following statement :—

	Government	Native Authority	Mission	Private	Total Schools
Primary ..	2 (256 boys 42 girls)	397 (19,066 boys 5,620 girls)	710 (34,248 boys 9,130 girls)	12 (466 boys 75 girls)	1,221 (54,036 boys 14,867 girls)
Middle ..	—	11 (1,855 boys 74 girls)	—	—	11 (1,855 boys 74 girls)
Secondary ..	1 (161 boys)	—	4 (details incomplete)	—	5 (271 pupils)

There has lately been a noticeable increase of interest in education, including that of girls, but there is a great shortage of teachers. Plans have been made for a very considerable expansion of Training Centres and of middle and secondary schools to supply them with entrants. There are now eleven Training Centres, but these are to be increased in the near future by 13, and the secondary schools by 2, and 18 "senior primary" schools are to be created the Legislative Council having agreed in 1948 to a special grant of £500,000 for this purpose.<sup>1</sup> It is hoped that these means the number of children at school may be doubled in the next five years.

As regards technical education, there is a small School of Pharmacy at Zaria, and the Veterinary School at Vom provides a six-year course for Assistant Veterinary Officers in addition to shorter three-year and one-year courses. There is a Government Trade centre at Kaduna which may develop into a Technical Institute. The School of Arabic Studies at Kano gives a two-years' course in Arabic and English, followed by further courses in Arabic law and teacher training. A number of mass education campaigns are in progress, including an interesting experiment in adult education run in connection with the Anchau Rural Development Scheme.<sup>2</sup>

The Northern Provinces have hitherto been relatively deficient also in the provision of medical facilities. When the position was surveyed in 1945<sup>3</sup> there were 24 hospitals with 1,966 beds, and plans were made in 1946 to increase the number of hospitals by 31 and the beds by 3,648. The Government Sleeping Sickness Service has an important function in the Northern Provinces ; it controls 51 dispensaries in addition to temporary dressing stations.

### THE TRIBAL DISTRIBUTION OF THE POPULATION

There is much that is conjectural and indeed controversial about the history of the original settlement of the area now comprised in the Northern Provinces. The course which seems to have been taken by that settlement has been

<sup>1</sup> Annual Report for Nigeria, 1948, page 58.

<sup>2</sup> The Anchau Rural Development and Settlement Scheme, T.A.M. Nash, 1948.

<sup>3</sup> Sessional Paper No. 24, 1945, pages 78-79.

described by Dr. Meek in the following passage of his work on Northern Nigeria.<sup>1</sup>

“The close proximity to the desert of the northern fertile provinces and the absence of natural barriers have for countless ages drawn into the country we are considering horde after horde of invading tribes from the north and east, and have produced a heterogeneity of cultures and languages which almost defies analysis. Those tribes which were able to maintain themselves in the open fertile plains of the north have to a great extent intermixed and evolved a common tongue . . . Thus it is that a comparatively homogeneous Hausa nation has been evolved from the most diverse elements. The less-organized tribes, however, were forced to seek refuge in the hill countries, where they formed enclaves which have resulted in polyglot peoples, exhibiting almost unparalleled diversities in culture and social organization.”

Though great interest necessarily attaches to the assumed origin of the different components of the population, yet for our present purpose the major importance attaches to the fact that there is now an ethnical distribution which provides contrasts so striking as those between the great Hausa communities of the more northern areas, the Tiv of the Benue Province, and the numerous more primitive communities of the Bauchi Plateau. The number of tribes listed in the Census of 1931 was 250, and of the total population of approximately 11½ millions, 7,529,618 were classified as Muslims, 3,798,109 as Animists, 55,559 as Christians, and 16,094 were either unclassified or shown as belonging to other religions.

It will perhaps be simplest to give here a list of the largest tribes as then shown, with their distribution over the different Provinces, for though there have been subsequent estimates of their numbers, they are complicated by the fact that the tribal nomenclature now adopted differs in some cases from that of 1931 :

Hausa	3,604,016	Kano, Sokoto, Zaria, Bauchi, Bornu, Katsina
Fulani	2,025,189	Kano, Katsina, Sokoto, Bauchi, Adamawa
Kanuri	930,917	Bornu, Bauchi, Kano, Katsina, Sokoto
Munshi (Tiv)	573,605	Benue
Yoruba	498,212	Ilorin
Nupe	326,109	Niger
Igala	156,060	Kabba
Margi	149,982	Bornu, Adamawa
Gwari	149,724	Niger, Sokoto
Igbirra	144,231	Kabba
Idoma	117,423	Benue.

(a) THE HAUSA .

The Hausa language, the form of which is due to Hamitic influences, has become the lingua franca of this part of West Africa, but so far as the term Hausa can be said to have a racial connotation, it is applied to the large collection of peoples of Sudanic origin who at some early date were fused in the population inhabiting the country now generally described as Hausaland. The establishment of the Hausa States must have taken place at a remote era, long preceding the introduction of Mohammedanism in the thirteenth century. Under Islamic influences they developed a form of government which had a

<sup>1</sup> Northern Nigeria C. K. Meek, 1925, Vol. I, page 19.

well organized fiscal system and a trained judiciary, administering the Maliki code of Mohammedan law. Early in the sixteenth century there were seven such States, independent of each other, namely, Kano, Rano, Zeg-Zeg (Zaria), Daura, Gobir, Katsina and Zamfara.<sup>1</sup>

Internecine wars, attacks from the Sudanic Empire of Songhai, and invasions from the Jukun or Kororofa pagans of the Benue valley, marked the history of these States until by the middle of the eighteenth century Gobir was left the most powerful State in Hausaland. But its actual rulers were then pagans, and Mohammedanism throughout the country generally was at a low ebb when the movement commenced which was to end with the establishment of Fulani ascendancy over the greater part of Hausaland.

#### (b) THE FULANI

The Fulani, known elsewhere in British and French territories as Fulas, Fulahs, Peuls, Puls or Fulbe, had first moved into Hausaland when the Hausa States were still powerful. A great variety of origins have been assigned to them, but the most plausible theory is that they came from Upper Egypt and migrated westwards across the north of Africa to the Atlantic coast, where a number settled, while others moved in an easterly direction and entered Hausaland. A considerable section, the Fulanin Gida, intermarried with the Hausa, while others, now generally known as the Cow Fulani (Borroro) retained their pastoral habit and their own religion.

The "settled" Fulani were distinguished by their ability, but remained a more or less subject race till 1804, when as the result of a Holy War led by Othman dan Fodio, a Sheikh serving the King of Gobir, Fulani power was established over the majority of the Hausa States. Othman dan Fodio was recognized as Sarkin Musulumi (Commander of the Faithful), a title which descended to his son Bello, as ruler of Sokoto, and is still held by his successors as rulers of that Emirate.

It is to this movement that Nigeria owed its original Fulani Emirates, of which the chief were Sokoto, Katsina, Kano, Zaria, Hadeija, Adamawa, Gombe, Katagum, Nupe, Ilorin, Daura and Bauchi. Bornu, though a Mohammedan country, was attacked by the Fulani in 1808 and was temporarily in their hands, but was delivered from them by the efforts of one of the Bornu Chiefs, Mohammed el Kanemi, and el Kanemi's line became rulers of Bornu with the title of Shehu. The Fulani Emirs retained their rule intact for over a hundred years, a proof of their outstanding ability among the peoples of West Africa. They succeeded to an organized system of government, and this they retained practically intact, though, as is generally admitted, with standards of rule which became progressively lower than those which owed their original inspiration to the austere example set by Othman dan Fodio. Some of their pagan subjects threw off their yoke, and the Fulani Emirates were, in the words of one authority on Nigeria, "a diminished Kingdom, from which the glory had departed, when the British arrived on the scene at the end of the nineteenth century."<sup>2</sup>

To this brief summary of the history of the Fulani in the Northern Provinces there must be added three observations which are of importance in the present connection. In the first place, Fulani rule was never coterminous

<sup>1</sup> History of Nigeria, Sir A. Burns, 1948 edition, page 42. Historians differ however, as to the identity of these States.

<sup>2</sup> Notes on the Tribes of the Northern Provinces of Nigeria, O. Temple, 1922, page 398.

with the present boundaries of the Northern Provinces. It did not, as has been shown, include some parts even of the Hausa country, and a number of the pagan tribes on the Central Plateau and in the Benue valley were never brought under subjection. Secondly, though the Fulani Emirates acknowledged allegiance to the ruler of Sokoto as the Sarkin Musulumi and paid tribute (*gandu*) to him, they were not formally subject to Sokoto, but retained full independence in all their domestic affairs. Thirdly, some sections of the settled Fulani, the Fulanin Gida, have so intermarried with the Hausa-speaking tribes that many persons described to-day as Hausa might equally well be described as Fulani and vice versa. But the settled Fulani are now distinct from the pastoral Fulani, who do not intermarry with Hausa, maintaining their traditional custom and as far as they are able to do so avoiding close contact with modern civilization.

#### (c) THE KANURI

The Kanuri are centred on Bornu Province, though there are smaller numbers in some of the other Provinces, as for example Bauchi, Kano, Katsina and Sokoto. They are considered to be a mixture of Arab, Hamitic and Negro tribes, and their first home as known to history was within the empire of Kanem, a country now in French territory to the east and north of Lake Chad. Kanem was from the eleventh to the thirteenth centuries a powerful State, to which Mohammedanism was introduced during the thirteenth century, but in the fourteenth a temporary collapse of power forced the king to leave Kanem and to establish himself at Bornu. There the power of the Kanuri at first grew rapidly, but afterwards declined, and it was a comparatively weak Bornu that had to face the Fulani attacks in 1808.

Reference has already been made to the circumstances in which Mohammed el Kanemi, one of the most notable men in a period which produced so many remarkable leaders, maintained the independence of Bornu against the Fulani. Bornu was invaded in 1893 by Rabeh, with a division of Negro troops, officered by Arabs, which had once formed part of the Egyptian forces, but the fugitive Shehu was reinstated as ruler by the French when they defeated Rabeh in 1900 at the battle of the Shari. These events hastened the effective occupation of Bornu by the British in 1902.

After the adoption of the Mohammedan religion in Bornu, the systems of law and taxation approximated generally to those in force in Hausaland, though taxation had a somewhat simplified form. It may be added that there is to the east of Bornu a pastoral race of Shuwa Arabs, divided into small clans under their own Sheikhs. They first came into Bornu from Darfur and Wadai in the seventeenth century, but their numbers were largely increased when Mohammed el Kanemi invited them to join in repelling the Fulani attacks. They speak a dialect of Arabic, mixed with words of Negro origin.

#### (d) THE MUNSHI OR TIV

The Munshi or Tiv are centred almost entirely in the Benue Province, and are the outstanding example in the Northern Provinces of a large pagan community which never came under Islamic influences or submitted to Fulani rule. The Tiv maintain that they came from the south, and after some sojourn in the Cameroons, moved about 200 years ago to their present country, flowing round the Jukun, who were then in their decline. It has been claimed that their language is almost pure Bantu.<sup>1</sup>

<sup>1</sup> The Tiv Peoples, R. C. Abraham, 1933.

## (e) THE YORUBA

The Yoruba, centred in the Ilorin Province, are in effect an inset from Yorubaland into the Northern Provinces.<sup>1</sup> Ilorin owes its inclusion in these Provinces to the fact that during the break-up of the Yoruba kingdom of Oyo at the beginning of the nineteenth century, the Yoruba governor of Ilorin associated himself with a Fulani priest, Alimi, with whose aid he made himself independent of Oyo. He was ultimately supplanted by Alimi, and Ilorin thus became one of the Fulani Emirates owing spiritual allegiance to Sokoto.

## (f) THE NUPE, IGALA AND OTHER GROUPS

The Nupe represent the remains of a very ancient kingdom. They are now found both in the Ilorin and Niger Provinces, but their chief centre is in the Bida Emirate. By tradition they are of southern provenance, coming from Idah (Eda) on the lower Niger. The Nupe in Bida became subject to an emissary of the Fulani Emir of Gwandu about 1820, and large numbers of them embraced the Islamic faith.<sup>2</sup>

The Igala, in the Kabba Province, are akin to the Yoruba and like them have not come under Muslim influences. The Gwari, west of the Bauchi Plateau, were never subjected to the Fulani, though they suffered terribly from slave raiding. The Igbirra, of the Kabba Province, are akin to the Igala, and have remained pagan though they have a Chief who is a convert to Islam.

## (g) THE PLATEAU PAGANS

These observations have covered only some of the major communities and have made no mention of the many smaller groups, such as those who took refuge from the invading Sudanic tribes among the fastnesses of the Bauchi Plateau, and there retained a very primitive form of life. Even after the British occupation some of these peoples maintained their reputation as headhunters, "eaters of anything from rats and bats to their own deceased relatives, while others, more fastidious, do not eat their own people but exchange corpses with neighbouring villages."<sup>3</sup>

The largest of these Plateau tribes are now the Bi Rom, the Anga, the Yergam and the Eggon. Elsewhere there are other small but less primitive communities, such as the Jukun or Kororofa tribe, now intermixed with the Tiv, but representing the remnant of a people that was once very prominent in northern Nigeria. They are supposed to have come originally from Arabia, and first settled close to Lake Chad, whence they overran most of Hausaland including Kano and Zaria. Their power had, however, waned by the end of the eighteenth century, and they are now of little political significance.<sup>4</sup>

## THE POLITICAL AND SOCIAL STRUCTURES

At the outset of the British occupation, these various communities represented a diversity of political organization greater perhaps than was encountered in any other part of British Colonial Africa, for they varied from

<sup>1</sup> For the Yoruba see page 105.

<sup>2</sup> The Nupe have been the subject of an interesting study in *A Black Byzantium*, S. F. Nadel, 1942.

<sup>3</sup> Quoted by Sir A. Burns, page 55, *op. cit.*, from *Notes on Tribes of Northern Nigeria*, C. Temple.

<sup>4</sup> For a further account of some of these "pagan" tribes see Chapter X of *Native Administration in Nigeria*, M. Perham, 1937.



the highly organized Hausa States to primitive groups in which the extended family was the only recognizable political unit. It will be most convenient to deal in the first place with the more organized States, since but for their existence the system of native administration followed by the British in Northern Nigeria, and subsequently adopted so largely elsewhere, might well have taken a different form.

These more highly organized units are to be seen in their most complete form in the five Provinces of Sokoto, Bornu, Kano, Katsina and Zaria. There was, as already shown, little material difference between the political organization of the Hausa States which had come under Fulani rule and those which had escaped subjection to it, for the introduction of the Mohammedan influences to which this organisation was mainly due long preceded the consummation of Fulani rule. The position of the Ruler was, as in other Islamic States, theoretically absolute. He was, as head of the State, the final judge in all causes, and had, subject to the accepted principles of Islamic law, final control over the disposal of lands within his jurisdiction.<sup>1</sup> But his authority was qualified by the fact that he had himself no regular machinery for enforcing his will in the face of any sectional or general opposition to it, and absolutism therefore had in those conditions a different sense from that it often bore in Europe.

The Rulers had at an early stage been accustomed to rely on the support of the fief-holders whom they appointed to hold charge of different units of territory within their jurisdiction. These fief-holders were in most cases members or connections of the ruling dynasty, but in some instances included the Chiefs of the indigenous tribes or groups. At a later stage however the political organization took a more definite shape, in the form of a central control by the Emir and his Councillors, local rule being exercised through appointed District Heads and Village Headmen. The Councillors consisted partly of the old type of fief-holder and partly of official appointees; as members of the Emir's Council they were in principle merely his Advisers, but in their individual capacity they held charge, subject to the control of the Emir, of different departments of State work. As will subsequently be seen, the fief-holders were in very many cases absentees from their fiefs and were resident at the capital.

The District Heads were appointed by the Ruler, sometimes from his own or other important families, sometimes from the traditional Chiefs of the subject peoples comprised in the unit of which they were in charge. Their duties were administrative and executive, and they had no judicial functions. The Village Heads were nominally appointed by the Ruler, but were in practice usually selected by the people, using traditional methods. It was at this point therefore that there was to be found the most obvious evidence of the survival of the older indigenous system, which had continued to exist beneath the hierarchical organization of Emirate rule superimposed on it.

There were two other significant features of this system of rule, which distinguished it from the indigenous systems prevailing among most of the negro tribes of West Africa. It had a regular system of direct taxation, taking the form of a tax on incomes, fixed in proportions relative to the nature of the property held. This system of taxation will be subsequently described in further detail.<sup>2</sup> Secondly, the maintenance of the Islamic tradition resulted

<sup>1</sup> See page 90.

<sup>2</sup> Page 75.

in an effective separation of the agencies charged with executive and judicial functions. The Ruler as head of the State was the supreme judge and exercised this function, normally with the advice of his Councillors, in issues of major importance, in particular those arising in connection with land. But the bulk of the judicial work was discharged by Alkalai,<sup>1</sup> whose sole function was that of judges, administering the Maliki code of Muslim law, and discharging no executive duties. Further reference will subsequently be made to this feature of the system,<sup>2</sup> and it is only necessary to repeat here that this, together with the provision for direct taxation, was essentially the result of the introduction of Islamic institutions, and did not exist in the areas to which their influence had not extended.

These latter areas were, however, considerable, and they had for the most part a far less highly organized form of political organization. The large community of Tiv, for example, had a definite tribal consciousness, as was subsequently shown by their movement to secure the recognition of a Tiv chiefdom,<sup>3</sup> but their political organization was that of a loosely-knit group of clans, and if they recognized any definite authority, it was that of the traditional clan head and the clan assemblage.

The "pagan" peoples of the Central Plateau consisted of a large number of small tribal units, some of whom had Chiefs, who were often little more than heads of extended families, while others consisted of groups which were only united by the fact that they looked to the same priest as the guarantor of their welfare. Others again recognized only the authority of an informal Village Council. Many of these units in fact had an organization of which the social features were more easily recognizable than the political.

### THE INTRODUCTION OF THE SYSTEM OF NATIVE ADMINISTRATION

Contact with Northern Nigeria had first been established by the Royal Niger Company which (as the National African Company) sent an envoy to Sokoto in 1885, and subsequently concluded a number of treaties with Chiefs.<sup>4</sup> It had on occasion used armed force against certain of the Emirs, as for example Nupe and Ilorin, who had refused to give up the practice of slave raiding, but up to the time of the revocation of the Company's Charter and the declaration of the Protectorate in 1900,<sup>5</sup> the Company had exercised little effective power away from the Niger and Benue Rivers, and had at all events taken no steps to establish any regular system of native administration.

The initial task of the first High Commissioner (Colonel Lugard) was the pacification of the country and the suppression of slave raiding. That an area so extensive, with its powerful Emirates and militant tradition was brought so speedily under a system of ordered rule was due as much to Lugard's political wisdom as to his swift and courageous use of his small military force, and the policy adopted by him in introducing a system of native administration was an essential part of the process of pacification. The principles underlying this policy were subsequently expounded by him in the Political Memoranda

<sup>1</sup> The singular is Alkali, the Hausa rendering of el Cadi.

<sup>2</sup> Page 84.

<sup>3</sup> Page 53.

<sup>4</sup> For these treaties see Sir E. Herslet, *The Map of Africa by Treaty* Vol. I, 1909, pages 128-30.

<sup>5</sup> Order in Council, 27 December, 1899.

published in 1918, and they have occupied so prominent a place in the literature dealing with the procedure of Indirect Rule that it is unnecessary to discuss them at any length here. There were however considerations which, apart from any question of general principle, must have helped to determine the actual application of the High Commissioner's policy.

In the first place, his own staff and resources were exiguous, for the annual revenues available to him for all purposes amounted only to £136,000. Secondly, the more developed Emirates, even though they had lost some of the virility of the earlier Fulani rulers, had an organization which could be readily adapted as an instrument of local rule. Many of them had accepted without resistance the introduction of Protectorate control, and in some cases, where Emirs had been defiant, as in Sokoto, the people themselves had welcomed the British forces. But there was also a third consideration of much importance. The High Commissioner was not hampered by a tradition such as that which for long assigned to the Gold Coast Chiefdoms the character of Treaty States, with inherent powers of jurisdiction over their own areas.<sup>1</sup> If the powers acquired by the Crown in Northern Nigeria could not, save in a few cases, be described in strict juridical terms as flowing from conquest, nevertheless the High Commissioner found no difficulty in asserting the principle that such authority as the Emirs possessed was to be exercised subject to the legislative and administrative control of the Protectorate Government.

The policy adopted by the High Commissioner in respect of the Emirates was expressed in two characteristic statements. On the one hand, the Emirs were given Letters of Appointment which made it clear that they were not regarded as possessing sovereign powers, and that they were to obey the laws of Nigeria. "The policy of Government was that these Chiefs should govern their people not as independent but dependent Rulers." In the terms subsequently used, their status was to be that of *Wakils* or *Governors*, exercising only such jurisdiction as might be conferred on them by law. On the other hand, when in 1903 the territory was divided into 14 Provinces, the Residents in charge of them were told that their duty was to act as advisers to the Emirs, not to usurp their functions.<sup>2</sup>

These general indications of policy were accompanied by the issue of the Enforcement of Native Authority Proclamation No. 2 of 1907, which authorized "recognized" Chiefs to issue legal orders the breach of which might be punished by fine or imprisonment in a Native Court. Native Courts had already been recognized in a Proclamation of 1900, to which reference will be made subsequently in dealing with the judicial system.<sup>3</sup> In 1904 and 1906 action was taken by the Land Revenue Proclamation No. 4 of 1904 and Native Revenue Proclamation No. 2 of 1906 to regulate the system of taxation, a reference to which will also be made subsequently in a later part of this Section.<sup>4</sup> These measures formed the basis of the three Ordinances, (the Native Courts Ordinance No. 8 of 1914, the Native Authority Ordinance No. 14 of 1916 and the Native Revenue Ordinance No. 1 of 1917) which were subsequently applied throughout the Protectorate, and which are repeated in substance in the Ordinances which now regulate the system of Native Authorities, Native Courts and Native Taxation, namely, the Native Authority

<sup>1</sup> Page 201. Chapter VIII.

<sup>2</sup> Instructions to Political Officers on subjects chiefly Political and Administrative, 1906. Political Memoranda, 1918.

<sup>3</sup> Page 80.

<sup>4</sup> Page 76.

Ordinance No. 17 of 1943, the Native Courts Ordinance No. 44 of 1933, and the Direct Taxation Ordinance No. 4 of 1940. The main provisions of these Ordinances have been summarized in Section I<sup>1</sup> and need not be repeated here.

Though however the principles underlying this policy could be readily adjusted for the management of organized units of the type of most of the Emirates, this was not the case with the less organized units referred to in previous paragraphs. They presented the problem of which so many illustrations are given elsewhere in this Survey, namely, that, of adjusting to the circumstances of un-co-ordinated groups a pattern of local rule which was originally designed to meet the circumstances of units possessing some form of centralized political organization. Subsequent experience has for example tended to show that it was too readily assumed that because the Fulani had controlled their pagan areas through the appointment of Fulani District Heads, the Native Authority system which had been applied to the Fulani Emirates could be readily adapted for use in the pagan areas brought under Protectorate control.

At the outset, an effort was made to adopt the District Head system used by the Emirates, and artificial Native Authorities were set up, the Division being occasionally treated as the Native Authority area. But this arrangement brought to light a new series of difficulties. Among the Plateau pagans authority resided in priest-kings hedged about by elaborate taboos, but these men rarely came forward, and sheltered behind some powerless representative. It may be noted that at a later date endeavours were made to let the natural authorities come to the fore, but in some cases the priest-kings still hung back, thus creating a dual type of authority. Similarly the Tiv people were at first grouped under District Heads who had no traditional status; a Yoruba, for instance, was recognized as Headman at Makourdi. Here again it may be noted that subsequent anthropological investigations brought to light the existence of some 36 decentralized clans, and this new knowledge has resulted in a reorganization based on clan area Councils. Even where, as amongst the Igala, there was a traditional central authority, it was not at first made use of, and the area was sectionalized for some years; it was reunited in 1926 under District Heads, but within a few years the system had to be revised again, and the clan heads and Council were recognized as Native Authorities. Finally, it should be realized that some of the pagan communities in the Kabba, Plateau and Benue Provinces did not come under effective control until about the 1920's; indeed the people of the Shendam Division of the Plateau Province remained intractable until 1932.

It is accordingly natural to find that the years which succeeded the first introduction of the system of native administration were marked in areas of the class referred to by a continual process of adjustment in the procedure for the recognition or creation of Native Authorities. In some cases it was found advisable to detach from the Emirates certain of the communities which had come under their rule, but which could be more satisfactorily administered by Authorities who formed part of their own traditional structure. In other cases, it was necessary to discover, by investigation or as the result of experiment, Authorities competent to act on behalf of communities which had possessed little or no vestige of political organization. Communities of these two types were numerically less important and in most respects far less advanced than

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<sup>1</sup> Page 11.

those which formed part of the more highly organized units, but they for long continued to provide a difficult problem in the development of the Native Authority system, and it is indeed one which (as will afterwards be shown) still awaits a satisfactory solution.

During this period also the continuous growth in the standards of civil administration, and the progressive use made of the Native Authorities for the provision of local Government services involved many changes in the relations between the Protectorate Government and the major Native Authorities, and some changes also in the machinery of administration employed by the latter. Before however proceeding to deal with these developments, it will be convenient to give now the present composition of the Native Authorities, with some details of the organization through which they discharge their functions. It is unfortunately necessary to enter here into considerable detail, for any attempt to divide the Native Authorities into different categories and to select examples illustrating the position in each category might prove to be misleading.

#### THE PRESENT COMPOSITION OF THE NATIVE AUTHORITIES

There are now in the Northern Provinces 119 Native Authorities and 113 Subordinate Native Authorities. They vary in magnitude from major units such as the Kano Emirate with a population of nearly 2½ million, and a Treasury revenue of over half a million pounds, down to units such as those in the Wukari Division of the Benue Province, where six Native Authorities, with 52 Subordinate Native Authorities, have between them a population of a little over 100,000 and a Treasury income of just over £10,000.

Looking to the composition of these units as a whole, it is noteworthy that no less than 87 out of the 119 Native Authorities are Emirs or Chiefs of various grades who have been gazetted as sole Native Authorities, 12 are Chiefs and their Councils, five are Clan Area Heads and Councils, and eleven consist of Councils of Headmen or other traditional representatives. It should be explained that when a Chief is recognized as sole Native Authority he is gazetted by his title, as for example the Emir of Kano or the Shehu of Bornu, and no mention is made of his Council. Where the Native Authority is a Chief and his Council this is specifically mentioned in the Gazette Notification. The facts are summarized in the following Statement, which gives the twelve Provinces in alphabetical order. The ensuing paragraphs will give in the same order fuller details of the composition of the Native Authorities in each Province as it stood in 1947-1948.

Province	Division	Chief(s) as Sole Native Authorities	Village Heads as Sole Native Authority	Chief(s) and Council	Clan Area Heads and Council	Councils	District Officer	Subordinate Native Authorities
Adamawa	Adamawa	1	—	—	—	—	—	2
	Numan	1	—	—	—	—	—	3
	Muri	1	—	—	—	—	—	1
Bauchi	Bauchi	2	—	1	—	—	—	—
	Katagum	3	—	—	—	—	—	—
	Gombe	3	3	1	—	—	—	—

Province	Division	Chief(s) as Sole Native Authori- ties	Village Heads as Sole Native Authority	Chief(s) and Council	Clan Area Heads and Council	Councils	District Officer	Subor- dinate Native Authori- ties
Benue	Tiv	—	—	1	—	—	—	3
	Idoma	—	—	1	—	—	—	—
	Wukari	3	—	1	—	2	—	52
	Lafia	2	—	—	—	—	—	—
	Nasarawa	2	—	—	—	—	—	—
Bornu	Bornu	1	—	—	—	—	—	—
	Dikwa	1	—	—	—	—	—	—
	Potiskum	1	—	—	—	—	—	—
	Bedde	1	—	—	—	—	—	—
	Biu	3	—	—	—	—	—	—
Ilorin	Borgu	2	—	—	—	—	—	—
	Pategi-	2	—	—	—	—	—	—
	Lafiagi Ilorin	1	—	—	—	—	—	—
Kabba	Igala	—	—	1	5	—	—	—
	Igbirra	1	—	—	—	—	—	1
	Kabba	3	—	—	—	2	—	—
	Koton- Karifi	4	—	—	—	—	—	—
Kano	Kano	2	—	—	—	—	—	—
	Northern	2	—	—	—	—	—	—
Katsina	Katsina	2	—	—	—	—	—	—
Niger	Abuja	2	—	—	—	—	—	—
	Bida	2	—	—	—	—	—	—
	Kontagora	2	—	1	—	—	—	5
	Minna	—	—	—	—	2	—	22
Plateau	Jos	—	—	2	—	3	—	15
	Pankshin	22	—	—	—	—	—	5
	Jemaa	1	—	—	—	—	—	—
	Southern	2	—	—	—	—	1	—
	Shendam	3	—	3	—	1	—	3
Sokoto	Sokoto	1	—	—	—	—	—	—
	Argungu	1	—	—	—	—	—	—
	Gwandu	2	—	—	—	—	—	—
Zaria	Zaria	5	—	—	—	—	—	1
Total		87	3	12	5	11	1	113

## (i) ADAMAWA PROVINCE

(a) In the Adamawa Division the Lamido Adamawa is the sole Native Authority. He is the successor to the dynasty of the Fulani Adama, who "obtained a flag" from Othman dan Fodio in the course of the Holy War at the beginning of the nineteenth century, and established his rule over this area. The country was up to that time completely pagan, except for the considerable number of Fulani who had brought their cattle to the well watered grazing grounds at the foot of the hills. Owing largely to their isolation from Hausaland, and their comparatively large numbers, the settled Fulani have here retained their own language (Fulfulde) and maintain, more perhaps than

in any other part of Nigeria, the custom and culture of the Fulani.<sup>1</sup> The system of rule, conducted through Fulani District Heads, is characteristic of the procedure adopted by the Fulani Emirs elsewhere for the control of subject indigenous tribes.

The succession to the office of Lamido is hereditary in the patrilineal line. He has an Advisory Council consisting of four office holders including the Chief Alkali, and has 31 District Heads who are mostly of Fulani origin. There are also Advisory District Councils which hold quarterly meetings, the members being elected by the people; these are said to be popular and successful. The Lamido is literate in Hausa, Fulani and Arabic and is learning English. His salary is £2,600 with an establishment allowance of £400. His Councillors hold salaried posts, and his 31 District Heads have salaries averaging £140 a year.

(b) The Numan Division has two Native Authorities, representing the Bachama, Batta, Mbula and Kanakum tribes, namely the Chief of Shellen as sole Native Authority and the Numan Federation of three Chiefs under the Presidency of the Chief of Batta. Both are mixtures of traditional and hereditary rule, Chiefs being selected from various "royal" families. There are informal District Councils composed of Village Heads together with one representative from each village area.

The Chief of Shellen is literate in Hausa and is paid £180 per annum; he has four Village Heads who draw between £36 and £72, and 56 hamlet Heads receiving a tax rebate. The Chiefs of Batta, Bachama and Mbula receive £140, £160 and £96 respectively; under them are 25 Village Heads with salaries of between £3 and £18, and 24 others who receive a tax relate.

(c) In the Muri Division the Emir of Muri, whose appointment is hereditary in the patrilineal line, is the sole Native Authority. He has an Advisory Council consisting of five members, and there are informal District and Village Councils composed of representatives of each village chosen by the people. The Emir is literate in Hausa and has a salary of £1,200 per annum. His Council are salaried in their executive capacities and his 10 District Heads draw between £72 and £250 a year.

#### (ii) BAUCHI PROVINCE

(a) In the Bauchi Division the Emir of Bauchi and the Chief of Ningi are sole Native Authorities, the third Native Authority being the Chief and Council of Dass. The two first are hereditary and patrilineal, and have Advisory Councils. The Emir of Bauchi has 11 District Heads and the Chief of Ningi one. The Chiefdom of Dass dates only from 1935, and his Council, consisting of Village Heads, is chosen by the villagers.

The three Chiefs are all literate in Hausa. The Emir of Bauchi is paid £2,400 per annum, the pay of his 11 District Heads average £360 and his 70 Village Heads £41. The Chief of Ningi receives £360, his District Head £120 and his 20 Village Heads an average of £27. The Chief of Dass has a salary of £175; one of his Village Heads gets £36 and the other nine £18 each.

(b) In the Katagum Division the Emirs of Katagum, Misau and Jama'ari are sole Native Authorities. The successor to the Emirate is in each case chosen from the patrilineal line by a council of Elders. Each Emir has an Advisory Council of salaried Native Authority officials, and administers his area through District Heads. The District Heads have informal Councils

<sup>1</sup> See page 3 of Report on Cameroons, 1948 (Colonial No. 244).

consisting of Village Heads together with some Native Authority technical subordinates, while Village Heads have Councils of hamlet heads and village Elders.<sup>1</sup>

All three Emirs are literate in Hausa, the Emirs of Katagum and Misau also being literate in English. The Emir of Katagum is paid £1,800 per annum, his 10 District Heads average £295, and his 68 Village Heads average £53. The Emir of Misau has a salary of £840; his five District Heads average £168 and his 21 Village Heads average £56. The Emir of Jama'ari draws a salary of £300 and a personal allowance of £60, his five Village Heads averaging £50 each.

(c) In the Gombe Division there are seven Native Authorities. The Emir of Gombe and the Chiefs of East and West Tangale are sole Native Authorities. For Dadiya, where the Native Authority was created in 1936, there is a Chief and Council, and there are in addition three Federations of Village Heads. The Chiefs are hereditary in the patrilineal line. The Emir of Gombe has an Advisory Council of salaried officials; in the Dadiya Native Authority the 12 Ward Heads form the Council.

The Emir of Gombe, who is literate, is paid £1,800 and of his four Councillors one receives £280, the others getting £112. There are three District Heads at £300 each, 57 Village Heads drawing between £24 and £84, and 156 hamlet heads are paid £6 each. The Chiefs of East and West Tangale receive £240 and £180 respectively. In the other Native Authorities, the Village Heads receive sums from £30 to £60.

### (iii) BENUE PROVINCE

(a) In the Tiv Division there were formerly 55 clan areas, each with a "spokesman" representing the clan, and subordinate to the Central Tribal Council, which was a very large body with no permanent President. Investigations in 1939 showed the existence of clan heads in one kindred in each clan; these, who were called Tyo-ors, were responsible for making and repairing the wells which insured the well-being of the land. They are now the recognized clan heads who, with the kindred heads, form the 54 District Councils, which are in their turn divided into eight septs with Intermediate Councils. These have Courts which are still being organised.

The Native Authority is now the Chief of Tiv and his Council. This consists of about 500 members composed of the heads of clans and kindred groups, one co-opted member, the three Subordinate Native Authorities, and the Chief of Utur. The Council meets once a year, the routine administration being carried on by the Chief of Tiv and an Executive quorum of the eight sept representatives and the co-opted member.

The Chief of Tiv does not hold a traditional post, but was appointed in 1947 at the request of the Tribal Council, which has been pressing for a Chief since 1930. He is literate, and was for 18 years a regular soldier, rising to the rank of Battalion Sergeant Major, and later becoming head of the Tiv Native Authority police. His salary is £600 per annum, and the nine members of the Executive quorum are paid £24 each.

Fifty-eight clan and village heads draw salaries not exceeding £63 each, the eight members of the Makurdi Town Council are paid £24 each, and there is a sum of £5,863 from which the kindred heads receive small monthly allowances to be redivided amongst the tax collectors. The Subordinate

<sup>1</sup> For the sense in which the term "village council" is used see page 96.



Native Authorities are in charge of three of the non-Tiv Districts, namely, Makurdi (which has a Town Council presided over by an Assistant District Officer acting for the District Officer), Katsina Ala (which has a Hausa Village Head and Council), and Abinsi (which has a Jukon Village Head and Council).

(b) In the Idoma Division the people are connected with the Jukon rather than the Tiv and are said to be fairly recent settlers from up-river. The political organization is built up around the Courts, which are more important in local eyes than the Councils. There were formerly 21 independent Native Authorities, one of whom had 14 Subordinate Native Authorities, based on the clan system. In 1947 these were reorganized into one Native Authority formed by the Chief of Idoma and Council. The Chief of Idoma is not a traditional ruler, but was the president of one of the former independent Native Authorities and is head of the principal ancestor cult in his District. He was elected Chief by the votes of the independent Native Authorities. The Idoma Council consists of four Regional Councillors and one co-opted Councillor, who is the Chief Scribe and is literate.

There are four Regional Councils consisting of the Presidents of the District Courts, but they are not Subordinate Native Authorities. There are also 21 District Councils which consist of representatives elected by the clans in the area.

The Chief of Idoma is paid £300 per annum, the Regional Councillors have allowances of £15 each, eight Presidents and 64 Councillors of the District Councils are paid sums varying from £6 to £72 per annum, while Village and kindred heads draw a tax rebate.

(c) The Wukari Division is an ethnological melting pot as the result of the Fulani invasions, and includes Tiv, Jukon, Kutev, Kentu, Ngoro, Chamba and Tigon people besides numerous other small tribal units. There are six Native Authorities, of which three are traditional Chiefs selected from "royal" families by bodies of electors, one is a Chief and Council (the Chief being a German creation) and two are Tribal Councils. The three last are in Trust Territory.

The Chiefs of Takum and Donga, who are sole Native Authorities, have 20 and 18 Subordinate Native Authorities respectively; these consist of Councils of clan, kindred and family group heads and Elders, but they are said to have little real authority and are likely to be abolished. The sole Native Authorities also have Advisory Councils consisting of both traditional and non-traditional elements.

The three Native Authorities in the Trust Territory consist of all the Chiefs and Elders of all the villages; each has Subordinate Native Authorities whose members are also members of the principal Native Authority.

All the sole Native Authorities are literate or semi-literate in Hausa, the Chief of Donga having been a schoolteacher. The Chiefs of Wakuri, Takum and Donga receive respectively £300, £136 and £128 per annum, the first named having four sub-chiefs with an average salary of £65. The Tigon, Ngoro and Kentu Native Authorities have £106, £47 and £47 respectively available for distribution amongst the Councillors. Throughout the Division a tax rebate is given to Village heads.

(d) The Lafia Division is also inhabited by various pagan tribes, some of which claim to be indigenous, part having come from the north and part from the south. There are two sole Native Authorities, the Emir of Lafia and the Chief of Awe; the former was originally Town Chief when Lafia was a raiding

outpost of Bauchi, and was created an Emir by the British ; the latter is a Fulani of Katsina stock, his forebears having established themselves partly by conquest and partly by infiltration. Neither are literate. The Emir has an Inner Council, which meets daily, made up of four District Heads, the Alkali, the Makwanjiki (Waziri) and the Supervisors of Works and Education ; in addition there is an Outer Council which meets weekly with the Limam (Imam) and 15 representatives of the people as additional members.

The District Heads have informal Councils of village heads and hereditary office holders, which meet monthly ; and there are informal Village Councils consisting of Elders which also have monthly meetings and are said to function effectively. Lafia itself has an Advisory Town Council which includes representatives of the stranger elements. The Chief of Awe also has an Outer and Inner Council, but although there are Village Councils his area is too small to be organized into Districts.

The Emir of Lafia is paid £360 per annum ; his Councillors receive sums ranging from £48 to £120, his four District Heads average £94 10s. each, while the 314 Village-Heads average £3 14s. per annum each. The Chief of Awe has a salary of £144 per annum. There is a tax rebate for the hamlet Heads of both Native Authorities.

(e) In the Nasarawa Division the Emirs of Nasarawa and Keffi are the sole Native Authorities. Keffi was the original Emirate, breaking off from Zaria in 1823, while Nasarawa established its independence about 1860. Both Emirs have Advisory Councils, Keffi having six members including a schoolmaster, and Nasarawa five, including a schoolmaster and the Chief Scribe. Both Councils are appointed by the Emir concerned subject to the Chief Commissioner's approval.

Both Emirates are divided into Districts with Heads who are described as nominated by the people from amongst traditional families and appointed by the Resident. These District Heads have unofficial Councils of town and village Elders, and an effort is being made to organize Village Councils. There is an Advisory Town Council of Ward Heads for Keffi itself. Among the Emir's Advisory Councils Keffi has one and Nasarawa three literate members. The Emir of Nasarawa's salary is £480 per annum, his Council receive varying sums from £55 to £216 and his six District Heads average £124.

#### (iv) BORNU PROVINCE

(a) In the Bornu Division the Shehu, who is sole Native Authority, has an Advisory Council of six, the Waziri (£1,000) who is in charge of District affairs and prisons ; the Mukaddam (£600) who is in charge of the police and of Maiduguri town ; Mainia Kanandi (£540), the first legal member ; the Wali (£450) the second legal member and in charge of agriculture and forestry ; the Ma'aji (£450) who is the Treasurer and supervises the co-operative societies ; and Shettima Kashim (£510) who is the Education Officer. Two of the Council (Mukaddam and the Ma'aji) are Shuwa Arabs appointed on merit ; the Waziri and the Mainia Kanandi come from traditional families.

The Advisory Council is appointed by the Shehu and approved by the Resident, who attends its weekly meeting ; its work is said to be of special competence, but the working of the 20 geographical Districts under District Heads is described as less satisfactory. A minority of the District Heads are hereditary from traditional families, others are merit appointments, and the rest are members of the Shehu's family. Their pay ranges from £170 to £600

per annum. They have no District Councils. The 321 Village Heads are nearly all chosen by hamlet Heads and villagers from chiefly families, though subsequently appointed by the Shehu. They have informal Councils, and their salaries are from £149 to £240.

The Shehu himself is paid £6,000 plus £1,500 establishment allowance. He is literate in Arabic, as are some members of his Council, while two members are literate in English.

(b) The Dikwa Division, now in Trust Territory, was originally part of Bornu. The Emir is a brother of the Shehu of Bornu, who was himself Emir of Dikwa before becoming Shehu of Bornu. His Advisory Council consists of the Waziri (£240), the Alkali of Bama (£128), the District Head of Bama (£180), the Judicial Member (£70), and the Ubandoma (£120). The Waziri is a Shuwa Arab and the Ubandoma a Fulani. Of the nine District Heads (£120 to £180), two are members of the "royal" family, two are Shuwa Arabs, one is a Fulani and four are Kanuri. The 81 Village Heads (£9 to £42) are all members of the local tribes.

The Emir is paid £1,800 per annum. All his Council members are literate either in Arabic or English or Hausa. The Council has recently been re-organized with a marked improvement in the administration. The Emirate has a number of pagan hill-tribes, who are restless and much given to fighting, and the hills are the last remaining "closed" area in Nigeria.

(c) The Emir of Fika is the Native Authority in the Potiskum Division. His house belongs to the non-Muslim Bolewa tribe and the successor is appointed by traditional electors from the ruling family. In 1948 he had an Advisory Council of two, which was to be increased to four, including a trader. There are two District Heads, both connections of the Emir, and 43 Village Heads who are the traditional tribal authorities.

The town of Potiskum was in 1948 about to have a small advisory Council of its own. The Emir is literate in Arabic and Hausa and his salary is £840. His two Councillors, the Chiroma<sup>1</sup> and the Maina Goki, received £96 each. The salaries of the District Heads vary between £104 and £134, while one Village Head is paid £48 and the remainder get sums not exceeding £30.

(d) In the Bedde Division the Mai Bedde, belonging to a non-Fulani family, and a well-educated product of the Kaduna School, is the Native Authority. Succession is patrilineal, the choice resting with traditional electors. The Advisory Council, consisting of the Alkali, the Barde and two Village Heads (each paid £36) was under re-organization in 1948. The Mai Bedde himself receives £360, and he has 14 salaried Village Heads who are the traditional rulers of their areas and are described as conservative.

(e) In the Biu Division there are three Native Authorities, the Mai Biu, the Chief of Askira and the Chief of Shani. The Mai Biu has an Advisory Council of four members (the Galadima<sup>2</sup> £204, three others £26) and four District Heads (one at £96, one at £120, two at £156), two of whom are his relatives. The Chiefs of Shani and Askira both have Advisory Councils of two members, but none of the three Councils are of much weight. The Chief of Askira has no Village Heads, the Chief of Shani has three or four, and the Mai Biu some 50, six of whom receive salaries between £24 and £51, the rest drawing sums not exceeding £24. The Mai Biu is paid £840, the Chief of Shani £144

<sup>1</sup> Chiroma is the title of the Emir's eldest son.

<sup>2</sup> The title of Galadima originated in Bornu, where the Councillor holding this post acted at one time as Chairman of the Council.

and the Chief of Askira £96. All three Chiefs are traditional and hereditary non-Muslim rulers, but the Chiefs of Askira and Shani are in fact little more than Village Heads. None of them are literate.

## (v) ILORIN PROVINCE

(a) The Borgu Division is sparsely populated, but some 19 different tribes are represented. Here the Emirs of Bussa and Kaiama are sole Native Authorities and succession is amongst members of the "royal" families. Both Emirs have Advisory Councils consisting of the Waziri, the Ubandoma and the Abokin Sariki, who are themselves normally members of the "royal" families, being nominated by the Emir and approved by the Resident. Both Emirs are partially literate in Hausa and Arabic. The Councillors are salaried, together with three District and 34 Village Heads in Bussa and four District and 33 Village Heads in Kaiama.

(b) The Pategi-Lafiagi Division has a similar organization, with the Emirs of Lafiagi and Pategi as sole Native Authorities. Descent is patrilineal and they have Advisory Councils. Both are literate in Hausa. The Emir of Lafiagi is paid £360 per annum and the Emir of Pategi £300. There are in the Division 75 District and Village Heads whose salaries range from £3 to £130.

(c) In the Ilorin Division the bulk of the inhabitants are Yoruba, with relatively small numbers of Fulani and Hausa. The Emir of Ilorin, who represents the conquering Fulani dynasty, is the sole Native Authority. Descent is patrilineal and the succession is usually collateral. There is an Advisory Council of ten, consisting of the five Ward Heads of Ilorin, two appointed literate members, one appointed Moslem member and two representatives of the former Yoruba ruling House. The last two were added to the Council as far back as 1913, but the literate members were recently included at the instance of the Resident.

The Council represents conflicting interests and is said to be of little assistance; its reorganization is being considered. The District Heads are appointees and have no Councils, but the Village Heads are chosen in accordance with custom by the villages and have informal traditional Councils. The Emir, who is literate in Arabic, receives a salary of £2,640 per annum. His Councillors draw between £84 and £280. The 15 District Heads average £200 and 240 Village Heads average £30.

## (vi) KABBA PROVINCE

(a) In the Igala Division there are six Native Authorities which include one Chief in Council and five Clan Area Heads and Councils. The Councils are composed of traditional and hereditary title holders. The Igala Native Authority has the District and Village Head system, and periodic meetings are held of the District Heads who themselves hold similar meetings of Village Heads. Village Councils, including young literate members, have recently been formed and have put forward development proposals.

Amongst the Native Authorities only the Ata of Igala is literate; his salary is £1,400 per annum, his Councillors receive from £216 to £240; there are 19 District Heads with an average salary of £100, and 195 Village Heads who average £10 10s. per annum. In the other Native Authorities the Clan Area Heads are paid £60 each and the hamlet heads get a tax rebate.

(b) In the Igbirra Division, the Chief of Igbirra is the sole Native Authority. He is not a traditional Chief, being the first to be appointed, since

until 1917 the area was ruled by five independent Clan Heads. He has an Advisory Council and District Heads. There are no District Councils, but informal Village Councils exist composed of Elders and literates chosen by the local community. There is a Subordinate Native Authority for Lokoja Town, who is a Village Head chosen by the people; he, too, has an Advisory Council of 12. He is semi-literate and has three literate Councillors.

The Chief of Igbirra is paid £1,200 per annum; his Councillors, who are salaried Native Authority officials, draw between £36 and £120; the five District Heads average £102 and the 142 Village Heads average £9. The Village Head of Lokoja receives £120 and his Councillors £6 each.

(c) In the Kabba Division the majority of the people have Yoruba affinities. There are three Chiefs as sole Native Authorities, who are traditional and hereditary, and two Native Authorities formed by Chiefs in Council, who are non-hereditary and chosen by their people. The sole Native Authorities have Advisory Councils, but these are being reorganized and may in the future consist of Village Heads with additional literate members. The Chiefs of Kabba and Western Yagba are literate, as are some members of the Ijumu Central Council. A Divisional Chiefs Conference is held twice a year, but no move towards federation seems to be contemplated.

The Obaro of Kabba is paid £162 and his 67 Village Heads average £11 each. The Olu Aworo and the Olu Kirri receive £84 and £96 respectively. The Chiefs of Eastern and Western Yagba get £150 and £120 respectively and their 33 Village Heads average £11.

(d) In the Koton Karifi Division there are four Chiefs as sole Native Authorities. They are traditional, and the succession rotates through kindreds in patrilineal descent, the actual choice being made by electoral bodies of titled officials which also form the Advisory Councils. There are no District Heads and the village set-up is similar to that of the Chiefdom.

The Chief of Koton Karifi, who is the only literate, is paid £300 per annum and his Councillors draw salaries not exceeding £30. The Chiefs of Kakanda, Kupa and Eggan receive £88, £64 and £48 respectively. Their Councillors receive salaries in their capacity of Village Heads, based on a percentage of the tax collected and not exceeding £33 per annum each.

#### (vii) KANO PROVINCE

(a) The Kano Division contains the important Kano Emirate, with a population of nearly 2½ million, and the small Kazaure Emirate, with a population of nearly 70,000. The latter was originally set up by a fugitive from Kano, but was never actually subject to it. The population of the Division is to a large extent homogeneous, for though in the Census the Hausa were shown as amounting to 64 per cent. and the Fulani to 27 per cent. of the whole, there are now close social affinities between the Hausa and the "settled" Fulani, and Hausa is the common language. There are some small pagan communities, but these are off-shoots of the larger tribal communities of the Bauchi Province which have overflowed into Kano.

The Emir of Kano has hereditary status in the sense that succession is determined by an electoral college, which includes some Council members, but, subject to the conditions existing at the time of the election, succession usually devolves on the eldest son or brother of the deceased Emir. The Emir has an Advisory Council the membership of which is not hereditary, but is selected by him with the approval of the Resident. As a general rule, an

attempt is made to keep a balance on the Council between members of the ruling house and those belonging to the powerful Yolawa family. The present members are the Chiroma, the Emir's eldest son, who receives a salary of £1,440, and who is in charge of staff and District administration ; the Wali (£1,008), in charge of the Legal Department ; the Sarkin Shanu (£1,000) who is responsible for the administration of Kano city ; the Galadima (£780) and the Madaki (£864), who are District Heads ; and Mallam Bello (£890) who supervises Education. The Emir's Council meets weekly, when the Resident and the District Officer attend. Though the Emir is admittedly the dominant figure on his Council, it is clear that he is much influenced by the advice given to him by its members. He himself is an Arabic scholar and a man of character, with considerable experience of service in the Native Administration. He receives £6,000 a year as salary, with an establishment allowance of £3,000.

The Kano Emirate is divided into 24 Districts under District Heads appointed by the Emir ; 13 are members of the "royal" family, seven are from other leading local families and four are from the Yolawa family, which has always been largely represented among the District Heads. One gathers the impression that the work of the District Heads compares unfavourably with that of the Councillors and staff at headquarters. The District Heads receive between £360 and £854 per annum, while the 1,256 Village Heads have salaries from £36 to £288 per annum. The latter are chosen by the Elders of the area, normally from traditional families. It may be said that in general the organization in the Districts was until recently on authoritarian and aristocratic lines, but some beginning has been made in the last two years in the formation of District Councils.

The Kazaure Council consists of four office holders, the Galadima (£228), the Yarima (£228), the Jekarade (£180) and the Magajin Gari (£180). There are four District Heads (£180-£228) and 49 Village Heads (£26-£34). The Emir, who is not literate, receives £840 plus a personal allowance of £160.

(b) The Northern Division of the Kano Province has a population of approximately 325,000, of which half consist of Hausa and the closely allied Anyakawa, and half of Beri Beri and Mangawa, who are Kanuri and affiliated by race to the people of Bornu. There are 70,000 Fulani, but they are semi-nomadic. There are two Native Authorities, the Emirs of Hadejia and Gumel ; their status is hereditary, but though succession is patrilineal it does not necessarily descend to the eldest son ; the successor is, however, invariably a blood relation of the male side.

The Emir of Hadejia is literate in Arabic ; the Emir of Gumel is literate in Hausa, English and Arabic. The former has a salary of £1,400 a year and the latter of £840. Each Emir has an advisory Council of three members who are described as being recommended by the Emir and confirmed by the Resident, but the choice appears to be confined in practice to a small circle of title holders. On important occasions the District Officer attends the meeting of the Council.

The Emir of Hadejia has seven District Heads and the Emir of Gumel four. Of these 11 Heads three are members of the ruling houses. It has been stated however that all District Heads in this Division are appointed and dismissed by the Chief Commissioner on the recommendation of the Emirs ; if so, this is an unusual provision. A number of the posts of District Head are described as hereditary, but an increasing number are educated, and some have

held posts of responsibility in various Native Authority departments. Their salary varies from £456 to £228 in Hadejia and £260 to £160 in Gumel. There are District Councils composed of Village Heads, but these are at present in an embryonic state, with no definite status or responsibilities.

(viii) KATSINA PROVINCE

Katsina Province has only one Division, of the same name, and in it are the Katsina and Daura Native Authorities, both of whom are Emirs, whose successors are chosen by electors within the patrilineal line, but whereas Katsina is Fulani, Daura is a Habe Emirate. Katsina has an Advisory Council of 9, all of whom are Fulani, namely, the Waziri, the Magajin Gari, the Native Authority Education Officer, the Chief Alkali, the Ma'aji, three District Heads, and the Durbi (the eldest son of the Emir). A weekly meeting is held, with the Resident in attendance. Most of these Councillors receive salaries from their appointments rather than in their conciliar capacity, but the Waziri is paid £960 per annum. The Emir of Katsina, who has been appointed as a member of the Executive Council of Nigeria, is literate in Arabic and Hausa and also has a knowledge of English; the Emir of Daura is literate in Arabic. The former draws £4,200 with an establishment allowance of £1,000 and the latter £1,200 per annum.

There are in Katsina 22 District Heads, all but one being Fulani, of whom 10 are hereditary, four hold titles formerly given to the Emir's emancipated slaves, and eight posts are in the Emir's gift; five of the present holders of these eight posts are members of the "royal" family. It is noteworthy that most of the hereditary holders are young and educated.

The salaries of the District Heads range between £142 and £960 per annum. They have Advisory Councils attended by Village Heads and local technical officers in the Native Authority employ with a few members, such as influential traders, elected by the people, but these Councils have as yet no definite responsibilities. There are 268 Village Heads, who share a total remuneration of £9,754.

Daura has an Advisory Council consisting mainly of members of the Emir's family. There are five District Heads with pay between £154 and £252 and 17 Village Heads who share £897.

(ix) NIGER PROVINCE

(a) The Abuja Division has the Emirs of Abuja and Lapai as sole Native Authorities. Their successors are chosen by electoral colleges from one and two families respectively. Both Emirs have Advisory Councils which they nominate and the Emirates are organized on the District and Village Head system. The Emir of Abuja is literate, while the Emir of Lapai is literate in Arabic. The Emir of Abuja draws a salary of £540 with a personal allowance of £260, his three District Heads draw from £126 to £180 and the 23 Village Heads from £18 to £26. The Emir of Lapai receives £300 and a personal allowance of £60, while his 18 Village Heads average £17.

(b) In the Bida Division the Emirs of Bida and Agaie are sole Native Authorities with Advisory Councils; the procedure of succession is similar to that followed in Abuja. The Emirs are descendants of Fulani dynasties ruling over Nupe people.<sup>1</sup> Both are literate in Arabic. The Emir of Bida's salary is £2,000, plus an establishment allowance of £200: his seven District Heads

<sup>1</sup> See page 45.

receive between £150 and £220, his 92 Village Heads average £17, and the nine Ward Heads of Bida get £20 each. The Emir of Agaie draws £300, his two District Heads are paid £60 each and his 23 Village Heads average £12.

(c) In the Kontagora Division there are three Native Authorities. The Emir of Kontagora and the Chief of Wushishi (a cadet branch of the Kontagora family) are sole Native Authorities with rules of succession as described above. Both have Advisory Councils. The third Native Authority, namely Zuru, is an administrative federation consisting of the Chief of Dabai in Council with four other Chiefs, each being a Subordinate Native Authority. Succession resides in one or more branches of a family and is apparently decided by popular choice.

The Emir and Chief of Wushishi are literate in Arabic. The Emir is paid £1,000 plus an establishment allowance of £120, while the Chief of Wushishi draws £192; their 97 Village Heads average £7. The Chiefs of the Zuru Federation draw between £108 and £144 each, and their 274 hamlet heads average £1 10s. each per annum.

(d) Both the Native Authorities in the Minna Division consist of Councils, of which the Presidents are elected for the term of six months by the Councils. In the case of Gwari the Native Authority Council consists of Chiefs, the President of the Minna Town Council and a representative spokesman from the Kadar Council of Village Chiefs. In the case of Kamuku the Council consists of Chiefs and four representatives each from the two Councils of Village Heads. The Gwari Native Authority has sixteen and the Kamuku has six Subordinate Native Authorities, which consist of traditional Chiefs and their Councils and the Minna Town Council.

The Gwari Council has two literates and the Kamuku Council one, while a few others are semi-literate. Members of the Gwari Council draw between £30 and £60 per annum, the spokesman receiving £60, while there are forty-one Village Heads with average pay of £14. The Kamuku Council members have similar salaries; the twelve Village Heads receive an average of £7.

#### (x) PLATEAU PROVINCE

In the Plateau Province there is what may best be described as a general southern tendency, some of which is attributable to the mixed stranger population, many of whom are Ibos, who have been attracted to the area by the tin mining operations. In this area, as in the Eastern Provinces, the Courts rather than the Native Authority Councils are the realities to the people, and the general system is only nominally one of Indirect Rule in the sense in which that term is used in regard to the Northern Emirates.

(a) In the Jos Division there are five Native Authorities, four of whom being Tribal or clan Councils and one a Chief and Council. The Bi Rom Native Authority is the most important, and consists of a Tribal Council of 84 members, all of whom are priest-chiefs, meeting monthly under the presidency of the Chief of the tribe. It has 15 Subordinate Native Authorities, made up of Village Area Councils composed of the head priest-chief of the area, who is by tradition a descendant of the founder, together with the priest-chiefs of the other villages in the area; they meet weekly as Courts, and they look on themselves as Courts rather than as Councils.

The Chief of the Bi Rom tribe was a headmaster, and four of the Councilors are literate, but there are no literate members amongst the other Native



Authorities. The Chief is paid £420 per annum, the Village Area Council Presidents receive between £45 and £60, while 69 Councillors receive between £9 and £30. Ward-heads and sub-heads draw a rebate on the tax collection, while the Hausa Headmen of the two urban areas average £119 and the ward-heads in Jos average £37. Members of the other Native Authorities draw lesser salaries ranging from £6 to £45.

(b) In the Pankshin Division there are a number of small tribes, but although many of them come from the same root stock there are no less than twenty-two Native Authorities, of which eight are Chiefs in Federation and the rest are Chiefs as sole Native Authorities. The Chief of Kanam rules over a small Emirate, being the descendant of a Habe ruling family which came from Kano in the eighteenth century. He is paid £300 per annum and has 38 sub-chiefs who draw an average of £7 each.

The other Native Authorities are little more than Village Heads, succession being patrilineal and confined to leading families; they work in close co-operation with their Elders. Their pay ranges between £12 and £120 according to the amount of responsibility they are called upon to assume. Five of the sole Native Authorities are literate, as are three members of the composite Native Authorities.

(c) In the Jema'a Division the small Jema'a Emirate, which is an offshoot from Zaria about 120 years old, continues in control of the pagan tribes which then became subject to it. The Emir is the sole Native Authority, and succession is patrilineal, the actual choice resting with his Council. He has an Advisory Council of five resident Councillors, four District Heads and the President of the Advisory Council of the town of Kafanchan.

The Kafanchan Advisory Council is made up of strangers residing in the town, but the actual administration of the urban areas is in the hands of Ward-heads. Of the District Heads two are hereditary tribal heads chosen by the tribes concerned and appointed by the Emir. The Emir, who is not literate, is paid £300 plus a personal allowance of £60, the five resident Councillors share £63, while the District Heads draw salaries from £66 to £140.

(d) The Southern Division has a predominantly pagan population; indeed the Eggon, who were not brought under effective control until 1917, are primitive and lawless and have an organization in which the highest unit is the family group. They have three Clan Councils, to which each village sends a representative, but these have little authority and this is one of the two places in Nigeria where the District Officer is gazetted as the Native Authority.

Wamba and Nunku have Chiefs as sole Native Authorities, who have been described as benign autocrats. They are actually patrilineal hereditary village Heads selected by the Elders from the appropriate houses in rotation, but dependant on the Governemnt for their authority. Neither of them is literate. The Chief of Nunku is paid £180 and the Chief of Wamba £264, while the three sub-tribe Presidents amongst the Eggon are paid £36, £42 and £48 respectively, their 128 members of the Council—who are the actual village executives—drawing on an average the small sum of £2 10s. per annum each.

(e) The Shendam Division is noted for its excitable and ill-disciplined people. It contains seven Native Authorities of which three are Chiefs, three are Chiefs and Councils, and one is a Federated Council. Prior to the advent of British rule spiritual and temporal power was in the hands of priest-kings, but many of these remained in the background and put forward temporal substitutes; the Chief of Langtang is an example of this. The Chief of Shendam, however,

holds a traditional office, while the Chief of Wase is a Fulani whose family came from Bauchi, and is in effect a minor Emir ; his successor is nominated by the Galadima of Bauchi from the Bauchi ruling family. He himself was formerly a veterinary subordinate and is literate. These three sole Native Authorities have Advisory Councils. The Kofyer Federated Council is based on the Native Courts, the membership of which is supplied by traditional families.

The Chiefs of Shendam, Lantang and Wase draw £396, £132 and £210 respectively, while their Councillors' pay averages between £10 and £30 ; there are 49 sub-chiefs with average salaries of between £10 and £18. The Chiefs of Zinni, Gerkawa and Montol draw £108, £54 and £42 respectively, which has to be shared between themselves and their Councillors, while the members of the Kofyer Federation divide £153 amongst themselves. In most areas there is a five per cent rebate on the tax collection which goes to the hamlet heads.

#### (xi) SOKOTO PROVINCE<sup>1</sup>

(a) In the Sokoto Division the Sultan is sole Native Authority. His successor is chosen from amongst two patrilineal families both descended from Othman dan Fodio the founder of the Sokoto Empire, by nine traditional electors. He has an Advisory Council of six. The Waziri, who is appointed from a family to which the post is traditionally attached, is the chief executive officer and is in charge of the Districts. The Chief Alkali is a merit appointment. The Magajin Rafi comes from a traditional family and is in charge of Sokoto City affairs. The Madawaki, a merit appointment, supervises the Treasury, together with forestry and agricultural affairs. The Sardauna is a member of the royal family and supervises the police, prisons, works, education, health, water supply services. Sarkin Rafi, a merit appointment, is in charge of communications and labour.

There are 47 District Heads appointed by the Sultan after consultation with local opinion. Eighteen are members of the "royal" family, 16 are members of other Fulani families, nine are members of indigenous Habe families and four are administrative appointments. Most of these posts are the perquisites of certain families, but the appointments go to the most meritorious member of the family concerned. They have Advisory Councils which have a more formal composition than in many other Emirates ; they consist of Village Area Heads and Elders, with the addition of local Native Authority officials, such as teachers and dispensers, as co-opted members. Below them are 547 Village Heads with informal Councils of hamlet heads and Elders. The District Councils have recently been given a more definite status and some responsibility for local expenditure.

There is, in addition, a Provincial Development Committee which includes Native Authority, Government, Mission and Commercial representatives, and as in other Provinces another Provincial Committee which selects the member for the House of Assembly. The members of the Provincial Committee are mainly drawn from three subordinate committees which cover the Eastern, Western and Central areas of the Province respectively.

The Sultan is literate in Hausa, and makes regular tours of inspection

<sup>1</sup> There is a useful account of the Province in the Sokoto Survey, 1948, by B. E. Sharwood Smith.

throughout the Emirate. He is said to be very accessible and anxious to see the development of the District and Village Council system with emphasis on a wider form of representation. His salary is £6,000 per annum with £1,500 establishment charge. The members of his Advisory Council receive the following salaries: Waziri £1,200, Chief Alkali £650, Magajin Rafi £590, Madawaki £432, Sardauna £504, Sarkin Rafi £240. The District Heads average £302 each and the Village Heads £20.

(b) In the Argungu Division the Emir, whose successor is chosen patrilineally by traditional electors, rules over a pre-Fulani Hausa state which is the remnant of the old Kebbi kingdom. His Advisory Council of five consists of the Kunduda (Waziri); the Muza, who is District Head of the Home District and Supervisor of Departmental activities; the Chief Alkali; the Chief Scribe, and the Native Treasurer. Of these the Kunduda is a traditional appointment and the Muza must be a member of the "royal" family, since he is heir presumptive. There are six District Heads, four of whom belong to the Kebbi and two to the Arewa tribes; two of them are members of the royal family and all are chosen from particular families. They have District Councils, and the 70 Village Heads also have Councils, but they are said to be more informal and less effective than those in the Sokoto Division.

The Emir is literate in Hausa and is paid £1,000 per annum plus an establishment allowance of £120. The members of his Advisory Council are paid as follows: Kunduda £252, Muza £168 plus £72 personal allowance, Chief Scribe £128 plus £32 personal allowance, Chief Alkali £150, Native Treasurer on the incremental scale £84 to £170. The District Heads average £181 and the 52 Village Heads average £17 each.

(c) There are two Native Authorities in the Gwandu Division, the Emirs of Gwandu and Yauri. The former descends from the brother of Othman dan Fodio, the latter is a descendant of the original ruling family of the old Hausa State. Both have Advisory Councils, that of Gwandu being composed of the Galadima, who is in charge of Finance and Works, with a salary of £360; the Magajin Rafi, who supervises Agriculture, Veterinary matters, Forestry, the Police and Prisons and is paid £264, and the Chief Alkali, who is paid £250.

The Yauri Council consists of the Ubandoma, who is in charge of Yelwa town affairs and receives £156; the Shantali, who is in charge of District Affairs and is paid £90, and the Chief Alkali, whose salary is within the scale £72 to £108. Both Emirs are literate in Hausa and have some English; Gwandu is paid £2,600 plus £400 establishment allowance, and Yauri £540 plus £160 personal allowance.

Gwandu has 16 District Heads, five of whom are members of the royal family, five belong to other Fulani families, five are from local leading families, and one is an administrative appointment; their average salary is £209 and they have Councils whose functions are being formalised and whose responsibilities are being increased. Under them are 219 Village Heads, whose pay averages £10, and who also have informal advisory Councils.

In the Yauri Emirate there are five District Heads, with an average salary of £117, three of whom are members of the ruling family, and 50 Village Heads whose pay averages £6 per annum. There are informal Advisory District and Village Councils, but the Emir of Yauri, who takes a prominent part in local administration, discharges personally much of the work normally done by District Heads.

## (xii) ZARIA PROVINCE

Zaria Province has one eponymous Division, in which the Zaria Emirate is of major importance. There are five Native Authorities in the Division, namely the Emir of Zaria and the Chiefs of Birnin Gwari, Kagoro, Moroa and Jaba. The two first are selected patrilineally from four and one families respectively. The last three are not hereditary, the Chief of Kagoro for instance having been selected on personal grounds irrespective of family considerations. These chiefdoms were formerly part of the Jema'a Emirate (Plateau) and were only transferred to the Zaria Province in 1938, but while their territories are close to Kafanchan they are 150 miles or more from Zaria, and it is doubtful whether the transfer has proved to be successful from an administrative point of view.

Each of the Native Authorities has an Advisory Council. The Zaria Council consists of the Chief Alkali, the Native Treasurer, the Head of the Home District, the Chief Scribe, the Emir's Confidential Scribe and the Second Legal Member. The Emir is the dominant character in his Council, which meets every day and has a weekly meeting with the Resident attending. There are 17 District Heads with salaries between £150 and £384, some also drawing personal allowances.

The District system is said to be efficiently conducted in this Emirate, and the salary range allows for promotions on merit, although nine present holders are members of the royal family, six others are confined to hereditary families and only three are purely merit appointments. There are District Councils of Village Heads and Elders with local Native Authority staff attending, but no outsiders are included, although some capable personnel is said to be available for this purpose. There are in addition seven District Heads Assistants, three of whom are paid £72 and four £48 per annum. The 378 Village and Ward Heads average £11 each; they, too, have their own informal Councils.

The Councils of the remaining four Chiefs, whose areas are of minor importance, are composed of three senior Village Heads or Elders. The Emir of Zaria and the Chiefs of Birnin Gwari and Kagoro are literate. The salaries paid to the Native Authorities are as follows: Emir of Zaria £2,600 plus £500 establishment allowance; Chief of Birnin Gwari £180; Chief of Jaba £120 plus £36 personal allowance; the Chiefs of Moroa and Kagoro £108 each.

#### MODIFICATIONS MADE IN THE NATIVE AUTHORITY SYSTEM SINCE ITS FIRST INTRODUCTION

The details given in the preceding paragraphs reflect a number of developments which have materially modified the practice, though not necessarily the principles of the system of native administration as laid down in the Instructions of 1906 and the Memoranda of 1918. One such development calls for special notice, since it affects the whole range of the units to which the system has been applied. The earlier Instructions indicated that the function of the Resident was to be mainly that of adviser to the Native Authorities of the day. In Colonial conditions the degree to which advice can acquire the force of direction varies according to the status and the personality of the recipient, and it is clear that the position occupied to-day by the Resident or District Officers differs materially in respect of the large Emirates and the less important or less highly organized Native Authorities.

It is significant that in the more important Emirates the Resident now attends regularly the meetings of the Advisory Councils of the Emirs or Chiefs. Appointment to these Councils is made after consultation with him and requires his approval. Matters of importance are as a rule discussed privately with the Emir or Chief, and it is no doubt only on exceptional occasions that the Resident is called upon to exercise the powers conferred on him by Section 24 of the Native Authority Ordinance to control action proposed to be taken by the Native Authority and his Council. But the extension of the Treasury system, accompanied by the provision that estimates of expenditure must have official sanction, has placed the representative of the Government in a position which, whatever the terms applied to it, differs in effect from that of an adviser. Every expansion in the range of the local services provided by the Native Authorities, involving as a rule problems of a technical character and requiring the maintenance of close contact with officers of the professional departments, has tended to add weight to the position of the Resident vis a vis that of the Native Authority. Whatever the propriety of the application of the designation of "Political Officers" to the Resident and his staff at an earlier period, they have lost in present circumstances some of the character which that term was designed to indicate.

It goes without saying, that these observations apply with even greater force to the relations between the District Officers and the smaller Native Authority organizations. In respect of the units in which the Native Authority is a Council of Headmen or a Village Area Council, such as some of those comprised in the Plateau Province, the position requires the District Officer to exercise a large measure of direct control. The experience of Northern Nigeria, like that of many other parts of Africa, shows that the unco-ordinated or "decentralized" African community can very seldom provide Authorities which can be successfully utilized as agencies of local rule. That does not mean to say that the recognition given to a Clan or Group or Village Council is without value, for it may supply a useful source of contact between the Administration and the community concerned. But it has seldom provided a machinery which is of use for anything more than the most rudimentary purposes of local government, and has sometimes failed to provide as much as that.

The developments which have occurred during this period have also resulted in noteworthy changes in the internal organization of the Native Authorities. The Emirs' or Chiefs' Councils which were an ordinary feature of the organization of the Hausa or Fulani chiefdoms have now in very many cases taken a form in which they can best be described as Councils of Ministers holding definite portfolios. A considerable number of these Councillors continue to owe their position to the fact that they are members of the "royal" house or of families of special standing; but there are (as the details given will show) a growing number of "merit" appointments, and a growing tendency to appoint educated men to them. Though the outlook of these Councillors is in general aristocratic and conservative, it is the conservatism of those interested in the maintenance of the Islamic conception of rule, which, as modern history has shown, is not opposed to economic or social change unless it seems to be in direct conflict with the basis on which that rule is founded. It is at all events a type of conservatism which differs materially from that which is characteristic of primitives or fetishists. Though again the Councillors may not as a body represent a high standard of modern education,

there are many who command respect by their experience of affairs and their inherited sense of leadership.

As has also been shown, there has also been a considerable change in the position of the District Heads. It is true that an unduly high proportion of them still owe their selection to their connection with a ruling house or privileged families, and there has been in some quarters a definite opposition to their selection purely on the ground of educational or similar qualifications. But it can at all events be said that the District Heads are now required to reside in their Districts, and to conduct themselves not as fief-holders but as officials.

The details given in the preceding survey of the different Provinces reveal a further development which has now become of increasing significance. The system of local rule practised in the larger units was in the past essentially authoritarian. It was in this respect clearly distinguishable from that which was characteristic of the State organizations in the Gold Coast, where the authorities exercising local control, whether Paramount or Subordinate Chiefs, owed their appointment to a process of popular selection, and could be removed by the community if they failed to command popular support.<sup>1</sup> It is perhaps a commonplace that in the regions of Africa south of the Sahara the existence of an authoritarian form of rule can usually be traced to the measures taken by an invading people to maintain its position among tribes of a different origin whom it had brought under its control. In Northern Nigeria the existence of an authoritarian type of rule was due originally to a similar cause, but it acquired at an early date a more definite and systematic form under the influence of the Islamic tradition of government, and it is no doubt the strength of this tradition which has accounted for the fact that this type of rule maintained its vitality, in spite of the widespread fusion of the invading tribes with peoples whose own tendencies were opposed to centralized political institutions or authoritarian forms of rule.

There is no doubt that the symmetry and discipline of the Emirate regime has made a strong appeal to the majority of officers serving in Northern Nigeria, especially when they have compared it with the conditions prevailing in some other parts of Nigeria, and more particularly in the Eastern Provinces. It certainly provided a machinery of local rule which was both easier to handle and more effective in its working. The appeal made by the system assisted to strengthen the sentiment, at one time prevalent among officers serving in the Northern Provinces, which favoured the maintenance of these Provinces as a separate entity for both legislative and administrative purposes. There were indeed many who looked forward to a future in which the Northern Provinces, as a separate constitutional unit, might achieve a self governing status by the process of handing over all legislative and executive powers to fully organized Native Administrations, developed from the basis established by the Native Authority system.<sup>2</sup> Whatever the merits of this conception, it has now, in view of the recent constitutional developments, only an historical interest, but it served at one time to strengthen the feeling against the invasion of the Native Authority organizations by what were generally decried as "southern" influences.

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<sup>1</sup> See page 192, Chapter VIII.

<sup>2</sup> See page 4 and the references quoted at page 94 of Administrative and Financial Procedure under the New Constitution, Sir S. Phillipson, 1947.

These influences were mainly represented by the trading communities, of which those which had settled in the Sabon Garis of Kano, Katsina and Zaria<sup>1</sup> were most typical, and by the subordinates of southern origin employed in the Government or Native Authority services. The Ibo, Yoruba or Ibibio immigrants were accustomed to form unions of a semi-political character which, were in general critical of the authoritarian aspect of Emirate rule. There were movements of a similar character among some of the Hausa traders in the urban centres. It is noteworthy however that there does not appear to have been any expression of general dissatisfaction with the position occupied by the Emirs themselves. Among the Hausa at all events the personality of the Emir commanded almost a religious reverence, and respect for him was enhanced by the Islamic tradition of obedience to the Ruler as head of the State and the source of all legal authority.

If there has been dissatisfaction, it has been directed most noticeably against the position occupied by the District Heads. In many cases, the supervision exercised over them by the Emir or his Councillors was inadequate or intermittent, and the system did not provide any regular means by which the people in a District could ventilate their grievances or express their opinions on any issue which affected them. The situation was to some extent mitigated by the fact that the District Head did not exercise judicial functions; but even so, the system appeared to embody most of the defects of bureaucratic rule without the advantages which a more enlightened system of bureaucracy can provide. In seeking a remedy for this situation, some Administrative Officers have felt that the solution lies in the creation of representative District Councils, while others have laid greater stress on a systematic provision of Village or Group Councils. At the Residents' Conference in 1945 the Conference expressed the opinion that the growth of vigorous District and Village Councils, from which large Central Councils might in time emerge, should be fostered by all means available. In a certain number of Emirates such Councils were established, though as has been shown above, the practice was not uniform, and there was a considerable variation in the manner in which they were composed and the importance attached to their proceedings. Where their existence was more fully recognized, minutes of their meetings were forwarded each month to the Emir, and in some cases he replied personally to the various points raised. Where the existence of Village Councils was recognized, the resolutions were forwarded to the District Councils, which were attended by Village representatives.

At this stage, such Councils as operated were regarded mainly as a means of calling attention to the needs felt in respect of amenities such as wells, markets or communications, and it was felt that further progress was impeded by the fact that they had no financial powers or responsibility. In 1947 the Regional Authority issued a circular stressing the importance of the Councils and suggesting that funds should be supplied to them on a small scale for village improvements, and a further Circular suggested that there should be a comprehensive delegation of financial responsibilities to District Heads and their Councils.<sup>2</sup> Further consideration, however, resulted in the modification of this recommendation in favour of the suggestion that a small sum should be set aside from the General Tax of each District to be devoted specifically to

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<sup>1</sup> See page 87.

<sup>2</sup> Circulars No. 264 and 292 of 1947.

expenditure in that District. If any financial responsibility was delegated, it should be confined for the present to a District Council.<sup>1</sup>

So far, therefore, the treatment of this question has been marked by a somewhat tentative approach, and the establishment of District and Village Councils on a regular basis still awaits a definite determination of Government policy. In some Emirates there is as yet no recognized system of Councils and in others they have an informal character with no prescribed composition or responsibilities.

### THE NATIVE AUTHORITY SYSTEM IN OPERATION

Reference has been made in the opening Section of this Chapter to the discussions which have taken place regarding the principles which should regulate the allocation of functions to Native Authorities,<sup>2</sup> and the following observations will therefore relate to the practice actually followed rather than to the principles which are held to underlie it. As seen in operation, their activities are of three kinds; they operate first as instruments for the maintenance of law and order, the collection of tax, and certain similar purposes. They act in the second place as local government bodies providing certain services from funds partly derived from a share of the General Tax, and partly from local sources. In these two respects their activities are broadly in line with those of Native Authorities in many other parts of Africa; but in Northern Nigeria the more highly organized Authorities have an additional function as agents of the Government in executing works charged to Government funds and normally carried out by its technical Departments. In this respect their position, if not unique, has few parallels elsewhere in Africa.

It has been argued in some quarters that it is incorrect to speak of the Emirs or Chiefs as instruments of the Government in the maintenance of law and order, since they are in this respect only utilizing their "innate" authority as part of the obligations flowing from their Letters of Appointment. But the distinction, if it really exists, is of no practical importance. Though their "innate" authority may assist them to secure obedience to their orders, the legal sanction for their action lies in the provisions of the Native Authority Ordinance, and by virtue of the terms of that Ordinance they are, as Native Authorities, subject to the direction of the Officers representing the Government.

There is no doubt of the value of the contribution made by the more important Native Authorities in the maintenance of order and the collection of tax. The policing of the Region is in the main the responsibility of the Native Authorities. In many areas there are no Government police, apart from a British Police Officer who supervises or trains the Native Authority Police, for which the Hausa term is *Yan Doka*. The Government Force, the Nigerian Police, operates only in the Townships of Ilorin, Maiduguri, Zaria, Kano, Jos, Makurdi and Yola; everywhere else the Native Authority Police are the sole agents for the maintenance of order, though the Nigerian Police can be called upon for assistance at the request of the Resident. In Jos the two Forces are closely integrated and the Native Authorities receive grants from Government and from the Mines towards the cost of their Force, which polices the mining and urban areas.

Again, a considerable number of the Native Authorities provide and

<sup>1</sup> Circulars 246 of 1948 and 71 of 1949.

<sup>2</sup> Page 11.



maintain Prisons of their own. There are in Nigeria 47 Government and 67 Native Authority Prisons, the most important of which are in the Northern Provinces. The Central Prison at Kano, for example, has over 1,000 prisoners and is conducted entirely by the Native Authority staff, under the general supervision of one of the local Administrative Officers. The important part taken by the Native Authorities in the assessment and collection of the General Tax will be separately described.<sup>1</sup>

It is natural to find that the contribution made in these aspects of administrative work varies widely; the small units in the Plateau Province, for example, have proved to be of little direct assistance. In modern conditions, however, it is the discharge by the Native Authorities of their functions in the provision of local government services that has attracted most attention, and the position occupied in this respect by some of the wealthier Emirates has exercised a marked influence on the views which have been advanced regarding the potentialities of the Native Authority system as practised in the British African Colonies. There is, for instance, hardly any work in the extensive literature dealing with this subject in which the position occupied by the Kano Emirate is not given a prominent place.<sup>2</sup> But the Kano Emirate, with its large population and exceptionally high revenue, has an unusual position, and the matter can best be viewed in due proportion by reference to the revenues available to the whole body of Native Treasuries.

The 119 Native Authorities now have 60 Treasuries, a number of the smaller units being joined together for this purpose. The establishment of Treasuries<sup>3</sup> had, it may be noted here, an early place in the inauguration of the Native Authority system in the Northern Provinces. An account has been given in Section I of the introduction of the system of taxation, and it has been mentioned there that at the outset the administration took for its own purposes a quarter, and subsequently a half of the collection of the tax.<sup>4</sup> It did not, however, at first seek to regulate the manner in which the remainder was spent, and the foundations of the Treasury system were laid when in 1906 limits began to be placed on the sums which might be retained by Emirs or Chiefs for their personal use, leaving the surplus for expenditure on the administrative or other services of the Native Authorities. It is not easy to follow the precise stages by which the Treasury system was built up, since this was effected by administrative order and not through the enactment of Ordinances. It was however reported in 1911 that there were already a considerable number of Treasuries in existence, with a combined revenue of £197,296. Though Native Treasuries are referred to incidentally in the Native Authority Ordinance and the Direct Taxation Ordinance, no legal provision was made until 1948 for their establishment or for the regulation of their working.<sup>5</sup>

The conduct of the Treasury now occupies an important place in the activities of the larger Native Authorities. Finance Committees as such are very rarely found. There is a Committee in Katsina consisting of the District Officer, the Emir, the Waziri, and the Head of the Home District, which jointly prepares the draft estimates, while in Adamawa there is a Committee of Native Authority Departmental Heads and Government Departmental Officers. In most of the larger Native Authorities however the actual prepar-

<sup>1</sup> Page 78.

<sup>2</sup> For Kano see further on page 96.

<sup>3</sup> The Treasuries are known locally as Beit ul Mal.

<sup>4</sup> Pages 7 and 73.

<sup>5</sup> The Native Authority (Amendment) Ordinance No. 4 of 1948.

ation of estimates is carried out by the Native Authority staff, and there are some instances in which the Native Authority personally prepares them, as for instance the Mai Bedde in the Bedde Division of the Bornu Province. In Sokoto and Kano the Native Authority Departmental Heads advise the Emir and are responsible for the appropriate parts of the draft, though the advice of the technical officers of Government is of course also required by them. In some of the smaller Emirates and in the relatively unorganized areas in the Benue and Plateau Provinces the responsibility for the preparation of estimates still rests on the District Officer, with any assistance he can derive from consultation with the Native Authorities concerned.

The income and expenditure of the Treasuries is given in the following statement, based on the figures of 1946-47 :

Province	Native Treasuries	Revenue £	Expenditure £
Adamawa	Adamawa	110,570	99,815
	Muri	23,881	13,471
	2 others	15,649	8,300
Bauchi	Bauchi	94,390	77,955
	Gombe	50,220	32,356
	Katagum	56,345	31,738
	4 others	39,975	27,074
Benue	Idoma	33,962	35,820
	Tiv	52,229	48,053
	4 others	43,023	36,990
Bornu	Bornu	190,107	152,180
	Dikwa	28,605	20,930
	Biu	20,865	16,810
	2 others	25,007	16,553
Ilorin	Ilorin	67,648	60,035
	4 others	18,078	15,282
Kabba	Igala	41,561	30,276
	Igbirra	33,487	27,929
	6 others	25,304	23,042
Kano	Kano	557,718	425,860
	Hadejia	32,629	21,391
	2 others	33,857	23,788
Katsina	Katsina	194,413	144,259
	Daura	21,320	15,441
Niger	Bida	51,625	47,186
	Gwari	24,432	21,520
	6 others	56,051	49,090
Plateau	Jos	61,517	55,014
	Pankshin	29,630	18,456
	4 others	41,709	25,488
Sokoto	Sokoto	220,342	180,669
	Gwandu	56,076	35,046
	Argungu	20,475	14,806
	Yauri	11,709	8,253
Zaria	Zaria	205,078	181,648
	Total	2,589,307	2,042,524

It has been estimated that at the end of the financial year 1948-1949 the 60 Native Treasuries will have reserve funds of £3,020,054.

The total income of the Treasuries is therefore very considerable, though the figures show a wide range in the resources available to different authorities. Six of the Treasuries had in 1946-47 an income of over £100,000, eight of £50,000 to £100,000, 11 of £20,000 to £50,000, 14 of £10,000 to £20,000, 10 of £5,000 to £10,000 and 11 an income of less than £5,000.

Turning now to the sources from which Native Authority revenues are derived, the chief source has from the first been the share left with the Native Authorities of the direct tax collected by them. It is unnecessary to repeat here the details given in Section I of the past changes in the practice regulating the allocation of the sums derived from the tax as between the Government and the Native Authorities.<sup>1</sup> The problem of allocation has now been placed on a legal footing by the adoption of the principle by which the whole of the General Tax is credited to the Native Treasury, which pays a Capitation Share to the Regional Revenues. The Capitation Shares now payable to Regional Revenues in the Northern Provinces vary from 2s. per tax in Kano and Katsina Provinces, down to 6d. in a number of the Divisions in the Niger, Zaria and Plateau Provinces. The net result of this change of system is best seen from the fact that whereas in the Estimates of 1947-48 the Government share of the General Tax was £206,000 plus £107,520 from the Jangali Tax (the tax levied on cattle), the estimates for 1948-49 show the Government share of the General Tax at £245,000, but the whole of the Jangali tax as credited to the Native Treasuries.

Expressed in terms of percentages, out of the total revenue of £2,589,307 in 1946-47 the share of Direct taxation credited to the Native Authorities accounted for 68 per cent of their total receipts, and the Jangali tax for 13·6 per cent. Of the remaining revenue 3·9 per cent came from fees etc., in the Courts, 2·3 per cent from interest on investments, 3·1 per cent from Grants, and 7·5 per cent from miscellaneous items.

Out of the total expenditure of £2,042,524, the largest items were Administrative charges (29·9 per cent) and Works Recurrent (22·7 per cent). Administrative expenditure was a fairly steady commitment throughout, the highest proportion being 31·4 per cent at Gwandu, and the lowest 8 per cent at Jos. Taking some of the larger Emirates, it was 27·7 per cent at Sokoto, 22·5 per cent at Katsina and 18·6 per cent at Zaria. Though the scale of remuneration of the Emirs or Chiefs and their Councillors and District Heads is noticeably higher than that obtaining in most other territories, the percentage borne by Administrative to other expenditure is not above the general average. The item of Works Recurrent accounted for only a slightly smaller percentage (22·7 per cent), varying between 10·5 per cent at Keffi to 31 per cent at Ikoma. Expenditure on Police was relatively heavy, with an average of 10·2 per cent, rising as high as 35·3 per cent in Jos, but sinking to 7·9 per cent in Gwandu and Katsina.

### THE PROVISION OF LOCAL SERVICES

As regards the social services, less was spent on Education than on Police, the average being 9·5 per cent, but some Native Authorities devoted a considerable proportion of their expenditure to it; thus at 26·2 per cent it was the highest single item at Bida. Medical and Health accounted for 9·6 per

<sup>1</sup> Page 10.

cent of the expenditure, and was between 5.1 per cent at Adamawa and 16.1 per cent at Katsina. Agriculture rarely attracted a high expenditure, only Daura, Agaie and Kamaku spending a fraction over 8 per cent, and the same may be said of the Veterinary and Forestry services, an exception being Gombe, where 11.8 per cent was spent on Forestry.

Some reference has been made in Section I to the general position in the Northern Provinces in respect of facilities for Education and Medical services.<sup>1</sup> As was shown there, the Native Authorities provide 397 out of a total of 1,121 Primary schools, and provide in addition 11 Middle Schools. They are responsible for the engagement and dismissal of staff, but the schools are inspected by the Government Education Department and in practice its advice is binding on them. They employ travelling teachers who send their reports both to the Native Authorities and to the Department. Local progress depends however largely on the interest shown by the Native Authority; thus in the Sokoto Province only one half per cent of the children of school going age were receiving instruction in 1946-47, while in Katsina no less than 40 per cent of the potential pupils attended school.

As regards the Medical and Health services, the Native Authorities have built and maintained eight of the 24 hospitals referred to in Section I, namely those at Kano, Katsina, Maiduguri, Ilorin, Offa, Hadeija, Wakari and Bauchi, which have a total of 873 beds, out of the total of 1,966 beds in the Northern Provinces. The senior staff is provided by the Government, but the Native Authorities have, with the exception of Pankshin, shown reluctance to transfer the hospitals to the Government Medical Department. In 1948 they maintained 214 dispensaries or health and welfare centres, and in some cases, as at Adamawa, have made contributions to Missions maintaining leper settlements and dispensaries. It was stated in 1947 that 675,914 cases had been treated in the Native Authority dispensaries, but that less progress had been made in maternity and child welfare work.<sup>2</sup> The Zaria Native Authority is progressively taking over the running of the Anchau Rural Development and Settlement scheme. Other Native Authorities are employing sanitary inspectors and vaccinators, and have organized communal anti-tsetse clearings.

In addition most of the Authorities provide Agricultural, Forestry and Veterinary services of some kind, although here technical direction and supervision is given by Government departmental officers. The Katsina Native Authority, for example, maintains veterinary clinics, control posts and inspection stations, controls the cotton marketing arrangements and provides training in agricultural methods to elementary school boys. The Kano Native Authority provides all the veterinary services, subject to technical supervision, and makes advances to intending "mixed farmers"; it is responsible (again subject to technical advice) for the maintenance of trees in the farming areas<sup>3</sup> and the running of a few plantations. Similarly in the Benue Division the Authorities provide experimental plots for the improvement of the quality of rice and benniseed, and a survey of communal forestry areas is in progress; in the Lafia Division there is a demonstration farm, a rice farm and a Forest Reserve is being developed; in the Idoma Division the Authorities have a saw-mill run under the direction of a Development Officer.

It is of interest to compare the proportion expended by the Government

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<sup>1</sup> Page 41.

<sup>2</sup> Sessional Paper No. 23, 1947, page 7.

<sup>3</sup> For these areas see page 77.

and Native Authorities respectively on some of the local government services. The statement below is based on the accounts of 1944-45, and corresponding figures for the Western and Eastern Provinces are included for purpose of comparison.<sup>1</sup>

	Government	Native Authorities Northern Provinces	Native Authorities Western Provinces	Native Authorities Eastern Provinces
Agriculture .. ..	89·78	7·82	1·67	0·73
Education .. ..	80·60	13·59	2·94	2·87
Forestry .. ..	70·04	15·20	13·42	1·34
Medical and Health .. ..	78·50	11·58	6·04	3·88
Surveys .. ..	77·46	18·27	2·36	1·91
Works Recurrent .. ..	50·88	26·14	14·07	8·91
Works Extraordinary .. ..	75·77	16·03	4·08	3·39
Preceding Heads Combined	71·05	16·53	7·69	4·73

These figures show that in the Northern Provinces the relative contribution of the Native Authorities to these seven services is noticeably higher than in either the Western or Eastern Provinces. But a fuller analysis would be required in order to establish the exact proportion borne by Native Authority expenditure to that incurred from General Revenues, since the percentage credited to the Government comprises expenditure of all kinds, including that incurred on headquarters establishments. But even after making allowance for this factor, the figures go to show that the contribution made by the Native Authorities is only complementary to the larger contribution made from General Revenues.

#### WORKS CARRIED OUT ON AN AGENCY BASIS

Reference has been made to an additional category of functions discharged by the Native Authorities in the Northern Provinces, and one which, if not unique, has no close parallel in other territories, namely, the carrying out of works on behalf of Government on an agency basis. The system has implications of a somewhat wider range than might appear at first sight. It originated from the fact that the larger Emirates had in their employment a number of technical officers, sometimes seconded from the Government service but occasionally engaged by the Native Authorities themselves, whom it was found convenient to employ on the execution of Government works in addition to the works financed from Native Authority funds. In the past this led to a dualism which caused many difficulties, both in respect of finance, and in the position of the officers themselves.<sup>2</sup> The matter has formed the subject of much discussion and of some changes of policy, but the present position is that while the Public Works Department of Government provides the technical and supervisory staff both in respect of Native Authority and Government works, it is relieved of direct responsibility in respect of stores, accounts or recruitment of labour.<sup>3</sup> The cost of the supervisory staff has thus since 1938

<sup>1</sup> The figures are taken from Table iv of Sir S. Phillipson's Report on Administrative and Financial Procedure under the New Constitution in Nigeria, 1947.

<sup>2</sup> This point is discussed at page 123 of Native Administration in Nigeria, M. Perham, 1937.

<sup>3</sup> See page 118 and 130 of Administrative and Financial Procedure under the New Constitution, Sir S. Phillipson, 1947.

been a Government charge, but in the case of revenue producing works, the Native Authority reimburses the Government for the cost of the technical staff; thus at Kano the Native Authority paid in 1948-49 the sum of £7,045 for the services of the engineers and other technical staff concerned with its water and electricity supplies. The Government reimburses the Native Authority for the cost of material and labour used.

This system is confined to some of the more developed Emirates, but in their case the amount of work carried out for Government is considerable, including the construction and maintenance of major roads and bridges, official residences, hospitals and schools, the sinking of wells, or the buildings required by the technical Departments. The item of Recoverable Expenditure is shown in the Estimates for 1946-47 as £62,036 in the case of Kano, £60,283 in Zaria, £33,397 in Bornu, £26,805 in Sokoto and £15,816 in Katsina. The justification for this "conjoint" system lies in the fact that there are practically no approved contractors available for carrying out Government works, and that its use avoids the employment of a double supervisory establishment. But it has certain inherent difficulties. The Native Authority can control the financial provision to be made for its own Works, but it remains dependent on Government technical officers for their planning and for estimating their cost. It provides the labour and subordinate technical staff and in theory controls it, but on this latter point there is necessarily an opportunity for friction, particularly in regard to the recruitment or dismissal of the subordinate technical staff. Where labour and materials are scarce, there is inevitably some tendency to give the priority to Government work. It is admittedly difficult to see a solution which has the same advantage of economy; but it is natural that some of the more progressive Native Authorities should complain that the system invades their own field of responsibility.

### THE SYSTEM OF TAXATION

Though the system of taxation in the Northern Provinces does not differ in principle from that followed in the other Regions of the Protectorate, it has certain features which require separate treatment here.<sup>1</sup> As has already been explained, the Fulani Rulers found in Hausaland a well-established system of direct taxation, which they did little to disturb. This included the *zakat*, regarded in theory as alms paid by the Faithful, and fixed in proportions relative to the nature of the property possessed; the *jangali*, or tax on live stock; a land tax (*kharaj*, or in Hausa *kurdin kasa*), and a capitation tax *jizyah* (in Hausa *gandu*) generally levied only on conquered tribes. In Bornu there was also a death duty (*gado*) and a well graduated income tax (*haku bineram*). The *zakat* (which when levied on crops was termed 'ushur') was normally assessed at a maximum of one tenth of the available income; it may be said indeed to have closely resembled a tithe.

Already before the British occupation therefore the people were well accustomed to the principle of direct taxation. But in the later period of Fulani rule a great variety of new imposts had been imposed, often of an arbitrary and oppressive nature,<sup>2</sup> and the initial effort of the new Administration was directed to securing some relief from the multiplicity of taxes and

<sup>1</sup> See page 13.

<sup>2</sup> See Political Memoranda, 1918, page 173; page 236 Lord Lugard's Dual Mandate in Tropical Africa; and page 48 of the History of Nigeria, Sir A. Burns, ed. 1948.

regularity in the procedure of assessment. It was at the same time concerned to secure that there should be no serious reduction in revenue, partly because of the heavy losses already imposed on the Emirs by the abolition of slave trading, but partly also on account of its own need for revenue. The Administration consequently decided "to retain as far as possible the ancient tribute as sanctioned by native law and custom and to preserve the individuality of the institutions of the country; to utilize the native machinery for the purpose; and to introduce some uniformity and equality in the incidence of taxation in the different Provinces." It is characteristic that the moneys resulting from taxation in the Hausa States were collected in the names of the Emirs or Chiefs, and were regarded as "Kuridin Sarki" or "moneys of the Chief." At the outset, the Administration took for its own purposes a quarter, and subsequently in most cases a half of the collections, but it did not intervene to control the manner in which the remainder of the Kuridin Sarki was spent.

In 1904, when the Land Revenue Proclamation laid down that the Chiefs were to pay one fourth of their revenue to the Government,<sup>1</sup> orders were issued to Residents to assess the value of the production taxed by the Chiefs, and to enquire into the methods of collection. A further step was taken by the Native Revenue Proclamation No. 2 of 1906, which authorized Residents to assess the taxability of the people, and to appoint the Village Headmen and District Chiefs who were to be responsible for the collection of tax. As a result of the investigations then made there was evolved the system of the single direct tax, which under the name of the General Tax or *haraji*, subsequently became the form adopted throughout the Northern Provinces.

The detailed Assessment Reports compiled by the Residents and their staff were based on an estimate of the gross income of each village area, taking into consideration the yield per acre, the market price of produce, the annual value of livestock and the computed incomes of traders and craftsmen. Up to this stage, the procedure thus followed that adopted in the Land Revenue Settlements of British India, though without the advantage which the Officers in charge of the Indian Land Revenue Settlements enjoyed of a cadastral survey which gave a complete map of all holdings, and statistics based on a careful observation over a series of years of the produce on different kinds of soil or types of cultivation. In Nigeria, after the estimated income of the village unit had been thus calculated, a percentage, not exceeding 10 per cent, was fixed as the gross amount of tax to be paid through the Village Head whose duty it was to collect it for the area under his control. He was not however supposed to collect it in the form of a flat rate, but was directed to allocate it, after consultation with his Elders, in accordance with the resources of individual taxpayers and their capacity to pay.

There was much to be said for this system as an alternative to the capitation or poll tax normally imposed in most other parts of Africa, and if the investigations made for the purpose of assessment had no other benefit, they were valuable in bringing Administrative Officers into close contact with the people and improving their knowledge of local custom. But as a system of taxation its success depended on the accuracy of the calculations made in the first instance, and on their repetition at intervals sufficient to make allowance for changing conditions in the units concerned. In very few instances however have the assessments been actually revised, the tendency being merely to make rough adjustments consequent on changes in the level of prices. As a consequence,

<sup>1</sup> Land Revenue Proclamation 4 of 1904.

the system does not now possess the character which it was originally sought to give it of an agricultural income tax based on detailed assessments. In some areas, such as Sokoto and Katsina, the tax is said to retain something of its original character is so far at all events that there are considerable variations in the amounts paid by individuals. In other Provinces, however, differences in apportionment are small, and the tax has gradually tended to become a capitation or poll tax. In some parts of the Benue and Plateau Provinces it has from the first differed little from a poll tax, so far as individual assesses are concerned.

It is natural that there should be wide variations in the average incidence of the General Tax in different areas, though it is not easy to explain why the variations cover so wide a range. The mean average in Sokoto is 8s. 11d., in Zaria 11s. 8½d., and in Kano between 10s. and 11s. 2d. ; in the Benue Province it varies from 5s. 6d. to 15s. ; in Bornu Province from 3s. to 11s. 2d., and in Kabba Province from 3s. 6d. to 12s.

In part of the Kano Emirate the tax takes a different form. There are in the neighbourhood of Kano City areas of heavy population, with an intensity and regularity of farming which are in great contrast to most other parts of the territory. In the more congested parts of this area the population is estimated to be 450 to 600 per square mile, and the average extent of individual holdings about 2·4 acres. Some 782 square miles of this area have been surveyed by a Survey staff maintained by the Native Authority, and maps and schedules produced showing the acreage and estimated production of each individual farm. A "farm" or Land Revenue Tax has been assessed on an acreage rate, based on a classification of the value of different types of soil, but calculated generally as representing 10 per cent of the total value of the crops.<sup>1</sup>

This system has been criticized as an uneconomic elaboration which has not justified the expense incurred in the survey. It has been said that the survey, if judged by professional standards, is only 80 per cent accurate, and that the assessment does not take sufficient account of the six or seven different types of soil in the farms. But there is much that may be said on the other side. It is the only existing factual record of land holdings in the Northern Provinces, and consequently the only source from which any statistics, however, uncertain, can be drawn.<sup>2</sup> The survey, which is carried out throughout by an entirely African staff, appears to be fully adequate for a record intended for fiscal purposes, which does not demand the accuracy which would be required were it a record of titles. On many grounds therefore it would be regrettable if the system were abandoned.

There is a further departure from the normal system in the Dikwa Division of Bornu Province, where there is still a "closed" area in which the pagans were to be counted for the first time in 1948. There the tax is paid at the rate of 2s. 6d. per compound in the hilltop villages and 3s. per compound in the foothill villages.

As shown previously,<sup>3</sup> the largest contribution to the Native Treasuries, next to the General Tax, is made by the Jangali tax on cattle. This is now collected at a flat rate of 2s. 6d. per beast, and the larger proportion is paid by the semi-nomadic pastoralists.

The third source of taxation, though of less importance, is that imposed on

<sup>1</sup> For a detailed history of this system and an account of the method of survey, see pages 155 to 157 of *Land, Law and Custom in the Colonies*, C. K. Meek, 1946.

<sup>2</sup> Report on Land Problems in Kano Province, C. W. Rowling, 1946.

<sup>3</sup> See page 72.



Ascertainable Incomes, namely those of the employees of Government, Native Authorities or commercial firms, to which reference has been made in Section I.<sup>1</sup> As there explained, this tax, like the General Tax, is levied under the provisions of the Direct Taxation Ordinance No. 4 of 1940. The rates paid on the "ascertainable incomes" are 4d. in the £ up to £72 and 6d. in the £ on the income over £72.

In addition, the more obviously wealthy traders in the towns are assessed individually for direct tax, year by year. The assessment is made by Assessment Committees locally appointed for the purpose; appeals against the assessment lie to the Resident, though (subject to any contrary direction) they in practice go first to the District Head and the Native Authority. There are some local variations of this system; thus in the Ilorin Division women living in the towns of Ilorin and Offa pay 1s. per head, wealthier women being subject to individual assessment. In some other cases also (as notably in the towns of the Kabba Province) women pay a fixed assessment.

Expressed in terms of incidence per head of population the average paid in direct tax of all kinds in 1946-47 was 3s. 3d. per head in the Northern Region, as against 2s. 6d. per head in the Western and 1s. 9d. per head in the Eastern Region and the Colony Districts.

Looking to the system of taxation generally, it has two noteworthy features. In the first place, the effort has from the first been to avoid the method of taxation by capitation, and to establish that of a tax on incomes.<sup>2</sup> If that effort has not always been successful in practice, it may nevertheless afford a basis for the more systematic use in future of the principle of differential taxation. In the second place, the development of the system has maintained the tradition that the General Tax was, in its origin, a tax imposed by Native Authorities. Though the Administration took steps by the Proclamations of 1904 and 1906 to assert that the final decision regarding the assessment of the tax lay with the Government, the introduction of the General Tax was in effect only the rationalization of a system of taxation which had long been practised by the rulers of the Emirates. This position was re-affirmed in the legislation which has defined the manner in which the collection made should be credited. In the Proclamation of 1906 the Head Chief was required to deliver to the Resident for credit to the general revenue of Nigeria such proportion of the collection as might be determined by Government, the rest being paid to the Native Treasury. The legislation of 1940 requires all the collection to be deposited in the Native Treasury, the payment of the Government share being made later, and the residue transferred to the revenue of the Native Administrations.<sup>3</sup> The recent change of system by which what was formerly the "Government Share" has taken the form of a Capitation Share payable to Regional Revenues tends to maintain the tradition that the General Tax is, subject to the ultimate control exercised by the Government, a Native Authority Tax. The net result of this allocation is that the Regional Revenue will take between 9 and 10 per cent of the total amount raised by direct taxation in the Region, the remainder being taken by the Native Authorities.

Though the ultimate control has remained with the Government, the Native Authorities have taken an important part in the assessment of the tax, particularly in the more advanced areas. In those areas they are almost

<sup>1</sup> See page 13.

<sup>2</sup> See Political Memoranda, 1918, No. 5, paragraph 60.

<sup>3</sup> Direct Taxation Ordinance, 1940, Section 17.

entirely responsible for its collection, through the agency of the District and Village Heads, and the responsibilities of the Native Authorities in this respect have provided a valuable part of their training in the practice of local self-government. It is only in the less advanced areas that the Administrative staff is called upon to exercise a close supervision over the process of collection.

### USE OF POWERS OF SUBSIDIARY LEGISLATION

The Native Authority Ordinance provides in Section 23 for the issue of Native Authority Orders on a variety of administrative matters, and in Section 25 for the making of Rules on a wide range of subjects affecting the general welfare. The Rule making power, it should be added, includes a number of matters which apply primarily to urban conditions, such as the control of building lines or the regulation of traffic in streets, a provision rendered necessary by the system under which the majority of urban centres in the Northern Provinces are controlled by the Native Authorities.<sup>1</sup> Some of these centres were at one time controlled under the provisions of the Township Ordinance (Cap. 57), and Section 54 of the Native Authority Ordinance lays down that Byelaws enacted when the area was a Township shall continue in force.

The Orders on record refer mainly to such matters as the control of the lopping of trees, bush burning, registration of deaths, the control of cattle movement, or the prevention of the noxious weed *Kashin Yawo*. There is a long list of Rules referring to such matters as Burial, Communal Hunts or Control of Native Liquor, and nearly all Native Authorities have issued Police and Public Health Rules. A number have made Rules for the control of groundnut marketing and for regulating tree planting. Generally speaking Rules such as those relating to the Police and Public Health have been made on the suggestion of Government Officers, though only after the matter has been discussed with the Native Authorities, and modification made to suit their requirements.

The Byelaws originally made in the Townships refer to such matters as Building lines, Hawkers permits, markets, control of nuisances and noxious trades, or the collection of water rates. A large number of additions to these Byelaws have been subsequently made by Native Authorities in the form of Rules especially relating to the construction and maintenance of buildings in the urban areas within their jurisdiction.

The power of making Rules for embodying native law and custom, or for modifying it, was originally part of the legislation establishing the Native Courts.<sup>2</sup> This power has now been vested in the Native Authorities by the Amending Ordinance No. 3 of 1945 but it is understood that no definite use has been as yet made of it. The use made of the important powers for making Rules regarding the use of land, also conferred in 1945, will be noted subsequently when dealing with land questions.<sup>3</sup>

### THE INTRODUCTION OF THE SYSTEM OF NATIVE COURTS

As has already been explained,<sup>4</sup> those Hausa States which had come under Islamic influences had from an early date developed a judicial system which involved the practical separation of the personnel discharging executive and

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<sup>1</sup> Page 87.

<sup>2</sup> See page 80, 81.

<sup>3</sup> Page 93.

<sup>4</sup> Page 47.

judicial functions. The Ruler himself seems to have dealt judicially only with certain important offences and with major land issues, in the trial of which he usually associated members of his Council, though only as advisers. For the rest, all cases were tried in the courts of the Alkalai, who administered the Maliki code of Islamic law, and had themselves no executive functions. In form therefore this procedure accorded more nearly with modern European practice than does the normal African procedure, which looks on the exercise of judicial functions as inseparable from the exercise of executive authority. There are however no means of determining how far the system was superior in practice. There can certainly be no ground for assuming that it secured the existence of a regime of the "rule of law" as the term is now understood in Western Europe. Doubtless there were Rulers and Chiefs who took the law into their own hands, and doubtless there were also some corrupt Alkalai. It must have been inevitable also that, as in all Muslim countries, the pagan was at a grave disadvantage when he faced a Muslim opponent in a Muslim Court.

Nevertheless, the existence of an organized system of Courts made its influence felt from the first in determining the form to be taken by the judicial institutions of the Northern Protectorate. As will be seen in the Section dealing with the Western Provinces, the initial measure taken there was the establishment of a system of "Native Councils" which were, as judicial bodies, really the Courts of District Officers, assisted it is true by African members, but tending in the main to follow the procedure of English law, and judicially subordinate to the Supreme Court.<sup>1</sup> In the Northern Provinces, it was from the first decided to recognize the existence of the indigenous Native Courts, consisting entirely of an African personnel, and administering only native law and custom.

In 1900 the Supreme Court was given jurisdiction over non-natives in the Protectorate and over areas specified as cantonments, which were later known as townships.<sup>2</sup> Provincial Courts were at the same time established, dealing primarily with certain classes of serious offences committed by natives, such as slavery, or offences against British Ordinances. These Courts were composed of the Residents or their officers, and appeals from their decisions went to the High Commissioner, who either dealt with them himself or referred them to the Supreme Court. But the great mass of judicial work, both civil and criminal, was left to the jurisdiction of Native Courts. The Native Courts Proclamation No. 5 of 1900 authorized the Resident, with the consent of the Head Chief or Principal Emir, to give warrants to Native Courts, consisting of not less than four persons, appointed by the Head Chief or Emir. They were to have jurisdiction over natives only and to administer native law and custom; the Resident was to have access to their proceedings, and was empowered to review their decisions.

Six years later, Proclamation No. 1 of 1906 took a more definite cognizance of the system of native judiciary existing in the Emirates. It authorized the Residents to give warrants to two classes of Courts, the Alkalai's Courts and the "Judicial Councils," these being described as composed of the Emir or Chief or District Headman, with *Mallams* acting with the Emir either as Judges or Assessors. The Native Courts could impose any punishments sanctioned in native law so long as this did not involve mutilation or cruelty. The appeal

<sup>1</sup> See page 134.

<sup>2</sup> No. 4 of 1900; See also Collected Reports, page 14.

was to be to the Resident, who could at his discretion refer cases to a Provincial Court; appeals from the Resident were to be submitted to the High Commissioner. The Resident might also appoint an Alkali's Court or a Judicial Council to be an Appeal Court. It is noteworthy that (following the precedent of legislation in Southern Nigeria<sup>1</sup>) the Emir or Head Chief was authorized, subject to the sanction of the Government, to make Rules embodying or modifying native law or embodying part of the Protectorate law as native law. By the end of 1906 some 109 Native Courts had been gazetted, graded into four classes according to their powers. Capital powers were granted to nine of these Courts, among them those of Sokoto, Kano, Bornu and Zaria, subject to the provision that executions were not to be carried out until the record of the case had been confirmed by the Governor.

There was at the same time another feature of the judicial system of the Northern Provinces which distinguished it from that which, as will subsequently be seen, prevailed at the time in Southern Nigeria. Lugard's institution of the Provincial Courts, and the provision that appeal from their decisions should lie to the High Commissioner, was due to his own conviction that the cause of justice would be best served if all cases in which natives were concerned remained within the jurisdiction of Administrative officials, and that both the Provincial Courts and Native Courts should consequently be controlled by the head of the Executive, not by the Supreme Court.<sup>2</sup>

While the system of Native Courts thus established appeared to have been well suited to the more fully organized Native Authority areas, difficulties were encountered in adapting it to the less advanced Emirates and the more primitive pagan areas. Though in some of the latter it was possible to confer jurisdiction on Chiefs and their Councils or Advisers, the powers granted to them were necessarily on a lower scale, and Political Officers were obliged to exercise a much more direct control over their proceedings. In some of the pagan areas in particular it was for many years difficult to find any authority which could be entrusted with the discharge of judicial functions.

When the amalgamation of Northern and Southern Nigeria took place in 1914, the existing law relating to the Native Courts in Northern Nigeria was replaced by Ordinance No. 8 of 1914, which applied to the whole of the Protectorate, but repeated in substance the provisions of the Northern Nigerian law. The position remained otherwise unchanged, save that the final powers of confirmation and revision of the decisions of the Native Courts (except in the case of death sentences) were delegated to the Lieutenant-Governors. In 1933 the law regulating the Native Courts was revised and consolidated in Ordinance No. 44 of 1933, which remains the Principal Ordinance on the subject. In 1934, a material change was made in the organization of the higher judicial system in the Protectorate, the Provincial Courts being abolished and replaced by Courts presided over by Magistrates. These Courts were brought for judicial purposes under the control of a new institution, the High Court of the Protectorate,<sup>3</sup> the result being, in effect, to transfer to officers discharging purely judicial functions the jurisdiction over the class of cases (namely, the more serious criminal offences) previously dealt with in the Protectorate Courts by Residents and their Administrative staff. The merits of the policy followed by Sir Donald Cameron in this matter were much

<sup>1</sup> See page 135.

<sup>2</sup> See Collected Reports, page 14.

<sup>3</sup> Protectorate Courts Ordinance, No. 45 of 1933.

debated at the time, but it is unnecessary to recall here the arguments then used on either side.<sup>1</sup> In 1945 the jurisdiction of the Protectorate High Court was merged into that of the Supreme Court, which henceforth constituted the highest tribunal for the whole of Nigeria.<sup>2</sup>

The changes made in 1934 were primarily designed to modify the trial procedure in the class of cases hitherto dealt with by the Protectorate Courts, but they were accompanied by changes which affected the position of the Native Courts in two respects. Firstly, the definition of "native" was modified in order to bring within their jurisdiction all persons "whose general mode of life was that of the surrounding native community." Secondly, provision was made by which, in virtue of a special endorsement on the warrant, appeals from certain classes of Native Courts would lie to a Magistrate or to the High Court of the Protectorate, instead of to the Resident or the head of the Executive. Such cases would, however, in the absence of a special provision to the contrary, exclude the important range of causes arising in connection with marriage, family status or guardianship of children.<sup>3</sup> The provision by which appeals might in certain instances lie to a Magistrate's Court or the High Court thus constituted a significant departure from the system which originally regulated the procedure of appeal from the Native Courts, but as will be seen, only a limited use was made of the power of special endorsement above referred to. The main provisions of Ordinance 44 of 1933, which continue to regulate the Native Court system, have already been summarized in Section I of this Chapter, and the succeeding paragraphs will give only such details as are necessary to explain their operation in the Northern Provinces.

### THE FORMATION OF THE NATIVE COURTS

There are now in the Northern Provinces 642 Native Courts of first instance and 81 Courts of Appeal, and it will be seen from the following Statement that the grading of the Courts of first instance corresponds generally with the classification of the Native Authorities in point of political organization or general development.

Province	Grade A Unlimited	Grade A Limited	Grade B Limited	Grade C Limited	Grade D Limited	Appeal Courts	Final Native Court of Appeal
Adamawa	1	2	13	19	27	5	2
Bauchi	3	5	28	6	4	5	4
Benue	—	—	10	18	85	11	—
Bornu	2	3	24	11	—	4	2
Ilorin	1	—	13	15	5	5	1
Kabba	—	—	3	28	12	3	—
Kano	4	4	23	4	1	2	2
Katsina	2	2	17	1	—	2	2
Niger	—	2	12	34	16	11	1
Plateau	—	—	4	25	56	9	—
Sokoto	3	3	38	11	—	4	3
Zaria	1	1	1	18	21	2	1
Total	17	22	186	190	227	63	18

<sup>1</sup> The policy underlying this change is discussed at pages 337 to 341 of *Native Administration in Nigeria*, M. Perham, 1937.

<sup>2</sup> Supreme Court Ordinance, No. 23 of 1943.

<sup>3</sup> Native Courts Ordinance No. 44 of 1933.

It should be explained that the difference between the unlimited and limited powers conferred on Courts is that those holding limited powers have no jurisdiction over cases of homicide or, in some instances, witchcraft and child stealing.

While the Native Courts administer in general the native law and custom prevailing in the area of their jurisdiction, they have been given by various Nigeria Orders in Council<sup>1</sup> power to administer a considerable range of cases arising in the application of the statutory law. All Courts administer the following Ordinances :—

- The Markets Ordinance, Cap. 58.
- The Waterworks Ordinance, Cap. 63.
- The Building Lines Regulation Ordinance, No. 11 of 1936.
- The Direct Taxation Ordinance, No. 4 of 1940.
- The Native Children (Custody and Reformation) Ordinance, Cap. 82.
- The Diseases of Animals Ordinance, Cap. 97.
- The Agriculture Ordinance, No. 4 of 1926—Regulations 10, 38, 41 and 59 of the Cotton Marketing and Export Regulations, 1937.
- The Motor Traffic Ordinance, No. 10 of 1927—the whole Ordinance except S. 7.
- The Forced Labour Ordinance, No. 22 of 1933—Part II.
- The Sleeping Sickness Ordinance, No. 1 of 1937.
- The Forestry Ordinance, No. 38 of 1937—Ss. 43-50, 52 and 53.
- The Hides and Skins Ordinance, No. 14 of 1942.
- The Criminal Code, Cap. 21—Ss. 124, 130, 134-142, 144-145, 243-245, 247, 341, 365, 372, 488, 489, S. 133 subsections (4) and (9).

In addition, all Grade A and Grade B Courts are authorized to administer the Criminal Code, Cap. 21, Sections 222A, 222B, 225B, 225A, subsections (1), (3), (4), 249, 250, 369, subsection (3).

There are also some minor modifications in the powers given to the Courts in the Muri Emirate and Numan Division of Adamawa Province, the Courts of the Tiv and Nasarawa Divisions of the Benue Province, the Courts of the Igbirra Divisions of Kabba Province, and the Courts in the Plateau Province.

### THE COMPOSITION OF THE NATIVE COURTS

In the Emirates, the constitution of the Courts follows a common form, the highest Court being that of the Emir, all other Courts being presided over by Alkalai of various grades. In theory, the supreme judicial power is vested in the Emir as head of the State, and this position is marked in particular by his retaining in his own hands the decision of issues arising in connection with the land. Even today, the disposal of such cases is regarded rather as an executive than a judicial function. It has however always been the custom for the Emir to be assisted in his judicial work by his Councillors, though these are otherwise an executive body, but it remains the prerogative of the Ruler to pronounce judgment.

In the Notifications issued to give effect to the provisions of Ordinance 44 of 1933 the highest Court is described as that of the Emir, no mention being made of his Council.<sup>2</sup> In practice the Emir is now assisted by such of his

<sup>1</sup> Orders in Council, Nos. 1 of 1945, 3 of 1945, 6 of 1946, 31 of 1947, 34 of 1947.

<sup>2</sup> See Notice 288 of 1934 (page 721 of Laws of Nigeria 1934). The title Emir as used in the text includes also that of Shehu, Sultan, Lamido, or Chief. The Courts are gazetted under the designation of "The Emir's Court," "The Chief Alkali's Court," "Sixteen Alkalais' Courts," "The Tribal Council's Court," etc., as the case may be.

Councillors as are learned in the law, or as in the case of Kano, by "Mallams" or law clerks who act as assessors. In some Emirates the Chief Alkali sits on the Court as member of the Emir's Council, and in most of them it is usual for the Waziri to sit on it.

The Emir's Court normally constitutes the Final Native Court of Appeal; where it sits as a Court of first instance, it usually confines itself to dealing with cases of homicide or important land cases.<sup>1</sup> Where it exercises original jurisdiction the appeal now lies to the Supreme Court which, as already explained, has replaced the Protectorate High Court. The Ordinance of 1933 retains the provision that when a death sentence is imposed, execution is not carried out until the record has been submitted to the Governor, and his orders have been received on it.<sup>2</sup>

The Courts of lower jurisdiction in the Emirates are presided over by the Alkalai, that of the Chief Alkali in the larger Emirates having usually A Grade powers (limited). When the Chief Alkali sits as a Court of first instance appeals go to the Supreme Court. In the Alkalai Courts of B and C Grades the appeals lie to the Chief Alkali's Court and thence to the Emir's Court as a Final Court of Appeal. The Alkalai usually sit with a varying number of Muftai or of Mallams who record the evidence and give advice on legal points, but the decision, in accordance with the procedure followed in the Muslim law, is that of the Alkali himself.

No one who has witnessed the working of the Alkalai Courts could have failed to be impressed with the regularity of their procedure, and the dignity and sense of command shown by the higher grades of these judges. The senior Alkalai are for the most part men of considerable legal knowledge, many having been trained in the school of Arabic Studies at Kano. It is clear that they value their reputation as judges, and are not readily accessible to the influence of the executive officers of the Emirate. It is moreover generally agreed that they are held in much popular respect, and their decisions generally well accepted. The working of these Courts is however the part of the organization of native administration which comes least under the supervision of Administrative Officers, and it is moreover the fact that non-Muslims are at some considerable disadvantage in Courts which administer Muslim law and procedure, even though the Alkali may, and indeed usually does, call in non-Muslim assessors to advise him on points of customary law. Nigeria, it may be remarked, is the only British Colonial territory in which cases are tried under the Muslim law of evidence.

The Alkalai and Muftai are salaried officers, some of whom receive a relatively high remuneration. Thus in Kano the Chief Alkali receives £846 a year, a Grade A Alkali is paid £350, Grade B £159, Grade D £154 and Grade E £108, Muftai receiving salaries between £63 and £111. In the Bornu Emirate salaries vary from £400 for the Chief Alkali to £72 for a junior Alkali; in the Sokoto Emirate the Chief Alkali is paid £650 and the junior Alkali receive from £84 to £160; in Katsina the Chief Alkali receives £432 and the others from £84 to £168. Where there is a Chief Alkali he normally inspects the records of the subordinate Courts when on tour or in his station. Katsina has a Chief Registrar who spends about half his time in inspecting records and Court accounts.

In the pagan areas of the Emirates, the Native Court is occasionally

<sup>1</sup> In Zaria however land cases are heard in the Chief Alkali's Court, not that of the Emir.

<sup>2</sup> Section 13 of Ordinance 44 of 1933.

presided over by District Heads (though this is not the case in Zaria or Sokoto) and is composed of Village Heads or other Tribal representatives. Appeals go in this instance to the Emir's Court.

In the pagan areas outside the Emirates the tendency is for membership of the Court and the Native Authority to be the same. This often means a large membership with no permanent President. Thus in the Jos Division of the Plateau Province the Bi Rom Court has 84 and the Northern Areas Court 34 members, but in addition to this traditional personnel Fulani Headmen also sit as members. Similarly in the Tiv Division of the Benue Province the District Courts consist of clan and kindred heads, but there is neither nominal roll, President nor fixed quorum. In the Intermediate Courts the Councillors of the component segments sit under the presidency of the sept head, but there is no nominal roll or quorum. The Central Court is composed of the Tribal Council with the Chief of Tiv as President, although no quorum is fixed. The constitution of the Native Courts in some of these areas has been the result of a lengthy process of adjustment, and it has not as yet taken a final form.

As has already been indicated, the majority of the urban areas are under the jurisdiction of the Native Authorities, and where there are large mixed populations, special arrangements have been made for the constitution of the Native Courts. Thus the Sabon Gari Court in Kano, with Grade C criminal and Grade B Civil powers, consists of a Sierra Leonean President, with one Yoruba and one Hausa member. The appeal lies to the Magistrate. The Makurdi Mixed Court, (Grade D with appeal first to the Jengba Regional Court, thence to the Tiv Central and finally to the District Officer's Court), has an Alkali as President, who is a Nupe trained at the Kano Law School, with Tiv, Jukon, Arago, Yoruba, Ibo and Hausa members chosen by their local tribesmen. These are permanent appointments and the members receive £30 per annum each, the Alkali being paid £84. In Jos there is an Alkali's Court (Grade B) with an appeal to the District Officer and additional powers of sentence up to imprisonment for two years, twelve strokes or a fine of £50; the Alkali sits with two Muftai and calls upon assessors for tribal cases. In Kaduna and Zaria there are also Mixed Courts, each of three Moslems, one Yoruba and one Ibo, who co-opt experts on tribal custom where necessary; appeals go to the Chief Alkali in Moslem cases, but otherwise to the Magistrate.

### THE STATISTICS OF COURT CASES

The statistics of cases given on page 86 show that there is a very wide resort to the Courts, especially in respect of civil causes. The relatively high figure of Criminal cases is due to the fact that it includes cases arising from breach of the Ordinances relating to taxation. The Statement shows also that the power of review by Administrative Officers is exercised mainly in regard to criminal causes, and then in three only of the Provinces, in which the Courts are admittedly of lower standing. The number of cases going to appeal, and the proportion modified as a result, is strikingly low in comparison with the Western and Eastern Provinces.



## NATIVE COURT STATISTICS 1947

## CIVIL CASES

Province	Total No. of Cases	Number Reviewed	Modified or annulled on review	Number of Appeals	Modified or annulled on appeal
Adamawa	10,133	9	2	390	1
Bauchi	28,302	39	4	37	4
Benue	11,971	75	25	197	112
Bornu	10,468	25	1	136	14
Ilorin	9,619	22	—	24	12
Kabba	10,098	110	29	194	—
Kano	52,761	18	10	—	—
Katsina	27,279	—	—	17	2
Niger	6,966	36	11	11	2
Plateau	5,736	6	6	23	16
Sokoto	23,098	—	—	274	161
Zaria	16,002	3	—	45	15
<b>Total</b>	<b>213,033</b>	<b>343</b>	<b>88</b>	<b>1,348</b>	<b>339</b>

## CRIMINAL CASES

Province	Total No. of Cases	Number Reviewed	Modified or annulled on review	Number of Appeals	Modified or annulled on appeal
Adamawa	2,119	23	11	304	1
Bauchi	6,435	412	18	52	1
Benue	9,569	216	149	126	84
Bornu	7,947	250	61	232	37
Ilorin	2,353	28	5	8	6
Kabba	6,202	79	48	59	—
Kano	10,949	22	20	—	—
Katsina	6,588	16	7	29	1
Niger	4,703	22	7	12	3
Plateau	14,742	94	56	27	25
Sokoto	10,250	90	73	71	48
Zaria	4,402	7	3	27	8
<b>Total</b>	<b>86,259</b>	<b>1,259</b>	<b>458</b>	<b>947</b>	<b>214</b>

## THE URBAN AREAS

It is probable that the proportion of the population living in urban conditions has increased considerably since 1931, when the Census showed it as comprising nearly 13½ per cent of the total population of the Region. There were then 45 towns with between 10,000 and 20,000 inhabitants, and 10 with between 20,000 and 50,000, the largest in this class being Zaria, with 28,121, and Ilorin with 47,557. Kano stood out from the rest with a population of 97,031. The Annual Report for 1948 gives an estimate of the present population of three only of these towns namely, Kano, with 102,604, Ilorin with 52,049, and Maiduguri with 42,819.

Most of these towns, however, contain populations which, except for the "stranger" elements, to which reference will subsequently be made, do not differ materially in their habit of life from the inhabitants of the rural areas

in their neighbourhood. Many of their residents indeed are occupied in agricultural pursuits. The "stranger" natives on the other hand, consisting largely of traders, tend to form communities which have in some cases formed suburbs of the city itself, as for instance in the Sabon Garis or "Stranger Quarters" of Kano, Kaduna or Zaria.

It has always been the policy of the Administration to leave the control of the urban areas to the Native Authorities within whose jurisdiction they lie. But at an early date the Stations in their vicinity occupied by Government officials, which had also attracted a number of European and Syrian traders, were constituted as Townships, controlled by the District Officer. These Townships subsequently received legal status under the Townships Ordinance of 1917, and those of them which are classed as Second Class Townships are controlled by the District Officer as Local Authority, with an appointed Advisory Board which normally includes unofficial Europeans and Africans. The Advisory Board of the Jos Township is larger than most others, owing to the fact that the town is the centre of the tin mining industry; it consists of the Resident, the Medical Officer of Health, and the Provincial Engineer, with six African, two European, and one Syrian appointed members.

The Second Class Townships have Township Funds administered by the Local Authority, into which are paid Township rates and fees, rates collected under other Ordinances, rents and grants in aid. The grants in aid have in most cases been given as payment for conservancy services for Government buildings, and certain subventions have also been made by the neighbouring Native Administrations out of the General Tax collected by them from the Africans resident in the Township.<sup>1</sup> For judicial purposes the Townships have been placed in the jurisdiction of Magistrates subordinate to the High or Supreme Court, and they have normally employed Protectorate Police.

The procedure by which the towns, apart from the Township areas, are controlled by the Native Authorities, has in general followed that adopted by these Authorities in their other administrative activities. As already shown,<sup>2</sup> the Native Authority Ordinance makes special provision for the issue of Orders and the passing of Rules applicable to urban conditions. Where the Native Authority administers an important town, it has been usual to place one of the Councillors in charge of it, the executive management being entrusted to a District Head, to whom the Ward Heads are responsible. In some cases, as in Kano, the District Head has an unofficial Advisory Council appointed from the townsmen; in a few cases, as in Minna and Makurdi, there is an appointed Town Council, gazetted as a Subordinate Native Authority.

While this system has created a sufficiently clear line of division between the procedure for the administration of the native towns and that of the Townships, there has remained a debatable field in the existence of the "stranger" communities of traders and others in the Sabon Garis which have been included in certain of the Townships and most notably those of Kano, Kaduna and Zaria. The subject became an active issue soon after the War of 1914-1918, mainly as the result of the influx of traders following on the expansion of the trade in groundnuts and benniseed, and the question then

<sup>1</sup> See page 139 of Administrative and Financial Procedure under the New Constitution, Sir S. Phillipson, 1947.

<sup>2</sup> Page 12.

arose whether these "stranger" communities should continue within the administration of the Townships, and thus be excluded from the jurisdiction of the Native Authorities. With the latter the issue was partly a matter of prestige, for it raised the question whether or not they were to be regarded as competent to have charge of communities coming mainly from the South and as a rule more modern in their ideas than the original inhabitants of the towns. But it was also a subject of complaint that the Native Authorities were thereby deprived of a source of taxation, and also of the control of the disposal of urban land sites, which was by custom the prerogative of the Emir.<sup>1</sup> The traders on the other hand could urge that they would not have invested money in building up the trading centres, but for the protection afforded them by residence in a Township, under a system of law administered by official Courts.

It is not necessary to dwell here on the issues of general principle which this question involved,<sup>2</sup> and it is sufficient to say that the Administration has adopted a measure of compromise. The Townships have been reduced to five, namely Kano Township, Kaduna, Lokoja, Zaria and Jos, and the Sabon Garis have in a number of cases been brought under the jurisdiction of the Native Authorities.<sup>3</sup> This measure has, however, involved some inconveniences. It has necessitated the creation of the "mixed" Courts to which reference has been made in a previous part of this Section.<sup>4</sup> But, more important, it has brought under Native Authority jurisdiction an increasing number of those who are likely to press for a form of municipal management in which they would have the right of representation. They are, in short, likely to prove a radical element in a conservative organization.

It is only of recent years that the need for a revision of the system of municipal administration in the larger urban centres has engaged the attention of the Nigerian Government, and so far the matter does not appear to have been considered in relation to the Northern Provinces. While however the existing system does not provide the Northern towns with Boards of a Municipal or equivalent status, on which their residents are represented as a matter of right, it cannot be said that the sanitary and other amenities of the towns suffer in comparison with the towns possessing a Municipal status in some other territories, as for instance in the Gold Coast. The considerable resources of the larger Emirates have enabled them to provide their head-quarter towns with public utilities on a considerable scale. Water systems have been installed, with some assistance from the Government, in Kano, Kaduna, Lokoja, Makurdi, Vom, Ilorin, Jos, Zaria, Okene, Yola, Bida, Maiduguri and Samarau. The Native Authorities own the electric supply installations at Kano, Katsina and Maiduguri, and draw supplies from Government installations at Kaduna, Jos, Vom, Zaria and Yola. As a rule the sanitary staff seem to be adequately supervised by the District Head or his subordinates. Though many of the older quarters of the towns still contain (as at Kano) the unhygienic borrow pits which in former times provided the material for building the houses, the newer quarters are well laid out, and building lines are adequately observed.

<sup>1</sup> See page 90.

<sup>2</sup> See on this point page 102 of *Native Administration in Nigeria*, M. Perham, 1937.

<sup>3</sup> Regulation 38 of 1940 made under Land and Native Rights Ordinance (Cap. 85).

<sup>4</sup> Page 85.

## THE POSITION OF THE GOVERNMENT IN REGARD TO LAND

In the Northern Provinces the position of the Government in respect of rights over land has been clarified by legal enactment, and it is therefore free from some of the complexities which have been noticed in dealing with the Colony, and which will be found to occur also in the Western and Eastern Provinces.<sup>1</sup> Though, as will be seen, doubt has been cast on its right to assume the extensive powers it has acquired by this legislation, yet such questions as now occur as to the exercise of its authority can arise only from difficulties of interpretation of the law or the method of its application. Since however the law in which these rights are embodied has formed the model for important measures of land legislation elsewhere, and most notably in Tanganyika and the Northern Territories of the Gold Coast, it is of some interest to note the circumstances which led to its enactment. It should be premised that the following paragraphs refer more especially to the position in Northern Nigeria, and that the application of the Ordinance to the Trust Territories in the Cameroons has a somewhat different history, to which reference will be made subsequently.

It will be recalled that in Northern Nigeria the Royal Niger Company made a number of Treaties with Emirs and Chiefs between 1885 and 1890, but these treaties do not seem to have given the Company any definite rights over land.<sup>2</sup> As a matter of fact, the only lands occupied by the Company in Northern Nigeria were the sites of certain trading stations, and the validity of the rights acquired by the Crown as the result of the Agreement made with the Company in 1900 form a relatively unimportant issue so far as Northern Nigeria is concerned. The matter can therefore be more conveniently left for discussion when dealing with the Western Provinces, where it is of somewhat more concern.<sup>3</sup>

When the Protectorate was declared in 1900, one of the first steps taken by the High Commissioner was to see that the Emirs and Chiefs should cede to it, by virtue of their acceptance of their Letters of Appointment, all rights which they possessed over land.<sup>4</sup> But it does not seem to have been held at the time that this cession gave to the Crown the wide powers, equivalent to a proprietary right over all lands, which have in many parts of Africa been assumed to have been conferred on it by agreements or acts of cession of this nature. The view taken by the High Commissioner himself is clear. He regarded the cession mainly as incidental to the abdication of any sovereign powers possessed by the Emirs and Chiefs, and as regards the native lands, he did not seek the type of proprietary right which would enable him to dispose of them to others; all he sought was legal power to prevent their holders disposing of them to non-natives without his sanction.

It is perhaps now a matter of only academic interest to ask what were the actual rights thus ceded by the Emirs and Chiefs. This is not the place to discuss at length the views now held, as the result of sociological and other enquiries, regarding the general character of the authority possessed by African Chiefs in regard to the lands of their tribe or community. It is easy to state the result of these enquiries in negative terms, for it is now well accepted

<sup>1</sup> Pages 140, 176.

<sup>2</sup> The Treaties are given in pages 128 to 130 of Vol. I of the Map of Africa by Treaty, Sir E. Herslet, 1909.

<sup>3</sup> Page 140.

<sup>4</sup> Political Memoranda, 1918, page 344.

that the position of the Chiefs could never be rightly described as proprietorship, in the sense which that term bears in European land law. It is more difficult however to state it in positive terms, because such expressions as are appropriate to describe the position are not those familiar to Europeans, and the authority possessed by any one out of the great variety of Chiefs can consequently be more readily illustrated than categorized.

As regards however the authority possessed by the ruling Chiefs in Northern Nigeria it does not appear that the introduction into Hausaland of a system of rule based on Islamic institutions had materially modified the traditional position of the Hausa Chiefs in regard to the land in general. Under a strict application of the Maliki code of Islamic law, all cultivated lands are on conquest treated as "waqf" and may be assigned to Muslims, but land not under cultivation and unoccupied land in villages and towns is at the disposal of the ruler. In practice, however, the Fulani rulers appear to have confined themselves to exercising rights over waste land and the unoccupied village or urban lands. It is true that they retained for themselves a number of Royal Domains, worked mainly by slave labour, and also gave a number of fiefs to leading members of their families and others who were placed in administrative charge of different units in their jurisdiction. But though there are still a small number of Royal Domains,<sup>1</sup> it is only in rare instances that rights over land are now claimed to be derived from the original grant of a fief. For the rest, the rulers limited themselves to taking for State purposes the "ushur" or share of the produce, normally one tenth, prescribed by the Koranic law.<sup>2</sup>

The first use made by the Administration of the powers flowing from the cession of rights by the Fulani rulers was to provide, by the Land Proclamation No. 8 of 1900, that no person other than a native of the Protectorate should acquire land from a native without the consent of the Government. A further Proclamation, 13 of 1902, permitted the High Commissioner to declare as Public Lands all lands which were the property of deposed or conquered rulers, or lands which were not occupied by persons having an original or derivative title under any law or custom. Under the same Proclamation the Government took over as Crown Lands the areas occupied by the Royal Niger Company to which reference has been made above.

So far, therefore, the Protectorate Government had not seen the need to assert by legislation a claim to "superior rights" or "ultimate ownership" of all lands in the Protectorate. That it subsequently undertook legislation which assumed its possession of this status was due to the Report made by the Northern Nigeria Lands Committee, which was issued in 1910.<sup>3</sup> It is unnecessary to enter here into the influences which inspired that Report, or the theories it advanced on the subject of the principles which should regulate the position of the State in regard to land and the propriety of taking an "economic rent" for the benefit of public revenues.<sup>4</sup> It is sufficient to say that the result was the passing of the Land and Native Rights Ordinance 1 of 1916, which with subsequent amendments now forms Cap. 105 of the Laws of Nigeria. This provided that the whole of the lands of the Northern Provinces, whether occupied or unoccupied, should be treated as Native Lands, under the control

<sup>1</sup> There are interesting references to the Royal Domains of the Bida Emirate in Dr. S. F. Nadel's book, *A Black Byzantium*, 1942.

<sup>2</sup> Page 75.

<sup>3</sup> Col. 5103 (1910)

<sup>4</sup> For this Report, see *The Native Problem in Africa*, R. Buell, Vol. I, page 752; *An Africa Survey*, 1938, page 772.

of the Governor, to be administered by him for the benefit of the natives, and that no title to the use or occupation of such lands should be valid without his consent. While this in principle left all lands at the disposal of the Governor, the preamble and terms of the Ordinance made it clear that he was, in exercising his powers, to have regard to native law and custom. A subsequent Minerals Ordinance, No. 93 of 1916, vested all mineral rights in the Crown.

The legislation of 1916 thus cancelled the distinction established by previous legislation between Public and Crown lands. But this was only a minor result of the law;<sup>1</sup> and it is of more importance that it embodied principles which were at the time an innovation in Colonial land legislation, but which have, as already remarked, since formed the model of some of the land Ordinances enacted in East and Central African territories. The justification for the assumption of such far reaching powers by the Government became for some time a matter of controversy,<sup>2</sup> though the matters of principle raised in that discussion are now of less practical interest, in view of the experience subsequently gained of the use which the Government has made of its powers in dealing with issues relating to the native lands.

Under the terms of the Ordinance the Governor was given authority to grant Rights of Occupancy to natives or non-natives in return for a rental which was to be revisable from time to time, but no non-native might be granted a right of occupancy for over 1,200 acres for agriculture or 12,500 acres for grazing. Regulations made under Section 27 of the Ordinance (printed as the Third Schedule to Cap. 105 of the 1948 edition of the Laws) have the effect of restricting the right of selling or transferring a title by a native to a non-native, but a native may (subject to any native law or custom to the contrary) sell or bequeath his title to a blood relation or, with the consent of the District Headman and approval of the Head Chief, to any other native in the same District, or with the additional approval of the Resident, to a native of any other District.<sup>3</sup>

Little use has been made in practice of the provisions for the grant of Certificates of Occupancy. There has been only a very limited demand by non-natives for land, save for tin-mining, or for shop or residential sites, and the grant of Certificates of Occupancy has for the most part been confined to these purposes. The chief centres of the tin-mining industry are in certain Divisions of the Plateau Province, and though the area thus occupied has undoubtedly reduced that available for cultivation in some of the more congested pagan units, the mines have afforded an opening for employment which has had a marked effect on the local standard of living. Restrictive covenants are moreover now attached to mining leases, providing for the restoration of the land to culturable condition where this is feasible, and special compensation is paid for disturbance. Part of these payments are made to the occupiers and part to the Native Authority.

The procedure for the grant of Occupancy rights has been utilized for the benefit both of non-natives and natives in the Townships, and under the provisions of the Native Authority (Right of Occupancy) Regulation 38 of

<sup>1</sup> See further on this point page 141.

<sup>2</sup> See on this point the references quoted at page 306 of *Native Administration in Nigeria*, M. Perham, 1937; *An African Survey*, page 773; *Land Law and Custom in the Colonies*, C. K. Meek, 1946, page 147; Chapter VIII of *Native Races and their Rulers*, C. L. Temple, 1918; L. Mair, *An African People in the Twentieth Century*, 1936, page 132.

<sup>3</sup> The Regulation will also be found at page 168 of Dr. Meek's work above quoted

1940, made under Section 27 of the Land and Native Rights Ordinance, certain of the Native Authorities have been empowered to grant Certificates of Occupancy for this purpose in their towns. A considerable use is now being made by them of this power. In the rural areas however, natives have very seldom sought to acquire Rights of Occupancy, and the question of taking rent on lands held under Certificate does not therefore arise in their case. It may justifiably be claimed, that the provisions of the law which require regard to be paid to native law and custom have been complied with in so far that all transactions between natives regarding their lands are left to be regulated by custom, and if recourse is had to litigation, the cause is tried in a Native Court.

The procedure under which the area of the Cameroons administered as part of the Northern Provinces has been brought within the scope of the Land and Native Rights Ordinance is fully described in the Section V dealing with the Eastern Provinces.<sup>1</sup> It does not appear that any use has been made of the Ordinance to grant Certificates of Occupancy to non-natives, and figures published in 1948 show that the total area occupied for Government purposes in this part of the Cameroons is only 659 acres.<sup>2</sup>

It appears reasonable to ask now whether in the light of the experience gained since 1916 some of the major provisions of the Land and Native Rights Ordinance of that year are any longer appropriate. The Ordinance has provided a method for securing lands for the tin industry which has been fully justified by the precautions applied in practice, for it is clearly better that land should be obtained for the purpose in this way rather than by allowing the mining interests to bargain with private occupants. It has provided also a suitable method for regulating title in town sites and for making provision for their transfer. But the provisions for the grant of Certificates of Occupancy in rural areas are not operative. There is something incongruous in declaring that no title shall be valid unless recognized by the Government when in practice a title derived from native law and custom is everywhere recognized in the Native Courts and the contents of the title are left to be determined not by the Government, but by the practice of the Courts.

There is, in particular, a serious difficulty created by the provisions of the Regulations made under Section 27 of the Ordinance above referred to.<sup>3</sup> If the provision regarding transfer applied only to the transfer of a right under a Certificate of Occupancy, it would be intelligible, but it appears to apply to all lands held under native law and custom. If the ban on transfer is to be held to include a ban on leasing, then it is clear that it is not enforceable in present conditions, especially in respect of lands such as those in the area of intensive farming in the neighbourhood of Kano.<sup>4</sup> The Regulation appears in short to have been made in pursuance of theories regarding the mischief inherent in the transfer or leasing of rights<sup>5</sup> which do not hold good in conditions of farming such as now exist in this and some similar areas.

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<sup>1</sup> Page 177.

<sup>2</sup> Report on Cameroons to Assembly of United Nations 1948, page 77.

<sup>3</sup> See page 91.

<sup>4</sup> See Report on Lands in Kano, C. W. Rowling, 1949.

<sup>5</sup> See Political Memoranda No. X, paragraphs 24 and 25.

## THE POSITION OF THE NATIVE AUTHORITIES IN REGARD TO LAND

In what follows, reference is made not to the use by Emirs or Chiefs of their inherent powers to control the disposal of lands, but to the exercise by Native Authorities, as such, of powers which may be vested in them by the Native Authority Ordinance or other legislation. It is clear that there is throughout Northern Nigeria a strong objection in principle to recognizing an absolute transfer of rights in land, though this applies with less force to leasing or transfer by way of "pledging." An Emir or Chief may exercise his influence to control this practice, but he normally does so not in virtue of powers vested in him by the Ordinance, but in exercise of his executive or judicial powers as head of the State—functions which, as observed elsewhere, are not easily distinguishable.

The provisions of Regulation 38 of 1940 made under Section 27 of the Land and Native Rights Ordinance, just mentioned, would seem to give the Native Authority a statutory power to control the transfer of titles in native lands save under approved conditions. But the meaning of the term "title" in this connection is, as has been remarked, very doubtful, and the power conferred by the Regulation does not seem to have been used, though transfers of rights are now common in a number of areas.

Mention has also been made of the powers conferred on Native Authorities by the provisions of the recent Native Authority (Control of Lands) Amendment Ordinance, No. 73 of 1945.<sup>1</sup> This provided that Native Authorities might make Rules, subject to the approval of the Governor, for the control of alienation of lands to strangers or persons other than strangers; for the control and use of family and communal land; for the control of mortgaging; for making the purchaser at every sale subject to the approval of the Native Authority, and for regulating the allocation of communal or family land. The Rules thus made may apply to all land other than that held in freehold, or Crown Land, or land covered by a Certificate of Occupancy.

The Amending Ordinance applies both to the Colony and the Protectorate, but it would appear from its terms to be designed to meet the conditions of Southern Nigeria rather than the Northern Provinces. It confers on Native Authorities legal powers in regard to the land more extensive than in any other British Colonial territory, though there is some analogy to be found in the position conferred by Ordinance on the Tribal Authorities in Sierra Leone.<sup>2</sup> It is understood however that so far the Native Authorities in the Northern Provinces have not availed themselves of these powers.

## RIGHTS IN THE NATIVE LANDS

It will have been gathered that the exercise of the powers taken by the Government under the Land and Native Rights Ordinance has not materially affected the position in regard to the bulk of the Native Lands. In the use actually made by Government of these powers it has in fact done little more than assert what has been described in a judgment of the Privy Council referred to in Section I as "the right of administrative intervention." In the lands held by natives all rights continue to be determined by the customary law.

<sup>1</sup> Page 79.

<sup>2</sup> Chapter IX, page 319.



The customary law in regard to landholding was described in the Report of the Northern Nigeria Lands Committee of 1910, and also in the unpublished Report of the West African Lands Committee of 1912. These and other sources of information have been analysed in detail in Chapter XIII of Dr. C. K. Meek's book on Land Law and Custom in the Colonies<sup>1</sup> and it will be sufficient therefore for the present purpose to make some supplementary observations, dealing with changes now noticeable in the traditional system of landholding.

The matter is of somewhat less importance in the Northern Provinces than elsewhere in Nigeria, since in a large part of the Region there has been little cultivation of permanent crops, such as cocoa, and there have moreover, save in the few areas distinguished by a marked degree of congestion, been ample lands available for occupation. Changes in the customary system of land holding will be found, broadly speaking, to be confined to certain of the more heavily populated rural areas and to the urban and semi-urban areas.

Among the former areas, it has long been recognized that the practice of sale prevails in the fertile lands in the neighbourhood of Lake Chad, where occupancy has in practice conferred a right which is practically proprietary. This procedure seems to be fully recognized in the local Native Courts. In the areas of intensive cultivation near Kano City of which some account has been previously given,<sup>2</sup> the transfer of rights seems to be common, in spite of the desire of the Emir and his Council to insist on the principle that land is not subject to sale. It is held at the same time that if transfer is to be permitted at all, this can only be valid if it has the assent of the whole family. In this area, the Village Heads do not in any sense control the transfer of rights, and their part is limited to witnessing transactions, in order that there may be clear evidence of them. Apart from transfer, leasing is general in this area, and is judicially recognized. The experiences gained of conditions in this area are important, because they raise in a significant form the question whether the restriction placed on the transfer of title by the Regulations made under Section 27 of the Ordinance, above referred to, are in any sense operative or enforceable.

There is considerable pressure on the land in the Jos Division of the Plateau Province, but there does not appear to be any general practice of transferring rights; this is indeed so severely discountenanced by local opinion that some persons have refused to accept compensation for land alienated for mining.<sup>3</sup> On the other hand, land in this Division is frequently "pledged" or "leased," and rents in some cases amount to 15s. an acre. The "leases" are not however formal agreements.

In some other of the rural areas there is a growing tendency to individualization, though in the hands of the family rather than in those of the individual, as a result of the encouragement given by the Native Authorities and Government to the extension of mixed farming. This is accompanied by an increased resort to the practice of "pledging," and "pledging," as elsewhere in Africa, can take some of the character of full transfer, if the pledge is on such terms as to be in fact difficult of redemption. The tendency to individualization has been stimulated by the application of the Maliki Code, resulting in the subdivision and fragmentation of holdings. The Conferences of Chiefs which were at one time held in Northern Nigeria debated on several occasions the

<sup>1</sup> See pages 149 to 155 and pages 300 to 301.

<sup>2</sup> Page 77. See also Report on Lands in Kano, C. W. Rowling, 1949.

<sup>3</sup> Land Tenure in the Plateau Province, C. W. Rowling, 1949.

feasibility of proposals for fixing a minimum limit for the subdivision of land under the Islamic law, but without any practical result.

The position is not unnaturally different in the urban areas, and particularly in the Sabon Garis, where, as already shown, land can now be obtained on Certificates of Occupation from the Native Authorities. In the Zaria Province instances are quoted in which the right of user in urban land has been sold outright, and the sale, though not in strict keeping with Moslem law, has been recognized in the Alkali's Court. Leasing and letting for rent are of course general. Even however in the more organized Native Authority areas the system for recording the possession or transfer of urban plots is very deficient, and the need for improvement in this direction is generally recognized.

In conclusion, it may be observed that though the general principles of the customary law relating to land holding are well known by Administrative Officers, there remains the need for more intensive study of local custom, particularly as administered in the Native Courts. Reference has been made in previous pages to two useful studies by C. W. Rowling, dealing with the Kano and Plateau Provinces, to which may now be added two others by C. W. Cole dealing with the Niger and Zaria Provinces.<sup>1</sup> There is also much useful information in studies such as those made by Dr. Nadel of the Nupe to which reference has previously been made. But it is clearly necessary to obtain further information regarding other areas, particularly in the Benue and Kabba Provinces.

Northern Nigeria has moreover its own special problem, arising from the process by which the principles of Islamic law have been and continue to be adjusted to the practices established in local custom. In certain other West African territories, as for instance the Gambia and Sierra Leone, there are also large Muslim populations, and there also the process of adjustment is taking place, but in their case it is achieved with less difficulty, since the Native Courts are not presided over by Alkali, with a professional interest in the maintenance of the tenets of Muslim law. It is not unnatural therefore to find that there is in Northern Nigeria often an open divergence between the concepts of Muslim law and the current practice in such matters as the subdivision of landholdings by succession, the holding of land by women, and the specific character of pledges of land as security for debt. The subject has been examined generally in Chapter XIX of Dr. Meek's book already referred to, but it demands more detailed local investigation.

#### SOME GENERAL OBSERVATIONS ON THE SYSTEM OF NATIVE ADMINISTRATION

The Native Authorities in Northern Nigeria, or at all events those represented by the Emirates, occupy a position to which it is difficult to find an analogy in other African Colonial territories. It is true that there are elsewhere individual ruling Chiefs who for historical reasons or from the extent of the area and population which they control command a conspicuous position of authority. But nowhere else is there today a comparable number of Chiefs who possess, as a body, the same measure of authority or prestige as the Emirs and Chiefs of the Northern Provinces. From the days of Denham and Clapperton onwards, travellers have been impressed by their display of personal

<sup>1</sup> Land Tenure in the Niger and Zaria Provinces, C. W. Cole, 1949.

dignity, the resources which some of them enjoy and the implicit obedience they seem able to command. It is not, however, within the purpose of the present survey to dwell on these more picturesque aspects of Emirate rule, but to attempt the more prosaic task of examining the extent to which the Native Authority system in its present form is effective, whether as an instrument of Government policy or, viewing the matter more broadly, as an institution contributing to the social and economic progress of the population of the territory.

There can be little doubt that in the present conditions the Administration would find it difficult to secure by any alternate system available to it a more efficient and economic instrument for the maintenance of law and order or the collection of tax. It has been able in this respect to take advantage of the organization established in the previous period of Hausa rule and of the discipline it established. If there is, when judged by modern standards, a weakness in the present system, it lies in two particular directions. In the first place the District Heads in the Emirates, though no longer fiefholders or merely representative of a ruling or leading family, are nevertheless in many cases recruited on an unduly narrow basis in point of qualifications and experience. It is obvious that improvement in this respect can only be gradual, for in present circumstances the possession of local prestige and standing assists to contribute to the authority possessed by a District Head. Nevertheless it is clearly to the general interest that the Administration should now interest itself in pressing for the selection of District Heads of a calibre superior to that of many of those now serving the Native Authority organizations.

In the second place, there is a general lack of any systematic provision of means by which the people can give expression to their views or voice their grievances. Attention has been drawn in previous pages to the measures taken to introduce some system of Village or District Councils as a remedy for this situation,<sup>1</sup> but these measures have been more or less sporadic, and the matter still awaits a definite determination of policy on the part of the Government. The provision of some form of Conciliar system would not be simply a concession to what has now become, in most parts of the world, a normal fashion of political thought; it is a requirement which common prudence indicates as essential where an improvement in the standard of living and the expansion of education contribute to make a community critical of the system of authoritarian rule in which it has hitherto been content to acquiesce. To meet this need appears to be the most urgent of the tasks before the Government in the field of native administration, and the obligation on Government is not diminished by the fact that the measure is likely to meet with very lukewarm support in some of the more conservative Emirates.

Turning now to the contribution made by the Native Authorities in the provision of local Government services, an assessment is less easy, not merely because of the differences in the measure of their resources, but for other reasons. Visitors to the headquarter towns of the larger Emirates are naturally impressed by what they see of the Native Authority institutions. At Kano, for example, they visit its modern and well equipped Native Authority Hospital with over 300 beds, its Electricity and Water Supply installations, its School of Arabic Studies, the extensive Stores and Workshops of the Public Works Department, and the Treasury and Survey Offices, which are entirely staffed by Africans. They see institutions of a somewhat similar nature, if not on

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<sup>1</sup> Pages 68, 69.

the same scale, in the headquarters of other large Emirates. But when the visitor looks further into the history of these institutions, he will realize that for the most part they actually owe their origin to the initiative of Political Officers and their efficiency to the Government technical or professional staff which manage them. He will ask himself, in short, whether they ought not to be regarded as institutions which are financed from Native Authority funds, but which in other respects merely represent services which the Government might have provided from General Revenues, had it reserved for itself a larger share of the resources provided by local taxation.

The question has perhaps been posed in an over-simplified form, and it does not in any case admit of an unqualified answer. It would be even more difficult to forecast the future of these services if the Native Authorities were to be accorded the greater degree of autonomy for which some of them are beginning to ask, and which would give them greater freedom in the disposal of their funds, or allow them to employ and control their own technical or professional officers. The working of the present system is based on a measure of co-operation between the Native Authorities and the officers of Government, both Political and Technical, which is a standing tribute to the good sense and good will of both parties. So long as this continues, there can be no good ground for any radical change in this system of conjoint activity, and it should be added, that there is no present evidence of any such alteration in the political atmosphere, or in the relations of the Government with the Native Authorities as should make it necessary to contemplate any material departure from it. But changing conditions may well bring the problem to the fore, and it will not be easy of solution.

The preceding observations apply in the more highly developed Native Authority organizations. There are however a number of smaller Authorities whose resources cannot be properly utilized until they are united on a basis which will give them a common Treasury with a full command of the joint funds. There remain, further down the list, a number of small communities with no centralized or co-ordinated structure. The Administration has now had a considerable experience of the capacity of these communities to provide Native Authorities of a type that is likely to be of any use for the provision of local government services. Many of them have proved to have little value in this respect, nor does it appear that the position is likely to improve in the future.

There was good reason why the Administration should in the past have sought to explore the character of the social institutions of these communities in order to discover the true seat of indigenous authority. But it may well be felt now that, in the light of the experience gained, their future progress demands the application of a more direct form of rule, exercised through agents who derive their authority from Government, and do not stand on the support of a mass moot of clan Elders or on the influence acquired by the practice of wizardry. Here as in many other cases, of which Tanganyika perhaps presents the most typical examples, circumstances have presented problems for which the current practice of Indirect Rule has been unable to provide a solution.

As regards the system of native justice a distinction must be drawn, as in the case of the Native Authorities, between the Courts of the more developed organizations and those of the less developed units. Though there is admittedly little direct evidence regarding the view held of the Alkali's Courts by the non-Muslim communities in the Emirates, yet there is, in the judgment of

Administrative Officers, a strong body of feeling which accepts and indeed appreciates the value of their administration of justice. It is perhaps only among some sections of the immigrant traders from other parts of Nigeria that there is any sentiment in favour of the substitution of official or Magisterial Courts.

Some mention has been made in the preceding pages of the weaknesses in the constitution of the Native Courts in the many less developed units of the Region. It may of course be true, as some observers hold, that the procedure of Courts so composed, which involves a hearing by the Elders of the community in the traditional setting of a community meeting, is of greater value in the maintenance of the standards of social conduct than the provision of either an Alkali's Court or an "official" Court. But that is a debatable question on which it might be difficult to secure any clear decision. Meanwhile, there can be no doubt of the need for a reform of the manner in which these Courts are composed, in order to secure more efficiency in the conduct of their proceedings, greater regularity in the despatch of business, and a more competent handling of the issues which modern conditions are bringing within their jurisdiction.

## SECTION IV

# THE WESTERN PROVINCES

### GENERAL NOTE

ACCORDING to the Census of 1931 the area of the Western Provinces was 45,000 square miles with a population of 3,803,000, giving an average density per square mile of approximately 84. No census has been held since that date, but the population is now estimated in round figures at 3,957,000, giving an average population density of just under 88 per square mile. This latter figure, however, gives little idea of the internal situation, as it includes the large towns which are characteristic of the Yoruba country, the nine largest of which are estimated to contain now a population of 847,000, and on the other hand it includes some 600 square miles in the Ijebu Province which are practically uninhabited.

The Region is now divided into six Provinces, comprising nineteen Divisions; the area and population of the Provinces are shown in the following statement:

Province	Number of Divisions	Approximate Area	Estimated Population	Average Density
Abeokuta .. ..	2	4,269	576,305	135
Benin .. ..	4	8,977	790,000	88
Ijebu .. ..	1	2,461	320,000	130
Ondo .. ..	4	8,276	571,060	69
Oyo .. ..	4	14,169	1,204,455	85
Warri .. ..	4	6,788	495,494	73
Total ..	19	44,940	3,957,314	88

The Region contains a considerable diversity of physical conditions, ranging from the creek formation on the coast to savannah in the north-west. The southern part of the Ondo Province and most of the Warri Province consist of low-lying creeks and swamps intersected by rivers and estuaries among which are found occasional patches of dry inhabited land. The eastern swamp areas are liable to seasonal inundation from the Niger. The West African Rice Mission have recommended the investigation of an area of about 40,000 acres in the Okitipupa Division (Ondo) which impressed them as a potential area for paddy production.<sup>1</sup> At present however only a small amount of rice is grown, and the main occupation is fishing, much dried fish being sent inland in return for staple foodstuffs. Rainfall is high, the average at Okitipupa being 96 inches, while in the Warri Province it is estimated at between 100 and 140 inches.

Proceeding inland the land rises and a belt of tropical rain forest is met which varies in width from 50 to 100 miles. Here the soil is more fertile

<sup>1</sup> British West African Rice Mission's Report, 1948, page 37.

and in the Abeokuta and Ijebu Provinces, in particular, the forest has been largely cleared for farming. Cocoa, kola and palm produce are the main cash crops, and the Urhobo Division of the Warri Province is the principal area in the Region for palm products. A large amount of export timber is extracted in the Benin, Warri and Ondo Provinces. This area is in the tsetse-fly belt, but there are small herds of the local dwarf cattle which have developed some immunity to trypanosomiasis. In the southern part of the Oyo Province lies the main cocoa producing area of Nigeria, the Ibadan Division alone being responsible for some 40 per cent. of the total crop. While the Ijebu Province is not self-supporting in all foods other areas have surpluses for sale to the towns. Cassava, yams, rice, maize, cocoyams and plantains are the staple food crops. Rainfall is variable, ranging from averages of 48 inches at Abeokuta to 60 inches at Ijebu and 81 inches at Benin. The mean tends to decrease as one moves north-west through the forest belt.

North of a line running roughly through Abeokuta, Ondo and Onitsha the forest begins to thin out to undulating orchard bush. The country then becomes hilly, reaching in the Kururuku Division of the Benin Province to heights of 2,000 feet, with sparsely vegetated granite outcrops, probably of volcanic origin. The north-west of the Abeokuta and the northern part of the Oyo Provinces lie in savannah country. In the orchard bush country the rainfall varies between 45 inches and 60 inches, and cocoa gives way to cotton most of which is used locally. Food staples are much the same as further south, but with an increasing emphasis on grain crops and yams as against cassava.

Although subsistence production of food supplies is still dominant over most of the forest belt, production for marketing both locally and abroad is well established. In some specialized areas devoted to oil-palm products for export and in the area of intensive cocoa growing, production for an external market has reduced the output of food staples far below the level of local needs. The ports and the large inland market centres require considerable supplies of foodstuffs and other native products, and in response to these demands there has developed elsewhere, especially in interior areas less well suited to the production of export products, such as the northern parts of Oyo, Benin and Ondo Provinces, a substantial production of staple foods, which is marketed in the deficit areas.<sup>1</sup>

The Western Provinces are differentiated from the Northern and Eastern Provinces by the existence of a more developed system of craftsmanship and greater specialization in the division of labour. There is an important cloth-weaving industry based on locally grown cotton, and metal working used to be important, although it is now losing ground to imported articles. The Region also enjoys a higher development of internal trade than the Northern or Eastern Provinces, the export of kola to the north being of particular importance in this respect. Cocoa is of even greater importance in the local economy. Cocoa production is organized on the basis of peasant farming, the size of the farms varying from one to fifty acres, though some of the larger farms belong to absentee landlords and are worked by paid labour.

Cocoa follows palm kernels, palm oil and ground nuts as the fourth most important export in Nigeria, and does not therefore dominate the economy of the country as a whole to the same extent as in the Gold Coast. Production is however increasing, and it is the predominant cash crop of the the Western

<sup>1</sup> The Native Economics of Nigeria, D. Forde and R. Scott, 1948, pages 101-2.

Provinces. Export from Nigeria has increased from an average of 32 tons per annum in the period 1892-1896 to 110,793 tons in 1947 with a value of £10,650,131.<sup>1</sup> Swollen shoot disease has been found, although not on the same scale as in the Gold Coast, and is thought to be confined within a thirty mile radius of Ibadan. A Cocoa Survey was started in 1944, and measures are being taken to cut out infected trees; the average Nigerian farmer appears to be co-operating in these measures more readily than his counterpart in the Gold Coast.

### THE SOCIAL SERVICES

Education has made rapid progress in recent years, and it is estimated that the school population doubled itself in the period from 1942 to 1946. In 1949 there were 312,000 children at school, calculated to be 30.0 per cent. of all children of school going age. There are now the following schools:

	Voluntary Agency	Government	Native Authority	Total
Primary Schools	3,218	13	109	3,340 (of which 37 are Schools for girls)
Secondary Schools	17	3	—	20 (of which 1 is for girls.)

It will thus be seen that education is largely carried out by voluntary agencies, 3,218 of the primary and 17 of the secondary schools being managed by Missionary or private agencies, the rest being Native Authority or Government schools.<sup>2</sup> The rapid increase of education has however sacrificed quality to quantity; there are, in the words of an official report, "a vast number of assisted schools staffed by untrained lads, indifferently paid and inadequately supervised." The main difficulty lies in the inadequate supply of trained staff; there are now however seventeen Teacher Training establishments for men and five for women.

A reference will be made subsequently to the part taken by the Native Authorities in the provision of primary education.<sup>3</sup> The Western Provinces have made greater use than elsewhere of the non-statutory Education Committees, which exercise control in regard to the opening of new schools, and the interest now taken in higher education is shown by the fact that a number of students have been sent abroad with funds provided by local communities. Provision for advanced education will now be made by the University College at Ibadan, which admitted its first degree students in October, 1948, but the progress of the College is likely to be retarded by the inadequate standards of the secondary schools.

Technical instruction is provided by the School of Agriculture at Ibadan, which had 73 pupils in 1948, and by the Oyo Farm School, which after a disappointing start in 1942 has now begun to make some progress.<sup>4</sup> A Trade

<sup>1</sup> Annual Report, Nigeria, 1947, page 32.

<sup>2</sup> Sessional Paper No. 15, 1947. Nigeria Legislative Council Debates Second Session, page 163.

<sup>3</sup> Page 128.

<sup>4</sup> See Sessional Papers 13 of 1946 and 28 of 1947 and Western House of Assembly Debates 14th December, 1948.



Centre was opened in Ibadan in 1946. A beginning has been made with adult education, the most successful experiment being at Ekiti. There is a Yoruba Literature Committee at work, producing vernacular booklets.

There is throughout Nigeria an admitted shortage of medical facilities. In 1945 it was stated that there was hospital provision of only one bed for every 3,500 people, a figure which the Ten Year Development Plan proposed to increase to one bed for every 2,000 people in Government and Native Authority Hospitals. The detailed figures show that there were in 1945 eleven Government Hospitals with 608 beds, to which it was proposed to add twelve Hospitals with 1,670 beds, these being in addition to those provided by Mission hospitals. Considerable progress had already been made in the programme by the end of 1947.<sup>1</sup> The part taken by the Native Authorities is confined largely to the provision of dispensaries, maternity clinics and sanitary services, to which a more detailed reference will be made subsequently,<sup>2</sup> but Ibadan finances the large Adeoyo Hospital.

The problem of epidemic disease is now being dealt with by the establishment of mobile Medical Field Units, the first of which are operating in Egbado and Oyo. There is a marked prevalence of leprosy in the Benin and Warri Provinces, where an Area Organization of the new Leprosy Service was established in 1945. There are now one Government, two Native Authority and three Mission Leper Settlements in the Western Provinces, and a considerable sum has been provided under the Ten Year Development Plan for dealing with this disease, the total for the first five years being £453,870 for the whole of Nigeria, of which a large proportion will be expended in the Western Provinces.

### THE ETHNIC DISTRIBUTION

The Western Provinces are predominantly a Yoruba country, for in the Census of 1931 the Yoruba numbered 2,455,889, out of a population of 3,803,000, the next largest community being the Edo with 501,050, followed by the Ibo with 248,331 and the Ijaw with 40,175. It is however somewhat of a misnomer to apply the term "tribes" to these communities, for they often amount to no more than linguistic groups, with a considerable diversity of ancestral stocks, and have now no pronounced consciousness or political focus as tribes. If the term is used here, it is mainly because it is the most convenient word to express a distinction which is in common usage by the people themselves.

There is the usual obscurity about the original home of these peoples, but it is commonly held that the Yoruba were a non-negroid people from Upper Egypt, though centuries of intermarriage have overlaid their original racial characteristics.<sup>3</sup> They may have reached Nigeria from the northwest, and may have been established there between three and four thousand years. In about 1,000 A.D. there occurred, it is believed, an Hamitic immigration which provided the members of the Yoruba ruling class. The original settlement of the Yoruba in Nigeria seems to have been at Ife, still the Holy City of Yorubaland, though after some time the political headquarters were removed to Oyo, which occupied a site some eighty miles to the north of the present town of that name.

<sup>1</sup> Sessional Paper No. 24 of 1945; Nigeria Legislative Council Debates, Second Session, Volume I, page 337.

<sup>2</sup> Page 128.

<sup>3</sup> P. A. Talbot, *Southern Nigeria*, 1926, Volume I.

In the fourteenth century the Yoruba spread to Benin and assumed control of the country occupied by the Efa. The Efa, the ancestors of the present-day Edo, had arrived in a wave of Sudanic immigration which included the Ibo and which possibly dates back to 700 B.C. In the fifteenth century a split occurred in the Benin hierarchy and one branch left to found the Itsekiri Kingdom in the Warri Province. Here the original inhabitants, perhaps the oldest established of all the coastal tribes, were the Ijaw, who had previously been divided into two geographical areas by an invasion of the Urhobo branch of the Edo from the north. The Abohs and Kwales are of Benin (*i.e.* Edo) origin but have many Ibo traditions and customs as the result of intermarriage with their neighbours across the river. The Urhobos and Isokos are closely related but separate peoples. The origin of the Ndonis is obscure; they were possibly a gang of pirates who came up the river in early days.

Over the course of centuries the four main tribes have become divided into a variety of sub-tribes and clans and there have been population movements within the area under the pressure of war and colonization. Short of a new census it is not possible to give an accurate account of their present distribution, but the main results of recent local estimates are tabulated as follows:—

Province	Division	Tribe	Sub-Tribe	Approximate Population
Abeokuta	Egbado	Popo	Egun	36,000
	Egba	Yoruba	Egba-Awori	115,000
Benin	Benin	Yoruba	Egba-Awori	405,000
		Edo	Bini	226,000
		Edo	Urhobo	8,000
	Asaba	Ibo	Ika	15,000
		Ibo	Ika	231,000
	Ishan	Edo	Ishan	119,000
		Ibo, Nupe and Igarra		7,000
Kukuruku	Edo	Kukuruku	106,000	
	Yoruba	Edo	38,000	
	Igala		13,000	
Ijebu	Ijebu	Yoruba	Ijebu	310,000
Ondo	Ondo	Yoruba	Ife	110,000
		Yoruba	Ife	70,000
		Edo	Bini	10,000
	Owo	Ijaw	Western Ijaw	15,000
		Yoruba	Ife	150,000
Ekiti	Yoruba	Ekiti	215,000	
Oyo	Ibadan	Yoruba	Oyo	800,000
		Yoruba	Oyo	132,000
		Yoruba	Oyo	271,000
Warri	Western Ijaw	Ijaw	Western Ijaw	50,000
		Edo	Itsekiri	45,000
		Edo	Urhobo	176,000
	Aboh	Edo	Isoko	57,000
		Edo-Ibo	Aboh	40,000
		Edo-Ibo	Kwale	120,000
		Ibo, Ibibio	Ndoni	2,000

It is unfortunate that the Census of 1931 does not give separately the total number of Muslims in the Western Provinces, but from such figures as are

<sup>1</sup> Ilesha was made into a separate Division in 1948. See pages 119, 120.

given regarding different tribes, it is obvious that the number is relatively small as compared with the Northern Provinces.

### THE INDIGENOUS SOCIAL AND POLITICAL STRUCTURE

The social organization is based on the extended family, which often occupies one compound, and among the Yoruba it is not uncommon for a group of related extended families to live together. These groups of families aggregate into "quarters," claiming descent from a common ancestor, and these are of particular importance in town life. The clan in Southern Nigeria is rarely exogamous and the clan system is tending to break up. It remains stronger amongst the Yoruba than elsewhere, and is normally a section of the sub-tribe claiming a common ancestry. Marriage is patrilocal, ownership of the children is vested in the father, and both family membership and inheritance are patrilineal, although the latter is not necessarily based on primogeniture.

There has always been a strong tendency, particularly amongst the Yoruba, towards urbanization and hence towards specialization in the division of labour. This accounts for the organization of the trade guilds which regulated the conditions and standards of the craft and protected the interests of the members. These guilds still exist and are to be found amongst women as well as men; the Ibo, for example, have the powerful women's guild called Otu Ommu, whose members have the choice of seats in the markets and the right of settling disputes there. The concentration of the Yoruba into towns preceded the advent of British rule, and few of them have been created as the result of European contacts, although these contacts have of course led to considerable urban expansion.

Though the Yoruba have a system of age-classes, this is not so marked a feature of Yoruba society as among the Ibo further to the east. There are separate classes for men and women and each class is assigned a particular function. Usually, but not always, the age-class is entered at the age of puberty, and often the senior group comprises the local rulers. Within the basic pattern there are wide variations, and in the case of the Yoruba and the Bini similar functions are carried out by companies which are not strictly speaking age-classes at all. The Yoruba have five and the Bini three companies, the senior group in each case being exempt from the call to public work. The Ika sub-tribe of the Ibo have eight classes and the Kukuruku sub-tribe of the Edo from nine to fourteen. There is no longer in modern conditions any need for the military grades, but the age-classes still have a social function and are concerned with such activities as the public cleansing of the village or the repair of roads, while the political importance of the senior age group still remains.

Another important aspect of the social organization is the existence of a large number of clubs and Societies, which may be used predominantly for religious, political or social purposes. The religious element is still of importance, and the Societies may well have had their origin in ancestor-worship, the protection against witchcraft and the observance of fertility rites. Before the coming of the European these Societies were in many places responsible for local administration, particularly in areas where there were no powerful Chiefs, and even there they exercised a salutary check against arbitrary rule. A good example is the Ogboni Society which formed an oligarchy amongst the Egba, Ijebu and Oyo; the Alafin of Oyo was the head of the Oyo branch of this Society. "There is no doubt that the power of the Chiefs—except in

Ibadan—was greatly fettered by the Society, which arrogated to itself the power of deciding all matters of importance and settling all serious cases.”<sup>1</sup>

These organizations do not usually admit members of the opposite sex, but both men and women have their own Societies and there is amongst the Ijaw, for instance, the Egbell Irieme, a women’s Society which was powerful enough to stir up the men of Okrika to oppose the establishment of British rule. Amongst the Ibo in particular the Societies are divided into various grades to which are attached “titles.” Entry into each grade is obtained by purchase and to each title a specific rank and status is attached. These Societies form oligarchies which exercise great influence over the Ibo country and at the same time form a means of investment for their members, since they share the entrance fees paid by subsequent initiates.<sup>2</sup>

#### THE YORUBA

Up to the beginning of the nineteenth century the suzerainty of the Alafin of Oyo was recognized by all the Yoruba, with the exception of the Ijebu and those Edo who were subordinate to Benin. The Alafin was theoretically an absolute monarch, presiding over a loose feudal system, but in practice the whole unwritten constitution of the Yoruba seems to have been a system of checks and counter-checks.<sup>3</sup> Accession to the throne was confined to the various branches of the royal family. Three office-holders, themselves of the royal blood, nominated members of the family and the final choice was made by the seven nobles, the Oyo Mesi, a body which comprised the King-makers and the great Councillors of State. “They represented the voice of the nation ; on them devolved the chief duty of protecting the interests of the Kingdom. The King must take counsel with them whenever any important matter affecting the State occurs.” The head of the Oyo Mesi was the Basorun, the King’s first Minister, who at some periods of Yoruba history has had more power than the Alafin himself. The other six members had religious functions and included the Alapini, who was head of the Egungun Society.

The Oyo Mesi were hereditary. The Aremo or Crown Prince was appointed at the accession and was almost a co-ruler. Below the Oyo Mesi came the titled officers of the palace, each with his particular function to perform, then the eunuchs, who were in charge of the Alafin’s wives and children, the chief priest of Sango, the Principal Legal Adviser, and the Osi’efor, who represented the Alafin on all normal occasions. The Ilaris were the King’s bodyguard and messengers ; they were in charge of the Iya Kere, one of the harem who also crowned the Alafin. The harem included the King’s “official mother” (his natural mother was killed on his accession) who had charge of the royal insignia. The military charge of the Kingdom was in the hands of the Esos, under the commander-in-chief known as the Kakanfo.

The provinces were ruled by the hereditary provincial Kings or by civil rulers (Bales). Each kept a representative at Oyo through whom they communicated with the Alafin. They too were assisted by war-chiefs who, under the Balogun, formed the ruling body of the town with the civil advisers. Each quarter and each village also had its Bale who was responsible for local and family matters. The Bales were semi-hereditary, except at Ibadan,

<sup>1</sup> Talbot, *op. cit.*, Volume III, page 762.

<sup>2</sup> For the similar Societies in the Eastern Province, see page 153.

<sup>3</sup> S. Johnston, *The History of the Yorubas*, 1921, page 71.

where the Balogun often succeeded,<sup>1</sup> and were usually the descendants of the original founder of the settlement.

The Oni of Ife was a theocrat. He exercised great influence in Yorubaland by virtue of his rule over the sacred city of Ile Ife, and for long his sanction was necessary on the accession of the Oba of Benin.

Among the Egba, a sub-tribe of the Yoruba, the Alake of Abeokuta was the principal Chief and he was selected by certain Chiefs of some of the settlements which make up the Ake Quarter of the town of Abeokuta. He was however more of a titular head than a ruler, and the real power was in the hands of the Ogboni Society.

The constitution of the Ijebu sub-tribe was headed by the Awujale, elected from amongst four families in turn by the members themselves. In Ijebu the palace eunuchs were especially important and elected the Olisa, who was the Chief Counsellor. There are four grades of nobility, the Lamursin, the Odi (confidential advisers), the Ipampa (petty chiefs) and the Osugbo (the Ogboni Society), who were jointly responsible for all legislation. The successor of the Akarigbo, Chief of the Ijebu-Remo, was chosen from his family by a eunuch sent by the Awujale.

The Ijesha and the Ekiti sub-tribes were ruled by Obas who were subordinate to Benin and who, with a few important exceptions, had to go to Benin to receive their titles.

#### THE EDO

From the fifteenth century the Kingdom of Benin was the most powerful or at all events the most autocratic State on the West African Coast. The person of the King or Oba is said to have been even more sacred than that of the Oni of Ife or the Alafin of Oyo, and he was practically deified during his lifetime. The Kingdom of Benin was very closely organized and was based on Benin City with a peripheral series of subordinate provinces. The establishment of the subordinate sister-state of Itsekiri has already been described.<sup>2</sup> It is sometimes claimed that the Uzaman-Nihino, the seven hereditary nobles, were descended from the aboriginal Efa, and whatever the truth of this tradition, it seems to be the fact that while practically all subjects of the State were considered in theory to be the slaves of the Oba the Uzaman Nihino stood in a different category. The Oba's successor was originally chosen from the royal family, but in the early eighteenth century the succession was made primogenitary in order to avoid conflicts amongst the eligible brothers. Other important posts were at the same time made hereditary rather than semi-hereditary.

The Oba of Benin was the supreme religious as well as civil authority, and much of his time was taken up with the various ceremonies and sacrifices which had to be carried out, especially those in honour of his ancestors. In the early days of the monarchy his supremacy was challenged by the Uzaman-Nihino, but with the assistance of the Portuguese the Oba successfully retained his position, and some time in the fifteenth century he created the Eghaivbo as a counterpoise to the power of the Uzaman-Nihino. The Eghaivbo was an order of nobility which, with the exception of the Ologbosere, was entirely appointed by the Oba and non-hereditary. It was organized into two grades, the senior of which included two war-chiefs, the junior grade being chosen

<sup>1</sup> See page 122.

<sup>2</sup> See page 103.

from the heads of the Otu or organizations which among the Bini take the place of age-classes. It was through these nobles alone that the Oba might be approached, and it was through them that all tribute was paid. They formed the advisers and the chief executive officers of the Oba, and in course of time they acquired more power than the Uzaman-Nihino, while remaining inferior in dignity and status. As they were appointed by the Oba and dependent upon him for their position they could normally be relied on to support him.

The Bini provinces were of two different classes. In one class rule was in the hands of the hereditary Ogies, usually descendants of the royal family given the headship of towns. In the others, the senior age-class, the Odiong, were in control under the headship of the Odiong-Were, usually the oldest man of the age-class in full possession of his faculties.

In its later development, the constitution, like that of the Yoruba, was one of checks and balances. The Oba, while autocratic enough to give quick decisions, was to a certain extent held in check by the Uzuman, who themselves were counter-balanced by the Eghaivbo. Succession by primogeniture in the most important families prevented internal dissension, while the fact that many of the titles of nobility were in the Oba's gift and lapsed on their owner's death added to his power.

Among the tributary states the Esa were governed by Ogies from Benin, part of the Kukuruku were ruled by the Societies and the Urhobo were controlled by the senior-age class.

As a whole, the people of Yorubaland have retained in modern conditions a pride in their history and institutions which has helped to protect them from the disintegrating influence of contact with European civilization, and has given them a consciousness which now manifests itself most conspicuously in their growing opposition to what they regard as Ibo efforts to assert a leadership in the politics of Southern Nigeria.<sup>1</sup> As a people who have from early times shown a tendency to urbanization they are well accustomed to the usages of commercial and industrial life, and their traders have penetrated widely into other parts of the territory. In their relations with other tribes with whom they have thus come into contact they have gained the character of a people who, though perhaps of less force and initiative than the Ibo, have at the same time been more welcome as immigrants, since they are by nature less acquisitive and are marked by an easier temper in their social and business connections.

There has of late years become apparent in Yorubaland a growing conflict between the common people, under the leadership of the educated and progressive members of society, and the aristocratic and "titled" elements which had in the past the chief control of affairs. Up to a comparatively late period the history of Yorubaland reflected mainly the contest for power between different sections of these latter classes, and though to some extent this contest still continues, they now tend to close their ranks against the new forces which are threatening their position. They are still strong, and have been able to appeal to the spirit of conservatism which has its roots deep in the social and religious tradition of the Yoruba peoples. But, as will subsequently be shown, they have had to accept compromises in more than one direction, and this process is likely to continue in proportion as the bulk of the population advances in education and economic strength.

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<sup>1</sup> Page 21.

## THE IBO AND THE IJAW

The Ibo are a section of the large Ibo community which forms the dominant part of the population of the Eastern Provinces.<sup>1</sup> Those living west of the Niger were formerly part of the Benin Kingdom and were ruled by Obis. The Obi of Abo was first appointed by the Oba of Benin and later elected by the townspeople subject to his approval. Elsewhere there was no royal family and the office was non-hereditary, the Obi being elected by the townspeople. Here again the Okpara, a council of old men, exercised much influence; elsewhere the Onetu Society, originally the senior age-class, held the chief power.

The Ijaw for long retained their system of priest-kings (Pere), who were not hereditary, but selected on personal grounds. There was associated with them a council of the Sakapin Society which in some parts held the chief power.

## THE INTRODUCTION OF THE PRESENT SYSTEM OF NATIVE ADMINISTRATION

As will subsequently be shown, the system of native administration introduced in the Western Provinces was, so far at all events as it was embodied in the Ordinances which regulated it, modelled on that in force in the Northern Provinces. But in making a study of the system of native administration in Nigeria, one is constantly made conscious of the problem created by the endeavour to apply to conditions very different from those of the Northern Emirates a procedure based on the facilities which the Emirates afforded for their use as instruments of local rule. The indigenous social and political institutions of the Western Provinces differed widely from those of the Emirates, and the introduction of a system of administration was moreover preceded by developments in the political field very unlike those which had enabled the High Commissioner to make so rapid and so effective use of the position he had acquired in the Northern Provinces.

These political developments fall into a somewhat complicated chapter in Nigerian history, and it is only possible to refer here to those which are directly relevant to our present purpose. There was a period when the suzerainty of the Alafin of Oyo, as political head of the Yoruba community, was recognized as far as Ashanti in the west and the Niger in the north and east; indeed Dahomey continued to pay tribute to him till the end of the eighteenth century. But a breach was driven into that position when the Fulani, in the early years of the nineteenth century, ousted the Yoruba from the rule of Ilorin and Ilorin became a Fulani State.<sup>2</sup> In subsequent conflicts the Fulani and their Hausa adherents overran the country as far as Abeokuta, and there was a rapid disintegration of Yoruba power. Central authority declined, and the demand for slaves encouraged the various states to fight each other and to send their prisoners of war to the slave-markets of Lagos and Dahomey.<sup>3</sup>

There was a short revival of Yoruba power during which the Alafin of Oyo took possession of Ibadan, but Yoruba ascendancy again declined as the result of conflicts which were largely caused by the demand for slaves, and also by attacks from Dahomey. By now, however, the British Government,

<sup>1</sup> For the Ibo see further on page 152.

<sup>2</sup> For the conquest of Ilorin, see page 45.

<sup>3</sup> History of Nigeria, Sir A. Burns, 1948, page 35.

under pressure from the Missionary Societies,<sup>1</sup> had begun to show concern at the continuous disorder in the Yoruba country and the opposition to the measures which were being taken for the suppression of the Slave Trade. In 1852 a treaty was made with Abeokuta for the suppression of slavery, though its terms were not observed by the Egbas, and Europeans were indeed expelled from Abeokuta in 1867. In 1888, arbitrators appointed by the Governor at Lagos effected a settlement among the Yorubas, but they were not successful in stopping the warfare then raging between Ibadan and Ilorin. In this year, however, following on rumours of an advance by the French, the Alafin of Oyo placed "the whole of Yorubaland" under British protection.

In 1892 and 1893 the active interest shown by the Governor at Lagos secured a considerable measure of pacification in the Yoruba country, and a number of treaties were signed by ruling Chiefs. The main purport of most of these treaties, however, was to secure agreement to the prevention of the Slave Trade, and to provide protection for legitimate commerce, rather than to cede jurisdiction to the British Crown. That made with the Alake of Abeokuta and the "Authorities of the Egba Kingdom" in 1893 was afterwards to have particular significance in this respect. While agreeing to the cessation of the Slave Trade and the abolition of human sacrifices, it made some provision for the protection of commerce by recognizing that in the event of any dispute arising between British and Egba subjects, it should be referred to the Governor of Lagos "for settlement as may be deemed expedient." It declared however, that the Egba country was to remain independent in other respects, and that no portion of it was to be annexed "without the assent of the lawful Authorities of the country."<sup>2</sup>

Though it could not be said that peace then reigned in the Western Provinces, the opportunity was taken of the cancellation of the Charter of the Royal Niger Company to declare a Protectorate over Southern Nigeria at the end of 1899.<sup>3</sup> It is noteworthy however that the Order in Council of that date explicitly provided that no action taken as a result of the Order should affect the rights secured to natives by any Treaties or Agreements made on behalf of or with the sanction of the British Government.

During this period Benin had occupied a position somewhat different from that of the Yoruba chiefdoms. As already shown, the Edo had recognized the suzerainty of the Yorubas, though retaining in most respects a position of independence. Benin managed to keep aloof from British intervention until 1892, when the active share taken by it in the Slave Trade resulted in pressure being brought on it to sign a treaty in which it accepted British protection, and agreed to abolish human sacrifices and the trade in slaves. The frequent breaches of this treaty led to a visit by the Consul in 1897, when his party was ambushed and massacred. The city was captured by an expedition a few weeks later and the Oba deported. He died at Calabar in 1914, and his son was re-installed as Oba in the same year.

When the declaration of the Protectorate of Southern Nigeria came into force in 1900 the Western Provinces were not under any definite measure of administrative control, and the position in respect of the legal jurisdiction of the Government was far from clear, in so far at all events as it could be said to depend on treaty rights.<sup>4</sup> There existed in all some eighty treaties, including

<sup>1</sup> The first Mission was established in Abeokuta in 1842.

<sup>2</sup> The treaty is printed at page 315 of the History of Nigeria, Sir A. Burns, ed. 1948.

<sup>3</sup> The Southern Nigeria Order in Council, 27th December, 1899.

<sup>4</sup> See Report on the Amalgamation of Northern and Southern Nigeria, Cmd. 468 (1920).



separate treaties with Ibadan and Abeokuta for the provision of land for the construction of the Railway, within the boundaries of which British Courts were to have jurisdiction. British Residents had been sent to the principal States, but they exercised in the main what amounted only to Consular powers. Following the construction of the Railway, so many complications arose between British traders and local inhabitants that in 1904 Ibadan, Ife and Oyo were persuaded to accept Judicial Agreements by which British Courts were authorized to hear all cases between non-natives and natives and all offences of non-natives. A similar agreement was made with Ijebu-Ode in 1908. In 1904 the Egba Authorities had also made a Judicial Agreement, but in more restricted terms.<sup>1</sup> While it ceded jurisdiction to the British Courts in indictable offences, it provided that non-indictable offences and civil issues involving less than £50 should be tried by Mixed Courts composed of a president appointed by the British Government and two members of the Egba Council, acting by majority.

As regards general administration, this was in the first instance left to the indigenous authorities, acting on the advice or guidance of the Commissioners or District Commissioners, and major attention was given to the organization of the judicial system. The jurisdiction of the Supreme Court was extended by Proclamation 6 of 1900, and provision was made by the Native Courts Proclamations 9 of 1900 and 25 of 1901 for the establishment of "Native Councils" and of "Native Courts" subordinate to them. The Councils had primarily judicial functions, and were to consist of the District Commissioner of the District, with such other members as the High Commissioner should nominate. They were given considerable powers; they could inflict imprisonment up to two years or a fine of £100, and in civil issues could try causes up to £200 in value. The Native Courts, which were called alternatively Minor Courts, had lower powers, and appeals lay from them to the "Native Councils." It is noteworthy at the same time that Section 36 of the Proclamation of 1901 vested the Native Councils with power to make Rules (subject to approval by the Government) for embodying or modifying native law, for regulating or promoting trade, and generally for providing for the peace, good order and welfare of the native population.

The term "Native Council" was in fact somewhat of a misnomer, for the Councils were really the Courts of the District Commissioners; the appeal from their decisions lay to the Supreme Court; and they seem to have followed in the main the procedure of the English Law.<sup>2</sup> In spite of the powers conferred by Section 36 of the Proclamation, it could not be said that this measure constituted any effective step in the organization of a system of native administration. It is moreover clear that outside the scope of functions vested in the Native Councils, the local officers of the Administration remained uncertain both of their executive powers and of the policy of Government. The most anomalous position was in Abeokuta, where the Egbas had modelled their administration on the British Colonial pattern. The Egba Government was conducted in the name of the Alake, who was himself a wholly illiterate chief, by an able and educated native. But it was in fact a pretentious hybrid form of government. "Side by side with a Secretariat, and Minute papers which only the Secretary and a few clerks could read, . . . and Orders-in-Council

<sup>1</sup> See the references given at page 671 of Vol. I of *The Native Problem in Africa*, R. L. Buell, 1928.

<sup>2</sup> See further on page 134.

and Regulations passed by an illiterate body of conservative Chiefs . . . , there existed the ancient regime with all its abuses of extortionate demands from the peasantry, corruption and bribery in the Courts, arbitrary imprisonments and forced labour."<sup>1</sup>

In 1906 Southern Nigeria was amalgamated with the Colony and became the Colony and Protectorate of Southern Nigeria, being divided for administration into the Western, Central and Eastern Provinces. Material progress continued, but the questions of jurisdiction and executive authority remained confused. Sir Frederick Lugard returned to Nigeria in 1912 charged with the task of amalgamating Northern and Southern Nigeria, which were at that time separate Protectorates. He found the constitutional position in the South unsatisfactory and bewildering, and was faced early in his tenure of office with the necessity of sending troops to Abeokuta to put down an armed disturbance. A similar occurrence in 1913 led him to invite the Alake to reconsider the Treaty of 1893, and in 1914 it was abrogated and an Agreement signed placing the Egba Kingdom unreservedly under the Government of the Protectorate of Nigeria.<sup>2</sup> Abeokuta was made subject to the jurisdiction of the Supreme Court and the laws of the Protectorate, and no legislation was in future to be enacted by the Alake and Council without the Governor's approval. The Alake was recognized as the head of the Egba and was to carry on the Native Administration with his Chiefs, subject to the Governor's control, while the Governor assumed responsibility for the maintenance of law and order. Similar arrangements were made with Oyo and Ibadan, but no formal agreements were drawn up, as the abrogated treaties had not recognized the independence of these States.

In January 1914 Northern and Southern Nigeria were amalgamated,<sup>3</sup> forming a single Protectorate under the Governor General of Nigeria. Northern Nigeria and Southern Nigeria (which then comprised nine Provinces) were each placed under the administrative charge of a Lieutenant Governor, a title subsequently altered to that of Chief Commissioner. It is convenient to add here that in April, 1939, Southern Nigeria, of which the Provinces had by this time increased to twelve, was divided into two Administrations, the Western and Eastern Provinces, each under a Chief Commissioner, and each comprising at that time six Provinces.

Though Sir Frederick Lugard regarded it as one of his primary tasks, following the Amalgamation of 1914, to provide Southern Nigeria with a better organization of its Native Administration, he was unable to take any immediate steps in this direction, and was obliged to confine himself to the reorganization of the judicial system on the lines which will be subsequently described.<sup>4</sup> But this measure was in itself significant, since it took the form of the application to the Western Provinces of the judicial system which had for some years been in force in Northern Nigeria. Though the Native Authority Ordinance No. 14 of 1916,<sup>5</sup> which embodied the chief features of the Native Authority system previously introduced by administrative Order and by Proclamation in Northern Nigeria, was made applicable to the Protectorate as a whole, little could be done at the outset to give effect to its provisions.

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<sup>1</sup> Cmd. 468 (1920), para. 19.

<sup>2</sup> Cmd. 468 (1920) Appendix II, page 75.

<sup>3</sup> Letters Patent 29th November, 1913; Nigeria Protectorate Order in Council 22nd November, 1913.

<sup>4</sup> Page 134.

<sup>5</sup> See page 48.

For this one circumstance in particular was responsible. The gradual and reluctant process by which jurisdiction had been extended in the South had not provided for the introduction of any form of direct taxation, and in Lugard's view, the introduction of a system of Native Treasuries was an essential feature of the method of native administration as practised in the Northern Provinces. The early Governments in the South had derived considerable revenues from the dues on imports (particularly trade spirits) and these had been largely expended on the provision of the port facilities, railways and roads necessary for the development of the interior. But there was little left for expenditure on local services, nor moreover was it possible without a system of direct taxation to introduce a régime in which local Authorities could be made responsible for services designed to improve local conditions or to promote in other ways the welfare of the people within their jurisdiction.

Lugard obtained permission in 1916 to introduce direct taxation in Yorubaland, Egba and Benin, and in 1918 an amending Ordinance was passed extending to Southern Nigeria the Native Revenue Ordinance of 1917 which had applied before only to the Northern Provinces. The procedure of native administration embodied in the Native Authority Ordinance of 1916 was then introduced in the areas above mentioned, and was gradually extended to other areas west of the Niger, the latest being the Asaba Division of the Benin Province and the four Divisions of the Warri Province.

As has been indicated in Section I,<sup>1</sup> the form of the existing system of native administration is regulated in the Western Provinces, in common with the rest of the Protectorate, by the Native Authority Ordinances which have taken the place of the original Ordinance 14 of 1916, the most important of which was Ordinance 43 of 1933, now replaced by Ordinance 17 of 1943. During the years that have intervened since the system was introduced there have been many changes in the composition of the Native Authorities or in uniting them into federations and the like, with the result that there is a striking difference between the composition of these Authorities as it stood when the two Protectorates were amalgamated in 1914 and as it stands to-day. As has previously been remarked,<sup>2</sup> the indigenous social and political institutions of the Western Provinces differ widely from those of the Emirates in the Northern Provinces, and the adjustments which have taken place in the system of native administration in force in the former Region illustrate the extent of that divergence. There has been in Yorubaland little evidence of the existence of the authoritarian régime which characterized many of the Northern States. A ruling Chief has been in the majority of cases only the mouthpiece of, or was at all events largely dependent on the support of a Council composed of hereditary title holders together with representatives of the Societies to which reference has been made above. Local rule has not been exercised through the agency of District Heads, but has for the most part been in the hands of town or village Councils which have represented similar elements in local society. The changes which have taken place since 1914 are the result of three tendencies which, if derived from different sources, have nevertheless moved in the same general direction.

The first of these tendencies has resulted in the clearer definition of the constitutional relationship between certain of the major ruling Chiefs and their Councils. In 1939 there were five ruling Chiefs who were formally recognized

<sup>1</sup> Page 11.

<sup>2</sup> Page 108.

as "sole" Native Authorities; in 1947 these had been reduced to three, and by the end of 1949 there was no Chief remaining in this category. In some instances perhaps this change may have been due to the desire of the members of the Councils to assert their own position as against the "ruling" Chief, but it has been stated that the change of title was not actually opposed by the "ruling" Chiefs concerned. "It should be stressed that the term Sole Native Authority has an autocratic sound that was in fact divorced from the realities of the situation. None of the Sole Native Authorities would have thought for a moment of taking action affecting the local community without full consultation with his Council. Nevertheless for some years the Administration and some of the Obas concerned had sought the abrogation of a status that appeared to become more and more out of accord with modern political developments."<sup>1</sup> There has in the second place been a movement, which has been of increasing strength in recent years, in favour of the inclusion in the Councils of "commoners" and educated men, often on a basis of election. Thirdly, there has been a growing realization of the need for concentrating authority, whether by federation or otherwise, in larger units, in order to make more effective use of the resources available for local services. This movement has also been particularly significant in recent years. The result is shown by the fact that whereas in 1945 there were in the Region 137 Native Authorities, the number was by 1947 reduced to 86 Native Authorities, with 280 Subordinate Native Authorities, and there will be in 1950 (if proposals pending with the Government are accepted) only 47 Native Authorities, with 208 Subordinate Native Authorities. The composition and character of the Authorities will be seen from the following detailed account of the organization in the different Provinces of the Region.

## THE NATIVE AUTHORITIES AS NOW CONSTITUTED

### ABEOKUTA PROVINCE

(a) In the Egbado Division, which has a population of about 160,000, the present Native Authority, the Egbado Divisional Council, was formed in 1949 from five formerly independent Native Authorities, most of which were themselves federations, and to which were attached 14 Subordinate Native Authorities. The Egbado Native Authority has now five Subordinate Native Authorities.

The Egbado Divisional Council consists of 28 members, elected from the five Subordinate Native Authorities, and meets under an annually elected President, who receives an allowance of £150. It works through six Committees, of which the most important is its Executive Committee. The Subordinate Native Authorities are composed of both ex-officio members (who are mainly Chiefs or traditional title holders) and elected members, there being altogether 35 of the former and 211 of the latter; the elected members are chosen by the quarters and villages by acclamation at village meetings. The Egbado Divisional Council is 85 per cent. literate, and the Subordinate Native Authority Councils are from 30 to 55 per cent. literate.

(b) In the Egba Division, with a population of about 272,000, the Alake of Abeokuta was until 1948 the sole Native Authority, with two Subordinate Native Authorities in the Otta and Imala Districts, each consisting of a Chief

<sup>1</sup> Local Government in the Western Provinces, 1939-40; Lagos, 1950.

and Council. The Alake had an Advisory Council consisting partly of titled Chiefs and partly of members elected by the Sectional Councils into which the numerous Townships are grouped; he had however the power of appointment to the Advisory Council, and thus to some extent controlled the election. As the result of an agitation, the merits of which it is unnecessary to discuss here, he abdicated in 1948 and the Egba Central Council was constituted the Native Authority; it now consists of 13 ex-officio titled members and 73 elected members, including four women. The elected members, originally appointed by their respective towns and villages, were in June 1949 elected by taxpayers, at elections supervised by Administrative Officers, voting being by show of hands. The four women were elected by the Councils of the four Sections into which the Egba Native Authority is divided.

About 60 per cent. of the present members of the Central Council are literate; the Council works through seven Committees, which conduct their proceedings at their own request in English.

The Alake received a salary of £2,520 a year. Chiefs who are permanent members of the Central Council are paid salaries varying between £42 and £360, while other members receive allowances between £18 and £24 per annum.

The Otta Subordinate Native Authority now consists of the Olotta of Otta as Chairman and his Council, which is composed of 11 ex-officio title holders, and 29 elected members. The Olotta has a salary of £250, and the members of the Council allowances of between £12 and £24. The Imala Subordinate Native Authority consists of the Amala of Imala as Chairman and his Council. The Council has six permanent members (traditional title holders), six members (village heads) selected annually, and three Councillors nominated annually by the Council or the District Officer. The Amala has a salary of £110, which he shares with some of the title holders; other Councillors have allowances of from £9 to £15 a year.

#### BENIN PROVINCE

The Benin Province comprises four Divisions, over all of which the Oba of Benin once exercised jurisdiction, but this is now restricted to the Benin Division, although it is from his family that came the Obis who are hereditary Chiefs over various Clan Areas. It will be recalled also that it was through his family that Ishan and part of the Colony was originally settled.<sup>1</sup>

(a) The Benin Division has a population of 164,000. The Benin Divisional Native Authority was completely reorganized in 1948 and the title altered from the Oba-in-Council to that of Oba-and-Council. The Council now consists of the Oba as President, the Iayse as Chairman, and two other Chiefs as ex-officio members. There are 80 elected members of whom 16 are Chiefs (from traditional Chiefs' societies); 24 Ward Members (two from each Ward in Benin City); 40 District Members (two from each of the 20 District Councils which are being gazetted as Subordinate Native Authorities); two nominated Members and the Administrative Secretary. There are in addition 16 Extraordinary life members, being traditional Chiefs who were members of the old Council, but whose places will not be filled as vacancies occur.

The Benin City Council,<sup>2</sup> which functions as a Subordinate Native Authority was also reorganized in 1948, and now consists of 38 members

<sup>1</sup> See page 25.

<sup>2</sup> Benin City has a population of 30,000.

elected for a period of three years. Of these 24 are Ward Members and ten are Chiefs. The District Council referred to above consists traditionally of all members of the senior age grade, known as Edion, but several Councils are expanding their membership by the inclusion of a number of younger, educated men.

The reorganization of the Divisional Council and of the Benin City Council has been the result of a considerable local agitation against the former traditional and aristocratic composition of these bodies. The organization appears to be still in a state of transition. The Divisional Council, with its present number of 103 members, is an unwieldy body, but its work is transacted by five Committees appointed by the Divisional Council, and three (dealing with such matters as Income Tax Appeals, Town and Market Planning) appointed by the City Council.

Composition of the District Councils is also in a state of transition; at present they contain only a proportion of from five to ten per cent. of literate members.

As a result of the political agitation the salary of the Oba has been reduced from £2,400 to £1,000 a year. The title of Iyase has been revived after a lapse of some years and the present holder receives a salary of £600; the remaining Chiefs and Councillors receive salaries varying from £12 to £120 a year.

(b) Ishan Division, with a population of 130,000 has now 11 independent Native Authorities, all of which have a similar composition, namely the Onogie (Clan Head) and Council, the Council in each case consisting of title holders and Elders of the Clan. There has hitherto been a low percentage of literacy, but a reorganization is in progress, and in three of the Native Authority areas an elective system has been introduced, which has given a higher percentage of literate membership. Voting is by villages, and where there has been a dispute, there has been a show of hands. Taking the Irrua Group area as an example, the Authority now consists of the Onogie as Chairman, 16 title holders (eight of whom are literate), two Elders and eight commoners (all literate).

The Division has hitherto been riddled by local jealousies, but the 11 Authorities are reported to have agreed to federate and become subordinate to a Divisional Native Authority.

(c) The Ogwashi Uku District of the Asaba Division, with a population of 110,000, has at present 12 Native Authorities of which three have independent Treasuries, the others sharing in the Treasury of the Ogwashi Uku Native Authority. Membership of the Native Authority Councils has hitherto been almost exclusively confined to senior age grades whose members are numerous and mostly illiterate, though in a few cases (as notably in the Asaba Clan) provision exists for the inclusion of literate members, subject to the approval of the senior age grade. A reorganization is now taking place which will result in a higher percentage of literate Councillors, freely elected, as well as in representation of the Hausa and Eastern Ibo communities. Some of these Councils have as Chairmen hereditary patrilineal Chiefs, known as Obis in Asaba and Onogie in Ishan. Except in the Asaba Clan, where there are Executive and Town Planning Committees, only Tax Assessment Committees exist.

In the Agbor District of this Division, with a population of 50,000, there is an Ika Federal Native Authority, with 11 Subordinate Native Authorities. The Federal Council is composed of the 11 Clan Heads together with one

elected member from each clan, chosen by the Clan Council. Membership of the Councils of the Subordinate Native Authorities is almost entirely confined to the title holders and senior Okparas (oldest men in each unit) with the Obi (the Clan Head) as President.

(d) The Kukuruku Division has three Native Authorities.

(1) The Ivbiosakon Federal Native Authority (population 32,000), has nine subordinate Native Authorities, which consist of Clan Area or Group Area Councils. The Federal Council is composed at present of 48 members; approximately half the seats are filled ex-officio by Clan Heads, Village Heads and Senior Title Holders, the remainder being filled by yearly election from the Subordinate Native Authorities. Right to membership of the Subordinate Native Authorities is usually consequent on title taking, but is sometimes leavened by the appointment of a certain number of representatives of the middle age grade (the Otuleha). The number of members of the Councils varies from 326 in the Otwa-Ikao Group to 24 in Usokha.

(2) The Etsako Federal Native Authority (population 60,000), constituted in 1948, has 12 Subordinate Native Authorities representing clan or sub-clan areas or village group areas. The federal Council is composed of two representatives from each of these 12 areas; where a Chief is recognized as Clan Head he is an ex-officio member; in other cases election is made by the Subordinate Native Authority. The membership of the Subordinate Native Authorities varies from 150 members (Weppa-Wanno) to thirty (Agbede and Auch). Members are chosen to represent kindreds or quarters, and though attention is being given to the problem of reducing the numbers and increasing the low proportion of literate members, the latter is unusually difficult as most of the local literates reside outside the Division.

(3) The third Native Authority (the Akoko-Igarra Native Authority, population 60,000) will be a union of two previous Native Authorities, the Oke-Akoko Federal Native Authority (which has seven Subordinate Native Authorities) and the Akoko-Okungbe Federal Authority (which has eight Subordinate Native Authorities). The new Native Authority will consist of four ex-officio members (Clan Heads); 20 members elected for three years at a time by the existing Subordinate Native Authorities; and additional members up to five, appointed by the Federal Native Authority from literates who need not be members of a Subordinate Native Authority. Membership of the Subordinate Native Authorities is based on representatives of kindreds or quarters; the numbers vary from 119 (Igarra Group) to 12 in the case of Imeri. The proportion of literates in English is low, though in some groups there are a certain number who read and write Yoruba.

The scale of salaries is low. A percentage of the tax collection (5 per cent. to 10 per cent.) is usually available for division among the Village Councils, while Clan and Village Heads receive salaries, sometimes as low as £6 a year, rising to £150, in the case of the Obi of Agbor.

#### IJEBU PROVINCE

The Province has only one Division, the Ijebu-Ode Division, in which there are two Native Authorities, (a) the Native Authority for Ijebu Province, exclusive of Ijebu Remo, and (b) the Ijebu Remo Area Native Authority.

(a) The first of these two Authorities, with a population of 192,000, consisted until May 1949 of the Awujale of Ijebuland as Sole Native Authority. Since that date it has consisted of the Awujale and Council, but the future

composition of the Council was still being discussed at the beginning of 1950. For the time being it is composed of the previous Advisory Council, which consisted of 21 ex-officio titled members of the two Towns Ijebu Ode (population 25,250) and Ijebu Igbo (population 42,400) with 20 elected members from these two towns. The District and Village Areas had 41 ex-officio titled members and 48 elected members. This large body of 130 members had seven Committees, and these were invariably consulted before the Awujale arrived at any decision of importance.

There are two Subordinate Native Authorities, the Ijebu Ode Town Council, which acquired its status in 1949, and the Ijebu Igbo Council which acquired its status in 1948. The personnel of these two Councils remains at present the same as that of the Advisory Councils created in 1945 and 1940. The Ijebu Ode Town Council has as Chairman the Olisa of Ijebu Ode, the next senior Chief to the Awujale in the town, and has 107 members of whom 66 (including three women) are elected by Ward Quarter Councils representing age grades and the women; 31 are selected by four titled Societies (the Itamuren, Odi, Oshugbo and Pampa Societies); eight selected by the four Ruling Houses, and two by the Hausa community. Though the titled Chiefs and members of the Ruling Houses come from exclusive groups, the majority of the Council are elected by the townsmen at Quarter meetings. About 40 per cent. are literate. The Ijebu Igbo Town Council has the Orimolusi of Ijebu Igbo as Chairman, six ex-officio titled members and 55 members elected at Quarter meetings in the town. Some 30 per cent. are literate.

Each of the other Districts in the Ijebu Native Authority area has its Council, composed of ex-officio titled and elected members, selected by Quarter or Village Councils, and in only one of the District Councils (Water-side Area) are the titled members in a majority. These District Councils have not the status of Subordinate Native Authorities, but as shown above, they send 89 representatives to the Native Authority Council.

(b) The Ijebu-Remo Native Authority (population 70,000) attained its independence in 1937, but still pays £400 a year to the Awujale in token of his spiritual headship. The Native Authority consists of the Akarigo and Council. The Council is composed of 15 ex-officio members (all Town Heads) and 54 members elected by Town Councils in numbers proportionate to the size of the town concerned.<sup>1</sup> The Council works through two Committees. The Town Councils, which have not the status of Subordinate Native Authorities, have nevertheless some actual responsibilities for their own areas; they are composed of a few ex-officio titled members with an elected majority, usually chosen by "free" vote, but in a few cases limited to selection by age grades.

In 1947-1948 the Awujale drew a salary of £1,700 and about 100 Chiefs and title holders drew sums varying from £414 a year to £3 a year, but these amounts have since been increased. In addition, Councillors receive attendance allowances and unsalaried Village Heads draw a rebate of threepence for every tax collected before the end of the year.

#### ONDO PROVINCE

The Province now has four Divisions, Ekiti, Okitipupa, Ondo, and Owo.

(a) The Ekiti Division, which had 16 Native Authorities in 1945 now has one, the Ekiti Federal Native Authority, controlling the whole area (population 215,000) with 20 Subordinate Native Authorities, of which 16 are District and

<sup>1</sup> The largest town is Shagamu with a population of 27,000.



four are Village Councils. The Federal Authority consists of the 16 Obas of Ekiti, together with members elected by the 20 Subordinate Native Authorities, on the basis of one Councillor for every 2,000 inhabitants, with one additional member who must be literate. The President is elected annually from among the 16 Obas by a full meeting of the Council. About 30 per cent. of the members are literate. The Federal Council works through two Committees, each consisting of the President and six members elected on a geographical basis; all these members are literate.

(b) The Okitipupa Division (population 110,000) was until 1949 divided into five separate Native Authority areas. All five are now united in the Okitipupa Federal Native Authority, which has a single Treasury; the original five Native Authorities remain as Subordinate Native Authorities for other purposes. Representation on the Federal Council is vested in various Group and Village Heads, accompanied by representatives of component units, some of whom are elected. The percentage of literacy is low, and the working of the Authority hampered by the physical conditions of the Division.

(c) The Ondo Division has now three Native Authorities, one for each of the three Districts (Ondo, Idandre, and Akure). The Ondo District Native Authority (population 60,000) is the Oshenawe and Council; the Council members are almost exclusively titled, and comprise certain senior Chiefs of Ondo Town and the heads and senior Chiefs of the towns and villages of the District. Two literate men are nominated by the Unions to be members of the Council. The District Native Authority works through ten Committees. It has one Subordinate Native Authority, the Ondo Town Council, which acquired its status in 1949 after many years of endeavour on the part of the Administration and progressive elements in the Town. The latter has a population of 24,000. The Town Council consists of a senior Chief and one literate commoner from each of certain Quarters of the Town; two literate commoners from certain other Quarters; six women (two of whom are Chiefs) elected by the women of the Town; and six men nominated by the District Native Authority. One of the High Chiefs of the Town is Chairman.

The Idandre Native Authority (population 16,000) until recently consisted of the Owa of Idandre, 31 Chiefs, Quarter Heads and Elders, and two representatives of the Youth League. In addition, ten literate men chosen by the Quarters of Idandre and Alade have now been included, in order to secure the co-operation of the younger men.

The Akure District (population 34,000) comprises 17 small towns and a number of villages, 15 of which have Village Councils constituted as Subordinate Native Authorities. The Native Authority is the Deji of Akure and Council, the latter consisting of all members of the Subordinate Native Authorities as well as the Heads and Elders of certain permanent farming settlements. During the last few years 15 literate members have been added to the Council. The latter is now a large and unwieldy body, but further reform has been rendered difficult by the strained relations between some of the villages and the people of the mother town of Akure, which has a population of 22,000, and therefore has a dominating position in the District.

(d) The Owo Division has now seven independent Native Authorities. The Akoko Area (population 101,000) has a Federal Native Authority with seven Subordinate Native Authorities, which up to 1948 were united only in the Akoko Advisory Council. The Federal Council has seven ex-officio titled members, and one elected member for each 2,000 of the population in each

Group, together with one literate member for each Group who is chosen by the Group Council, and one Hausa member. The Oka Village Group Native Authority (population 16,000) is geographically part of the Akoko area, but the Olubaka of Oka has not agreed to join the Akoko Federal Native Authority. The Oka Native Authority consists of the Olubaka and his Council, which contains only a small proportion of literate members. The Ifon, Ikaro, Imoru and Sobe Village Group Native Authorities are small bodies dealing with a population totalling only 15,000, and constitute a loosely knit unit, but jealous of their individual independence. The Owo District Native Authority (population 30,000) consists of the Olowo and the Owo District Council, on which each of the villages of the District is in theory entitled to representation, but owing to local jealousies and also internal strife within Owo Town (population 26,000) the development of the Council on a fully representative basis has not so far been practicable. There are 12 literates on the Council, in addition to the Olowo.

#### OYO PROVINCE

The Oyo Province is traditionally the heart of Yorubaland. As already shown, the Alafin of Oyo long held unquestioned suzerainty over the Yoruba, which the Oni of Ife had, and indeed still retains, a well recognized position as spiritual head of the Yoruba people and custodian of the holy city of Ife and the relics it contains. The Province has now five Divisions.

(a) Ife Division has one Native Authority, with jurisdiction over a population of 61,000 including the town of Ife, the population of which is 45,000. Up to 1947 the Oni of Ife was sole Native Authority, with an Advisory Council consisting of 24 traditional Chiefs and two nominated literate Councillors. Though in theory independent of the Council, he consulted it on all important matters. Since that date the Native Authority has become the Oni and Council, the latter consisting of 28 Chiefs and 15 elected or nominated Councillors. This measure has been effected with the full co-operation of the Oni, who has also accepted the grant of the status of Subordinate Native Authority to the Ife Town Council and the Origbo District Council. The former consists of 20 Chiefs and 18 elected Councillors, the latter of 16 Chiefs or Village Heads and 10 elected Councillors.

The emoluments proposed for 1948 to 1949 were £1,750 for the Oni of Ife, £1,093 to be divided among 30 Ward Heads and £312 among 15 Village Heads. Councillors receive separate allowances.

(b) The Illa Division had until 1949 the Illa District Native Authority (population 19,000) which consisted of the Orangun-in-Council, 25 Chiefs and one Councillor nominated by the Orangun-in-Council. The Native Authority is now the Orangun and Council, the number of Chiefs has been reduced to 18, and the number of Councillors increased to eight. These latter are not nominated, but chosen by the people of Illa and the Councils at Ora and Oke-Illa. The literate element is mainly to be found in the elected Councillors. The Council has now six Committees.

The Native Authority is relatively poor, and the Orangun receives £300 a year, £269 is divided among other Chiefs and £55 among three Village Heads.

(c) The Oyo Division has one Native Authority, the Oyo Divisional Native Authority (population 272,000) with five Subordinate Native Authorities. The Division contains three large towns, Oyo (79,000), Iseyin (48,000) and Okeiho (18,000).

The administration was until 1945 vested in the Alafin, assisted by an Advisory Council of 12 Chiefs from Oyo Town. In 1945 the Alafin abandoned his status as sole Native Authority, and the composition of his Council was changed to 11 Chiefs from Oyo, eight Chiefs from other towns in the Division and five nominated members. As the result of a further reorganization in 1949 the Council now consists of 13 Oyo Chiefs, 17 Chiefs from other towns, and 18 elected members, making, with the Alafin, a total membership of 49. The Council includes two women; all the elected Councillors are literate. The Council has six working Committees.

The composition of the Councils of the five Subordinate Native Authorities has also been revised, with the purpose of increasing the number of elected Councillors, and nomination by Chiefs or Societies has been abolished.

The salary of the Alafin is £2,450, and other members of the Council receive sums varying from £20 for the Okaefa and Otumefa of Oyo to £380 for the Bashorun, £440 for the Aremo, £540 for the Okere of Shaki and £545 for the Aseyin of Iseyin. The sum of £2,662 was in 1948 to 1949 made available for division among members of the Subordinate Native Authorities.

(d) In the recently formed Ilesha Division, there is one Native Authority, that of Ijesha (population 93,000), whose present constitution dates from 1944. It consists of the Owa of Ilesha-in-Council, the Council being composed of the Owa, 28 Senior Chiefs of Ilesha Town (population 35,000), two women Chiefs, six Quarter Heads, 12 literate representatives (10 elected by the Societies and two by the Owa and Chiefs) and 58 District representatives, who are mainly Chiefs. Discussions were however being held early in 1950 with a view of securing a more popular constitution of the Council, as it seems to be generally agreed that there is an undue proportion of the traditional or titled element. At present only a small proportion of the 106 members of the Council are literate.

The Owa of Ilesha receives a salary of £1,450; 22 of the Chiefs divide the sum of £942; 30 Town and Quarter Heads draw £172 jointly, and Village Heads have a tax rebate of £650.

(e) The Ibadan Division derives unusual importance from the extent of its urban population, for it contains not only the town of Ibadan (now estimated to have 335,500 inhabitants), but Iwo (86,000), Ogbomosho (84,500), Oshogbo (64,000), Ede (51,000), Igboora (38,800) and Ejigbo (21,000). As regards the early history of Ibadan, it is sufficient to say that it was originally an Ife war camp, which admitted the Oyos, who ultimately seized control of it. The Ibadan area was until 1934 under the suzerainty, if not the actual control, of the Alafin of Oyo, and when it secured independence of the Alafin in that year, the Bale of Ibadan and Council became the Native Authority for the Ibadan Division, with Subordinate Native Authorities for the Oshogbo, Ogbomosho, Iwo, Ede and Ejigbo Districts. These, as will be gathered from what has been said above, contained what were then the most populous towns after Ibadan itself.

The Bale of Ibadan was not a ruler of the same status as the Alafin of Oyo or the Oni of Ife, who hold hereditary Chiefdoms in the sense that succession is confined to one or more families claiming a common ancestor. In Ibadan the Bale was chosen alternately from the "civil" and "military" line of traditional Chiefs, and his accession to the post represented a process of promotion from the junior to the senior ranks. He was therefore frequently of a somewhat advanced age before he reached the position of Bale, and was

consequently likely to be more dependent on the Council than some of the other major Chiefs in Yorubaland.

In 1936 the title of the head of Ibadan was changed to that of Olubadan, and a separate Native Authority established for the Ibadan District, which comprises Ibadan itself and some neighbouring towns and villages. From this date there have been two Native Authorities in the Division, separate in jurisdiction, but closely interlocked in personnel, namely, the Ibadan and District Native Authority, responsible for Ibadan Town and District (population 369,000), and the Ibadan Divisional Native Authority, which is responsible, through its 11 Subordinate Native Authorities, for the large towns and the rural areas lying outside the Ibadan District. (Population 893,000.)

Taking first the Ibadan and District Authority, this between 1938 and 1949 consisted of the Olubadan-in-Council, the Council comprising the 11 Chiefs of the Inner Council and four elected Councillors. It received assistance from an Advisory Board of 30 members, 15 of whom were Quarter representatives and the other 15 were representatives of the Junior Chiefs and Mogajis (family heads). These two sections of the Advisory Board each elected two Councillors as members of the Native Authority. The Advisory Board has lately been increased to 60 members, namely, 14 Chiefs and Councillors representing the seven largest towns in the District, 23 Quarter representatives elected in the different Quarters of Ibadan, and 23 Junior Chiefs and Mogajis. Each of these two sections now appoints six of its members, instead of two, as District Councillors, and the District Council has accordingly since 1949 consisted of the 11 Inner Council Chiefs and 12 Councillors. All the latter are literate, and four of them are employed on full time Native Administration duties. The Native Authority works through seven Committees.

The Ibadan Divisional Native Authority had until recently the same membership as the District Authority, with the addition of the heads of the Subordinate Native Authorities. Owing to recent changes, it now consists of the 11 (Inner Council) Chiefs, eight Councillors from the Ibadan District Authority, and the President and one Councillor from each of the 11 Subordinate Native Authorities. The Olubadan is President, and the Authority thus consists of 42 members. It has an executive Council dealing with finance and legislation, and an Executive Committee dealing with political and Chieftancy disputes, and also has four other Committees.

There has at the same time been a considerable decentralization of powers to the 11 Subordinate Native Authorities, each of which has its own Treasury. The Councils of these Authorities have been reconstituted with the object of giving a larger proportion of elected Councillors. Thus, to take some instances, Iwo has nine elected Councillors as against 32 Chiefs or titled persons; Ogbomosho has 16 elected Councillors against 40 Chiefs; Aiyedale has 13 elected Councillors against 21 Chiefs.

As will have been seen, there has of late years been a marked increase in the proportion of "elected" members on the Native Authority Councils, though their composition still gives considerable weightage to the "chiefly" or "titled" element. Popular pressure for the increase of the former element is likely to continue. But it is also clear that the constitution of these bodies is cumbersome; and the machinery of local Government is far from effective. As regards emoluments, the Olubadan in 1948 to 1949 was to receive a salary of £2,400, the traditional Councillors being paid sums varying from £48 to

£700, this being the salary of the Balogun.<sup>1</sup> The elected Councillors were to receive £120 each. The Chiefs who preside over the Subordinate Native Authorities receive salaries which in some cases amount to as much as £600 yearly.

#### WARRI PROVINCE

This Province, which has four Divisions, has characteristics resembling those of the Eastern rather than those of the Western Region. In most of the Province there is, in particular, no tradition of organizations headed by ruling Chiefs of the type of those in the Yoruba country, though there still remain the rudiments of the Yoruba system in Itsekiri, which has by tradition a paramount Chief, the Olu, and a number of Chiefs whose titles are similar to those of Benin. The system collapsed however during the regime of the European trading companies, and the Olu-ship was vacant for a hundred years after 1836. In the Province generally, the emphasis has in recent time been mainly on the effort to create some workable form of Native Authority by federating the large number of separate units, in the majority of which the only recognizable political institutions have been clan or village Councils, often of an informal composition. The only towns of any importance in the Division are Warri (population 15,000) and Sapele (30,000).

(a) The Aboh Division has now three Native Authorities, the Kwale-Ibo, the Aboh District, and the Ndoni Native Authorities. The first of these with a population of 95,000, has 12 Subordinate Native Authorities, composed of Clan Councils. The Native Authority consists of an "Executive Council" whose members are drawn from the Councils of the Subordinate Native Authorities and those of five of the Village Groups; it has an authorized membership of 64, but though the area contains a number of men of ability and standing, the attendance at the meetings of the Council is poor.

Three permanent Presidents sit in rotation for four months at a time. In the effort to overcome local apathy, the Native Authority Finance Committee was reorganized in 1949, on the basis of the representatives of each clan and Village Group by one elected member, and the majority of these are literate.

The Aboh District Native Authority (population 53,000) consists of the Obi of Aboh and Council, the latter having 52 members drawn from the 19 clan and village Group Councils, 15 of which have the status of Subordinate Native Authorities. Membership of these Councils is as a rule confined to Clan Heads and title holders, this latter term denoting either membership of a senior age grade or a person who has by purchase obtained membership of the title society. The District is backward, much of it being swamp forest, and communications are poor.

The Obi of Aboh is a hereditary Chief, but the rule of primogeniture does not apply. He receives a salary of £340 a year, and the Councillors share 17½ per cent. of the tax collected. For many years the Obi was the only literate on the Council but the Finance Committee has lately been reorganized on the same lines as in Kwale Ibo, and 16 of its 20 members are literate.

The Ndoni Native Authority (population 3,000) consists of the Awoh and Council. The Clan lies on the east bank of the Niger, and a strong distrust of Aboh has rendered its federation with that Native Authority impracticable.

(b) The Itsekiri Division has now only the Itsekiri Area Native Authority (population 48,000) with six Subordinate Native Authorities. Up to 1949 the

<sup>1</sup> For the Balogun see page 105.

Authority consisted of the Olu of Itsekiri with a Council of 50, drawn partly from the Subordinate Native Authorities and partly from members of prominent families who were Court members. As reorganized in 1949 the Council consists of the Olu as President, the President and vice President of each of the six Subordinate Native Authorities, 21 other members elected by these Authorities and five literate members nominated by the Council.\* The composition of the Subordinate Native Councils is mainly elective.

There is a marked diffusion of authority for so small a population and a Treasury Revenue of only £6,890. The title of Olu has lately become vacant ; the late holder received a salary of £300 a year ; the members of the Councils have 12½ per cent. of the tax collected, amounting in 1947 to 1948 to £367.

(c) The Urhobo Division has two Native Authorities, the Urhobo and the Western Urhobo Native Authorities. The former, with a population of 243,000, consisted till recently of a Central Council with a membership of 81 drawn from 22 Subordinate Native Authorities, of which 10 were Urhobo and 12 Isoko, a closely related people. The working of the Native Authority was not satisfactory, and it has been recently reorganized. Twelve local Councils whose members are fully elective, except for the Ovie (Priest-Chief) and Otota (spokesman), elect an Isoko District Council, and 10 similarly constituted Urhobo local Councils elect a Urhobo District Council. These two Councils will have the status of Subordinate Native Authorities, the local Councils remaining solely as electoral colleges. The two District Councils combine to elect a Urhobo-Isoko Federal Council which will have 22 members, namely, the President and Vice Presidents of the two Subordinate Native Authorities, and 18 elected members from these bodies.

The Western Urhobo Native Authority (population 69,000) is the result of a reorganization effected in 1948. Formerly there were six superior and 20 Subordinate Native Authorities in this area, with a total membership of 921 persons. In the reorganization of 1948 the six Native Authorities combined to form the Western Urhobo Native Authority, retaining for themselves the status of Subordinate Native Authorities ; the former 20 Councils holding this status have ceased to exist.

The Native Authority now consists of the President and Otota (spokesman) of each of the six Subordinate Authority Councils ; 29 representatives elected by those Councils ; and four members nominated to represent outside interests. On the Subordinate Authority Councils there is one representative for every 50 tax payers and each Council nominates three additional members. The system is fully elective, there being no title or age grade qualification. About 10 per cent. of the members are literate.

(d) In the Western Ijaw Division the Native Authority has also come under reorganization. The Western Ijaw Native Authority (population 53,000) has now 13 Subordinate Native Authorities and consists of 42 members. These are the President and Vice President of each of the 13 Subordinate Native Authorities ; one literate member appointed by each of these Authorities ; one member nominated by the District Officer to represent Forcados, and two members nominated by an Advisory Committee on Burutu island. About 40 per cent. of the Council is literate.

The 13 Subordinate Native Authorities, originally representing Clan Councils, now represent geographical units. The only ex-officio members are the Pere or Clan Heads and the Otota or Spokesmen, who are elected for

life as President and Vice President. The remaining Councillors are elected for three years on the basis of one representative per 30 tax payers.

It may be added that Warri and Sapele Towns are not controlled by the Native Authorities but are administered as second class Townships.<sup>1</sup>

### THE CHARACTER OF THE PRESENT NATIVE AUTHORITIES

The details just given illustrate both the diversity in the formation of the Native Authorities in the Western Region and the extent to which they differ from those in the Northern Region. Like the latter, they fall roughly into two categories, those namely which represent political institutions with some form of central organization, as in Yorubaland, and those representing the less co-ordinated or centralized type of institution, as most notably in the Warri Province. But neither category of these Authorities bears any close resemblance to those of the Northern Region.

Though Yorubaland has Chiefs with a long tradition of rule—much longer indeed than the rulers of the Fulani Emirates—their status differs widely from that of the Emirs. They have been dependent in the past on Councils composed of Chiefs or title-holders who have derived their authority from sources independent of the ruling Chief, and who, apart from the natural tendency to assert their own position, have had a traditional function, well recognized in local society, as checks on the acquisition of personal power by the ruler. And of recent years the composition of the Council itself has undergone a significant change. Popular pressure, to which the Administration has lent its support, has resulted in securing the inclusion in the Councils of a growing proportion of “commoners,” and educated men who owe their position to a definite process of election. That is obviously a development which is destined to acquire increasing momentum in the future. There is a third feature which differentiates the organization of the Native Authorities from that which has characterized the Emirates. Local administration has not been conducted through the agency of appointed District Heads, but has remained largely in the hands of the representatives of Clan or Village Councils or, in the towns, of representatives of Quarters or Wards. It has followed as a natural result that recent reorganizations of the constitution of the Native Authorities have seen a growing measure of decentralization of their functions in favour of Subordinate Native Authorities.

It seems unnecessary to enlarge here on the points of difference as between the two Regions in respect of the second category of Native Authorities above referred to, namely those which represent the less centralized forms of organization. It has been necessary in such areas to create Native Authorities by federating a number of Clan Councils or Village Group Councils, in order to provide a more effective working organ. But the social organization which supplies these Councils is not of the same primitive character as, for instance, that of many of the units in the Plateau Province of the Northern Region. While in point of political structure the communities represented in these Councils are loosely co-ordinated groups, with no centralized form of authority, their social organization is more advanced than the units in the Northern Region above referred to, and they have a more fully developed economic life, owing to their opportunity for marketing export crops or surplus subsistence production. There is moreover a far higher standard of education, and in

<sup>1</sup> See page 132.

some of these areas it has been possible to make an increasing use of the procedure of election. Both the Native Authorities and the Clan or Village Councils on which they are based now contain a considerable number of literate members.

### THE DISCHARGE OF THEIR FUNCTIONS BY THE NATIVE AUTHORITIES

So much for the composition and character of the Native Authorities as now constituted. Turning now to the manner in which they discharge their functions, it may be said that there is a general agreement among the majority of the officers of the Administration that the more important Native Authorities have performed a useful function in the maintenance of law and order. Except in the Warri Province and in three Divisions of the Benin Province, they maintain their own Police force, which is trained by officers of the Government Police Force (the Nigerian Police). The Oyo Provincial Native Authority Police Force, for example, includes 33 N.C.O's. and 225 Constables. For the most part these police deal only with crimes of which the Native Courts can take cognisance. The Authorities maintain Prisons, though not on the same scale as in the Northern Provinces; the more important are in the Oyo Province, which has five in all. They have been appointed Tax Collection Authorities under Section 13 of the Direct Taxation Ordinance, No. 4 of 1940; they prepare the nominal rolls, and the tax is collected either by salaried tax clerks or by Village Heads who normally receive a 10 per cent. rebate on the total collected.

In regard to the provision of local services, there is a considerable diversity in the resources available for this purpose in different areas. As has been explained, the system of direct taxation was first introduced in the Western Provinces soon after 1916,<sup>1</sup> and a beginning was made at the same time in the establishment of Treasuries, on the system already in force in the Northern Provinces. With the gradual formation of the Treasuries there was an increasing tendency to amalgamate them in order to secure greater efficiency, though this measure was for some time unpopular, as Subordinate Native Authorities claimed that they should have the disposal of their own funds. As the result, however, of a reorganization effected in 1946 to 1947 there have now been established a number of Divisional Treasuries, with sub-treasuries in the more important Subordinate Native Authority areas, and in 1949 to 1950 the number of Treasuries maintained by the 47 Native Authorities and the 208 Subordinate Native Authorities will be reduced to 53 in all.<sup>2</sup>

The figures of the revenue available to the Treasuries of each Province in 1949 to 1950 are summarized in the following Statement, which mentions separately the Treasuries having a revenue of over £15,000.

Province	Treasury	Estimated Revenue	Estimated Expenditure
Abeokuta .. ..	Egba .. ..	£ 162,441	£ 159,296
	Egbado .. ..	45,193	47,694
	Two others .. ..	11,194	12,445
	Total .. ..	218,828	219,435

<sup>1</sup> Page 112.

<sup>2</sup> Memorandum on the Native Treasuries of the Western Provinces for 1949-1950; Ibadan, 1949.



Province	Treasury	Estimated Revenue	Estimated Expenditure
Benin .. ..	Benin .. ..	£ 100,934	£ 111,387
	Thirteen others ..	87,158	95,023
	Total .. ..	188,092	206,410
Ijebu .. ..	Ijebu .. ..	157,473	158,616
	Ijebu Remo .. ..	19,888	25,881
	One other .. ..	9,685	14,189
	Total .. ..	187,046	198,686
Ondo .. ..	Ekiti .. ..	57,808	63,435
	Ondo .. ..	37,728	47,432
	Owo .. ..	18,448	18,677
	Akoko .. ..	18,671	18,449
	Five others .. ..	44,032	41,254
	Total .. ..	176,687	189,247
Oyo .. ..	Ibadan .. ..	201,773	195,834
	Oyo .. ..	79,620	74,444
	Ife .. ..	26,850	29,145
	Ilesha .. ..	25,885	26,121
	Iwo .. ..	21,884	23,875
	Ogbomosho .. ..	16,101	16,185
	Ten others .. ..	77,712	84,060
	Total .. ..	449,825	449,664
Warri .. ..	Urhobo .. ..	22,084	22,702
	Western Urhobo ..	19,844	25,383
	Five others .. ..	41,144	43,133
	Total .. ..	83,072	91,218
	Total Western Provinces	1,303,550	1,354,660

The treasuries had in 1948 a total investment of £180,905. The figures do not represent accurately the true local revenues, since they include not only Government grants but reimbursements for agency services rendered to Government. The great diversity of the means available is shown by the fact that only six of the treasuries, namely Ibadan, Egba, Ijebu, Benin, Ekiti and Oyo had a revenue of over £50,000, while 10 had a revenue of less than £5,000. There is obviously a strong case for further federation, in order to secure funds of an amount which can be profitably employed in the provision of general services.

The chief source of revenue is the General Tax, the sum derived from direct taxation being £562,292 or over 43 per cent. of the total revenue. Save for a small amount collected in Oyo there is no Jangali Tax, which makes so important a contribution to the revenues of the Treasuries in the Northern Provinces. The system under which the Government will now take its share of the General Tax by means of a Capitation share has been explained in Section I,<sup>1</sup> and it is only necessary to say here that in the case of the Western Provinces the share is sixpence per tax payer with the result that the Regional Revenues were in 1948-1949 to receive £24,470 from this source, as compared with £36,916 which the Government took as its share of taxation in 1946-1947.<sup>2</sup>

The incidence of direct taxation in 1946-1947 was two shillings sixpence per head of population, as compared with three shillings threepence in the Northern and one shilling nine pence in the Eastern Provinces. The incidence per tax payer of the General Tax, and the method followed in its assessment will be subsequently described.<sup>3</sup>

Among sources of revenue other than the General Tax, Court fees and fines account for £124,054 or a little less than 10 per cent. There is in other respects considerable variation in the pattern. In some areas forestry fees and royalties are important; they account, for instance, for 46 per cent. of the total revenue in Benin.<sup>4</sup> Where water and electricity is provided, the rates sometimes amount to considerable sums, such as £54,800 in the Ibadan Division and £20,000 in Egba.

Turning now to the expenditure as shown in the statement above, the relative importance of different items is illustrated by the following figures:—

Central District and Village Administration	Judicial	Police and Prisons	Works Recurrent	Education	Medical and Health	Agriculture and Veterinary	Forestry
£ 141,416	£ 95,913	£ 69,218	£ 297,525	£ 65,562	£ 123,540	£ 10,576	£ 62,353

Judged by the standards of some other territories, the proportion expended on Administration is by no means high. The relatively high expenditure on Forestry has been incurred mainly in Benin (£30,667) and Ibadan (£15,099). In view of what has been said in regard to the amount of Recoverable Expenditure in the Northern Provinces, it is of interest to note that in the Western Region the amount in 1949-1950 was £210,385, of which the largest part (£90,039) was incurred in the Ijebu Province. The heavy expenditure under the head Works Recurrent is partly accounted for by the fact that this head includes the maintenance of water and electricity works, for which £6,600 and £13,567 respectively were voted in the Egba Native Authority estimates for 1947-1948, excluding street lighting and extension work.

As regards the preparation of the Estimates of expenditure, the system differs in some respects from that followed in the Northern Provinces. Every Treasury has a Finance Committee, usually appointed by the Native Authority Council from amongst its own members, preference being given to literates, and sometimes with co-opted members who are prominent local personalities, as in Ondo, Benin and Ishan, or representatives of the younger men, as in

<sup>1</sup> Page 9.

<sup>2</sup> Estimates of Nigeria, 1948-1949, page 11.

<sup>3</sup> Page 131.

<sup>4</sup> See page 128.

Aboh. An endeavour is made to keep these Committees to a workable size, but in some places, such as Ekiti and Kukuruku, it has been found necessary to have representatives from all the component elements of a federation.

The work of these Committees differs in quality. In some cases, as for example Ekiti, it is reported that the Estimates are actually prepared by the Finance Committees. Some other Committees take a fair share in this work, in consultation with the District Officer and the technical Officers, who have to provide in particular most of the detailed statistics. There are others which take little part, as in some cases in Ondo and part of Warri Provinces, and it is still the Administrative Officer who has to prepare the draft Estimates for subsequent discussion with the Finance Committees and Native Authorities.

### THE PROVISION MADE FOR LOCAL SERVICES

Some reference has been made in the first part of this Section to the part taken by the Native Authorities in the provision of facilities for education.<sup>1</sup> It is not considerable, for, as shown there, they provide only 109 out of a total number of 3,340 schools. Of these, the greater part are in the Warri Province, where the Native Authorities spend on an average more than 12 per cent. of their revenue on education, rising to 22.89 per cent. in the case of the Aboh Native Authority. Elsewhere such schools are few, but some Native Authorities make grants to Mission schools.<sup>2</sup> The Native Authorities provide the buildings of the Native Authority schools and pay the teachers' salaries, receiving Government grants to assist them, but the members in some cases give a practical help in their running, with the benefit of technical supervision from the Government Education Department.

As regards Medical and Health Services, Ibadan is the only Native Authority to have maintained a Hospital,<sup>3</sup> and the greater part of their expenditure is incurred on dispensaries, maternity clinics and sanitary services, the amount of control over which varies with the Native Authority concerned. It is intended to co-ordinate this work through the new Rural Health Centres, the first of which will be set up at Ilaro. The maternity clinics are increasing in popularity and the demand outruns supply. Thus in the Ondo Province there were in 1946 four maternity homes, in addition to midwives attached to 20 of the 28 Native Authority dispensaries, while in Ijebu Province in 1948 two new maternity centres were opened, and five were being built. A major requirement in the expansion of maternity services is an increase of the supply of trained midwives, and provision is now being made for this in the hospitals at Ibadan and Ondo.

As the preceding Statement shows, the Native Authorities contribute little by way of Agricultural services, but in certain areas, particularly Benin, a considerable part is played in the provision of Forestry staff. In Benin, which derives a considerable part of its income from its forests, the cost of Forestry services accounted in 1948-1949 for nearly 34 per cent. of the total ordinary expenditure, and included provision for a seconded European Forestry Officer.

As was remarked in dealing with the position in the Northern Provinces,<sup>4</sup> there is some difficulty here also in determining how far the Native Authorities

<sup>1</sup> Page 101.

<sup>2</sup> Sessional Paper No. 15 of 1947.

<sup>3</sup> The Adeoyo Hospital is now being taken over by the University College at Ibadan.

<sup>4</sup> Page 97.

can be said to be responsible for the actual control or management of the services provided from their funds. Ibadan, for example, previously financed the Adeoyo Hospital, which was a legitimate source of pride to it, and there are Electric Light and Water Supply installations at Ibadan and Ogbomosho, but the senior Medical Officer at the Hospital and the Engineers in charge of the Electric and Water works were supplied by Government. As in the Northern Provinces, the works which constitute so large a part of Native Authority expenditure are run on a "conjoint" system in which Government provides the superior technical officers, only the subordinate staff and the labour being supplied by the Native Authority.<sup>1</sup>

It is true that a certain measure of initiative is left with the Native Authorities, who in most cases show a considerable interest in the Works and make a strong point of being consulted about their planning and progress. But though the advantages of this system are obvious, it is unnecessary to point out that it has certain inherent disadvantages. The problem which awaits the Administration is to determine the point at which the present procedure will cease to be educative, and become an obstacle to the progress of the Native Authorities towards a true status as local government institutions. That however is a subject on which it is unnecessary to dwell further here, in view of the account given in Section I of the measures taken for the delimitation of the relations of the Regional Authorities and their Native Authorities.<sup>2</sup>

#### THE USE MADE OF THE POWER OF SUBSIDIARY LEGISLATION

The use made by Native Authorities of their Rule-making powers under Section 25 of the Native Authority Ordinance calls for no special comment. It appears that at an earlier period Rules were generally made at the suggestion of Administrative or technical Officers, the normal procedure being to inform the local Authorities of Rules made elsewhere, and to suggest their adoption. Of late years, however, some Authorities have shown increased initiative in the matter, and have put forward a number of Rules on matters of special local interest. Among such Rules are those passed by Authorities in the Egbado Division of Abeokuta Province for the legalizing of night guards and the licensing of canoes; those passed in Asaba regarding the control of native dances or the impounding of pigs; those in Ijebu regarding the Ayelala Juju and the Awo Opa Society (which was held to have a criminal purpose) and the wearing of turbans by market women.

There are on record a number of Rules, many of which are in common form, dealing with matters such as the regulation of markets and sanitation, the control of bush burning and the registration of births and deaths. Most of these appear to have been made at the suggestion of Government Officers. The Rules made by a number of Authorities for the voluntary registration of marriages are said to have a similar origin, as have the Rules made in the Warri Province regarding the planting of foodstuffs as a security against scarcity, the Rule made by the Authority in the Ife Division for the preservation of antiquities, and the Rule made in Ekiti for protecting palm trees.

As has been remarked in dealing with the Northern Provinces,<sup>3</sup> the Ordinance includes in Section 25 provision for Rules specially applying to urban conditions, and these powers have been largely used by the Authorities

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<sup>1</sup> Page 74.

<sup>2</sup> Page 10.

<sup>3</sup> Page 5, 12, 79.

which administer urban areas. A number of Rules have for example been passed in the Ibadan, Oyo and Ife Divisions of Oyo Province for this purpose. In the Benin Division the special importance of the exploitation of the Forests has led to the making of a code of Rules for controlling the cutting and marketing of timber. These Rules have been prepared in consultation with the officers of the Forest Department and were drafted by them. Their observance is as far as possible safeguarded by the employment at Benin of the seconded European Forest Officer above referred to.

Mention will be made subsequently of the use made by the Native Authorities of the special powers conferred on them by the Native Authority (Control of Lands—Amendment) Ordinance 73 of 1945 for making Rules dealing with land issues, and the Native Authority (Amendment) Ordinance 3 of 1945 for making Rules modifying native law and custom.<sup>1</sup> This legislation is of recent date, and the Native Authorities do not as yet seem fully aware of the possibilities it offers. The Ado-Igbesa Subordinate Native Authority (Egbado Division) was the first Native Authority to make use of this new legislation in declaring a change of custom relating to the selection of the Oba of Igbesa.

### THE SYSTEM OF TAXATION

Reference has already been made to the circumstances in which a system of direct taxation was introduced shortly after 1916 and to the part which this measure played in the introduction of the existing procedure of native administration.<sup>2</sup> When the Administration imposed a tax in the Northern Provinces soon after the declaration of the Protectorate in 1900, it was able to take advantage of the previous existence of a regular procedure of direct taxation in the Emirates. It did not have a similar advantage in the Western Provinces, though, as was remarked in a Memorandum quoted by the Aba Commission of Enquiry in 1930,<sup>3</sup> “the idea of tribute in some form or another was a custom of the country; the organization was there, and only required to be revived, systematized and supervised.” The introduction of the tax into Yorubaland was not effected without opposition, and there were disturbances in Iseyin and in the Egba country which partly arose out of its collection. It was however generally accepted there, as the people recognized the advantages of consolidating in a single payment the demands previously made on them,<sup>4</sup> and by 1920 it was in force in a larger part of the areas west of the Niger. By 1924 it was in force throughout the whole of the Western Provinces.

As has already been explained, the General Tax was imposed under an amending Ordinance which extended to Southern Nigeria the provisions of the Native Revenue Ordinance of 1917. The legal authority for the tax is now the Direct Taxation Ordinance of 1940, which provides for the taxation of Africans in Nigeria outside Lagos, leaving the direct taxation of Europeans and of Africans in Lagos to be regulated by the Income Tax Ordinance of 1940.<sup>5</sup> There has not been in the Western Provinces the same effort as was made in the Northern Provinces to ensure the assessment of the General Tax on the basis of individual incomes. Thus there are normally no “lump” or “community” assessments on village or similar units, to be afterwards distributed over individuals on the basis of their assumed incomes or capacity

<sup>1</sup> Page 143. See also page 93.

<sup>2</sup> Page 112.

<sup>3</sup> Sessional Paper No. 28 (1930).

<sup>4</sup> Report on Amalgamation of Northern and Southern Nigeria, 1912–1919, paragraph 8.

<sup>5</sup> Page 14.

to pay. The Tax takes the form of a flat rate varying by localities, payable by all adult males, except those with "ascertainable" incomes assumed to amount to over a maximum varying from £24 to £30 a year, these being assessed to be personal tax at "approved" rates.

The flat rate has been varied at different periods in the light of the rise or fall of prices. In 1946-1947 the rate ranged from 7s. per male in the Abeokuta Province to 10s. per male in Ijebu Remo, but in most areas it was either 8s. or 9s. In addition females were till 1948 taxed at 3s. per head in the Abeokuta Province (where they had been taxed for 29 years), and they were formerly taxed at 5s. and 4s. a head in Ijebu Remo and Ijebu; in 1948, however, the two Ijebu Native Authorities decided to abandon the tax on women and make an increase in the male tax rates, and it was also abandoned in Abeokuta, after an agitation which was one of the causes for the abdication of the Alake. In 1949-1950 there was a general increase in the rate in order to meet the rising cost of salaries and services, the highest rate being 15s. per adult male in the Ijesha, Egba, and Ijebu Native Authority areas.<sup>1</sup>

The "approved" rates for the tax on "ascertainable" incomes (which like the General Tax is levied under the provisions of the Direct Taxation Ordinance of 1940) were fixed for 1946-1947 at a scale beginning with fourpence in the pound on the first £48 per annum and rising to eightpence in the pound on £300 or over. In 1947-1948 these rates were subjected to a surcharge of 12½ per cent. and in 1948-1949 the surcharge was raised to 37½ per cent. in the Ondo Province.

In the Oyo and Ijebu Provinces additional revenue is raised by the imposition of special taxes on tradesmen, ranging from 2s. 6d. to £1 10s. per head according to the trade they follow. The Ago-Iwoye area of the Ijebu Province provides the only instance of the imposition of a general improvement rate, namely, 6d. per male and 3d. per female, but the Idanre District Native Authority (Ondo Province) has proposed a rate of 1s. per tax payer for Educational purposes. In these two Provinces there is also a tax levied at five per cent. and 2½ per cent. respectively on unearned income, that is income derived from rents, securities, etc., such income not being included in the income on which the individual is assessed to pay the personal tax.

As regards the General Tax, nominal rolls of all tax payers are prepared and retained in the Native Authority Tax Office. These are revised annually, and it is the duty of the Village and Quarter Heads to ensure that all the amendments are notified. Assessments of personal tax are as a rule made by an Assessment Committee of the Native Authority. If the method adopted by the Egba Authority be taken as an illustration, the practice there is for an Assessment Committee to be appointed, on which persons who are not members of the Native Authority are normally co-opted. The Committee examines the tax roll and picks out the names of individuals who seem to enjoy above the average level of income. These are called before the Committee which then arrives at a rough assessment of their income and assesses the tax accordingly. There is an appeal to the Native Authority and thence to the Resident.

Where the Native Authority is responsible for public utilities it is usual to find a water rate and an electricity rate. Thus Ibadan Town levies 4s. per taxpayer for water and 1s. per taxpayer for street-lighting, while Ilaro has water rates of 4s. per male and 3s. per female. Elsewhere the water rate is lower, being as low as 1s. 3d. per taxable male in Oyo.

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<sup>1</sup> Memorandum on the Native Treasuries of the Western Provinces, 1949-1950.

## THE URBAN AREAS

The Yoruba, as already stated, have from early times had a strong tendency, which has been no more than reinforced by European contacts, to live in towns, though many of the residents have farms in the surrounding countryside. In the absence of a recent census, it is difficult to calculate the extent to which the urban population generally has increased since the Census of 1931, but the following statement compares the figures of 1931 with the estimates given in the Annual Report for Nigeria for 1948 in respect of nine of the principal towns.

Year	Ibadan	Iwo	Ogbomoshò	Oyo	Oshogbo	Abeokuta	Ede	Iseyin	Ife
1931	987,113	57,191	87,744	48,733	49,599	45,763	52,392	36,805	24,170
1948	335,500	86,000	84,500	79,000	64,000	54,000	51,000	48,000	45,000

As in the Northern Provinces, the policy has from the first been to leave these and other urban centres under the charge of the Native Authority within whose jurisdiction they lie, while placing the Government Stations in their immediate vicinity under official control as Townships regulated by the Townships Ordinance (Cap. 57 of the Laws). In the Western Provinces, however, circumstances have not given rise to the same difficulty as was created in the Northern Provinces by the inclusion of "stranger native" communities in these Townships.<sup>1</sup>

The Townships administered as Second Class Townships under the Townships Ordinance are now only two, namely Warri (population 15,000) and Sapele (30,000). Warri is controlled by a Local Authority who is an Administrative Officer responsible to the Resident, with an Advisory Board appointed by the Resident. The composition of the Board was reorganized in 1948 in order to make it more representative, and in its present form consists of three official members (the Local Authority, the Provincial Engineer and the Medical Officer of Health) and 14 unofficial members. Of these seven have been appointed by the Resident (one for each Ward of the town) and seven "elected" at meetings of ratepayers in the Wards. The new Board is said to be gaining experience, but so far "has not shown as much readiness to accept responsibility as might be expected from the representatives of a comparatively advanced community."

Sapele, now an industrialized town, presents a specially difficult problem. The system of administration has followed similar lines to that in Warri, but the new Advisory Board was only constituted in 1949, after considerable argument as to who should be entitled to "vote." Here the unofficial members (who are regarded as *de facto* though not *de jure* responsible) are said to have shown considerable ability.

The Local Authority is empowered to make Byelaws under Section 29 of the Ordinance, and has a Fund into which are paid receipts from Township rates, and fees and charges. The finances of the two towns are not on an important scale, Warri having a revenue in 1949-1950 of £13,000 and Sapele of £12,000. The Grants-in-aid made by Government have been mainly in respect of conservancy services in Government quarters and buildings.

There are a small number of Government stations administered as Third

<sup>1</sup> See page 87.

Class Townships, but these have no Advisory Board or separate Fund, all receipts being paid into General Revenue, and Byelaws are made by the Governor. For the present purpose, however, major importance attaches not to areas administered as Townships, but to the large native cities whose affairs are administered by the Native Authorities. In the part of this Section which dealt with the composition of the Native Authorities in each of the Provincial areas some details were given showing the provision made either for representation of the urban population on the Native Authority Councils or for the creation of separate bodies for town affairs. There is a considerable diversity in the methods adopted, but the account given points to three developments of special importance, first, the growing tendency to give to what were formerly Advisory Committees for town affairs a new status as Subordinate Native Authorities, and secondly, the growing tendency to reorganize the composition of both the Superior and Subordinate Authorities by reducing the number of traditional Chiefs or title holders, and the inclusion of "commoners" elected on a free vote. It is also an advantage that a beginning has been made (as for example at Ibadan) in the appointment of literate Councillors in charge of certain departments of urban work. All these measures are to be welcomed as an adjustment of the Native Authority system to meet the requirements of urban communities which are progressively improving their standards of living and of education.

It cannot however be said that the system in its present form provides an adequate machinery for the conduct of municipal affairs, which require an executive organization capable of dealing regularly and systematically with a great variety of urban needs.

It is true that the Native Authorities have, with assistance from Government, provided or are in course of providing electricity supplies in ten of the towns, and that there exist, or are projected, water supply installations in thirteen of them. Ibadan has a large and well equipped hospital, a specially trained section of urban police, a Sanitary School, a Works Department with four European officers, and a Survey Department. Its Council meets in a spacious and massive Council House, erected by its own Public Works Department, on which the Native Authority looks with much pride. It has a public library and a public park, with a brass band. But in many other respects Ibadan leaves a far from favourable impression of municipal management. Its large population, scattered over seven wooded hills, presents a problem of unusual difficulty in urban administration, and it is not possible to share the complacency of the Olubadan's Council with the manner in which they are solving it.

But the conditions in Ibadan are typical of those in the other large Yoruba towns, and it is clear that at the moment one of the most pressing questions for the Government in the field of native administration is a reform in the procedure for the control of urban affairs. The urban centres provide the most critical or at all events the most vocal elements in Nigerian politics, and dissatisfaction with the conditions prevailing in the towns will not merely react on the position of the Government, but will strengthen the prejudice already being expressed in political circles against the use of the Native Authorities as instruments of local rule.



## THE NATIVE COURTS

In the earlier part of this Section which dealt with the history of the introduction of the system of native administration in the Western Provinces,<sup>1</sup> mention was made of the fact that at the outset the chief attention was directed to the organization of the judicial system. This took the form of the extension of the jurisdiction of the Supreme Court in 1900 and the provision of a system of "Native Councils" and Native Courts (or "Minor Courts") in 1901.<sup>2</sup> But as was explained in the passages referred to, the existence of numerous Treaties or Agreements with ruling Chiefs had made the extent of the legal jurisdiction of the Government doubtful, and the provision made for the administration of justice was further complicated by the arrival of large numbers of traders, following the construction of the railway to Ibadan soon after the year 1900. It was this latter fact which accounted largely for the conclusion of the Judicial Agreements with Ibadan, Ife and Oyo, thus making it possible to apply the system of "Native Councils" and Native Courts in those areas. In the Egba country the more serious offences were tried in the British Courts, but offences classed as non-indictable were tried in the Mixed Courts established under the Egba Agreement of 1904.

It would seem that at the outset the jurisdiction exercised by the new "Native Councils" was confined to the vicinity of the railway, and it was only when their activity subsequently took a wider range that some of their less desirable features became apparent. It was not merely that these Courts tended to adopt a procedure largely based on English law. There is evidence that much of their time was occupied with land causes, fomented by African lawyers, though lawyers were excluded, at the request of the Native Administrations from the Native Courts in Egba, Ibadan and Oyo. To each Court was attached a clerk who, in the absence of the District Officer, wielded considerable influence and was often corrupt. Fees and fines sometimes went to a fund at the disposal of the Provincial Commissioner, which was spent partly on sitting fees and partly on road making, but in other cases were the perquisite of the African members of the Courts.

When, following on the Amalgamation of Northern and Southern Nigeria in 1914, it was decided to apply to the South the procedure of local rule which had been in force in the North, the initial step taken was the reorganization of the judicial system. This measure extended to the British as well as to the Native Courts. In 1914 the jurisdiction vested in the Supreme Court was modified by the institution of the Provincial Courts; the legislation which had provided for the establishment of the Native Councils was repealed; and provision was made for the introduction of a system of Native Courts on the model of those existing in the Northern Provinces.<sup>3</sup>

The Native Courts were therefore no longer to be presided over by a District Officer; they were explicitly charged to administer native law and custom; appeals from them were to lie to Administrative Officers<sup>4</sup> and not to the Supreme Court; they were to be supervised by Administrative Officers who would also have the power of revising their decisions. Like the Native

<sup>1</sup> Pages 108 to 113.

<sup>2</sup> Proclamations 6 and 9 of 1900 and 25 of 1901.

<sup>3</sup> Provincial Courts Ordinance 7 of 1914; Native Courts Ordinance 8 of 1914; for the Provincial Court and Native Courts in the Northern Provinces see page 80 to page 83.

<sup>4</sup> The legislation of 1914 substituted the designation of "Resident" for that of "Provincial Commissioner" as contained in the Southern Nigerian legislation above referred to.

Courts of Northern Nigeria, their powers were in each case to be prescribed by Warrant, and like those Courts they were normally divided into four grades, according to the extent of the powers vested in them. There was therefore in these matters a definite change of policy, and there was a significant change in another respect also, namely, the exclusion of lawyers from appearance in the Provincial and Native Courts, a measure which met at the time a good deal of opposition from African lawyers.<sup>1</sup>

Finally, though the Ordinance of 1914 retained the provision which empowered Native Courts to make Rules embodying or modifying any native law in the District or adopting any Protectorate Law as part of native law, and generally, to make Rules for the peace and welfare of the people of the District, this last function was transferred to the Native Authorities when they were constituted under the series of Native Authority Ordinances commencing with No. 14 of 1916. This marked therefore the end of the policy which sought to make the Native Court an instrument of administrative rule. It is of interest to recall here that the provision enabling Native Authorities to make Rules embodying or modifying native law and custom did not form part of the Native Authority Ordinance No. 44 of 1933 which consolidated the law regulating the powers of Native Authorities.<sup>2</sup> It was, however, subsequently embodied in that Ordinance by the Amending Ordinance No. 3 of 1945.

The Section dealing with the Northern Provinces has given an account of the judicial reorganization of 1934, involving the abolition of the Provincial Courts and their replacement by the Protectorate High Court, and the subsequent abolition of the latter Court in 1943.<sup>3</sup> These measures applied also to the Western Provinces.

#### THE POWERS OF THE NATIVE COURTS AS NOW CONSTITUTED

The provisions of Ordinance 44 of 1933 have been summarized in Section I,<sup>4</sup> and it is unnecessary to repeat them here. It should however be remarked that though the Native Courts primarily administer native law and custom, local Orders in Council have been passed under Section 10 of the Ordinance bringing a number of Ordinances within their jurisdiction.<sup>5</sup> All Native Courts may in consequence enforce the following Ordinances:

The Markets Ordinance, Cap. 58.

The Waterworks Ordinance, Cap. 63.

The Building Lines Regulation Ordinance No. 11 of 1936.

The Direct Taxation Ordinance No. 4 of 1940.

The Criminal Code, Cap. 21, Sections 124, 130, 134-142, 144-145, 243-245, 247, 341, 365, 372, 394, 488-489, and Section 133 sub-sections 4-9.

The Labour Code Ordinance, 1945, Sections Nos. 120, 122.

In addition a number of the Courts have been vested separately with powers in regard to a further range of Ordinances. The Courts in the Abeokuta Province may be taken as an example.

<sup>1</sup> See Section 21 of Ordinance 8 of 1914. For the grounds for the decision to exclude lawyers from the Provincial and Native Courts see Report on Amalgamation of Northern and Southern Nigeria, 1912-1919, paragraphs 50 to 54, and the references in page 651 of Vol. I of *The Native Problem in Africa*, R. L. Buell, 1928.

<sup>2</sup> See page 48.

<sup>3</sup> See page 80.

<sup>4</sup> See page 15.

<sup>5</sup> Orders in Council Nos. 1 of 1945, 3 of 1945, 6 of 1946, 31 of 1947, 34 of 1947.

Grade A Courts: Prevention of Crimes Ordinance, Cap. 33, Section 3.  
 Grades A and B: Criminal Code, Cap. 21, Sections 249-250.

Grade A and 11 B Courts: Criminal Code, Cap. 21, Sections 369, sub-section 3.

Grades A and 2 B Courts: Motor Traffic Ordinance, No. 10 of 1927.

35 Courts: Public Health Ordinance, Cap. 56, and Rules 1-7 and 10-25 of Rules No. 2 of 1917.

5 Egba Courts: Rules 51-61 of Rules No. 2 of 1917.

Grades C and D: Criminal Code, Cap. 21, Section 249, paragraphs (c) and (d).

All Egba Courts: Forestry Ordinance No. 38 of 1937, Sections 43-50, 52-53.

All Courts: Vaccination Ordinance, Cap. 53.

The numbers and classes of Courts as constituted in 1947-1948 are shown in the following Statement. The numbers in brackets show the number of Courts which have "limited" powers, that is, powers which in the case of A grade Courts do not extend to the trials of cases of homicide or witchcraft, and are in the case of B, C, and D Grade Courts less than the range of powers normally given to such Courts. It will be observed that in this Region no Native Court is competent to deal with cases of homicide or witchcraft, and to this extent the higher grade Courts have a more restricted competence than a number of the Courts of the same grade in the Northern Region.<sup>1</sup>

Province	Division	Grade A	Grade B	Grade C	Grade D	Appeal Courts (included in preceding figures)
Abeokuta	Egba	2 (2)	19 (19)	—	3 (3)	2
	Ilaro	—	1	—	22	3
Benin	Benin	—	1	1	37 (12)	5
	Asaba	—	—	6 (1)	41 (22)	5
	Ishan	—	—	9	57 (39)	12
	Kukuruku	—	3 (2)	2 (1)	39 (11)	5
Ijebu	Ijebu	—	5	12	24	3
Ondo	Ekiti	—	1	6 (6)	32 (32)	8
	Okitipupa	—	1 (1)	3 (3)	22 (22)	4
	Ondo	—	1 (1)	3 (3)	16 (16)	3
	Owo	—	2 (2)	2 (2)	21 (21)	4
Oyo	Ibadan	—	5 (5)	5 (5)	33 (33)	1
	Ife	—	1 (1)	2 (1)	5 (5)	2
	Ilesha	—	4 (3)	—	9 (9)	1
Warri	Oyo	—	2 (2)	4 (4)	21 (21)	1
	Aboh	—	2 (2)	6 (6)	32 (32)	2
	Jekri-Sobo	—	3 (3)	12 (12)	31 (31)	7
	Urhobo	—	—	11 (11)	2 (2)	1
	Total	2 (2)	51 (41)	103 (74)	451 (335)	71

It should be explained, in reference to the last column of the Statement, that many Courts of first instance which have only B, C or D powers are also Appeal Courts. The total number of Courts is 607.

<sup>1</sup> See page 82.

## THE COMPOSITION OF THE NATIVE COURTS

Though the law providing for the establishment of Native Courts in the Western Provinces has since 1914 been identical with that of the Northern Provinces, the difference in the indigenous institutions of the two Regions is reflected in the actual composition of the Courts. In view of the relatively small number of Muslims in the Western Provinces there are, it need not be said, none of the Alkalis' Courts which are a distinguishing feature of the Northern system, and the existence of which has resulted in the practical separation in very considerable areas of the personnel discharging executive and judicial functions. Nor are the higher Native Courts those of Chiefs who occupy the position of sole Native Authorities. Where there are Chiefs in the Western Provinces, the Native Courts are gazetted as those of the Chiefs and Council; where, as in the Warri Province and parts of Benin Province, the Native Authorities consist of Group or Village Councils, the Courts are those of the Councils concerned.

Of recent years considerable attention has been given by the Administration to measures designed to define the numbers and regulate the selection of the sitting benches of the Courts, and there has been an increasing effort to discourage the practice by which members of the Native Authority also sat on the benches of the Courts. In principle the Resident "appoints" Court members, but there is a considerable variety of practice in the application of this provision. In the major Chiefdoms of Yorubaland the Chief is normally left to select the members of the Courts, up to the number arranged; elsewhere, the Resident selects the members in consultation with the Native Authority; in some cases, as in Egbado, the Court members are recommended for appointment by the District or Village Councils. In some parts of the Warri and Benin Provinces, all members of the Native Authority councils are members of the Native Courts, but in view of the very large numbers involved, it is usual to appoint panels for the composition of the benches, and to fix a quorum. But this is no longer true of some other areas; in Urhobo for example the members of the Native Courts are not eligible for election to the Councils, and Western Ijaw and Itsekiri have gone a considerable way toward a similar separation of function. For the most part, the Courts in Yorubaland are presided over by the Head Chief or by the Clan or Village Heads of the areas served. In cases where the Native Authorities are federations it is usual for the Clan or Village Heads to take it in turns to preside, though there are instances where the President is elected by the Court members among themselves.

The higher Courts of the Egba Division afford, in some aspects at all events, an example of a relatively advanced form of constitution. Up to the time of his abdication, the Alake appointed from his Council from nine to ten members to each Court, the President and two or three members sitting at a time. Here all the Presidents are sufficiently literate to take down their own records of evidence, and the Grade "A" Court in Abeokuta is presided over by an African who has qualified as a barrister. On the Grade "A" Court of Appeal the Alake sat by himself, sometimes alone and sometimes with assessors, but now a barrister presides, with co-judges.

The two Courts in Benin City have a special composition. The Oba presides over the Court "B" (which is an Appeal Court as well as a Court of first instance) with six literate Chiefs and a literate commoner as members, and a quorum of three. The Benin City Court Grade "C" has 46 members and sits

in criminal and civil divisions. The members preside in turn and are selected by the Wards, the names being sent to the Oba for approval. The Court is said to be far from successful, but the procedure adopted gives scope for some non-traditional elements to be appointed.

There is a considerable diversity in the procedure prescribed in the Warrants for the course to be taken by appeals. In the Egba Division they go first to the Ake ("A") Court, thence to the Egba Native Court of Appeal and from there to the Supreme Court. In Egbado appeals from the three Appeal Courts go to the Administrative Officer, as do some appeals from Courts of first instance, though land appeals go to the Magistrate. In the Benin Division all appeals find their way either through other Courts or direct to the Oba's Court and thence to the Administrative Officer. In the rest of Benin Province appeals go either direct or through Native Courts of Appeal to the Administrative Officer. In Ijebu appeals go either through the Waterside Court or direct to the Ijebu Judicial Council and then to the Administrative Officer, but in Ijebu Remo they go through the "B" Court to the Magistrate. In the Ondo Province they go through Native Courts of Appeal to the Administrative Officer, and the same occurs in the Oyo Province, but in the Warri Province some land cases from Native Courts of Appeal and from some Courts of first instance go to a Magistrate and others to an Administrative Officer. Appeals from the Sapele Mixed "C" Court and the Forcados-Burutu "D" Court all go to a Magistrate.

The payment of Court members does not follow a uniform system. In the less developed areas all the members share a fixed percentage of the Court fees, from 60 per cent. in the Benin Division to 33½ per cent. in most of the Ondo Province, the usual percentage being 40 per cent. Elsewhere, as in Ijebu and Abeokuta, members receive sitting fees; in Ijebu £1 per session is divided, in Egba a sitting fee of 3s. to 5s. is paid, and in Egbado members get either a 2s. 6d. sitting fee or 15s. a month. It is common for Presidents of Courts to receive a salary even when their members either share a percentage of Court fees or receive a sitting fee. Thus in Okitipupa 45 per cent. of the Court fees are shared, but the President of the Ikafe Courts receives a salary of £54 per annum. Similarly in Ijebu Presidents of the busier Courts get £5 a month, while Presidents in Egba get salaries of between £120 and £720 a year, and in Egbado between £18 and £72. In a few of the more advanced areas members of the principal Courts are all salaried. The five members of the Ibadan Judicial Council, for instance, each receive a salary of £72 per annum, while the twenty-three members of the other Courts in Ibadan receive salaries amounting to a total of £1,500. The ten members of the Oyo Native Court similarly are paid £72 per annum, with the exception of the Bashorun, who is the President, and is paid £84 per annum.

A very considerable number of the Native Courts maintain cause books in which evidence is recorded and these are inspected by an Administrative Officer monthly or as often as occasion offers. In the Grade "D" Courts in the Benin Province however the evidence is not recorded, and the judgment is entered on the back of the summons. Benin, Oyo and Ondo Provinces have a Supervisor of Native Courts who checks the Court accounts monthly with the Native Authority Treasurer. Elsewhere Court accounts are checked by Native Treasurers with sample checks by Administrative Officers. The periodic checking of record books gives the District Officer an opportunity of reviewing cases, but the exercise of the power of review is discouraged except in cases of

manifest injustice, and parties are advised to exercise their rights of appeal. No appeal lies however in matrimonial causes, which are dealt with by review. A convicted prisoner is not admitted to prison before he is seen by an Administrative Officer, thus providing him with a chance of putting his case.

It is unfortunate that the Court statistics are in certain respects defective, but those available for 1947 are given below. The figures for appeals include those to Administrative Officers, Magistrates and the Supreme Court.

Province	Division	Total Cases	Reviewed	Modified	Appeals	Modified
Abcokuta	Egbado	Civil: 3,046 Criminal: 1,609	80 6	48 4	40 1	15 —
	Egba	Civil: 4,106 Criminal: 2,180	Very few reviews, about 6 a year.		59 21	24
Benin	All	Civil: 22,059 Criminal: 11,172	1,192 500	185 98	1,167 434	274 111
Ijebu	Ijebu	Civil: 4,859	76	29	284	97
		Criminal: 3,075	74	38	54	25
Ondo	All	Civil: 13,925	297	100	480	273
		Criminal: 5,813	263	65	118	86
Oyo	All	Civil: 20,769	135	38	691	183
		Criminal: 8,102			107	30
Warri	Urhobo	Civil: 2,470	Figures for reviews not available.		85	35
		Criminal: 562			35	18
	Others	Civil: 7,761 Criminal: 4,004			165 57	94 27

Although no statistics to cover the whole of the Western Provinces can be extracted from the foregoing, it will be seen that the number of civil and criminal cases coming before Native Courts are of the order of 78,000 and 37,000 respectively, the civil cases being especially numerous in the Benin and Oyo Provinces. It is only in the Benin Province that any considerable use has been made of the power of review, and it is in this Province also that the appeals have been most numerous.

Some further observations on the working of the Native Courts will be found in the Concluding Note to this section.<sup>1</sup>

#### THE POSITION OF THE GOVERNMENT IN REGARD TO LAND

The difference between the land law of Northern and Southern Nigeria is not due merely to the accident of local history; it reflects the effect of a change in the British outlook on colonial policy of which the results can be seen also in a wide range of administrative and other developments. In Southern Nigeria the early penetration into the hinterland took place at a period when the purposes of Government were limited to the suppression of the Slave Trade and the protection of legitimate commerce, and the only means open to it for securing these purposes was to conclude treaties with the ruling Chiefs and to utilize the sporadic services of Consular Agents to secure their performance.

<sup>1</sup> Page 145.

Such treaties did not however until a much later period contemplate any extension of jurisdiction. On the other hand, the extension of our rule over Northern Nigeria occurred at a time when the Continental Powers were competing for the possession of African territory, and when, by the conventions then prevailing, the acquisition of Protectorate rights depended on proof of "effective occupation," a phrase which inevitably came to be interpreted in terms of administrative control. To these underlying differences of outlook must be added the fact that in the course of the occupation of Northern Nigeria there were circumstances which, whatever their correct legal implications, were at all events held at the time to warrant the claim that the Protectorate Government had succeeded to the rights over lands held by the Fulani and Hausa Ruling Chiefs.<sup>1</sup>

The fact remains that in Southern Nigeria the Government has attempted no legislation asserting its "ultimate" or "superior" rights in the land. When Benin was occupied by British forces in 1897,<sup>2</sup> the Crown claimed rights of ownership over Benin lands by right of conquest, and for nearly 20 years afterwards granted, as absolute owner, a number of leases, but when the Oba of Benin was reinstated in 1916 his customary right of control over lands was restored to him. Crown rights are in practice now limited to the lands acquired from the Royal Niger Company in 1900 and to such lands as have been acquired under Ordinances providing for the acquisition of land for public purposes, as for instance the Public Lands Acquisition Ordinance, No. 9 of 1917.

The Crown title to the lands held by the Royal Niger Company is based, as in the Northern Provinces, on agreements made at the time of the revocation of the Charter by which all rights held by the Company in lands were (with one or two minor exceptions) vested in the High Commissioner in trust for the Crown. The Crown rights thus acquired were, in the case of the Southern Provinces, formally affirmed in the Niger Lands Transfer Ordinances Nos. 6 of 1906 and 2 of 1916, certain lands, mainly trading stations, being excepted. But the legal validity of the title acquired by the Company itself, to which the Crown is successor, is open to the same doubts as in the case of the Northern Provinces.<sup>3</sup> The point has formed the subject of some litigation, but with indecisive results.<sup>4</sup>

There is an additional complication due to the fact that the Crown has not exercised proprietary rights over these lands, but has left the occupiers in undisturbed possession and in enjoyment of their rights under native law. It seems indeed to be true that the occupiers are for the most part ignorant that the Crown has acquired any rights as the result of its agreement with the Royal Niger Company. It is in recognition of these difficulties that the Government passed the Niger Lands Transfer (Amendment) Ordinances 2 and 22 of 1945, by which it took powers to divest itself of lands (hitherto described as Crown lands but now described as "vested trust lands") held in this manner. The effect will be that after the issue of a divesting order, such lands will be treated as if they were not originally transferred to the Niger Company, that is, as if still in effective native occupation.

There is a doubt also about the correct interpretation to be placed on the term "Crown lands" as used in various Crown Lands Management Ordinances and the Crown Lands Ordinance No. 7 of 1918, which define the powers of the

<sup>1</sup> See page 89.

See page 109.

See page 89.

<sup>4</sup> See for example 11 Nigerian Law Reports 140 (1934).

Governor in respect of the control and disposal of Crown lands. The terms used in the definition of Crown Lands are very wide and obscure the fact that these lands are, in fact, with the exception of lands taken over from the Niger Company, limited to lands acquired for public purposes. There is here an obvious case for the revision of the law, in order to clear up the obscurity caused by the use of the term "Crown lands," which is now falling out of use elsewhere in British Colonial legislation.<sup>1</sup>

All other categories of land than those referred to above are treated as native lands, in which rights are regulated by native law and custom, and in their case the Government has only legislated in order to acquire a statutory power of intervention over their disposal. In the Native Lands Acquisition Proclamations No. 1 of 1900 and No. 1 of 1903, it provided that no person other than a native should acquire any interest in land from natives without the assent of the Government. The Native Lands Acquisition Ordinance 3 of 1908 reinforced the provisions of Proclamation 1 of 1903 by requiring any "alien" desirous of acquiring land from a native to give notice to the District Commissioner. Finally the previous Native Lands Acquisition Ordinances were brought up to date by Ordinance 32 of 1917 which now regulates the acquisition of land from natives by aliens.

An alien is for this purpose defined as any person who is not a native of Nigeria; and the instrument by which the Governor sanctions a transfer of rights is now limited to a lease for a maximum period of 99 years.<sup>2</sup> A limited number of leases have been sanctioned for shop and residential sites in urban areas, and the United Africa Company has been allowed to secure by agreement with the Native Authorities the leasehold over about 12,400 acres for the development of rubber, timber and palm oil industries in Benin and Sapele.

The Government does not claim Forests as public property. Leases for cutting timber are acquired by agreement with the Native Authorities, royalties being distributed as to one-third among the actual occupiers of the land and two-thirds to the Native Treasury. Up to 1916 the Government negotiated with Native Authorities for the right to establish Forest Reserves, but in that year, owing to the rapid destruction of Forest areas, it passed an Ordinance (No. 12 of 1916) providing that where a native community failed to reach an agreement, the Government might create a Forest Reserve on native lands. These Reserves are only created after investigation by a Reserve Settlement Officer into existing rights of occupiers and others, and only the management, not the property in them is vested in the Government.<sup>3</sup> The royalties are credited to the Native Treasuries. The Forest Report of 1947 showed 2,137 square miles of Government Reserves, and 4,291 of Native Administration 373 miles of Reserves, together with Government and 223 of Native Administration Reserves approved but not legally constituted. Attention has already been drawn to the importance of the Native Administration Reserves to the Treasuries of some Native Authorities, and most notably Benin.

#### THE NATIVE AUTHORITIES AND THE LAND

The authority possessed by ruling and other Chiefs in Africa as regards land rights has formed the subject of much sociological and other study,

<sup>1</sup> See the article by Dr. C. K. Meek in *Journal of Comparative Legislation*, Vol. XXVIII (1946), Parts III and IV, pages 90 to 91.

<sup>2</sup> For the attempts made by Lord Leverhulme in 1924 to acquire freehold rights for oil plantation in Nigeria see page 769 of Vol. I of the *Native Problem in Africa*, R. L. Buell, 1928.

<sup>3</sup> For the similar system in the Gold Coast, see Chapter VIII, page 221.



particularly in reference to the extent of their power to make Treaties conveying rights over the lands of their communities. But we are concerned here not with transactions of this class, which lie so entirely outside the range of native custom, but with the exercise of the traditional powers of Chiefs in such matters as the allocation of land, whether to members of the community or "strangers," or the resumption of lands left unoccupied, or the confiscation in certain circumstances of occupied lands. In such matters the position of the Chiefs is sufficiently clear. Even in Benin, where in theory all land was "owned" by the Oba,<sup>1</sup> the rights enjoyed by him were in fact restricted and elsewhere it is obvious that the authority of a ruling Chief was largely symbolic; he was "the embodiment of the common consciousness of the people as the final administrative authority over land." The accepted theory is that the individual receives his allocation from a family head, who derives authority from a Chief who, in his turn, has delegated to him the supreme controlling power of the Oba. In practice however the Oba or other ruling Chief is seldom consulted in the minor dispositions of land held by the family.<sup>2</sup>

There was in the indigenous custom a well accepted practice by which in cases where abandoned land was reallocated or a holding allowed to a "stranger," tribute was paid to the Chief, not in recognition of his ownership of the land, but as an earnest of the good faith of the grantee. A tribute paid by a "guest" to a "host" community was known as *ishakole* in Yorubaland and *akorhore* in Benin. It is doubtful whether there now survive in the Western Provinces any of the "official" or "Royal" Estates to which reference was made in dealing with land questions in the Northern Provinces,<sup>3</sup> save perhaps in Benin, where the Oba has certain reserved lands whose tenure resembles that of the "Royal" Estates.

It is often difficult to distinguish between the traditional functions exercised by Chiefs in regard to land and those exercised by Native Authorities in pursuance of the powers vested in them by the Native Authority Ordinances. In the Western Provinces however there is this distinction; the functions exercised by the Native Authorities are vested in a body of which the Chief is in the majority of cases only a presiding figure. This is well illustrated by the use made of the powers for creating Forest Reserves, the proceeds of which are paid into the Native Treasury.<sup>4</sup> That however is the result of relatively modern legislation, and many years previously some of the Native Authorities had sought to acquire the power to control dealings in land, as for example in Ibadan. The facts regarding the claim made in 1903 by the Bale and Council of Ibadan that all land should be treated as vested in the Chiefs, and the effort made by the Egba United Government to limit transfers of land to transactions between Egbas are stated at length in pages 163 to 165 of Dr. Meek's work on Land Law and Custom in the Colonies. Leases, especially of urban lands, continue to be issued and rents demanded by the Ibadan Native Authority, which maintains a Lands Officer, and a Standing Lands Committee. The right to lease plots in Benin City has for many years been exercised by the Benin Native Authority.

In the past, the attitude taken by the Government in regard to the claims made by Native Authorities in this matter has varied, but the position of the

<sup>1</sup> H. L. Ward Price, *Land Tenure in the Yoruba Provinces* (1933), paras. 348 to 366. But see on the other hand, C. W. Rowling, *Notes on Land Tenure in Benin, etc.* (1948), page 7.

<sup>2</sup> T. O. Elias in *Nigerian Land Law and Custom*, June 1949 (unpublished).

<sup>3</sup> Page 90.

<sup>4</sup> Page 141.

Authorities was fully recognized in the Native Authority (Control of Lands) (Amendment) Ordinance 73 of 1945 which applies to the Southern as well as to the Northern Provinces.<sup>1</sup> Various Native Authorities have begun to take formal action under this Ordinance. The Ijebu Authority has drafted Rules providing that no alienation shall take place without prior notice to it; the Ijebu Remo Authority has Rules of a more elaborate character relating to urban lands; the Egba Authority has also drafted Rules and is considering the compilation of a record of land sales. The Ika Authorities in the Asaba Division have made Rules under this Ordinance to restrict stranger immigration and occupation of land. It is likely that a growing use will in particular be made of the Ordinance by those Native Authorities which control urban centres, where rents are becoming a matter of increasing concern to them. The Ordinance may moreover serve a useful purpose by providing a legal basis for a record of transfers of residential and shop sites.

#### CHANGES IN NATIVE LAW AND CUSTOM

The chief features of native land custom in the Western Provinces have been described in Chapter XIII of Dr. Meek's work already quoted,<sup>2</sup> and it is necessary to refer here only to recent instances of a tendency to which he has referred, namely, the growing desire to acquire a legal title to holdings acquired by purchase from other natives. Whatever the strength of the traditional feeling against the absolute transfer of rights, there can be no question of the wide extension of the practice of sale, and where this takes place, local feeling as to the nature of the rights acquired has come strongly under the influence of English ideas of real property and the title attaching to it in English law. In many of the urban centres the sale of rights is common, sales being frequently the subject of public auction, and in spite of the efforts made by the Egbas in 1903 and again in 1913 to prohibit sales or mortgages except between Egbas, transactions of this nature continue. In Benin City transactions are considered effective if the Quarter Heads are informed and do not object. The practice of sale is extending to rural areas, though in some cases, as in Ijebu Ode, transactions are allowed only if the Quarter or other Chiefs are informed.

The nature of the legal title acquired by these transactions has been the subject of a considerable body of litigation,<sup>3</sup> and legal authorities seem to be still in doubt whether rights acquired are absolute or whether they are qualified by the persistence of native law and custom, particularly in respect of the residual rights of the family or the community. The question of preparing a systematic record of title has been under consideration since the matter was ventilated in 1932 by Mr. H. L. Ward Price in the work on Yoruba Land Tenure already referred to, and it is understood that a regional Lands Officer is to be appointed to consider the question of the recording of titles in Ibadan, Abeokuta and Ijebu Ode. Legislation for this purpose already exists in the Registration of Titles Ordinance, No. 13 of 1935.<sup>4</sup>

Some doubts have been expressed regarding the possible effect of the Rule making power conferred by the Native Authority (Control of Lands) (Amendment) Ordinance 73 of 1945, combined with the power for declaring or

<sup>1</sup> Page 93.

<sup>2</sup> To the references given by Dr. Meek must now be added the Report on Lands in Benin, C. W. Rowling, 1947.

<sup>3</sup> A number of cases have been analysed in *Nigerian Law and Custom* by T. O. Elias, 1949.

<sup>4</sup> See page 36.

modifying native law and custom vested in them by the Native Authority (Amendment) Ordinance No. 3 of 1945. Fears have been felt that the use of these powers may lead to the creation of a great variety of local Rules relating to native land rights or tenures. So far little use has been made of these powers save, as has been shown, in regard to certain urban centres, but clearly their use will need careful supervision, if we are to secure a reasonable measure of uniformity in the evolution of systems of land tenure in this part of Nigeria.

### CONCLUDING NOTE ON THE SYSTEM OF NATIVE ADMINISTRATION

It is inevitable that one should, in the first instance, ask what success has attended the application to the Western Provinces of the legislation dealing with the procedure of native administration which had been for some 14 years in force in the Northern Provinces. To ask this question is not to suggest that there were not good grounds for the decision then taken. It was not unnatural that Sir Frederick Lugard should have considered it as one of the primary results of the amalgamation that Southern Nigeria should, as he said, "receive a better organization of its Native Administration to replace the confused and ill-defined arrangements, complicated by numerous written agreements and treaties, which had developed in response to practical requirements as these had made themselves felt over a considerable number of years."<sup>1</sup> The procedure in force in the Northern Provinces suggested itself as an obvious precedent, the more so because the Yoruba and Egba had Ruling Chiefs whose co-operation might assist the success of the new organization, both in other ways, and in the introduction of a systematic procedure of taxation, which had so far been lacking in Southern Nigeria.

There was another reason which might well have been adduced in favour of the adoption of this system. It has undoubtedly contributed to preserve Yoruba institutions from disintegration, and thereby to foster Yoruba consciousness, always an important asset in the development of any community, and one which in this case has become of special importance, in so far that Yoruba sentiment has provided a counterweight to some of the subversive influences emanating from the Eastern Provinces.

Such administrative difficulties as were encountered in the use of the procedure embodied in the Northern system were due mainly to the fact that the leading indigenous organizations in the Western Provinces had not the same symmetrical form, comprising a definite chain of authority under an hereditary ruling Chief, as those of the Emirates. The type of authority was, to use a convenient term, pluralistic, and the component elements were in some cases so balanced as to make it uncertain where the real seat of executive power lay. But there were other difficulties also, which had their origin in the social organization of the Yoruba. The first effect of the introduction of the Native Authority Ordinance was to enhance, in form at all events, the status of the ruling Chiefs, but its subsequent working emphasized the need for according fuller recognition to the accredited community leaders, derived, as has been shown, from a variety of sources, on whom the authority of the ruling Chiefs rested in the indigenous system. The movements directed against the authority of the Chiefs (such as that which has occurred in Abeokuta) are sometimes described as designed to secure a greater measure of popular representation in

<sup>1</sup> Amalgamation Report, 1918, paragraph 8.

the Native Authority organization; but they might also be described as movements on the part of certain elements to reassert a position which had been accorded to them by tradition, and which seemed to have been threatened by modern developments.

The organization of the Native Authorities is therefore still in a process of transition, and in constitutional or political developments a transitional stage is notoriously "untidy" and open to attack from a variety of angles. In this case it has had special disadvantages. It has made it more difficult for the Native Authorities to raise funds, by way of a local rate, from their own communities, and thus to strengthen their position in the popular view as sources for the provision of local government services. It has invited attacks from "progressive" sections of the community, whose concern is centred mainly in schemes for political development. There have indeed been indications that some officers of the Administration, possibly influenced by these attacks, or perhaps affected by the current discussions regarding the reform of the system of native administration in the Eastern Provinces,<sup>1</sup> have been inclined to feel that the Native Authorities in Yorubaland have failed to come up to the anticipations held of them in 1914, and that a radical change of system is now required. But such a view seems to show an undue lack of faith in institutions which can still command much traditional support and for which no acceptable substitute is for the time being in view.

It would seem more profitable therefore to study measures which will render the Native Authorities more efficient in the immediate present than to forecast the changes which may have to be made in a more distant future, under the stress of the remarkably rapid constitutional readjustments which have now become the fashion in West Africa. Some of these measures may be briefly indicated here. It would, in the first place be an advantage if the Native Authority Councils could be given a more efficient form by the establishment of an Executive body consisting of persons holding charge of definite portfolios, and with sufficient training and experience to discharge their duties. The activities of some of the Native Authorities are, again, hampered by the existence of a number of secondary authorities (frequently having the status of Subordinate Native Authorities) with a consequent loss of administrative efficiency and financial control. Much has been done to reduce the number of Authorities holding separate Treasuries, but there is an obvious case for further reorganization on lines more nearly approaching a Divisional basis.

The administration of the large urban centres is now in special need of reorganization and reform. As has been pointed out, they are for the most part lacking in the type of executive organization necessary for the discharge of the modern functions of municipal authorities.<sup>2</sup>

The administration of the Native Courts also calls for special comment. Their procedure is being influenced in a growing measure by that of the Courts subordinate to the Supreme Court which follow European methods of procedure. It is characteristic, for example, that the Instructions issued to the Native Courts in the Oyo Province speak of a Judgement Creditor obtaining satisfaction by issue of writs of *Fi Fa* or *Ca Sa*. The Yoruba are active in trade, and the Courts have now to deal with a considerable volume of causes arising from commercial transactions and normally falling under the law which regulates commercial practice. The Courts now deal moreover with a con-

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<sup>1</sup> See page 183.

<sup>2</sup> See page 133.

siderable range of matters regulated by the statutory law and are no longer Courts administering only native law and custom.<sup>1</sup> One of the difficulties arising from this situation was illustrated in the course of the discussions leading to the passing of the recent Amending Native Courts Ordinance, No. 36 of 1948. The West African Court of Appeal had ruled that where a Native Court exercises its jurisdiction in relation to an act which constitutes an offence against the Criminal Code, whether or not that act is also an offence against native law and custom, the Court is required to exercise that jurisdiction in accordance with the provisions of the Criminal Code. As all Native Courts could not be expected to administer the highly technical provisions of the Code, the Ordinance makes it legal for them to try a person for an offence against customary law, even though his act also constituted an offence against the Criminal Code.

But though the Native Courts are now increasingly faced with fresh types of issues and are also yielding increasingly to the tendency to adopt European forms of procedure, the composition of many of the benches is still largely traditional, and difficulties are bound to arise when judges, often of inadequate education or having at all events no legal experience, attempt to apply a procedure based on principles of European law in deciding the issues which come before them. Tradition and a sense of natural justice, when applied in the field of native law and custom, can produce results which will satisfy those who resort to the Native Courts; but outside that field the way is opened for chicanery and a bastard legalism which is bound to cause popular dissatisfaction with the administration of justice.

Here, again, it is not easy to forecast the future of the Native Courts, but elsewhere somewhat similar conditions are being met by the use of the powers of the Administration in order to ensure a more careful selection of the personnel of the benches, which are then constituted on a semi-permanent basis, under Presidents specially chosen for the purpose and holding office for a prescribed period. It has in particular been found an advantage to curtail the practice by which Chiefs preside over Courts of first instance. Though African tradition has favoured the union of executive and judicial power in the same authority, this tradition can be satisfied by giving a Chief a titular position in judicial matters or by limiting his jurisdiction to the hearing of appeals.

It is clear that unless some systematic reform of the Courts is undertaken, even at the cost of the privileged position of certain traditional interests, the Government will have to face continuing pressure for the replacement of the Native Courts by Magisterial Courts, with the corollary of the admission of professional lawyers to plead in them. At the present stage of society in the Western Provinces, this would be of doubtful advantage to the mass of the population concerned, and would be of very definite disadvantage in the trial of land causes. It is therefore satisfactory to learn of the recent appointment of a Commission to enquire into the working of the Native Court system, under the chairmanship of Mr. N. J. Brook, lately a Puiane Judge.

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<sup>1</sup> See page 135.

## SECTION V

# THE EASTERN PROVINCES

THE only figures available for the population of the Eastern Provinces are recent local estimates based on the Census of 1931, when the total population was recorded as 4,690,567. If the local estimates shown in the table below are correct, they show a considerable but by no means abnormal increase in the interval.

Province	Number of Divisions	Population	Area	Density per Square Mile
Calabar .. ..	8	861,882	6,102	141·23
Cameroons ..	4	487,000	16,581	29·4
Ogoja .. ..	5	692,039	6,407	108·01
Onitsha .. ..	4	1,206,148	4,877	247·31
Owerri .. ..	5	1,597,134	3,869	412·80
Rivers .. ..	4	481,073	6,250	76·81
Total .. ..	30	5,325,276	44,086	121·07

The Rivers Province was established in 1947 from parts of the Owerri and Calabar Provinces. The Cameroons Province lies entirely in the British section of the Cameroons, which by virtue of the Nigeria (Protectorate and Cameroons) Order in Council, 1946, and Article 5A of the Trusteeship Agreement of 13th December, 1946, is integrated with the administration of the Eastern Provinces. Under an arrangement accepted in 1948 the Cameroons Province is now to be divided into two Provinces, each in charge of a Resident, under a Commissioner who is to be responsible to the Chief Commissioner, Eastern Provinces.<sup>1</sup>

### THE PHYSICAL CONDITIONS

As will be seen, the Eastern Provinces are distinguished by a relatively high density of population, particularly in the Owerri Province, where it is said to amount in some localities to over 1,000 in the square mile. The Region has an even greater physical diversity than the Western Provinces. Along the coast in the Rivers, Calabar and Cameroons Provinces, there is lowlying land, with mangrove swamps, creeks and small islands, and a high rainfall varying from a range between 100 to 111 inches at Calabar, and 98 to 217 at Victoria, with an exceptional incidence ranging from 289 inches to 481 inches at Debundscha. The main occupation in this coastal area is fishing, and food-stuffs have as a rule to be imported.

<sup>1</sup> Page 4 of Report to Assembly of United Nations, 1948.

In the extreme east near Victoria the Cameroon Mountain rises abruptly to a height of 13,350 feet; it is volcanic and its lower slopes are covered with dense forest falling to swamp. Once away from the coast, practically the whole of the Cameroons Province is composed of high land, rising to grass plateaus of between three and eight thousand feet, where grazing is found for some 160,000 Fulani cattle, and falling to rocky, rugged country in the west towards the headwaters of the Cross River. Cocoa is the principal export crop—chiefly from the Kumba Division—while a little coffee, castor seeds and palm kernels are also exported. It is here that development is being entrusted to the Cameroons Development Corporation, which was established in the circumstances to be described in a later part of this Section.<sup>1</sup>

Proceeding inland there occurs the rain forest belt which runs across the whole of south Nigeria, and here reaches its northern limits on a line just south of Onitsha; it narrows to a width of some 30 miles north of Calabar, and then increases in width to cover most of the southern portions of the Cameroons Province. A large part of the Owerri and Calabar Provinces lies within this zone, and it is here that occurs the major production of palm oil and kernels, which as shown subsequently provide the chief resources of the Region. This zone also produces rubber, of which there was a considerable export during the War period.

Further north there is a narrower belt of deciduous forest which includes part of the Niger Valley and runs just south of Enugu, Ogoja and Bamenda. Rainfall is still heavy, although it falls from the high coastal totals to averages between 70 inches and 90 inches. The country is fairly low-lying, with broken hills and river beds, but rises as one approaches the Cameroons. Palm products are still important, but there is more emphasis on staple food crops for internal export.

The remainder of the Eastern Provinces lie within the savannah forest belt with an average rainfall of between 60 inches and 75 inches, on undulating open country which includes the plateau running through the Udi and Nsukka Divisions of the Onitsha Province and well-wooded hills in the east of the Ogoja Division, rising to 6,300 feet, with a grass plateau on which a number of Fulani cattle graze. Zinc is found south-west of Ogoja, and there is near Enugu the important coal field which was discovered in the early years of the twentieth century, and has been worked as a State undertaking.

The West African Rice Mission found only one area which it considered suitable for the development of rice cultivation, and recommended works at Aguleri in the Onitsha Province calculated to involve a capital cost of £597,072, with a recurring expenditure of £129,067, and to provide an area of between 10,000 and 20,000 acres for cultivation.<sup>2</sup>

### THE ECONOMY OF THE REGION

Though the production of palm oil and kernels occurs also in the Western Provinces, particularly in the Warri Province, the Eastern Provinces make the largest contribution to the export of these commodities from Nigeria. Palm oil has moreover played an important part in the history of the territory, for early in the nineteenth century it began to replace slaves as an article of export,

<sup>1</sup> Page 178.

<sup>2</sup> British West African Rice Mission's Report, 1948, pages 36-37 and Appendixes XI and XIII.

and furnished the principal source of the commerce whose protection created the need for the expansion of administrative control. The export of 150 tons of oil in 1808 rose to 13,600 tons in 1839; a hundred years later, in 1938, Nigeria exported 112,000 tons of oil and 337,000 tons of palm kernels. In 1947 the export was 154,469 tons of oil and 319,000 tons of kernels; and palm products accounted for 57 per cent. in value of the total exports of the territory. The average yearly value of the export between 1941 and 1946 was £4,865,000.

The palm oil of Nigeria has not been able to compete with the better organized production of the plantations in the Netherlands East Indies, but the territory is the world's largest exporter of palm kernels.<sup>1</sup> The production of palm oil and kernels is, with relatively small exceptions, in the hands of peasant farmers, the sale of the kernels being normally regarded as a woman's perquisite,<sup>2</sup> but native methods of extraction result in the loss of a high percentage of potential oil content. The Government has endeavoured to meet this disadvantage by the establishment of Pioneer oil mills which will, it is contemplated, be handed over in due course to Native Authorities or Co-operative Societies. There has been some local opposition to these mills from interested parties, notably the middlemen, but four were operating in 1948, and 13 more have been planned for the Eastern Provinces. So far the results have been satisfactory, but it remains to be seen how far the system will receive a general measure of local support.<sup>3</sup>

Of other products, the out turn of rubber for many years was about 1 $\frac{3}{4}$  to 2 million pounds weight; in 1945 War conditions stimulated production up to 23 million pounds, but export has now declined, following the rehabilitation of the Malayan plantations. There is some export of cocoa from the Calabar and Cameroons Provinces. The coal field at Enugu, above referred to, produced 605,408 tons in 1948, a considerable part of which was exported to other British West African Colonies. Export, however, has now virtually ceased owing to the increase in internal demand.

### THE SOCIAL SERVICES

A relatively high proportion of the children of a school going age are now attending school; it is said, indeed, that in some parts the enrolment has reached saturation point, in the sense that it is practically equal to the number of those contained in a four-year age group.<sup>4</sup> But the attendance is only for short periods, and the distribution of the figures of enrolment is very unequal; in the total number of 310,923 boys and girls attending primary school in 1946 there were 125,882 in Owerri Province, and only 15,325 and 22,122 in the Ogoja and Cameroons Provinces respectively. The disparity reflects largely the diversity of activity on the part of the Missions, which, as the figures in the annual Report for 1947 show, have been responsible for establishing the great majority of the schools:

<sup>1</sup> In 1938 the Netherlands Indies exported 221,000 metric tons of oil and 47,000 tons kernels; the corresponding figures for Nigeria were 112,000 and 337,000 tons; for the Belgian Congo, 70,000 and 89,000 tons.

<sup>2</sup> There is an informative account of methods of production and the native marketing of palm products in the United Africa Company's Statistical Review No. 3 (March, 1949).

<sup>3</sup> Page 55 of Annual Report for Nigeria, 1948.

<sup>4</sup> Annual Reports, Nigeria, 1947, page 48, and 1948, page 59.



	Government	Native Authority	Mission	Private	Total
Primary	16	54	2,819	236	3,125
Secondary	1	—	15	7	23

It is noteworthy that there has been a greater advance in girls' education than elsewhere in Nigeria, and nearly one fifth of the total number of the pupils enrolled are girls. There are, however, many complaints of the low standard achieved in school education. Of the 14,000 teachers employed in 1946-1947, only 2,000 were professionally qualified, and between 3,000 and 4,000 were boys or girls of fourteen or fifteen years of age. There were in 1947 two Government and 10 Voluntary Agency Teachers Training Centres for men and eight for women, but plans were in hand for expanding training facilities, and a new Government centre was being opened in Enugu in 1948.

The part taken by the Native Authorities in education will be subsequently referred to.<sup>1</sup> Attempts are being made to establish Local Education Committees on the lines adopted in the Colony and Western Provinces, and though these have so far been attended with only partial success, Committees were in 1948 functioning in Aba, Port Harcourt and parts of the Cameroons and Owerri Provinces. In the field of technical education there is at Enugu a Trade Training School, which gives a basic six-months' course to ex-Servicemen, and Enugu is also to have a Trade Centre which it is intended to develop into a Technical Institute. A Trade Centre is also contemplated for the Cameroons. Mission teachers attend courses in rural science at the Umuahia Agricultural Education Centre.

There have been interesting experiments in the use of methods for the expansion of adult literacy, the chief centre of which has been the Communal Development scheme now being operated in the Udi Division of Onitsha Province. These experiments have however been impeded by the lack of suitable literature in the local vernaculars, though some progress has been made by the Efik and Ibo Language Bureau which was started some years ago. The social value of "mass" education has been the subject of an interesting study by Mr. E. R. Chadwick, and some of the conclusions drawn by him merit mention here. The introduction of mass literacy, in his view, invariably appears to accelerate the rate of communal development, owing to its effect on morale. It appears, again, to free the backward village from the tendency to follow slavishly the advice of literate youths living away from the village itself, and it has further had the effect of bringing the women into the political field as co-operators with the administration in local welfare projects.<sup>2</sup>

As regards the medical services, when the position was reviewed in a Sessional Paper issued in 1945<sup>3</sup> it was shown that there existed 20 hospitals with 1,426 beds, or one bed for every 3,700 of the population, and it was then proposed to supplement these by the addition of 11 hospitals, increasing the total number of beds by 1,586. There appears to be an urgent demand for maternity homes, midwifery services and dispensaries, and it is these which,

<sup>1</sup> Page 168.

<sup>2</sup> Communal Development in Udi Division; E. R. Chadwick; Overseas Education, Vol. XIX, No. 2, January 1948, page 627; Fundamental Education in Udi Division, page 9 of Fundamental Education, UNESCO, Vol. 1, No. 4 (1949)

Sessional Paper, No. 24 of 1945, pages 78 to 79.

as will afterwards be shown, are now engaging much of the interest of the local Native Authorities. There are now nine leper settlements of which two are provided by Government, three by Native Authorities, and four by Missions. A Mobile Field Unit is at work in the Cameroons Province and has apparently attracted many patients even from across the French border.

### THE ETHNIC DISTRIBUTION

Though the Eastern Region now presents itself most characteristically as the country of the Ibo and Ibibio, yet it contains also a large variety of other peoples of different stocks. Little is known of the early history of the inhabitants of the Region. Such inferences as can be drawn from the scanty data available tend to show that the Ijaw were the earliest forest-dwellers and were followed by the semi-Bantu tribes, which had little in common save a similar culture and root-language. It is conjectured that a series of immigrations of Sudanic peoples into Southern Nigeria began about 700 B.C., the first waves being formed by the Yoruba and the Edo, to be followed by the Ibo, who drove a wedge between the Edo and the Iyala, originally related to the Edo. Over the course of centuries the Ibo continued to exert a pressure towards the south, driving about 1000 A.D. some semi-Bantu to the east from what is now the Ogoja Province, but leaving behind small isolated pockets, and reaching the Aro-Chuku area about 1400 A.D. They were themselves subject to some pressure from the west, and in the early years of the eighteenth century refugees from Benin settled in Onitsha.

Generally speaking the present Rivers Province is inhabited by Ijaw, and the Onitsha and Owerri Provinces and the west of the Ogoja Province by Ibo. The rest of the Ogoja Province, the whole of the Calabar and the middle of the Cameroons Provinces are inhabited by various semi-Bantu tribes, the south of the Cameroons Province by Bantu tribes, and the extreme north of it by the Jukon and Badzumbo tribes which, together with two Bali pockets in the middle Cameroons, are Sudanic. This is, of course, a broad generalization which does not take account of the "stranger" elements to be found chiefly in towns, or of the multifarious divisions into sub-tribes and clans. Thus P.A. Talbot in his work, *The Peoples of Southern Nigeria*, recognizes three sub-tribes of the Ijaw (Kalabari, Lower Ijaw and Western Ijaw, the last in the Warri Province), 11 sub-tribes of the Ibibio (the most important of them being the Anang, the Ogoni and the Kwa), 10 sub-tribes of the Ekoi, and no less than 30 sub-tribes (including 67 clans) of the Ibo.

He classifies the present inhabitants in three main groups, mainly on a linguistic basis :—

*Sudanic* : comprising the Edo, Ibo, Ijaw, Yoruba, and various smaller communities, such as the Bali, Badzumbo and Jukon.

*Semi-Bantu* : comprising the Bafumbum-Bansaw, Ekoi, Ibibio, and smaller bodies, such as the Abuan, Boki, Ekuri-Akunakuna, Iyala, Mbembe, Munshi, Ododop, Orri, Ukelle, Uyanga and Yache.

*Bantu* : comprising the Abaw, Bakwiri, Bakundu, Balundu, Balung, Mbonge and a few smaller groups.

No accurate figures can be given of the present distribution of these peoples, but local enquiries have provided the following rough estimates for the six Provinces :

- Calabar* : about 860,000, nearly all Ibibio with the Efik and Anang sub-tribes and a few small tribal units.
- Cameroons* : about 450,000, of which some 113,000 are in 27 Bantu tribes with seven different languages, 5,000 are Bali (Sudanic) and the rest are divided amongst 28 semi-Bantu tribes in the Bamenda and Mamfe Divisions, those in the latter speaking a language of the Ekoi group, and those in the former languages of the Bafumbum-Bansaw group.
- Ogoja* : about 700,000, including 131,000 Ibo, the rest being made up of various semi-Bantu tribes some with vague affinities and speaking different languages.
- Onitsha* : about 1,200,000, of which 98 per cent. to 99 per cent. are Ibo.
- Owerri* : about 1,600,000, all Ibo, except for the Bende clan of the Ibibio in the south-east.
- Rivers* : about 475,000, of whom 56,000 Ijaw, 15,000 Ogbeyan (Semi-Bantu) and 9,000 Epie-Atissa in the Brass Division ; 250,000 in the Ahoada Division mostly Ibo, but including 10,000 Abua ; 95,000 Ogoni (Sudanic but non Ibo) in the Division of that name ; 46,400 Ijaw sub-tribes together with 4,200 Odual (akin to the Abua) in the Degema Division.

### THE SOCIAL STRUCTURE

The character of the indigenous social structure is here of particular significance, since it affords a clue to the difficulties experienced in adjusting to the Eastern Provinces a procedure of native administration which, though based on principles held to be of general application, followed in form that inspired by experience of the centralized political institutions of the Northern Emirates. Of the different communities mentioned above, the Ibo have received the closest study, and the following summary gives some of the most characteristic features of the composition of Ibo society.<sup>1</sup>

#### THE IBO

Amongst the Ibo the basic social unit is a group of patrilineal relatives living in close association ; this group may be a single extended family or a kindred composed of several such families claiming descent from the same father and mother. A kindred or several kindreds may form a village, and a number of contiguous villages a village group. Everyone within such a village group claims a common ancestor, although it is not an exogamous unit. Sometimes a slender social solidarity unites a number of such village groups, although there is little political or social unity except in extraordinary circumstances, such as the threat of invasion. There is a feeling of distinctness from other tribes, based on community of custom, but this does not lead to political integration. Besides this general feeling geographically contiguous Ibo are linked socially and economically by markets, and certain oracles, such as that at Aro Chuku, have powers over wide areas. The kindred is exogamous, and this system of exogamy is itself a binding force, since, while men are organized only within their own villages, women have organizations based both upon their natal and marital villages, which gives them an inter-village organization not

<sup>1</sup> P. A. Talbot, *op. cit.*, Vol. III, Chapters XXIII to XXV; Law and Authority in a Nigeria Tribe, C. K. Meek, 1937; Ibo Village Affairs, M. M. Green, 1947.

possessed by the men. A startlingly effective use was, it may be noted, made of this in the 1929 Aba riots.<sup>1</sup> It should be remembered however that the social grouping is far from static; villages may break away from the group, kindreds may grow into clans or bisect themselves for political or social control or so that they are no longer exogamous.

“From a political point of view it appears that in part, at any rate, of the Ibo country the village is the largest social unit with any claims to be a unit of government. The village-group may be considered as a whole in certain respects; but it is the village which, for most practical purposes, manages its own affairs. Within the village, authority is dispersed among groups rather than centralized in any one individual or body, and the spirit of rivalry institutionalized in the dual division of the village is one of the sources of executive action and one of the mainsprings of communal activity. This pluralistic organization, the tendency to balance two halves against each other rather than to unify them into a whole, would appear to be a characteristic of village government of a different order from the fact that extended families composing the village themselves paddle their own canoe in many matters . . . And though the whole village considers itself theoretically a kinship unit, in fact the sentiment of kinship wears thin outside the bonds of the extended family and merges into a feeling which has more of a local or political character.”<sup>2</sup>

We have therefore a picture of a decentralized type of society, in which each extended family has tended to manage its own internal affairs without reference to or interference from any higher authority. When a clash occurred between members of different families within the kindred the matter would go before the heads of all the families in the group for decision. Amongst these heads the senior was the Okpara, himself the head of the senior branch of the kindred, but his powers did not extend to interference in the domestic affairs of any family other than his own, although he had a priestly and ceremonial function as the intermediary between the whole kindred and the ancestors. If indeed he were not a strong character he would be little regarded even in Council, where rich people often gained a position of influence in return for services rendered and even came sometimes to exercise executive power. Their continued power, however, always depended on continued services. It was from this class that came many of the Warrant Chiefs who will afterwards be referred to,<sup>3</sup> and it is easy to see how they became unpopular when, relying upon Government support, they increased their autocratic powers without remembering that to the Ibo authority implied parallel service to the community.

The village group sometimes had a central Council called the Oha, composed of a meeting of the heads of the constituent families, but meetings of such bodies were infrequent. Great importance attached to the various Societies which were a characteristic feature of Iboland, nor must the religious powers of priests and oracles be overlooked. The Societies were divided into grades, carrying their own titles, and entry to a new grade was gained by payment of an initiation fee, which was shared amongst the existing titleholders. Titles are losing some of their importance now, but they formerly conferred both social and political status on their holders. The highest titles carried much more than a local recognition, and the holder of their emblems could travel safely

<sup>1</sup> See page 159.

<sup>2</sup> M. M. Green, *op. cit.*, pages 231-2.

<sup>3</sup> See page 158.

through the country, a proceeding fraught with danger to an ordinary man in older days. The possession of title also gave its holder an important part in public affairs; his person was sacred, and his house a sanctuary. "Summing up, we may say that . . . government was . . . the business of the whole community, that it was based on the family organization, and that authority was in consequence widely distributed. But the system of titles, which was bound up with the possession of wealth, tended to cut across and frequently even to eclipse the family organization, establishing the richer families at the expense of the poorer, and forming a polity which, if more centralized and effective, was also more bureaucratic."<sup>1</sup>

Besides the family organization described above, it was customary for people of approximately the same age to be joined in age-grades, usually starting at the age of puberty. Public duties were attached to each of these grades and they exercised moreover a certain legal function by taking action against any of their members committing an offence. The warrior age-grade frequently formed the executive arm of the Council of Elders, in some places exercising summary jurisdiction in its own right. This executive might either take direct action itself or leave it to be carried out by the various secret societies, such as the Memo, which represented the spirits of dead ancestors and thus invested the enforcement of decisions with a spiritual sanction.

#### THE SPECIAL ORGANIZATION OF ONITSHA

The foregoing outline has not taken account of the organization of Onitsha which, for historical reasons, is not typical. Here the immigration from Benin in the eighteenth century resulted in the creation of a chiefly system akin to that of its place of origin. The Chief (Obi) is selected from the families of two kindreds, is surrounded by elaborate taboos, and exercises authority through titled officials who are organized into three grades. The system of age-grades exists, which try breaches of law by their own members and enforce their executive authority through the Memo society.

At Nri in the Awka Division of Onitsha there is a priest-king, the Eze-Nri, also surrounded by elaborate taboos, whose civil supremacy was acknowledged throughout the Division and in part of the Udi Division. His successor was chosen by divination. Similarly there were semi-hereditary rulers in the Alensaw, Aloa, Okkpaw and Ozuzu-Uznama clans in the northern Ikwerrri area and at Alimini.

#### THE SEMI-BANTU

Among the semi-Bantu we find a considerable variety of systems of rule. The Ibibio towns were usually independent of one another and ruled by a Chief with Sub-chiefs, sometimes semi-hereditary, sometimes chosen from any family. Thus at Calabar there were three Quarters, each with its Chief, one of whom was usually acknowledged as the head, the succession going to brothers rather than to sons, while amongst the south Iyala the succession was confined to three families and the actual successor was elected by the townspeople. Amongst the Okpoto (a clan of the Orri tribe), Chiefs were also elected by the people and were not confined to particular families, but the Mbembe, the Yache and the Akunakuna had Chiefs selected from "royal" families, the successor usually being a brother, while the Abua were ruled by a priest-king with similar rules of succession.

<sup>1</sup> Meek, *op. cit.*, page 164.

The Boki tribe was split into clans some of which acknowledged the paramountcy of hereditary or semi-hereditary Chiefs, and some were governed by Councils of Elders. Residual power amongst the Ekoi was also in the hands of a Council of Elders, although in some parts there were also hereditary Chiefs and in others Chiefs elected by the people for their personal qualities without hierarchic restrictions. The Bafumbum-Bansaw were ruled by Chiefs succeeded usually by a son.

It should be mentioned that it was amongst the semi-Bantu that the Ekpe or Leopard Society originated and where it was strongest. It was organized into seven grades and formed the ruling power amongst the eastern and north-central Ibibio tribes. Human sacrifices were made when new farms were cultivated or when a member died, and death was the penalty for resisting an envoy of the Society. It was used also for the recovery of debts and for maintaining the supremacy of the freeborn over the more numerous slave population.

#### THE BANTU TRIBES

Finally, the Bantu tribes were usually ruled by semi-hereditary Chiefs, but the Council of Elders held most of the power and some clans had no Chiefs at all.

#### THE INFLUENCE OF THE SOCIAL ON THE POLITICAL STRUCTURE

There is therefore in the Eastern Provinces a great diversity in the character of the indigenous political institutions. Nowhere however is there to be found any close analogy to the centralized organizations of the Northern Emirates, nor indeed to the less highly centralized but nevertheless authoritative organizations of the Yoruba and Egba. If there is any analogy at all, it is in the chiefly structure found in Onitsha, though its original form has been much modified by contact with the institutions prevailing in its vicinity. The semi-Bantu tribes had Chiefs, but with a small range of local authority, and frequently the Chiefs were what have been described elsewhere as "clan heads," whose political control, if it existed at all, usually had a very restricted range.

The large Ibo community presents perhaps the most outstanding example in the British African Colonies of an indigenous structure in which it is difficult to find any definite seat of executive authority, a characteristic which it has retained up to the present day. It would be of interest to speculate how far this has been due to the fact that their history had for a prolonged period no record of the invasions or the mass migrations which have in many other instances led to the formation of groups under authoritative leadership. But if the structure of Ibo society was wanting in this particular respect it was not in another sense anarchic.

"Ibo institutions catered with success for the basic needs of society; anti-social conduct, exceptional in small kinship groups, was checked by the authority of the ancestors, wielded by those who stood nearest to them . . . Collective family responsibility turned relations into potential policemen who might force a murderer in their midst to commit suicide rather than to bear the results of his crime, or might sell a thief rather than repay his theft with interest and stand the cost of the sacrifice necessary to purge his offence. Feuds between local groups could be settled at councils representing the wider groups which contained them or by neutral arbitration. Members of age grades would fine one of their number who shirked his duties."<sup>1</sup> It has been usual to speak

<sup>1</sup> M. Perham at page 232 of *Native Administration in Nigeria*, 1937.

of the Ibo as "democratic," but they are democratic only in the African sense of the term. They do not willingly accept the existence of superior authority, and are suspicious of any assertion of leadership among their own people. With a higher standard of intelligence than most of their neighbours, they have a reputation for being acquisitive and difficult to deal with. It is these characteristics which have tended to make them, more than any other of the peoples of Nigeria, a special problem in the field both of administration and of politics.

### THE INTRODUCTION OF THE PRESENT SYSTEM OF NATIVE ADMINISTRATION

It is necessary to give, however briefly, some account of the history of the Region up to the date of the amalgamation of Northern and Southern Nigeria in 1914, if only to show how slender was the measure of administrative control exercised by the British Government at that date, in spite of the fact that its connection with the area had been of much longer duration than with the people of Northern Nigeria. The early contacts of the British with the inhabitants of Bonny and Calabar were limited to the dealings of the slaver captains with Chiefs or others for the supply of slaves, but a wider connection commenced when, following on the passing of the Abolition Act of 1807, the trade in palm oil began to replace the trade in slaves.

The conditions of commerce were however hazardous, and the difficulties of the merchants finally led the Government to appoint a Consul for the Bights of Benin and Biafra in 1843, followed by the posting of a separate Consul for the Bight of Benin in 1853. But merchants were still dependent on their own exertions for meeting the depredations of river pirates, and they themselves established Courts of Equity in 1854 for dealing with local commercial disputes. These Courts were presided over by traders in turn, but where dealings with natives were concerned they had to depend on the co-operation of a local Chief for giving effect to their decisions. Trade, which up to this time had been confined mainly to the coast and the estuaries, was extended further up country when the Niger was opened up soon after 1859. A consulate was established at Lokoja, at the junction of the Niger and the Benue Rivers, soon after 1867. In 1872 an Order in Council, based on the Foreign Jurisdiction Act of 1843, empowered the Consul for Biafra and Benin to implement any agreements made with Chiefs and to act as presiding officer in the Courts of Equity, whose procedure was now regularized. But the Order in Council confined the jurisdiction of the Consul to British subjects and to such natives or foreigners as should have consented to submit to his jurisdiction or that of the Courts of Equity.<sup>1</sup>

Five years later the activities of Sir George Goldie resulted in the amalgamation of the local British firms to form the United Africa Company, which was three years later reorganized as the National African Company. A rival French establishment was bought out in 1884. Meanwhile the Consul had made Agreements with a large number of Chiefs on the Oil Rivers in which they accepted the protection of Great Britain and agreed to accord full civil and criminal jurisdiction over all British subjects and foreign subjects enjoying British protection. Disputes between local Chiefs and British or foreign traders were to be submitted to the British Consular agents "for arbitration and decision

<sup>1</sup> See Appendix E, in *History of Nigeria*, Sir A. Burns, 1948.

or for arrangement." These Agreements, in combination with those made with the Sultans of Sokoto and Gando, were sufficient to secure from the Berlin Conference of 1885 a recognition of the validity of the British claim to Nigeria, subject to free navigation of the Niger.<sup>1</sup> A British Protectorate was accordingly proclaimed over the "Niger Districts" in June 1885.<sup>2</sup>

The proclamation of the Protectorate satisfied international requirements, but it was not followed by any immediate measures to establish jurisdiction or exercise administrative control. Any authority that the Consul could exercise was effected by arrangement with Chiefs such as Nana of the Benin River, who received formal recognition as "the executive power through which the decrees of Her Majesty's Government and of the Consular Court are to be enforced," or Jaja of Opobo, the relations with whom form an incident in Nigerian history which it is perhaps easier to explain than to excuse.<sup>3</sup> Much difficulty was encountered in keeping open the navigation of the Niger River, and the National African Company, which had in 1886 obtained its Charter as the Royal Niger Company,<sup>4</sup> was engaged in a conflict on the subject with the Brass people that ultimately involved the despatch of a punitive expedition against them. Though however the grant of the Charter to the Royal Niger Company greatly strengthened its position, its energies were directed chiefly to the maintenance of the customs regime on the Rivers and to the protection of trade routes. Courts of Justice were established by the Government at Asaba and an armed constabulary, with British Officers, raised for the protection of peace, but no steps were taken to establish a system of local administration until 1891, when the Government appointed a Commissioner and Consul General at Calabar, with Deputy Commissioners and Vice Consuls posted to the various rivers.

In 1893, the Protectorate was extended by Order in Council over the hinterland, being renamed the Oil Rivers and Niger Coast Protectorate. Finally in 1900 the Company's Charter was cancelled, the territory was renamed the Southern Nigeria Protectorate, and placed in charge of a High Commissioner. In 1906 the Lagos Colony and Southern Nigeria were amalgamated and became the Colony and Protectorate of Southern Nigeria under the Governor with headquarters at Lagos.

In a despatch written subsequently in 1931 the Secretary of State expressed his view that the problems of South East Nigeria had been neglected for the simpler problems of the Northern and Western Provinces.<sup>5</sup> It is at all events clear that in the south-eastern Districts of the Southern Protectorate the introduction of a system of local administration was for a considerable period limited to making provision for Courts of Justice, and, as will be seen, these Courts became the main if not the only instruments of executive control. The Native Councils Ordinance of 1901, to which a reference has been made in the Section dealing with the Western Provinces,<sup>6</sup> applied only to those Provinces, and not to the south-eastern Districts, but a subsequent Ordinance, No. 7 of 1906, provided for the establishment in the South-eastern Districts of Native Councils, or Courts, with Minor Native Courts subordinate to them.<sup>7</sup>

<sup>1</sup> Herslet's Map of Africa by Treaty, Vol. I, page 440 (Second edition).

<sup>2</sup> London Gazette, 5th June, 1885.

<sup>3</sup> See pages 141 to 145 of *The History of Nigeria*, Sir A. Burns, 1948.

<sup>4</sup> The principal clauses of the Charter are given by Sir A. Burns, *op. cit.*, page 147.

<sup>5</sup> Cmd. 3784 (1931).

<sup>6</sup> See pages 110, 134.

<sup>7</sup> Page 1267 of Vol. II of *Laws of Southern Nigeria*, 1908.



These Native Councils had civil and criminal jurisdiction over natives, and were presided over by the District Commissioner, with natives appointed as members. But they were given in addition such powers for the conservation of the peace as were necessary for preventing riots or affrays. As Native Councils, moreover, they could make Rules (with the sanction of the Governor) embodying or modifying any native law, or generally providing for the peace, good order and welfare of the natives in their jurisdiction. It was mainly to the use made of the members of the Courts as executive agents that the South Eastern Provinces owed the creation of the class which became known as Warrant Chiefs. In the process of constituting the Courts, a representative was in theory chosen from each village, but in practice from a more or less arbitrarily determined geographical unit. The representative so chosen was given a Warrant empowering him to exercise the authority vested by the Ordinance in members of the Court. The Warrants were sometimes given to people in return for services rendered to the Government, and there was inevitably a tendency to appoint persons of intelligence with some understanding of European ways, so that the more pushing men tended to gain Warrants, although they may have had no hereditary or customary status. It is clear nevertheless that in most places selection was made with some care. "His antecedents, and sometimes his genealogy, were enquired into and the Chiefs and people of his town were called upon to confirm their choice . . . Thus in any case the Court member, whether he was a recognized Town Chief or not, was the natural link between his town and the Government. His function was to voice the views of the townspeople and to carry back messages or executive orders from the Administrative Officers."<sup>1</sup>

There can be no doubt that the procedure of Native Courts as judicial bodies was subject to the same criticism as the similar Native Courts of the same period in the Western Provinces.<sup>2</sup> They were in effect the Courts of the Deputy Commissioners, not Native Courts in the same sense as those of the Northern Provinces, and they suffered in particular from the dissatisfaction felt at the powers accorded to the Warrant Chiefs as members. When after the Amalgamation of 1914 provision was made for the reorganization of the system of native administration in Southern Nigeria by the enactment of the Native Courts Ordinance No. 8 of 1914 and the Native Authority Ordinance No. 14 of 1916,<sup>3</sup> this did not for some time make any material difference in the procedure followed in the South Eastern Districts. The Native Courts took a different form, in so far that the District Commissioner ceased to preside, and their appeals lay to Administrative Officers instead of the Supreme Court, but the Warrant Chiefs continued to act both as members of the Courts and as the executive agents of the Administration.

That earlier attention was not given to the reorganization of the system of native administration was doubtless due to the fact that there existed at the time no direct tax, and that the establishment of a Native Treasury was regarded as an indispensable condition of the procedure which had been brought into force in the Northern Provinces and was being introduced into the Western Provinces. When in 1919 an investigation was made into conditions in the South East Provinces at the instance of the Governor, Sir Hugh Clifford, the reports submitted were strongly critical in tone and called particular attention

<sup>1</sup> Sessional Paper No. 28 of 1930, Annexure I, Appendix III (1).

<sup>2</sup> See page 134.

<sup>3</sup> See pages 111, 134.

to the lack of inherent authority possessed by the Warrant Chiefs.<sup>1</sup> The Governor, in addressing the Nigerian Council in 1923, expressed the view that reorganization of the system should take the form of resuscitating "the original tribal organization which was in existence prior to the coming of Europeans." The policy thus set forth was unexceptionable, though there were in fact in the South Eastern Districts no tribal or other indigenous organizations comparable with those which had lent themselves readily to the creation of the Native Authority system of the Northern Provinces.

The view put forward by the Governor was however the subject of much consideration during 1924 and 1925. Its first result was the revival of the proposal, put forward by Lord Lugard in 1914, for the imposition of a direct tax as the basis for the establishment of a Treasury system. It was decided in 1926 that taxation should follow the form adopted in the Northern Provinces, namely, a tax based on a rough assessment of income, not a poll tax, but the decision was unfortunate in its results, for the process of assessment involved a series of domestic investigations that were bound to arouse suspicion on the part of a people which, unlike that of the Northern Provinces, had no previous experience of taxation, and indeed little experience of any organized form of local administration. Some disturbance occurred in the Warri Area during the preparation of the tax register, but the tax was collected without any serious difficulty in 1928, the Warrant Chiefs being largely used in the process of collection. Half the proceeds were paid into District Native Treasuries, which were artificial creations established for the purpose. At the end of 1929, however, there broke out in Calabar and Owerri the disturbances which have occupied a conspicuous place in Nigerian history as the Aba Riots. It is sufficient to say here that the trouble originated in the Ibo country and afterwards spread to the Ibibio, and that the actual rioting was almost entirely confined to the women. For our present purpose it is important to note that the Commission of Enquiry into its origin found that discontent with the Native Court members or Warrant Chiefs was one of the causes which contributed to the outbreak.<sup>2</sup>

In comments made subsequently on this incident there has perhaps been a tendency to over emphasize the part played by the unpopularity of the Warrant Chiefs as a cause of the disturbances. There have indeed been some advocates of the use of traditional Native Authorities as the basis of the system of Indirect Rule who have quoted the failure of the Warrant Chiefs as a proof that in no circumstances can it be proper to make use of "appointed" agents of local rule. But the fundamental cause of the disturbances, as the Secretary of State observed in 1931, was to be found in the fact that the Government had insufficient knowledge of the indigenous institutions and life of the people,<sup>3</sup> and in the years 1931 and 1932 it made a serious effort to repair this defect by investigations conducted on a very extensive scale. By the end of 1935 over 200 Intelligence Reports dealing with the local social structures had been completed, though the task was one of special difficulty, owing to the obstacles presented by the Ibo and Ibibio languages, with which only those possessing

<sup>1</sup> Report on the Eastern Provinces by the Secretary for Native Affairs (Lagos, 1922) and Report on a tour in the Eastern Provinces by the Assistant Secretary for Native Affairs (Lagos, 1923).

<sup>2</sup> Report of a Commission of Enquiry appointed to enquire into certain incidents at Opobo, Abak and Utu-Ekim-Ekpo in December 1929. Sessional Paper, No. 12 of 1930. Report of a Commission of Enquiry appointed to inquire into the Disturbances in the Calabar and Owerri Provinces, December 1929, Sessional Paper No. 28 of 1930.

<sup>3</sup> Cmd. 3784 (1931).

unusual linguistic ability seem able to make more than a superficial acquaintance.<sup>1</sup>

The chief purpose of these inquiries was to determine as far as possible the natural limits of the different units which should be recognized for administrative purposes, and to discover the true seat of indigenous authority in them. The result was the recognition, for the purpose of the Ordinance, of a very great variety of units of Native Authority which only in a few instances consisted of a traditional Chief or Chief in Council (these being mainly in the Cameroons and Ogoja Provinces and in the Onitsha Division of Onitsha Province) and for the most part consisted of Group or Clan Councils or Village Councils. The term "Council," it may be noted, is retained here because it is that which is used in the Government Notifications, but it is not a term of precision. It applies in some cases to bodies which have a recognized constitution, but it more often connotes only amorphous bodies, with no determinate composition, and sometimes with no more formal constitution than a village "moot." The number of these units has been subsequently reduced by federation or in other ways, but some indication of their original number is afforded by the fact that there were at one time in the Owerri Province alone as many as 245 Native and Subordinate Native Authorities. There remained however in 1948 no less than 217 Native Authorities and 300 Subordinate Native Authorities in the Eastern Provinces as a whole, as compared with 86 and 280 respectively in the Western Provinces. As already shown the latter numbers were being reduced to 47 and 208 in 1950.

#### THE PRESENT COMPOSITION OF THE NATIVE AUTHORITIES

Before proceeding to describe the working of the Native Authority system thus constituted it will be convenient to give the facts relating to the composition of the Authorities as it stood in 1946-1947. The forms taken by them are difficult to categorize, but the statement (page 161) follows the nomenclature adopted in the Gazette Notifications, and it may be added that many of the Councils are in fact federal though they may not actually bear that name.

#### CALABAR PROVINCE

In the Calabar Province the great majority of Native Authorities are normally Clan Councils, which were in fact at one time meetings of family Heads. But their attendance was irregular, and it at times consisted largely not of family Heads, but of their representatives, so that the Councils tended to deteriorate into mass meetings, and to fall into the hands of undesirable elements. They have now been reorganized so that only recognized members attend, and are composed of Village or family representatives. Some of the Councils are very large, but efforts are being made to reduce them in size; an example is the Efik-qua-Efut Council, which was reduced in 1947 from 165 to 80 members, including roughly 50 per cent. representing the educated and professional classes. Similarly the Aro Council now includes one traditional member for each village, together with 23 elected representatives, while the Enyong Council has been reduced from 100 to 33, some of whom are traditional and some are elected members. All these Councils include a fairly high proportion of literate members and the percentage is continually increasing.

<sup>1</sup> See Dr. I. Ward, *An Introduction to the Ibo Language*, 1936, pages x to xii.

Province	Division	Chief as Sole N.A.	Chief or Title-holders in Council	District, Divisional, Federated or Federal Councils	Two or more Clan Village or Group Councils	Clan Council	Council	Group Council	Village Council	Village Group Council	Town Council	Central or Area Council	Main Council	Subordinate Native Authorities
Calabar ..	Abak ..	-	-	-	-	8	-	-	-	-	-	-	1	9
	Calabar ..	-	-	-	-	1	1	-	-	1	-	-	1	-
	Eket ..	-	-	-	-	6	-	1	-	-	-	-	-	-
	Enyong (Itu) ..	-	-	-	-	4	-	1	-	-	-	-	-	-
	Enyong (Aro) ..	-	-	-	-	5	-	1	-	-	-	-	-	-
	Ikot Ekpene ..	-	-	-	-	3	-	1	-	-	-	-	-	19
Opobo ..	-	-	-	-	-	1	1	1	-	1	-	-	7	
Uyo ..	-	-	-	-	-	8	1	-	-	-	-	-	-	
Cameroons	Bamenda ..	5	-	-	-	7	3	2	-	6	-	-	-	-
	Kumba ..	1	-	-	-	3	1	2	9	-	1	1	-	7
	Mamfe ..	-	-	1	-	4	2	1	-	-	-	2	-	51
	Victoria ..	-	-	1	-	3	-	-	-	-	-	-	-	6
Ogoja ..	Abakaliki ..	-	-	1	-	-	-	-	-	-	-	-	-	6
	Afikpo ..	-	-	1	-	7	-	-	-	-	-	-	-	33
	Ikom ..	-	1	-	-	5	-	3	-	1	-	-	-	-
	Obubra ..	-	4	1	1	4	-	-	-	-	-	-	-	10
	Ogoja ..	-	-	1	-	10	2	-	-	-	-	-	-	10
Onitsha ..	Awgu ..	-	-	-	3	-	-	-	-	-	-	-	-	-
	Awka ..	-	-	-	-	-	-	-	-	-	-	1	-	9
	Nsukka ..	-	-	2	-	-	8	-	-	-	-	-	-	4
	Onitsha ..	-	1	-	-	-	19	-	-	-	-	-	-	-
	Udi ..	-	-	-	-	3	-	-	-	-	-	-	-	-
Owerri ..	Aba ..	-	-	1	-	3	-	-	-	-	-	-	-	37
	Bende ..	-	-	4	-	1	-	-	-	-	-	-	-	13
	Okigwi ..	-	-	3	1	1	-	-	-	-	-	-	-	13
	Orlu ..	-	-	1	-	-	-	-	-	-	-	-	-	5
	Owerri ..	-	-	6	-	-	-	-	-	-	-	-	-	22
Rivers ..	Ahoada ..	-	-	-	-	7	-	-	-	-	-	-	-	18
	Brass ..	-	-	-	-	2	1	-	-	-	-	-	-	16
	Degema ..	-	-	-	-	4	-	-	-	-	-	-	-	-
	Ogoni ..	-	-	-	-	-	1	-	-	-	-	-	-	5
Total ..	6	6	24	7	99	40	16	3	8	2	5	1	300	

It has for some years been customary to hold both Provincial and Divisional meetings, in which all Native Authorities are represented. Though these have only a consultative status, they have in some cases been used as embryo Divisional Native Authorities; for instance where there are a large number of small Native Authorities sharing a Divisional Treasury, the decision of a Divisional meeting has been used to short-circuit the formal agreement of the separate component Authorities. In general, these meetings have been found to have a value as a convenient method of consultation with the people. The Divisional Meetings have since 1945 had a further function in electing members to the Provincial Meetings which in turn elect Provincial Members to the Regional House of Assembly.

Members of the Councils do not receive salaries as such, but some receive payments for services rendered, and allowances are paid to members of the Divisional Meetings.

#### CAMEROONS PROVINCE

The Cameroons Province contains the only examples in the Eastern Provinces of Chiefs as sole Native Authorities, five being found in the Bamenda Division and one in the Kumba Division; these Chiefs nevertheless have Councils of Elders which they consult. Elsewhere, however, there are in all 17 Clan Councils, and 22 other Councils, including one Town Council, with no less than 64 Subordinate Native Authorities. In all these areas therefore there is a wide diffusion of authority with, a corresponding lack of centralized

control of finance. The Native Authorities are constituted by Village or Quarter Heads who are appointed by public consent. Literacy is never more than 40 per cent. and in Bamenda falls as low as 10 per cent.

As in the other Provinces, there is a Divisional Meeting in each Division to which representatives selected in the customary manner from the Native Authority are sent and these Meetings select further representatives on a population basis to go to a Provincial Meeting.

All members of the Divisional and Provincial Meetings draw attendance allowances, while unsalaried village heads get a proportion of the taxes collected, varying from 2½ per cent. in Bamenda to 12½ per cent. in Mamfe. In addition some of the Councillors receive salaries. The expenditure by Divisions is as follows :—

<i>Victoria</i> :	President of the Federated Council	..	..	..	£300 p.a.
	District Head	..	..	..	£158 p.a.
	Village Heads and Council Members	..	..	..	£537 p.a.
<i>Kumba</i> :	District Head	..	..	..	£98 p.a.
	Village Heads	..	..	..	£264 p.a.
	Tax Rebates	..	..	..	£787
<i>Mamfe</i> :	Banyong Superior Native Authority	..	..	..	£12 p.a.
	Executive Salaries	..	..	..	£665 p.a.
<i>Bamenda</i> :	The Fon of Bafut	..	..	..	£78 p.a.
	Three District Heads	..	..	..	£270 p.a.
	The Fon of Nsaw	..	..	..	£200 p.a.
	Fon's Councillors	..	..	..	£18 p.a.
	Village Heads	..	..	..	£1,290 p.a.
	Tax Rebate	..	..	..	£1,689

#### OGOJA PROVINCE

The Native Authorities have been reorganized in recent years by the reduction of the number of units ; in the Obubra Division, for instance, they have been reduced from 42 to 10. The Councils consist of men selected by the clans or villages on personal grounds, but include some traditional titleholders or priest kings who have hereditary rights ; thus there are five Chiefs-in-Councils in the Province. Ogoja is one of the more backward areas, and there is a very low degree of literacy on the Councils, apparently never rising above two per cent. There are 59 subordinate Native Authorities.

As elsewhere Divisional and Provincial Meetings are held, and on the whole these are successful, the Native Authorities choosing their best men as representatives, and some active interest being shown in the proceedings. It is understood that a movement directed to utilizing these Meetings as the basis for the formation of Divisional Native Authorities has encountered opposition on the ground that this might involve the abolition of a number of Native Authorities now functioning as such. They were apparently prepared to continue as Subordinate Native Authorities, but not to be absorbed into a Divisional Authority.

No salaries are paid to Council members but up to 12½ per cent. of the tax is available as a rebate.

## ONITSHA PROVINCE

In Onitsha Town the Council was just before the War composed mainly of title holders. At that time a few outsiders were introduced and their number has subsequently been increased, so that the Native Authority now consists of the Obi in Council, the Council having 28 title holders and 32 elected members, the latter either being elected by family groups or by the "Stranger" communities.

In the rest of the Onitsha Division there were formerly 19 Native Authorities, but these were in 1948 coalesced into a body named the Onitsha Rural Areas Native Authority, called Ozana for short. An interesting account of this reorganization has been given in a Report by the District Officer, Mr. C. A. L. Guise. He explains that in the north of the Division the Councils consisted of "unnumbered collections of old men"—all title holders. Holders of traditional titles also predominated in some Native Authorities of the middle belt of the Division, although they were challenged increasingly by progressive ex-Servicemen and clerks. In Newi to the South, Elders, Obis and family Heads again formed a privileged class, but exerted little administrative authority. It was sought accordingly to create larger units, directed by more energetic and forward looking men.<sup>1</sup>

As the result of much local discussion, in which members of the "Progressive Unions" took part,<sup>2</sup> it was decided to create an elected Council for the Division, derived from elected Groups and Area Councils. The village quarter or ogbe, a traditional unit, was taken as the electoral unit for the Group Councils. The Area Councils covered a number of groups, but their members were elected directly by the people of the group area, not indirectly by the Group Councils, the purpose being to "break down parochialism and put progressive men into the higher Councils." The Council for the Division was then elected by all members of both Group and Area Councils. The first elections were held in 1947 and conducted on the "line-up" system. It is stated that a number of progressive Africans were candidates, and that in the more advanced areas some prominent titleholders were heavily defeated. At the time Mr. Guise's Report was written, the distribution of work between the various grades of Councils had not been fully worked out, but it was intended that Area and Group Councils should acquire powers only by delegation from the Native Authority. There was also to be only one Treasury for the area, controlled by the Native Authority.

In this Province the Divisional and Provincial Meetings were at first regarded with some suspicion, and members tended to look upon themselves as an unofficial opposition to the Government. It is understood, however, that the position has since improved in this respect.

Apart from Nsukka and Udi, where literacy is one and two per cent. respectively, the Councils contain not less than 10 per cent. literate members, rising to 50 per cent. of Awka Division in the Onitsha Division as reorganized.

As regards emoluments the Obi of Onitsha receives a salary of £200 a year, while the members of his Council draw allowances of between £6 and £24 per annum in virtue of their work as Committee members. In the Awgu Division an attendance allowance of 5s. is paid to members, but the total to be spent is limited to 10 per cent. of the tax, a restriction which applies also to the other Divisions in the Province.

<sup>1</sup> Journal of African Administration, Vol. I, No. 1 (January, 1949).

<sup>2</sup> For the Progressive Unions see page 19 and 166.

## OWERRI PROVINCE

In the Owerri Province most of the Native Authorities are federations with Subordinate Native Authorities (numbering 90 in all) consisting of Group or Clan Councils. The membership of the Federal Councils ranges from 24 in the case of the Omuma Native Authority in the Aba Division to 48 in the Ngor-Okpala and Oguta Federal Native Authorities in the Owerri Division and 52 members of the Ngwa Native Authorities in the Aba Division. But the membership is variable in the sense that the representatives of the Group or Clan Councils selected to serve on the Federal Councils are sometimes appointed only for six months or a year. The Clan or Group Councils consist of from 50 to 200 members, and their composition is even more variable. In the Owerri Division, for example, they consist of the heads of extended families, but these attend as they choose or send a representative; elsewhere they are selected by the people but not necessarily for defined periods. As a consequence, the membership of these bodies, including the Federal Councils, is indefinite and authority is too dispersed to be effective.

In the Bende Division there were till 1948 four federated and one Clan Council, each consisting of about 40 members, but in 1948 a reorganization was being undertaken as a result of a number of mass meetings and informal elections. All five Native Authorities have now joined in the Bende Divisional Native Authority, consisting of 49 members, who are appointed to sit for three years. This Central Native Authority, which bears some similarity to that lately established in the Onitsha Division, was designed to function through Committees, including an Executive Standing Committee of seven. In due course members of the Divisional Native Authority were to be elected by ballot.

In the Aba Division literacy amongst the Councillors is as low as five to 10 per cent.; in the Bende reorganization it is about 25 per cent., while in the six Owerri Division Native Authorities, one has no literates, the Ngor-Okpala Native Authority has one literate member, the Oguta Native Authority has 10 per cent. literates, while the other three Native Authorities have at least 75 per cent. literates, rising to the high figure of 90 per cent. in the case of the Mba-Itoli-Ikedururu Native Authority. Some use is made of the Committee system, most Native Authorities having Finance and Assessment Committees, while the Ngwa Native Authority has also Building, Education and Tax Appeal Committees which include some non-Council members.

In this Province, too, there are Divisional and Provincial Meetings, but their value has depended very largely on the character of their membership, and the first of the Provincial Meetings, which included 29 members, is said to have been unconstructive and to have evaded the issues put before it for discussion.

The Council members are not paid salaries, but receive honoraria as members of Finance Committees and Keyholders, the total not amounting to more than 10 per cent. of the tax collected.

## RIVERS PROVINCE

In the Brass Division of the Rivers Province some members of the "Clan" or other Councils are elected, but most are members by virtue of their position as heads of Houses,<sup>1</sup> families or villages. In the Ahoada Division, Village

<sup>1</sup> The term House refers to the trading organizations which formerly existed along the mouths of the Niger and gave rise to the practice of "House Rule." See page 677 of Vol. I of *The Native Problem in Africa*, R. L. Buell, 1928.

Councils send members to Group Councils which in turn send members to the Clan Councils which constitute the Native Authorities. There is only one Native Authority in the Ogoni Division, this consisting of 30 members, six from each of the Subordinate Native Authorities. The Native Authorities in the Degema Division are the heads of Houses elected by members of the Houses. The Bonny Council has 32 members, the Kalabari Council 158 members, the Okrika Council 66 members, and the Odual (Saka) Council 34 members, consisting of 14 heads of villages together with 20 heads in rotation of the 87 extended families.

Literacy varies from five to 20 per cent. in the Brass Division, is approximately 20 per cent. in the Ahoada Division, and about 25 per cent. in the Ogoni Division. It varies from 15 per cent. on the Odual (Saka) Native Authority to 60 per cent. on the Bonny Native Authority in the Degema Division.

Divisional Meetings have been held, and the minds of members seem already to be moving in the direction of the establishment of Divisional Native Authorities, although here as elsewhere progress is being slowed up by the disinclination to see the authority of a local unit made subject to that of a larger unit. Throughout the Province efforts are being made to reorganize the Councils on a more representative basis. The Kalabari Native Authority has delegated its responsibilities to Executive Committees to such an extent that the Council itself meets infrequently and it is said to be difficult to get a quorum.

In the Ahoada Division the Title holders and others holding executive posts draw salaries amounting to £2,516 per annum. The Ogoni Divisional Native Authority draws £200 in executive salaries, while members of the various Assessment Committees draw percentages of the tax collected and the Chairman of the Schedule Two Tax Assessment Committee is paid £4 and the six other members £3 each. In the Degema Division the total payments to Councillors must not exceed 12½ per cent. of the tax collected, the payment amounting in 1947 to £942.

#### THE CHARACTER OF THE NATIVE AUTHORITIES AS NOW CONSTITUTED

There can be no question that in 1934 and the following years the Government made a conscientious and painstaking effort to give effect to the policy underlying the views which had been expressed by the Governor in 1933, namely, that the system of local administration should be based on the indigenous institutions of the people, so far as these could be recognized. That it could achieve its aim only in a limited measure was due not to any lack of effort on its part, but to the character of those institutions. In the greater part of the Region the real seat of indigenous authority, so far as it took any recognizable form, lay in the heads of kindred or family groups or Village Councils. These now form the lower strata of the Native Authority structure, but they represent a great diffusion of authority, and moreover, as already remarked, the Councils are often amorphous bodies of no regular membership or defined constitution. The upper strata of the organization of the Native Authorities, namely, the federated or other Councils, have suffered from the disadvantage that they have had no roots in indigenous custom and no inherent authority.

It can be claimed for the bodies which collectively make up the Native Authority organization that they are constituted on a "popular" basis in the sense that though there are in some cases a considerable proportion of traditional or other title holders, there are also a number of members who have no such



standing. There is in some of the Authority Councils a growing proportion of members elected by the methods in local use, many of whom are educated or at all events literate. The Native Authorities are in any case free from the charge, so frequently brought against Native Administrations elsewhere, that they owe their existence to a policy which has sought to perpetuate the powers of reactionary Chiefs or to secure compliance with the orders of an alien bureaucracy. They provide as a matter of fact a readier means for the expression of popular views or grievances than is to be found in most other parts of Colonial Africa.

It is when we examine the system as part of the machinery of local administration that its deficiencies become most apparent. For such achievements as it can claim, it depends on the activity of the heads of kindred or family groups. It is they who appear to be responsible for the fact that the tax is now, on the whole, collected with no great difficulty, and that law and order are maintained. There are no Native Authority police, but it is claimed by Administrative Officers that there is not more crime in the Eastern Provinces than in other parts of Nigeria. It says much for the inherent strength of the social institutions of the community that these results can have been achieved in spite of the lack of any systematic machinery of local rule.

At the same time there have been developments within the Native Authority organization that have proved a source of disquiet and anxiety to the Administration. The federalized Councils have tended to be deliberative rather than functional, and the Divisional and Provincial meetings have provided a fruitful field for views coloured by political sentiment. The organization of Native Authority has not provided a machinery for the conduct of local rule which is comparable to that existing in the Emirates of Northern Nigeria or even in the major organizations of the Western Region, and the absence of this machinery has not only thrown an unusual burden on District or other Administrative Officers, but has made them a target for criticism by elements who have sought to secure a revision of the system as a whole. These elements are largely represented in the "Progressive Unions" which are now a characteristic feature of Ibo and Ibibio society, and while their opposition to the system is no doubt partly due to motives of a political character, it has also been due to the fact that the Native Authority Councils as at present constituted are viewed by them as unduly weighted in favour of representatives of the older and more conservative type of opinion. It is not easy to determine how far the feeling shown by these progressive elements is due to the form taken by the Native Authority organization, and how far it reflects tendencies inherent in the character of the Ibo and those who share their outlook. But further reference to this point may be deferred to the concluding Note in this Section, which will describe the measures now being considered for a radical revision of the system as described in the preceding paragraphs.<sup>1</sup>

### THE NATIVE TREASURIES

Turning now to the discharge by the Native Authorities of their functions in the provision of local government services, the position reflects both the difficulties created by the nature of their formation and by the tendencies above referred to. Though there has been for some years a gradual reduction in the number of Native Treasuries, they still amounted in 1946-1947 to a total

<sup>1</sup> Page 182

of 107, against 47 in the Western Provinces. The number was reduced in 1948 by the substitution in the Bende Division (Onitsha Province) of two Treasuries for the former number of eight, and the 28 Treasuries of the Calabar Province were reduced to 24 in 1949-1950. There are in consequence few which have any considerable revenue; only two had a revenue of over £20,000 in 1946-1947, while there were 44 with a revenue between £2,000 and £5,000, and 24 with less than £2,000.

The figures for the estimated revenue and expenditure for 1946-1947 are given below, those Treasuries with revenues of over £10,000 being specifically mentioned and the rest aggregated by Provinces:

Province	Treasury	Estimated Revenue	Estimated Expenditure
Calabar .. ..	28 Treasuries ..	£ 122,925	£ 107,484
Cameroons .. ..	Bamenda Divisional	39,413	34,568
	Kumba Divisional ..	15,702	14,315
	8 others .. ..	37,028	30,867
Ogoja .. .. .	Obubra .. ..	13,233	12,851
	Izi .. .. .	10,908	10,910
	Ogoja .. .. .	10,189	10,509
	9 others .. ..	27,716	25,498
Onitsha .. ..	Nukka Divisional ..	15,765	12,246
	Abaja .. .. .	14,638	13,661
	Nkanu .. .. .	14,530	13,084
	Onitsha Town .. ..	14,285	9,606
	15 others .. ..	62,560	53,996
Owerri .. .. .	Ngwa .. .. .	24,989	20,662
	Mba Isa .. .. .	10,586	7,735
	22 others .. ..	82,584	75,897
Rivers .. .. .	Ikwerre .. ..	15,249	14,127
	Ogoni .. .. .	11,189	9,440
	11 others .. ..	32,418	28,367
Total .. .. .		585,916	514,852

Of the total revenue, 65.5 per cent. was derived from taxation, 14 per cent. from Court receipts, 14 per cent. from reimbursements of the Cost of Living Allowance, and 6.5 per cent. from other receipts. The system of taxation in the Eastern Provinces will be subsequently described,<sup>1</sup> but it may be noticed here that the total incidence per head of the population in 1946-1947 was only 1s. 9d. as against 2s. 6d. in the Western and 3s. 3d. in the Northern Provinces. Under the current system, by which the Government takes its share of the Direct Tax in the form of a Capitation Share, the Share payable in the three Townships in Enugu, Aba and Port Harcourt varies from 2s. 4d. to 1s. 7d. per tax, and is 1s. in the Onitsha Province, 8d. in the Rivers, 6d. in the Owerri, and 3d. in the Calabar, Cameroons and Ogoja Provinces.

There were no Finance Committees in the Cameroons, Ogoja and Rivers Provinces at the beginning of 1948, where the work of preparing the Estimates still devolved largely on the District Officer, in consultation with the Native Authorities. In the Calabar Province a start had been made with Finance Committees, but most of the work was done by the Executive Committee in

<sup>1</sup> Page 169.

consultation with the District Officer. The Finance Committee system was most developed in the Onitsha and Owerri Provinces, where the Committees were composed of selected Council members with, in parts of the Owerri Province, some co-opted outsiders ; they took a considerable part in preparing the Estimates in the Onitsha Division and actually prepared the draft in the Owerri Division, but did less of the work elsewhere.

The percentages of the chief items of expenditure were as follows :

Ordinary Expenditure	Percentage
Central District and Village Administration ..	11.6
Judicial .. .. .	18.7
Treasury .. .. .	4.8
Prisons .. .. .	.1
Works .. .. .	22.5
Veterinary .. .. .	.1
Education .. .. .	4.9
Surveys .. .. .	.3
Medical and Health .. .. .	6.3
Agriculture .. .. .	3.1
Forestry .. .. .	.5
Miscellaneous .. .. .	27.1
	100.0

It will be seen that when the commitments for Administration, Judicial salaries and Recurrent Works (an item which includes the maintenance of buildings and agency work on maintaining roads) are taken into account, there remained a relatively small amount for expenditure on social and other services. As already shown,<sup>1</sup> the Native Authorities provided in 1947 for only 54 out of the 3,148 schools in the Region. These were moreover unequally distributed, the Cameroons Province having 29, Ogoja only two and Onitsha none. The Native Authorities provide the buildings and staff, and in theory appoint and discharge the teachers, though in practice this is subject to the advice of the District Officer and of the inspecting officers of the Education Department. The Native Authorities are however said to take direct interest in their schools, and a number of them provide funds for scholarships. It may be noted that the two local Associations, the Ibo and Ibibio Unions, do the same, and also give assistance to voluntary schools. Thus in the Nsukka Division (Onitsha) the local Union raised £4,000 to provide scholarships and build village schools. The Ibibio Union maintains a Secondary school, the Ibibio State College.<sup>2</sup>

The expenditure on Medical and Health services (6.3 per cent. of the total) is mainly devoted to dispensaries, the Rivers Province, for instance,

<sup>1</sup> Page 150.

<sup>2</sup> See page 20.

having 30 in 1948. There are maternity homes in the Degema (Rivers) and Aba (Owerri) Divisions, and in the Owerri Division the Native Authorities have contributed female nurses and midwives to the Government Hospital. There is a relatively small expenditure on Agricultural Services, mainly in the employment of Agricultural Assistants, who assist in running small model farms and demonstration plots. In the Awka Division some expenditure is incurred on anti-erosion work.

The activities of the Native Authorities in respect of the provision of local services are thus on a much smaller scale than those of many of the Authorities in the Northern and some of those in the Western Provinces. They undertake none of the major works which require the employment of a superior technical staff, and their agency functions are limited to the maintenance of roads, for which however they have as a rule no adequate supervisory staff.

### THE USE OF POWERS OF SUBSIDIARY LEGISLATION

In the Calabar Province very little use has hitherto been made of the power for making Rules, but in 1947 various Rules were in course of preparation, including some relating to the use of land. In the Cameroons Province Rules have been made, at the suggestion of Government Officers, for a number of local purposes, such as the licensing of vehicles, the control of native liquor, markets, buildings and slaughter houses. In Ogoja Province the few Rules made refer mainly to health matters and were passed on the suggestion of the Medical Officer. In Onitsha Province two of the Divisions have made Rules, on the advice of Administrative Officers, for dealing with soil erosion and cattle control. One Native Authority in the Udi Division has on its own initiative passed Public Health Rules.

In the Owerri Province, apart from Sanitary Rules, some four sets of Rules concerning hawkers, the construction of buildings, and the control of live stock has been passed upon the initiative of the Native Authorities concerned. There is also a Rule relating to the Ngwa Clan Isusu Club, which is a species of contributory club to which all members make regular payments and each member takes the whole of one contribution at stated intervals. In the Rivers Province, apart from Public Health Rules passed by the Ogoni Native Authority upon the advice of the District Officer, some ten sets of Rules have been passed by various Native Authorities on their own initiative, including Rules controlling fishing, Sanitation Rules, Marriage Registration Rules (which are voluntary and so far ineffective) and two sets of Rules by the Kalabari Native Authority concerning local jujus.

### THE SYSTEM OF TAXATION

Reference has already been made to the circumstances in which a system of direct taxation was introduced in 1928 and to the decision then made that the tax should take the form of an assessment on income rather than a poll tax.<sup>1</sup> The tax was imposed under the Native Revenue Ordinance No. 1 of 1917, the main provisions of which were subsequently incorporated in the Direct Tax Ordinance No. 4 of 1940.

The prescribed method of assessment followed that used in making the original assessments in the Northern Provinces,<sup>2</sup> the purpose being to produce

<sup>1</sup> See page 159. For a fuller account see pages 52-55 of *The Administrative and Financial Procedure under the New Constitution*, Sir S. Phillipson, 1947.

<sup>2</sup> Page 76.

for each unit of assessment "an equitable and uniform flat rate of income tax payable by all adult males with a few exceptions," the rate being calculated on a basis of  $2\frac{1}{2}$  per cent. of the gross income of the unit. But the procedure actually adopted in the Eastern Provinces, like that in the Western Provinces, differed from that in the Northern Provinces in so far that there was no "community" or "lump" assessment on the village or similar unit, and the tax has in practice taken the form of a general flat rate, varying usually by Divisions or parts of Divisions. No subsequent reassessment has been made, but the flat rate originally fixed has been varied from time to time, mainly in consideration of the rise or fall in the price of palm oil, or the failure or success of agricultural seasons. Tax rates were for example raised in most areas of the Eastern Provinces for the year 1946-47 on account of the enhanced price received for palm products. At the present day the rate varies from as little as 3s. per tax in parts of the Bamenda Division to as much as 10s. per tax in parts of the Kumba Division of the Cameroons Province. It is 10s. also in the Onitsha Division of the Onitsha Province, but for the most part the variation is between 6s. and 8s.

The normal method of ensuring that each taxable male pays his tax is for the Native Authority to require the tax collectors, who in the majority of cases are the persons whom each family puts forward as its representative for this purpose, to furnish a nominal roll of all taxable males in the family or similar unit. The nominal rolls after check by the Native Authority staff are submitted for the approval of the District Officer, and when the rate is settled the tax collector receives a demand note signed by the District Officer requiring him to collect from a specified number of persons the tax at the basic rate. The collector is obliged to give each taxpayer a numbered receipt. While this is the usual practice, there are some less developed areas in which the tax is collected by appointed collectors, instead of the family or other Heads above referred to.

In addition to this flat rate tax, a Jangali tax at the rate of 2s. 6d. per head of stock is collected in the Bamenda and Kumba Divisions of the Cameroons. Of late years also there has been a growing use made of the provisions of the Direct Tax Ordinance of 1940 to substitute a tax on "ascertainable" incomes, where it appears that a tax at an "approved" rate would exceed the flat rate. Many of the persons so taxed are salaried workers while others are traders or the like. The usual practice in such cases is for special Assessment Committees of the Native Authority to furnish the Divisional Officer with a list of persons whom they consider to be in receipt of an "ascertainable" income. The "approved" rate, as agreed in January, 1945, ranges from  $4\frac{1}{2}$ d. a £ of the first £700, up to a maximum of 4s. 9d. a £ on incomes of £2,000 a year. An appeal is provided against such assessments under Section 11 of the Ordinance.

### THE URBAN AREAS

The people of the Eastern Provinces have not shown the same tendency as the Yoruba to congregate in large towns and there are few cities comparable with those of the Western Provinces. The latest statistics available are those of the Census of 1931, which showed that there were then only six towns with over 12,000 inhabitants, namely Afikpo (19,556), Onitsha (18,084), Calabar (16,653), Port Harcourt (15,201), Enugu (12,959) and Aba (12,958). Their population has however increased materially since that date, it being estimated

that Onitsha has now a population of about 60,000, Port Harcourt 45,000 and Enugu 40,000.<sup>1</sup>

Of these towns Port Harcourt owes its existence mainly to the development of its harbour and commercial facilities. It was laid out in 1914 on land leased from the Diobu clan, and has grown up round the Railway and Port installations. The rapid growth of the African population and the lack of space for extending the residential area led in 1945 to the preparation of a town planning scheme by the Planning Adviser, the immediate problems of congestion and the expansion of the utility services being committed in the following year to a Town Planning Authority established under the Town and Country Planning Ordinance.<sup>2</sup> The town has never been under the management of a Native Authority, and was until recently administered as a Second Class Township under the Township Ordinance, No. 29 of 1917.

In 1948 an Ordinance was passed by virtue of which the town was to be administered from 1949 as a First Class Township, with a Town Council having a majority of elected members.<sup>3</sup> Each of the six wards is to elect two members, on a franchise based on the possession or occupation of a property or tenement, the minimum rental qualifying for a vote being £8 a year. The Governor can appoint other members up to half the number of elected members, but so far only three have been appointed. The President is appointed by the Governor, but the Vice-President is elected by a majority vote of the Council. The major part of the income of the new Town Council will be derived from the levy of a general rate, to be deemed an owners' rate, and to be borne by the owner in absence of any agreement to the contrary with the occupier. Port Harcourt will thus be the first town in Nigeria to be administered by a Town Council with an elected majority.

Elsewhere the general policy has been, as in the Northern and Western Provinces, to leave the administration of the towns in the hands of the local Native Authorities, with the exception of a small number of towns which have for special reasons been administered as Second Class Townships, under a Local Authority consisting usually of the District Officer with a nominated Advisory Council. There are now three such towns, namely, Aba, Calabar and Enugu.<sup>4</sup>

Aba has the District Officer as Local Authority, with an Advisory Council of four Europeans and seven Africans. The revenue of roughly £20,000 is mainly derived from Government grants, market dues, and a share of the Direct Tax, which the Local Authority will in future collect itself. The question of introducing a Town Rate is under discussion. Enugu similarly has a Local Authority with an Advisory Council of Europeans and Africans and also has a revenue of £20,000. A rating system is being introduced and the Township will in future collect and retain the Direct Tax, which is now collected by the Native Authority, a proportion being credited to the Township. The position at Calabar is difficult, as the Township and Native Authority areas overlap. A scheme was at one time put forward for bringing the town under a Native Authority subordinate to the Efik-Qua-Efut Native Authority, but alternative proposals have since come under consideration.

A certain number of the Government Stations in the vicinity of other native towns are administered as Third Class Townships under Cap. 57 of the

<sup>1</sup> Annual Report, Nigeria, 1948, page 17.

<sup>2</sup> See page 132 of Annual Report for Nigeria, 1948.

<sup>3</sup> Port Harcourt Township Ordinance, No. 38 of 1948.

<sup>4</sup> Blue Book, Nigeria, 1945.

Laws. These are normally under the direct management of the District Officer, and the expenditure on sanitary and similar services is a Government charge.

The arrangement by which the native urban areas are administered by the Native Authorities is far from satisfactory. This is particularly the case in the Cameroons Province, where the urban areas contain large numbers of "stranger" natives, and the Native Authorities object to their inclusion in their Councils. Proposals are now being considered with a view to bringing the urban areas in that Province under the administration of Subordinate Native Authorities whose composition will include "stranger" natives. Similar proposals are being considered for Abonnema, Buguma, Bakana and Tombia in the Degema Division (Rivers Province), and Umuahia (Calabar Province).

The Local Authorities in charge of the Townships have, with the assistance of Government grants, provided pipe-borne water supplies at Aba, Calabar, Enugu and Port Harcourt, and electricity is supplied at Port Harcourt, Calabar and Enugu. The services supplied by the Native Authorities in charge of towns elsewhere are on a lower scale than in some of the larger towns of the Northern and Western Provinces, but water supplies have been provided at Onitsha (where the Native Authority is the Obi-in-Council and has a revenue of about £15,000), Buea, Umuahia and Awka. The sanitary conditions of the areas administered by the Native Authorities suffer not merely from the small sums made available for the employment of a sanitary establishment, but from the lack of a trained staff for its supervision. There appears also to be little regard paid in practice to the planning of building lines or supervision over the construction of buildings.

### THE SYSTEM OF NATIVE COURTS

Some mention has already been made of the early history of the judicial system and of the part played by the Native Court as the initial step in the development of a system of native administration.<sup>1</sup> It has been shown also that when the judicial system in Southern Nigeria was reorganized, soon after the Amalgamation of 1914, by the passing of the Native Courts Ordinance No. 8 of 1914, the immediate result was to remove the District Officer from the presidency of the Native Courts, but that in other respects the change was not material. It was not indeed until the reorganization of 1934 and the following years, that any radical change was made in the formation of the Native Courts. Following the policy which sought to base the system of local administration on the indigenous local institutions, a serious effort was then made to reconstitute the composition of the Native Courts also on the same principle.

The initial result was the creation of a great number of Courts, exceeding in some localities even the number of "natural units" which were recognized by the establishment of Native or Subordinate Native Authorities. If not in form, this amounted in effect to a return in large areas to the indigenous system by which justice was administered by meetings of heads of kinship groups or extended families or Village Elders. To such Tribunals however it was only possible to give minor powers of jurisdiction, and their number rendered it impracticable to exercise over them the supervision contemplated by the Ordinance.

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<sup>1</sup> Page 157.

The provision made in the law for the appointment of the members of the Courts afforded yet another illustration of the difficulty arising from the application to Southern Nigeria of legislation framed primarily to suit the conditions existing in the Northern Provinces. Section 7 of the Ordinance of 1914 provided that members of the Courts should be appointed by the Resident or Commissioner. But in many instances the nearest that the Residents could arrive at a specification of the personnel of the Courts was to describe the membership in terms such as "all the family heads of the component villages or their representatives" or "the senior Elders of the Clan or such representatives as they may send in their place," though occasionally the condition was added that they should not exceed more than fifty per cent. of the whole. There was of course nothing abnormal in this, for in many other territories the law merely provides that the composition of the Native Courts shall follow that recognized in native custom. It had moreover the advantage that it left the selection of membership of the Courts to the choice of the people themselves. But it also meant that in many cases the persons attending as judges were very numerous and their composition indeterminate. In the individualistic society of some parts of South-Eastern Nigeria practically everyone might claim his right to sit on a Court, and a man might possibly sit only once in a long period; instances are indeed quoted of persons sitting only once or twice in five years. There was in those areas often no recognized president of the Courts, and in many cases they arrived at their decisions, by methods best known to themselves, without even a president chosen for the occasion.

In dealing with African institutions, however, one must always be on one's guard against the tendency to condemn them merely because they are, to European eyes, "untidy" and unsystematic. It is at all events clear that the Native Courts as composed after the reorganization of 1933 and 1934 conveyed more general satisfaction to the people most concerned and aroused less opposition than those which existed under the previous regime. Nevertheless they clearly had their inconveniences from an administrative point of view, nor were they well adapted for the administration of justice in a society which was rapidly advancing in education and commercial activity. While therefore maintaining the principles on which they have been composed, the Administration has of recent years used its influence to effect changes which have modified their formation in three directions. In the first place, there has been a considerable reduction in the numbers of the lower powered Courts; thus, to take one example, in the Abakaliki Division (Ogoja) there are now only 18 Courts instead of the 46 that existed shortly before 1938. In the second place, there has been a more systematic re-grouping for the purpose of providing Native Appeal Courts. Thirdly, there has been a material reorganization of the composition of the benches by adopting what is known locally as the "best man" system. This system involves a process of rough election, at mass meetings, of a fixed number of persons, who are then appointed by the Resident as Court members, thus giving the people a choice in their selection, but at the same time enabling the Administration to veto the appointment of undesirable characters. There has also been an increasing movement both to secure a reduction in the size of the panels and to ensure the inclusion of literate persons.

The existing Courts can now be roughly divided into those which have been reformed under the "best man" system and those which are still unreformed. In the Calabar Province all Courts are reformed and in Onitsha



Province all but those in the Nsukka Division. There is an increasing number of reformed Courts in Owerri. The position differs in the Cameroons Province. In some cases, as in the Bamenda Division of that Province, the membership of the Native Authority Councils and the Native Courts is the same, but in other Divisions members of the Courts are usually selected by the communities concerned. The panels of the reformed Courts rarely exceed 15, and the bench is usually about five or six, who sit for four to six months at a time, with a quorum which is usually one member less than the full bench. Permanent Presidents are rare, a presiding member usually being chosen by the bench at each session. There are, however, a few permanent Presidents in the Ogoja Province, and they are the rule rather than the exception in the Cameroons Province, where either the Chief or Village Head presides or else, as in the case of the federations, they preside in rotation.

At an earlier stage it was usual for the members of the Courts to retain a fixed percentage of the Court fees (usually about 40 per cent.) as payment for sitting members, and this often led to the distribution of very small sums for individuals; the Annual Report for 1934 speaks, for example, of the fees in the Aro Division as amounting on one occasion to sixpence per head for a month's sitting. The method of remuneration still shows a wide variation. There is in the reformed Courts a steady progress towards the payment of fixed monthly salaries, which must form an attraction for those who succeed in gaining nomination to those Courts. These salaries are, of course, only drawn by those members of the panel forming the bench for the time being. Thus in Onitsha fixed monthly payments are made, varying from 10 shillings to as high as £5, while the average aimed at in the Calabar Province is £3, and in the Owerri Provinces salaries of about the same amount are paid, based on the volume of business performed by the Court. In that Province the fixed salaries in the reformed Courts make a startling contrast with payments in the unreformed Courts, where sitting fees average from 9d. to 2s. 3d. per session. There are still some Courts which divide a percentage of Court fees amongst the members; thus 50 per cent. is so divided in the Courts in the Obubra Division (Ogoja) and in some Courts in the Rivers Province, while in the Bamenda Division (Cameroons) the sum available for division is based on 40 per cent. of the Court's revenue for the preceding year.

It is convenient to give at this stage a summary showing the number and grades of the Courts existing in 1947. It should be noted that all the Appeal Courts shown in this Statement are also Courts of first instance.

There are thus 551 Courts of first instance and 45 Native Appeal Courts compared with 607 and 71 respectively in the Western Provinces. It is noteworthy that there are no Courts exercising A Grade powers, and consequently no Courts competent to try cases of homicide, and that there is still a great preponderance of Grade D Courts. No less than 13 Divisions have no Native Appeal Court.

The Courts, like those of the Northern and Western Provinces, have since 1933 been regulated by the Native Courts Ordinance No. 44 of that year, which has taken the place of the original Ordinance No. 8 of 1914, and the main provisions of which have been summarized in Section I.<sup>1</sup> In addition to the range of jurisdiction there described, all Courts in the Cameroons administer Section 22 of the Public Health Ordinance and all those in the Ogoja Province

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<sup>1</sup> Page 14.

Province	Division	Grade B	Grade C	Grade D	Native Appeal Courts
Calabar ..	Abak .. ..	—	—	18	—
	Calabar .. ..	3	1	6	1
	Eket .. ..	—	5	6	1
	Enyong (Aro) .. ..	—	—	7	—
	Enyong (Itu) .. ..	—	2	10	2
	Ikot Ekpene .. ..	—	—	19	—
	Opobo .. ..	—	2	11	1
Cameroons ..	Uyo .. ..	—	3	12	1
	Bamenda .. ..	—	1	34	2
	Kumba .. ..	—	2	14	2
	Mamfe .. ..	—	—	22	5
Ogoja ..	Victoria .. ..	—	3	12	2
	Abakaliki .. ..	—	8	9	1
	Afikpo .. ..	—	1	29	6
	Ikom .. ..	—	—	12	—
	Obobra .. ..	—	2	29	3
Onitsha ..	Ogoja .. ..	—	18	14	2
	Awka .. ..	—	—	12	2
	Awgu .. ..	—	—	9	—
	Nsukka .. ..	—	1	13	—
Owerri ..	Onitsha .. ..	2	—	24	6
	Udi .. ..	—	—	16	2
	Aba .. ..	—	—	18	—
Rivers ..	Bende .. ..	—	—	22	4
	Okigwi .. ..	—	—	14	—
	Orlu .. ..	—	—	11	—
	Owerri .. ..	—	—	22	—
Total ..	Ahoada .. ..	—	—	24	1
	Brass .. ..	—	1	19	—
	Degema .. ..	—	3	19	—
	Ogoni .. ..	—	1	5	1
Total ..		5	54	492	45

administer Section 210 (d) and (f) and Section 211 of the Criminal Code, and a number of the Courts of Ogoja and Onitsha Provinces have increased powers of imprisonment in cases of praedial larceny. The Onitsha Town Court also administers a number of the Sections of the Public Health Ordinance.

Appeals normally lie to a Native Court of Appeal and thence to the District Officer, or direct to the District Officer where no Native Court of Appeal exists. From some Courts in the Calabar, Ogoja and Rivers Provinces however land cases go to appeal to the Magistrate, while all appeals lie to the Magistrate from the following Courts: Utu Etim Ekpo and Efik-Qua-Efut (Calabar); Onitsha Court B (Onitsha); Bonny and Kalabari (Rivers).

Full statistics of Court cases are not available for the Cameroons Province, but those for the remaining five Provinces were in 1947 as follows:—

Province	Total Cases	Appeals	Reviews	Modified	Percentage Modified
CIVIL CASES					
Calabar .. ..	36,779	479	4,402	1,590	4'3
Ogoja .. ..	5,782	99	1,075	465	8'04
Onitsha .. ..	6,214	1,028	1,309	966	15'5
Owerri .. ..	25,876	1,734	3,034	1,722	9'65
Rivers .. ..	15,641	1,087	1,758	1,148	7'3
Total ..	90,292	4,427	11,578	5,891	6'52

Province	Total Cases	Appeals	Reviews	Modified	Percentage Modified
<b>CRIMINAL CASES</b>					
Calabar .. ..	14,829	83	1,211	539	3.6
Ogoja .. ..	5,116	77	867	444	8.67
Onitsha .. ..	7,252	541	929	619	8.6
Owerri .. ..	12,141	683	1,466	812	6.35
Rivers .. ..	6,399	279	534	411	6.4
Total .. ..	45,737	1,663	5,007	2,825	6.17

The statistics available for the Cameroons Province give the number of individuals concerned in criminal cases in 1948 as 4,187, and the number punished as 3,328, of whom 2,666 were sentenced to fines of £5 or under, and 10 to whipping.

There is thus a striking difference between the use made of the Courts in the different Provinces, particularly in respect of civil issues. The most significant feature of the statistics, however, is the use made by Administrative Officers of the power of review, as compared with the Northern and Western Provinces,<sup>1</sup> and this is especially noticeable in regard to civil cases. It is indeed obvious that an undue part of the time of Administrative Officers is occupied by dealing with judicial work of this character.

This consideration alone would seem to argue the need for further revision of the present system. But there are also other considerations. Many Administrative Officers, while admitting that the Native Courts give reasonable satisfaction to the great mass of the people, complain also of the irregularity of their procedure and of the prevalence of corrupt practices. Some sections of the educated community have urged strongly the need of reform, which in the minds of many of them must necessarily take the form of the substitution of Magisterial Courts for the Native Courts, a view which, as has been shown elsewhere, finds general support among the educated community in the coastal areas of West Africa. This view however is here confined mainly to the Divisions where there is a large educated element in the population, and there is not the same evidence of its existence in areas such as the Cameroons or Ogoja Provinces. But so far as concerns any immediate change, there is a general agreement that any radical modification of the judicial system must await the result of the discussions now taking place regarding the reform of the procedure of native administration in the Eastern Provinces. Further reference to the proposals made in this direction will be found in the concluding paragraphs of this Section.<sup>2</sup>

## THE POSITION OF THE GOVERNMENT IN REGARD TO LAND

The legislation which prescribes the position of the Government in respect of the land in the Eastern Provinces (apart from the Cameroons) is in all essentials the same as that described in dealing with the Western Provinces.<sup>3</sup> The amount of land alienated to non-natives remains very small. In early days the principle prevailed among the Ibo that land required for public purposes should be surrendered without compensation, and land required for railways, roads, and most Government Stations was generally given freely. Of later years alien ideas of compensation and of lease for a term of years with

<sup>1</sup> See pages 85 and 139.

<sup>2</sup> Page 184.

<sup>3</sup> Page 139.

an annual rent have spread inland from the more advanced coastal areas, and whilst most Ibo communities now hold that land required for purely Native Administration purposes should be surrendered rent-free, there is a tendency to claim that land required by Government or commercial undertakings should be given only on lease, at the highest rates obtainable. There is evidence of a lively apprehension among the Ibo lest their land should be permanently expropriated, even for public uses, and the practice of leasing is that now generally followed by the Government, as for instance where land is taken under the Native Lands Acquisition Ordinance for Mission Schools or similar undertakings.

In the section of the Cameroons administered as part of the Eastern Provinces the position is different, as this area has, like that administered as part of the Northern Provinces, been brought within the scope of the Land and Native Rights Ordinance, No. 1 of 1916, the provisions of which have been summarized in the paragraphs dealing with the Northern Provinces.<sup>1</sup> The history of the measures leading up to the extension of this Ordinance to the Cameroons requires some notice. Under the administration of the Germans a Decree of 1896 provided that Crown Lands should comprise all lands to which no claim could be established by a private person or by a Chief on behalf of a native community, and also all lands not subject to agreements between the Imperial Government and third parties. But there were never any areas demarcated as Crown Lands and the practice followed by the German Government was to give some compensation to dispossessed native occupants and lease the lands thus acquired to European enterprises. In this way some 56 estates in all, amounting to about 258,000 acres, were alienated to European enterprises or individuals. When it became obvious that this was likely seriously to diminish native customary land rights, the system of "Reservats" was instituted, these being declared to be areas subject to native law and custom regarding land tenure.

After the War of 1914-18 all the estates held by Germans were offered for auction, but without attracting any offer from the British public. As a result, most of these estates found their way back into the hands of their former owners at a subsequent sale held in 1925, special legislation being passed to legalize this transaction.<sup>2</sup> These transactions however affected only a relatively small area of the Cameroons. Neither Article 22 of the League of Nations Covenant nor the terms of the Mandate of 1922 had made provision for the assertion of Crown ownership of the Native Lands. But this was not held to prohibit the normal power of the Government to legislate in order to exercise administrative control over the disposal of lands, and it was decided in 1924 to acquire a legal authority similar to that secured by the British Government in the Northern Provinces, the chief object of which was to obtain power to regulate the disposal of land rights by natives to non-natives. By Section 2 (1) of the British Cameroons Administration Ordinance No. 3 of 1924 and the British Cameroons Administration Ordinance No. 1 of 1925 the provisions of the Lands and Native Rights Ordinance No. 1 of 1916, applicable in the Northern Provinces, were extended to the Cameroons.<sup>3</sup>

<sup>1</sup> Page 90.

<sup>2</sup> See the British Cameroons Ex-Enemy Immoveable Property Disposal Ordinance No. 22 of 1924, which repealed the Cameroons Proclamation No. 38 of October 1922, the effect of which was to prohibit acquisition of property by the ex-enemy subjects.

<sup>3</sup> The Amendments to the Ordinance of 1916 as contained in Ordinances 1 of 1927 and 47 of 1935 were made applicable to the Cameroons by Ordinances 1 of 1927 and 38 of 1946.

In the Cameroons the Government has made very little use of its powers under this legislation to make grants of Occupancy over lands occupied by natives. It has used its general powers under the Ordinance to acquire certain small areas required for public purposes, such as aerodromes or sites for agricultural stations or schools, compensation being paid to occupants for unexhausted improvements or disturbance. Some 1,108 acres were so acquired in 1948.<sup>1</sup>

As regards the Ex-enemy properties, the history of which up to the year 1925 has been given above, an area of 14,851 acres was purchased by the Government in 1931 from their European owners, with the purpose of extending the area held by certain congested village communities.<sup>2</sup> The plantations held by enemy subjects were sequestered for a second time during the recent War and, as already shown, are now held on lease by the Cameroons Development Corporation.<sup>3</sup> This organization was established by Nigerian Ordinances,<sup>4</sup> and holds an area of approximately 395 square miles; there were in 1948 some 25,000 persons living on the estates and the Corporation paid a wages bill of £436,000. It has a capital of £1,750,000. It is noteworthy that the Annual Report on Nigeria for 1946 stated, in referring to the legislation which gave legal authority for the establishment of the Corporation, that it was the intention of the Government to hold these estates in trust for the peoples of the Cameroons and to develop them "until such time as the Government of Nigeria is in a position to undertake national ownership in a fully representative form." But the implication of this declaration is by no means clear, in view of the terms under which the Trust Territory is held, which do not seem to contemplate either its annexation to Nigeria or the establishment of a separate "national" government for the Cameroons.

In dealing with the Western Provinces, reference was made to the position taken by the Government in respect of the creation of Forest Reserves for public purposes.<sup>5</sup> The legal position is the same in the Eastern Provinces, and the figures for 1946-1947 relating to the areas of Government and Native Authority Reserves respectively are as follows, in square miles :—

	Reserves approved but not legally constituted	Reserves constituted but not delimited	Reserves constituted and demarcated
Government .. ..	162	1,741	1,080
Native Authority ..	220	—	2,143
Communal .. ..	—	—	—
Total .. ..	390	1,741	3,223

### THE NATIVE AUTHORITIES AND THE LAND

The attitude of the Ibo community to the Native Authorities as now established would seem to account for the fact that the latter have made little use of their general powers or their special powers under Amending Ordinance

<sup>1</sup> Annual Report to Assembly of United Nations, 1948.

<sup>2</sup> Annual Report to League of Nations, 1932.

<sup>3</sup> Page 148.

<sup>4</sup> The Ex-Enemy Lands (Cameroons) Ordinance No. 38 of 1947 and The Cameroons Development Corporation Ordinance No. 39 of 1947.

<sup>5</sup> See page 141.

No. 73 of 1945<sup>1</sup> in order to deal with matters relating to the land. It is understood, however, that some of the Native Authorities have considered suggestions for registering land transactions, though it is possible that Ibo susceptibilities may stand in the way of any progress being made in formulating concrete proposals. In the semi-Bantu areas the Native Authorities are said to be contemplating the use of their Rule making powers under the Ordinance of 1945 to control the use of the land, since in some parts, notably in the Calabar Province, soil impoverishment has become a serious problem. In the Bantu areas of the Cameroons, action taken by the Native Authorities has for the most part been confined to the regulation of grazing by Fulani cattle.

## CHANGES IN NATIVE LAND LAW AND CUSTOM

### THE IBO

A study of the present land custom of the Ibo has special interest in that it serves to illustrate the influence exercised by a rapidly expanding money economy on a people whose system of landholding has not been subject to the traditional control of a Chief or other centralized authority but has been regulated within the family or kindred group. We have here the advantage that more attention has been given to the study of the Ibo tenures than to those of any other people in the Eastern Provinces, and that some of its results have been described in Chapter XIII of Dr. Meek's *Land Law and Custom in the Colonies*. To the authorities quoted in that Chapter must now be added the further studies by Miss M. M. Green, L. T. Chubb and G. I. Jones referred to in the note below.<sup>2</sup>

For practical purposes, the Ibo lands may be divided into taboo land, virgin forest, communal farm-land and individual holdings. The first includes fetish groves and the "bad bush." No one is by custom allowed to farm here, but in areas of population pressure the interdiction is no longer so powerful, and if the Elders do not interfere a man who clears such bush is considered as the "owner" should no harm have come to him for a period of two years.

Virgin forest, over which control rests with the family Heads, is also decreasing in most areas. It includes lands which were set aside for defence or reserved for the collection of wood and fibre, but anyone who is permitted to clear land becomes the "owner," though no one would be allowed to do so if its original purpose was still valid.

As regards communal farm-land, the rights are exercised by the highest exogamous unit, which may be the village, the kindred or the extended family, and this means that within each village-group there may be a large number of independent land-controlling bodies. The living are regarded as trustees for the ancestors and the unborn, and custom has therefore been opposed to the sale of this land, but by consent of the whole family it might be pledged, and in recent times some cases of outright sale with full family consent have occurred. It should be noted that in many areas the communal land was re-allocated every season for farming. Even with such land there is, in the thickly populated areas, a tendency towards further sub-division of control within the exogamous unit, thus decreasing the area over which the group exercises genuine control.

<sup>1</sup> See pages 93 and 143.

<sup>2</sup> Miss M. M. Green, *Ibo Village Affairs*, 1947; L. T. Chubb, *Ibo Land Tenure*, 1947; and G. I. Jones in *Africa*, Vol. XIX, No. 4 (October, 1949).

Individual holdings are those which are regarded as being at the personal disposition of the "owner" and are not subject to family control. Such land may be obtained by inheritance, by clearing virgin forest or by purchase. It has been stated that in many village-groups there is scarcely any land at all within the recognized boundary of the group which is not held by individuals.<sup>1</sup> The land holder may sell his holding outright, but if he dies without doing so it is subject to the normal rules of inheritance. These provide that the land should be divided amongst the sons, the eldest getting the largest share; the right to sell persists, and as the inheritance system leads to subdivision (and even fragmentation when a man has several individual holdings) the position eventually arises when some of the portions are too small to farm and the new owner disposes of them to other contiguous owners. As the holders of such land may also require money for other purposes and sell land to obtain it, it will be seen that conditions exist which can lead to the emergence of a land-owning class.

While therefore it is true to say that most land is held under a system of family rights, it will be seen that the position is not static and that there is a marked tendency towards individualization. Sale is becoming more common, often twice the average pledge price being paid, although as a rule such sales are confined to members of the clan. "Sales of small parcels of land occur in so many parts of the Ibo country that an exhaustive list of such areas has not been attempted. They appear to be most common in the Nnewi District. The Native Court judgment books of Agbaja Nnewi are full of cases where the point at issue is whether land has been sold or pledged, a sale being sealed by the production, in that area, of a goat by the buyer."<sup>2</sup> Even more common is the practice of pledging land for a sum considerably higher than the average; sometimes the sum is so high that it is unlikely that it will ever be redeemed. L. T. Chubb has found instances of land transfer which were in practice permanent (although they fell short of recognized sales) in all the Divisions of the Onitsha Province (except the Udi Division), in the Bende and Owerri Divisions of the Owerri Province, and in the Ahoada Division of the Rivers Province.

The pledging of land is in full accordance with indigenous African custom, though it is an accepted principle that the pledge is indefinitely redeemable. People are not supposed to build or plant permanent crops on pledged land, but the rule is increasingly ignored and the problems of betterment are consequently arising. Pledging, of course, only confers rights of use, but (always subject to redemption) these are both transferable and inheritable. On the other hand mortgage does not appear to be known in rural areas, although it is common enough in the large townships, where mortgage to an alien is permissible but requires the Chief Commissioner's consent under the Regulations made under the Native Lands Acquisition Ordinance No. 32 of 1917. Leases, too, are well-known, the most usual being for one farming season, but leases with a fixed rental for an indefinite term of years are on the increase. "It is doubtful whether any localities remain where cash is not now paid as rent for a single farming season, though formerly it was in kind, more in the nature of a present than a recognized standard rent."<sup>3</sup>

The custom as to economic trees varies from place to place, but as a general

<sup>1</sup> Law and Authority in a Nigerian Tribe, C. K. Meek, 1937, p. 103.

<sup>2</sup> Ibo Land Tenure, L. T. Chubb, 1947, page 24.

<sup>3</sup> Chubb, *op. cit.* page 45.

rule all trees which are planted belong personally to the planter, while wild trees go with the ownership of land. Thus on the communal farm-land trees are communally owned, but a man has the exclusive right to trees on his farm as long as he is actually cultivating the land; though on his giving it up it reverts to the community. On unfarmed communal land anyone belonging to the kindred may by custom help himself to tree products, but under economic pressure the system is changing, and a more rigid communal control is often exercised under which fixed days are set aside for cutting the palm nuts, and the whole area is sometimes reserved for limited periods so that the proceeds during that time may be devoted to the community's tax payments. Communal trees may be pledged, but if land is pledged the trees do not go with it unless express arrangements to that effect are made.

The increase in the number of transfers, or transfers under the guise of pledging, has caused a section of the Ibo to concern itself in the possibility of clarifying, by Native Authority Rule, the customary law on the subject, particularly in respect of the rights of the family to be consulted on such transactions. Consideration has also been given to the question whether the Native Authorities might not provide by Rule for the registration of sales or other transfers of rights. But the Ibo are, as already indicated, very sensitive on any question of land rights, and it seems likely that the intervention of the Native Authorities may be opposed, as tending to lead to interference with such rights by the Government itself.

#### THE CONDITIONS IN ONITSHA

In the town of Onitsha the position in regard to land transfer has gone even further, and land is frequently sold openly and outright, conveyancing being done by a solicitor. Leasehold is also found, sometimes with fixed terms, annual rent and revision periods. "It is, I think, safe to say that rights in land property in Onitsha Town are to-day mainly conveyed by an instrument based on the English model and often drawn up by a solicitor. Both land and house property can be and frequently are conveyed by way of outright sale. The earlier Modebe leases provided for a twenty-year revision period, but in new leases the period is reduced to ten years, the family realizing that their land may be expected to increase substantially in value."<sup>1</sup>

Mention must be made of the Kola Tenancy, a form of tenure known both in Onitsha and in other areas. This conferred, usually on a stranger, the right to occupy land permanently in return for one original payment. The right was inheritable, the heir having to give the owner a Kola, which could not be refused. With the rise in commercial values the possibility of sub-letting such tenancies has given rise to much litigation, and a modified form is now sometimes found precluding rights of assignment without consent and providing for the landlord to share any rents from sub-letting.

#### THE SEMI-BANTU

The information available about the semi-Bantu is on a much slighter scale. In many respects, however, the land custom appears to be similar to that of the Ibo. Land is held by the family and is divided out amongst members for farming every year, but where land is plentiful there is no division and anyone may farm where he likes. Increased individualization is noted

<sup>1</sup> Chubb, *op. cit.*, page 39. Modebe is the name of a family which owns a large tract of land in Onitsha.



owing to population pressure in the Calabar Province, particularly to the west, where Native Authorities are said to be anxious to use their new Rule-making powers under Amending Ordinance No. 73 of 1945 to deal with the problem of soil impoverishment.<sup>1</sup>

Inheritance systems show a wide range of variation among the semi-Bantu. Thus among the Mbembe and southern Nkumm Ekoi inheritance is matrilineal, amongst the Ejagham property goes to the eldest surviving brother and amongst the Nde and Olulumaw it goes first to the brother with reversion to the eldest son and then to the brother's son. Elsewhere, as with the Bafumbum-Bansaw, property is divided between the sons.

#### THE BANTU

The Bantu inheritance system is to the elder brother. There seems to be no shortage of land, except where land alienated by the Germans has led to fragmentation in the vicinity of the plantations. Land is controlled by the community, except in certain areas of the Bamenda Division where the Chief (who is also Native Authority) is in charge. Some difficulties have arisen over the grazing of Fulani cattle and Rules have been made by Native Authorities to deal with them. There has been a certain amount of immigration by way of squatting, in the sense that "strangers" have not asked the landowning community for permission to settle.

Among the Bansa in the Nsaw District of the Bamenda Division the Chief is the titular owner of the land, but beneficial rights are held by a lineage and vest in the head of this lineage.<sup>2</sup> He allots the land to women marrying into the lineage, but only usufructuary rights pass, since he alone—with the consent of the lineage—can pledge or sell land to meet communal obligations. Formerly no exclusive rights existed over either fallow or virgin bush, but they are now becoming recognized. Plantation crops are here individually owned, but pass to the lineage on death, although in practice an inherited usufruct is usually recognized subject to the lineage head's continuing consent. Strangers can build and farm upon application accompanied by a small present, and if they leave the area they can sell the house and permanent crops. Custom, however, shows definite signs of breaking down under economic pressure, and this has led to a number of individual sales and leases, particularly in the Victoria area.

#### CONCLUDING NOTE ON THE SYSTEM OF NATIVE ADMINISTRATION

The Eastern Provinces have now had some fifteen years' experience of the operation of the reorganization inaugurated in 1934 and the years immediately following. If it has served no other purpose, it has at all events shown that, whatever the difficulty attending the application to the Western Provinces of the Native Authority system in force in the Northern Provinces, it has been far greater in the case of the Eastern Provinces. That does not mean that the Government was not justified in taking this measure, for it was one which the Government would on principle have been wrong to omit, and, as has been shown, it has been attended with certain definite advantages. But experience of its operation has proved that it has also weaknesses which, by common

<sup>1</sup> For Ordinance 73 of 1945, see page 179.

<sup>2</sup> A study of Land Tenure in the Cameroons Province, C. W. Rowling, 1948.

consent, can only be remedied by a substantial change of system, and since 1947 the Regional Authority has been actively engaged in discussing the character of the steps required for this purpose.

These discussions however disclosed some material difference of opinion regarding the root causes of the defects in system which have made a change necessary. There were some officers of the Administration who saw the basic defect of the system in its inability to meet the requirements of the progressive element represented in the various political or semi-political Unions, which, when it consented to take part in the work of the Native Authorities at all, was described as constituting itself as a "standing opposition" to Government on the Councils. This school of thought expressed a feeling that the future course of administration in the Region would be seriously threatened unless progressive and educated opinion could be satisfied by a wholesale amendment of the system of local government. To other officers this appeared to be an over-simplification of the position; they felt that it both exaggerated the attitude of the progressive elements and underestimated the strength of the more conservative opinion represented in the Native Authority organization. They were more inclined to point to specific causes for public dissatisfaction with the working of the system. They recognized that the Councils were not sufficiently representative; the system had been based on the representation of the traditional element just at a time that a profound change was taking place in rural society, when for the first time an expansion in education was producing a class of educated or semi-educated rural dwellers which found itself unable to obtain salaried employment. But they pointed out also that the conservative and traditional members of the Councils, who were still representative of the majority of the people, had begun to feel themselves frustrated in their effort to press on with the development of the local services. The Native Authorities, in their view, were not allowed sufficient responsibility, and Government control had become increasingly strict after the Regionalization of 1945. Salary scales and conditions of service were laid down without previous notice to the Councils; the gratuity and pension rights given to Native Authority employees in 1946, for instance, were accorded without previous notice to the local Native Authorities.<sup>1</sup> Works Extraordinary were not approved unless the estimate was a firm Public Works estimate. Proposals for dispensaries or aid to Hospitals were held up by the Medical Department. In the absence of adequate machinery, in the form of Committees, for considering executive measures, and of an executive staff for carrying them out, District Officers were frequently forced to take the decision on themselves and obtain the consent of the Native Authorities afterwards—a formality which they no doubt sometimes omitted to observe. But if it was a common complaint that all executive action in local affairs was concentrated in the hands of the District Officer, this was inevitable, when a considerable number of the more progressive elements seemed to consider that they could best serve the public interest by an attitude which varied from apathy to obstruction.

It is unnecessary to attempt here to assess the relative weight to be attached to these two differing views, and the more so, because there has subsequently been a substantial clarification of thought as the result of the measures taken to consult further opinion throughout the Region on the scheme of reform put forward in August, 1948, to which reference will shortly be made. Before however proceeding to deal with these proposals, some reference must be made

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<sup>1</sup> See page 8.

to the efforts of some of the Administrative Officers to effect reforms within the framework of the existing scheme. No observer could fail to be impressed by the spirit in which the officers serving in this Region have continued to approach the problems of local administration, in spite of the difficulties which they have had to face. It is to their credit that they have in certain cases taken the initiative in gaining local acceptance for changes designed to give the present system a more effective form. The more important of these changes have been directed towards the reconstitution of the Councils on a Divisional basis, but with a considerable elected membership, thus both making an appeal to the progressive elements, and concentrating in one working instrument the powers now diffused over a variety of different bodies. Practical expression was given to these efforts in the reforms made in the organization of the Rural Areas of Onitsha and of the Bende Division of which some account has already been given.<sup>1</sup> There was a slightly different line of approach taken by the authors of the Udi Development Scheme, who sought to find natural leaders at the village level and to inculcate a spirit of self-reliance through the use of voluntary communal labour, thus providing the foundation for a type of Native Authority which would show a practical concern in the management of local affairs.

The scheme eventually formulated by the Regional Authority is of a more far reaching character, and, as will be seen, constitutes in many respects a radical departure from the principles on which the system of local administration in the Northern Provinces was based. In August, 1948, a Select Committee of the Eastern House of Assembly was appointed to review the existing system of Local Government in the Eastern Provinces, and had before it a Scheme of reforms put forward by the Regional Authority for its consideration. The Report of the Select Committee, presented twelve days afterwards, recommended these proposals for discussion with Native Authority Councils and the Tribal Progressive Unions. The views of the Regional Authority on the scheme, as modified by these discussions, were published in a Memorandum which was adopted by the Eastern House of Assembly on 16th July, 1949.

It proposed to establish a three tier system of Councils, namely County Councils, District Councils (Urban and Rural), and Local Councils, and in certain circumstances to recognize also Village Councils. The composition and functions of these bodies was to be made clear in the Instruments by which they are to be established, but from the discussions regarding the drafting of the projected Local Government Bill it is possible to form some picture of the position which will be occupied by the various bodies comprised in the Local Government organization.

The County Councils will be constituted on the basis that a Council will have a revenue of roughly £50,000, so that in the more densely populated areas of the Calabar, Onitsha and Owerri Provinces it may be found possible to form County Areas which do not cover more than two Administrative Divisions. There may be six to ten District Councils in a County, not including those Town Areas which may become Town Councils with a status equivalent to that of a District Council. It is at present the intention to have an average of roughly ten Local Councils in each District Area. The great majority of these will be Rural Local Councils, but in some instances minor towns will be given the status of Local Councils. Recognition is to be given to Village Councils

<sup>1</sup> Pages 163, 164.

where it is found that they discharge useful functions in respect of the maintenance of law and order, or can utilize to good account their customary rights for the exaction of communal services, or where they desire to undertake specific projects of development within their own areas.

These grades of Councils will not however stand in the same relation to each other as the present Native Authorities and Subordinate Native Authorities. The Instruments will allocate the functions to be discharged by the different Councils, and each Council will be as far as possible autonomous in the discharge of its own functions. If there is a link between them, it will be mainly in regard to their financial relations. The District Council will be the operative centre of the financial system. It will assess and collect the Direct Tax under the Direct Taxation Ordinance and will also impose Rates for its own purposes. The County Council will obtain its revenue by precept on the District Council, which will either meet the precept from its general funds, or impose a special Rate for the purpose, crediting the receipts to the County Council. Local Councils will in the same way levy Rates by way of precept on the District Council, which will act as their collector and banker, holding the Rate money at the disposal of the Local Council. The latter will have no claim to share in the proceeds of the Direct Tax, and all its funds will be derived from the Special Rate to be imposed and collected for its benefit by the District Council. A Local Council will further be able to precept on the District Council for a special Rate on behalf of a Village Council in its area.

The functions to be discharged and the powers exercised by each of these series of Councils will, as stated above, be embodied in the Instruments establishing them. They will therefore be varied to suit the circumstances of each Conciliar area, but there will be one function which will be common to all and will be mandatory, namely, the maintenance of law and order.

As has been explained, the intention is that the County, District and Local Councils shall be as far as possible autonomous in the discharge of the functions assigned to them. It is clearly indicated that the District Officer will not exercise any control over them. It has been urged in defence of this decision that "so long as the District Officer, as the local agent of the Government, is held responsible by the Administration for errors committed by Local Government Councils, there will be continuance of that sense of frustration which has been bred among Native Authority Councils by the manner in which control has been exercised in the past, and which has developed irresponsibility among Councillors themselves and has deterred the more progressive elements from participating in local administration." It has however been provided that control should be exercised over their financial operations by the Regional Authority itself. The County and District Councils will therefore submit estimates of Revenue and Expenditure for the sanction of the Regional Authority, but for the rest, control will be exercised through an Audit Service which will have the power to surcharge Councillors and their staff for default in their use of finance.

It would seem that this provision for financial control was at one time advocated on the ground that the new Councils would draw the major part of their revenues from their share of the Direct Tax, and it will be recalled that the existing Native Treasuries drew roughly 80 per cent. of their revenues from this source in 1947. It has been argued however on the part of the Native Authorities that the fact that local taxation is levied through the guise of a Government tax is merely incidental. The Direct Taxation Ordinance now

provides that after payment of the amount of the Capitation to Government the residue shall "form part of the revenue of the Native Authority of the areas from which it has been collected."<sup>1</sup> It has been claimed therefore that the revenue thus accruing to the Native Treasuries is not Government money, and that there is accordingly no justification for Government control over its use. The point is somewhat theoretical, and the arguments of the Native Authorities would be stronger if they had adopted the alternative practice, followed in some territories, of raising funds by a Local Rate. So far this has been done only to a very minor extent, though there are in many areas of the Region unofficial levies or "voluntary collections" for maintaining village schools or the like. In the Eket Division, for example, where tax was raised in 1949-1950 to 11s. from the previous figure of 9s., village collections have for some years been at the rate of £1 per adult male. There thus remains a considerable field for the raising of funds by a Special Rate, a course which seems preferable to a general increase in the Direct Tax as a means of increasing the resources of the Native Authorities. Meanwhile there is a practical argument for the imposition of control over the estimates, since there is a possibility that the County Councils, responsible for the provision of expensive services but not for the collection of revenue, may make such demands on the Districts as to cripple them in the development of their own local services. It affords moreover a safeguard against the tendency to adopt projects involving future liabilities which a Council will find it difficult to implement.

It is clear from the preceding provisions that the function of the local Administrative Officers is to be limited to keeping the Regional Authority informed of all Local Government developments in their area, for which purpose they will have access to the records and accounts of the Councils. But they will have no responsibility for directing the Councils, though they may render advice to them at their own request.

The Councils will be given either by Ordinance or Instrument powers for making Rules or Byelaws which will be roughly equivalent to those now conferred under the Native Authority and Township Ordinances. These will require the sanction of the Regional Authority, but this is of course the normal procedure in such cases.

There remains the important question of the composition of the Councils. It is proposed that they may draw their membership from four sources: (a) direct election from constituencies; (b) indirect election from lower Councils or electoral bodies; (c) co-option by the Councils themselves; and (d) appointment under the Instruments.

It appears to be intended to keep the procedure for the composition of the Councils as flexible as possible; all or any of the methods above referred to may be adopted in accordance with local wishes. In certain less populated Provinces, where (as for instance in the Cameroons) tradition is stronger, Clan Heads may be given special seats on District Councils and they may also serve as permanent Chairmen. Certain classes of title holders may also require special representation. But it has been indicated that in every case, even in the most backward areas, there will be a substantial elected majority. In rural areas election to the superior grade of Councils will normally take the form of employing the lower Councils to act as electoral colleges. As regards the lower Councils, various systems to ensure a secret election at the village level have been tried out in recent years, and it seems to be anticipated that the

<sup>1</sup> Section 17A as enacted by Ordinance 2 of 1948. See also page 78.

chief difficulty to be encountered here will not be that of securing a suitable method of voting, but that of devising suitable constituencies, "other than the traditional groupings of family, kindred, quarter or village." In this last respect therefore there is also to be a breakaway from tradition.

Until the issue of the Instruments makes available the operative details regarding the allocation of functions between the various grades of Councils and the manner in which their membership will be composed, it would be premature to discuss the practical difficulties likely to be encountered in the operation of this scheme. It is however clear, to take only some of the more obvious points, that difficulties must be encountered in the allocation of functions to the different grades of Councils, whose claims in this respect are likely to be competitive, and in adjusting the demands made by the County and other Councils on the field available for the levy of local taxation.

The proposed procedure for surcharge by Auditors is hardly likely to be effective; even in Europe this provision, though it may act as a deterrent against individual misuse of powers over expenditure, fails as a means of preventing a local body from exceeding its estimates or incurring expenditure which though legitimate in itself is not covered by the terms of the statute or Regulation under which it operates. That is a safeguard which can only be provided by a system of control over estimates or by an elaborate procedure of pre-audit. There are again likely to be difficulties in operating a system under which the Councils are autonomous in a wide range of Local Government functions, but nevertheless share with the District Officer the responsibility for the maintenance of law and order, and (so far as the District Councils are concerned) also share with him responsibility for the assessment and collection of the Direct Tax.

But these are incidental problems for which it should be possible to find some solution, if the population shows itself amenable to the psychological revolution which the new scheme of Local Government is designed to produce. The result will not merely affect the Eastern Provinces of Nigeria since it must have a direct reaction also on the future of the Native Authority system in the Western Provinces and ultimately on that of the North. But it will also have a significance which is not limited to Nigeria. That is not only because the measure now contemplated departs from the principle of utilizing traditional institutions as the agency of local rule, for Uganda and Kenya and some parts of Tanganyika—to quote only some examples—have systems of local rule in which the personnel of the Native Authorities has no traditional standing. Nor is it due only to the use to be made of the electoral principle, for there is in many territories a growing resort to methods of election in constituting the membership of the Councils or other component elements of the Native Authority organization, extending in some instances to the use of the ballot box. The feature of this scheme which will attract most attention in other territories is the concession to local demands for the creation of practically autonomous institutions of Local Government in the rural areas, for elsewhere in Africa the grant of a similar measure of autonomy has been restricted to a limited number of the major Municipalities. It will attract all the more attention because the demand for this measure has not been confined to the politically minded or educated section of the population, but is (as the result of enquiries made in 1949 show) shared by a considerable part of its more conservative elements.

CHAPTER VIII

The Gold Coast

SECTION I

THE GOLD COAST COLONY

GENERAL NOTE

It will be convenient to deal separately with the three areas into which the Gold Coast is divided for administrative purposes, namely, the Gold Coast Colony, Ashanti, and the Northern Territories. The circumstances of the Northern Territories differ widely from those of Ashanti and the Gold Coast Colony, and though the two latter areas have since 1946 been fully united for constitutional and legislative purposes,<sup>1</sup> the development of the institutions of native administration has followed a different course in each case. The present Section will therefore deal only with the Gold Coast Colony and South Togoland, the area and population of which are given in the table below :

Province	District	Population	Area in Square Miles	Density in Square Mile
Eastern	Accra .. .. .	224,771	918	244.8
	Akwapim-New Juaben ..	113,850	397	286.8
	Birim .. .. .	370,761	6,008	61.7
	Ho .. .. .	172,575	2,464	70.0
	Keta-Ada .. .. .	304,268 <sup>2</sup>	1,954	155.7
	Volta River .. .. .	164,782	1,458	113.0
	Total for Province .. ..	1,351,007	13,199	
Western	Ahanta-Nzima .. .. .	179,812	1,880	95.6
	Cape Coast .. .. .	495,369	3,922	126.3
	Sefwi .. .. .	65,208	2,695	24.2
	Wasaw-Aowin .. .. .	182,009	9,294	19.6
	Total for Province .. ..	922,398	17,791	
	Total for the Gold Coast Colony and South Togoland	3,273,405	30,990	105.6

<sup>1</sup> See page 229.

<sup>2</sup> Keta-Ada no longer exists as a separate District. Keta is included in the Ho and Ada in the Volta River Districts.

This table requires some explanation. Up to 1944 the Gold Coast Colony was divided into three Provinces (Western, Central and Eastern), each under charge of a Provincial Commissioner. In 1945, following on the abolition of the post of Secretary of Native Affairs, the post of Chief Commissioner for the Colony was created, with headquarters at Cape Coast, and in 1946 the former Central Province was absorbed in the Western and Eastern Provinces.<sup>1</sup> In 1948 the two remaining posts of Provincial Commissioner were abolished, and the officers in charge of the nine existing Districts now correspond direct with the Chief Commissioner of the Colony or, in some cases, through a Senior District Commissioner.

As regards South Togoland it will suffice to note that the former German Protectorate of Togoland was partitioned between Great Britain and France by the Declaration of 10th July, 1919; in 1922 His Majesty's Government accepted the Mandate for the British portion; and by the British sphere of Togoland Order in Council of 1923 this portion was divided into two Sections, of which the Northern Section was to be administered as if it formed part of the Northern Territories of the Gold Coast and the Southern section as part of the Eastern Province of the Colony. This arrangement was confirmed in the Trusteeship Agreement approved by the General Assembly of the United Nations on 13th December, 1946. The area of South Togoland administered as part of the Gold Coast Colony is 2,464 square miles and the population was given in the Census of 1948 as 172,300. The northerly part of this area is administered from Kpandu, and the southerly part from Ho, where there is a Senior District Commissioner who exercises supervision over the whole Section, as well as over the area included in the former Keta-Ada District of the Colony.

#### THE TRIBAL STRUCTURE

As compared with the inhabitants of many of the African Colonial territories, the majority of the inhabitants of the Gold Coast Colony are more homogeneous, in respect both of language and custom. With the exception of those inhabiting a strip in the south of the Colony and the area lying to the east across the Volta River, all belong to the Akan people, who are ethnically a single group, though divided linguistically between Fanti and Twi speaking groups. The two languages are, however, so closely related that they can be regarded as two forms of the same language. Fanti, with dialectical variations, is spoken on the coast from near Sekondi to some 80 miles inland, when it is replaced by Twi, and Twi, also with some dialectical variations, is spoken over an area which includes most of the central part of the Colony and extends over Ashanti.

The origin of the Akan people has been much debated, and different opinions have in particular been held on the question of their relation to the Ghana Empire of the Western Sudan, which at one time reached a high degree of civilization.<sup>2</sup> Most enquirers, however, attach value to the well-established tradition that the Akan moved into the Gold Coast from the north or north-west. For our present purpose it is more important to note two general characteristics of the Akan, their attachment to the matrilineal principle in

<sup>1</sup> Provinces and Districts (Colony) Order, 1946.

<sup>2</sup> The latest discussion on the various theories regarding the origin of the Akan will be found in *The History of the Gold Coast*, W. E. F. Ward, 1948. The votaries of the modern "Nationalist" Movement are wont to refer to Ghana as the "homeland" of the Akan, and for them the Gold Coast, when it attains independence, is to be the "Ghana State." They have already established "Ghana schools."



kinship, and their tendency to form groups organized on a territorial basis, which have developed into the "States" to which reference will subsequently be made.

The Ga-Adangbe inhabitants of the southern strip above referred to, which includes Accra and its neighbourhood, differ from the Akan speaking peoples both in origin and custom. The Ga came into the Gold Coast from the east, probably about the beginning of the sixteenth century, and now speak a language which has some affinities both with the Akan and Ewe languages; in its present form indeed it may have been formed by a mixture of these two tongues. They follow the patrilineal not the matrilineal principle of succession. But the most characteristic feature of Ga society is that it did not form itself into units similar to the Akan "States." The people lived in so-called "towns,"<sup>1</sup> politically independent of each other, each being under the control exercised by Elders with the guidance of a *mantse* or *manche*, to whose position reference will be made subsequently.<sup>2</sup>

The majority of the inhabitants of the extreme south-east of the Colony (including the inhabitants of the Trust Territory) belong to the Ewe speaking people, now numbering in all some 800,000, who are spread out from Dahomey in French West Africa, through southern Togoland, into the eastern part of the Gold Coast Colony. Their first known home seems to have been in the delta of the Niger River, and there is ground for holding that they came into the Gold Coast Colony area about the beginning of the seventeenth century. There has of late years been a growing measure of Ewe tribal consciousness, which has led to the creation of an All-Ewe Conference and its claim for the union of all the Ewe peoples in one unit of Government—a matter which has recently formed the subject of reports to the Trusteeship Council of the United Nations.<sup>3</sup>

#### THE ORGANISATION OF THE AKAN AND FANTI STATES

Reference has been made above to the tendency of the Akan and Fanti speaking peoples to group themselves into political units, which in the process of time developed into the Akan and Fanti States. It is convenient to retain that term here, for though these units have not now the status they once enjoyed, it was the description invariably applied to them in earlier historical documents and is indeed still in common usage. Their constitution followed a pattern which, though not uniform, was nevertheless similar in its most important features. The hierarchy of authorities of which the State was composed reflected throughout the tradition which regulated the control of the village, its lowest and most characteristic unit.

The villages are usually divided into a number of clan sections; the clan is matrilineal, but marriage is in general patrilocal, and clans may therefore extend over several villages. Within any village the clan contains a number of families, traditionally the descendants of one female ancestress, and each family recognizes a head. The family heads of the clans residing in a village select one of their number to occupy the "stool" of the clan-section within the village, and these clan-section stoolholders are the persons who select the headman (Odikro, plural Adikrofo) of the village. The range of selection is,

<sup>1</sup> For the use of the word "town" see Chapter IX, page 296.

<sup>2</sup> Page 194.

<sup>3</sup> See page 1 of the Report to the Assembly of the United Nations on Togoland, 1947. The representations made on the subject by the All-Ewe Conference in 1946 and the observations thereon of the British and French Governments are printed as an Appendix to the Colonial Annual Report on the Gold Coast for 1947.

however, limited, for though there may often be a number of candidates, the Odikro always has to be the member of one family. The government of a village is thus organized on a representative and to some extent on a "popular" basis. There is no doubt of its vitality as an institution. The Odikro acts with a Council composed of other clan-section stoolholders; both in theory and in practice he is dependent on them, and can be "destooled" by them. The Adikrofo, accompanied normally by one or more of their Elders, attend the Council (Oman) of the Division in which the village is situated, and they may on rare occasions attend also the Council of the State.

The building up of the "State," with its hierarchy of Sub-chiefs and Divisional Chiefs (Ohene, plural Ahenfo) under an Omanhene or Paramount Chief,<sup>1</sup> was doubtless due to the necessity for evolving an organization which would secure joint action by the group in the numerous wars of the time, and especially in resisting the incursions of the Ashanti. The present designation of the Divisional Chiefs bears testimony to the influence of this process. Thus, to take as an example the Akim Abuakwa State, the Omanhene has under him as the principal Divisional Chiefs, the Adontenhene, the Head Chief of the Advance Guard, the Nifahene, the principal Chief of the Right Wing, the Benkumhene, the principal Chief of the Left Wing, the Oseawuohene, the Head Chief of the Stool Guard, and the Gyasehene, the Head Chief of the Bodyguard.<sup>2</sup>

But the military formation thus established did not impair the tradition that the institution of the chiefdom was regulated by the same custom as that of the village. Chiefs are taken from traditional stool worthy families, which in some cases hold the privilege in rotation. They are elected from what are often a considerable number of candidates in much the same way as the Adikrofo in their smaller sphere, though in the case of a Head Chief the most important of the electors are the Ahenfo of the Divisions of the State. In the actual process of election the Queen Mother has an important function; she produces the candidates who are to be presented to the electors, and in the event of a candidate being unacceptable, it is her duty to produce another.

But the position of a Chief thus elected is not that of an absolute ruler, for he is, like the Odikro, responsible to Councillors and Elders, and subject to removal or "destoolment" by them. The tradition that a Chief could not speak on any public matter, even among his own people except in the presence of and in consultation with his Councillors and Elders was reflected in the custom that he could only act or speak through his "spokesman" or Linguist.<sup>3</sup> Some information will be given subsequently regarding the practice of destoolment;<sup>4</sup> but it is of interest to note here that between 1904 and 1926 there were 109 such cases, and though the use of the practice was subsequently curtailed, there were in the year 1947 15 instances in which Chiefs of various grades and eight in which Adikrofo were either destooled or abdicated to avoid destoolment.

The control over the personal authority exercisable by the Chiefs is reinforced by another institution common to the Akan and Fanti peoples,

<sup>1</sup> The term used in earlier enactments was Head Chief. The term Paramount Chief was introduced by the Gold Coast (Legislative Council) Order in Council of 1925, and embodied in the Native Administration (Colony) Ordinance 18 of 1927. It is there defined as including not only the Omanhene of the Akan States but the Manche, Konor, Awame Fia, and Fiaga of other tribal groups.

<sup>2</sup> The Akim Abuakwa Handbook, J. B. Danquah, 1928, page 64.

<sup>3</sup> For the position of the Linguist in more modern times see The Gold Coast Legislative Council, M. Wight, 1947, pages 67 and 94.

<sup>4</sup> See pages 200, 232, 235, 239.

namely, the organization of the Asafo.<sup>1</sup> The Asafo were in origin companies of warriors, formed on a patrilineal basis, each under its captain or Asafoatse, chosen by members of the companies without regard to family connections. Since losing their military purposes the Asafo have developed differently in various States. Thus in the Akim States the members consist of commoners, who have on occasion combined to represent the voice of the ordinary people against the "stoolworthy" families who monopolize the leadership in the village, Division or State Councils. In the Fanti States on the other hand everyone is, in theory at any rate a member of the Asafo. They discharge a number of social duties, and hold annual "customs" for such purposes as ceremonial road clearing and a grand parade, but the associations or clubs formed by them for social purposes have on more than one instance taken a prominent part in disputes relating to the management of the Stool revenues or conflicts between rival candidates for the chieftom. There is one instance in which the Asafo paralysed the organization of the State for a prolonged period by "putting in fetish" a Paramount Chief selected in opposition to a candidate favoured by the Asafo. Among the Fanti, the Asafo tend to indulge in faction fights characterized by the display of banners and the singing of insulting songs, a practice which is utilized for political ends in certain quarters. In some States, the Asafoatse has been made a member of the States Council with a view to combating disorder by providing the commoners with an accredited representative.

The development of the States thus described has involved another consequence. The Odikro, as representing the body of family heads, was in more primitive times regarded as the custodian of the village lands. In process of time such authority as he exercised over the lands in concert with other family heads came to be shared with the Chiefs, and it became ultimately a well established principle that the trusteeship of the Stool lands was vested in the Omanhene and the Divisional Chiefs. That was in principle strictly a position of trust for which they shared responsibility with their Councillors and Elders, and though, as will subsequently be shown, the trusteeship has often been used by Chiefs for their personal gain owing to the increased money value of Stool lands, the principle holds good, and it has on many occasions been invoked by champions of the popular cause against Chiefs charged with the misuse of their authority in the conduct of Stool affairs.

From what has been said, it is clear that the constitution of the Akan or Fanti State is far from autocratic. It has indeed, as many have claimed, features which are in spirit if not in form democratic. There is no doubt of the fact that the Paramount and Divisional Chiefs are fully dependent on the advice or support of their Councils, which are loosely constituted bodies, comprising not only Divisional and other Chiefs but a number of traditional Councillors. There is in practice a considerable variety in the character of the relation of the Paramount to the Divisional Chiefs. In some States, the latter retain an independence in the domestic affairs of their Divisions which has led to the constitution of the State being described as federal, but in recent years the general tendency has been for the Paramount and his Council to exercise an increasing influence over the affairs of other Stools. This tendency has been increased by the introduction of the Native Authority organization shortly to be described.

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<sup>1</sup> For the Asafo in Ashanti, see page 232.

## THE CONSTITUTION OF THE GA UNITS

The political constitution of the Ga units has, as already indicated, followed a different principle from that of the Akan. The political unit in their case was a "town,"<sup>1</sup> and a number of towns were accustomed to federate themselves for purely military purposes. Each "town" had a Stool, but the Stool had only a supernatural or magical significance; it was not the seat of a Chief. Associated with the Stool was a personality known as the *manche* or *mantse*, but he had no secular position; though magically useful in war, he had in peace time only a spiritual authority, and that only if he happened also to be a priest. His post was neither traditional nor hereditary, and he was created *mantse* by a magical ritual applied *ad hoc*.

The European administrations, both Dutch and British, tended to regard the *mantse* as a Chief, and their influence resulted in building up round him an organization which had no real basis in indigenous society. Many observers hold that in consequence the modern "Chief" has in fact only such authority as has been conferred by Government, and that the intrinsic seat of indigenous authority remains in the Elders, who still regulate the affairs of the "towns."<sup>2</sup> They point to the frequent destoolments of the Ga Paramount Chiefs as proof of the need for some revision of the present system.

## THE POLITICAL STRUCTURE OF THE EWE

The Ewe people have a political structure differing in many respects from that of the Akan and the Ga. The early organization appears to have taken the form of an alliance of independent Divisions under one of the Divisional Chiefs whose leadership of the alliance was traditionally accepted; but it is likely that in the past this loose alliance only functioned in time of war, and that the Ewes, a peaceful agricultural people, had as their unit of government merely the compact Division, which has survived to the present day. Within the Division, the organization is in sub-divisions, and within each sub-division in clans, the head of which is a member of the Council of the sub-division. The sub-division corresponds to the village.

The Chief, who comes from a ruling family by patrilineal descent (though there are some instances to the contrary) is selected from all the available candidates of his family by the Stool Elders, among whom the Stool Father has the greatest influence. After selection he must be accepted by the sub-chiefs. Like the Akan Chief, the Ewe Chief is strictly dependent on his Council, and his power is also limited by the influence exercised by the Asafo. It is apparent that the attempts made in the past to form the Ewe Divisions into "States" on the Akan precedent, and the recognition given to Ewe Paramount Chiefs, have not accorded with the traditional organization of the Ewe people. Some Divisions have in fact refused to accept the organization of Native Authorities framed on this precedent, and the political constitution imposed on the Ewe, like that imposed on the Ga, appears to require reconsideration.

## RELATIONS WITH THE NATIVE STATES PREVIOUS TO 1874

The history of the steps by which the Gold Coast Government has made use of the indigenous institutions as agencies of local administration makes it clear that its approach in this matter has differed materially from that described

<sup>1</sup> In the Gold Coast, a "town" is defined as a place which has a Stool. It may, however, be only a small village.

<sup>2</sup> The Social Organization of the Ga People, M. J. Field, 1940.

in dealing with many other Colonial territories, including most of those in East and Central Africa. It was determined by historical developments, at a period when general conceptions of policy differed widely from those which at a later period determined the system adopted in those territories.

The interest of the British in the Gold Coast dates from the earlier part of the seventeenth century, when they came into competition with the Dutch for a share in the Slave Trade. The first British fort, Koromantin, was built in 1631. If the Slave Trade was sordid, it was nevertheless lucrative; it is estimated that between 1680 and 1700 over 300,000 slaves were exported from West Africa, and that by the middle of the eighteenth century the annual export amounted to 74,000, of whom possibly about half came from the Gold Coast. The Chiefs of the time were the purveyors of slaves, and the British concern with them was limited to the establishment of relations which would secure the maximum supply of slaves for the trade. So far as the British exercised any measure of rule, it was confined to the "Settlements," or in other words the coastal forts and the lands in their immediate vicinity. In the "Settlements" their rule had at first no legal basis, and it did not indeed acquire this till nearly the middle of the nineteenth century, by the operation of the first British Settlements Act of 1843. It is of interest to note that this Act was passed specifically to provide for the government of the West African Settlements and the Falkland Islands.

Early in the nineteenth century, however, the relations of the British with the indigenous States lying beyond the Settlements began to be determined by a new factor—the incursions of the Ashanti. The Ashanti had at one time held Assin, Akim and Denkyera States as tributary provinces, and at the beginning of the century their forces penetrated as far as Winneba, Cape Coast and Accra. It now became the interest of the Cape Coast Government to treat the Akan and Fanti States as allies, and to extend over them, so far as the very limited resources and often vacillating policies of the Government allowed, a loose form of protection against the Ashanti.

Under British leadership, a number of the allied States succeeded in defeating the Ashanti at Dodowa (Katamanso) in 1826, an event which opened a new chapter in Gold Coast history, and prepared the way for Governor Maclean's treaty of 1831, which for the time being put a period to Ashanti attacks. It is significant that this Treaty recognized the position of the British Governor at Cape Coast as a mediator where acts of aggression were committed either against the Ashanti or as between the allied States.<sup>1</sup>

So far there is no evidence of any intention to extend jurisdiction over the Akan and Fanti States. Not only were the material means wanting for effecting this, but British policy at the time was firmly opposed to any extension of sovereignty. In 1828, indeed, the British Government had decided to abandon the Gold Coast, a decision which was only reversed when the protests of British merchants were reinforced by those of the Fanti Chiefs. The general confidence won by Maclean (1830-1843), did indeed result in establishing what came to be known as a Protectorate, a term which was later given formal recognition in the Native Jurisdiction Ordinance of 1878 subsequently referred to. But the element of control was in fact limited to the extension of the practice by which criminal cases of a serious character arising in the "Protectorate" area were brought to a British Court, in which a British "Judicial

<sup>1</sup> W. W. Claridge, *History of the Gold Coast and Ashanti*, Vol. I, pages 399 to 433, and page 448 following.

Assessor" presided over a panel of Chiefs. This practice had at the outset no legal sanction, but it was accepted by the Chiefs concerned as a means of controlling the crime which had endangered the relations between their States. It was subsequently validated by the operation of the first Foreign Jurisdiction Act of 1843.

#### THE BOND OF 1844

The relations to be observed between the Government at Cape Coast and the Chiefs of the Protectorate were clearly expressed in the Report of a Select Committee of the House of Commons in 1842. The Committee recommended that the relations of these peoples to the Crown should not be "the allegiance of subjects to which we have no right to pretend, and which it would entail an inconvenient responsibility to possess, but the deference of weaker powers to a stronger and more enlightened neighbour, whose protection and counsel they seek and to whom they are bound by certain definite obligations." It was largely as a result of this recommendation, and in order to define the nature of the obligations referred to, that Maclean's successor interested himself in negotiating the treaties with a number of Fanti Chiefs which became famous as the "Bond" of 1844.

The "Bond" does not appear to have been intended by the Chiefs as an admission of the sovereignty of the British Crown. It is true that it acknowledged "the power and jurisdiction of the Crown," but its main purpose was to reaffirm their acquiescence in "the trial of criminal offences by Her Majesty's judicial officers and the Chiefs of the districts," and to agree that the customs of the country should be moulded "to the general principles of British law." It might indeed be claimed that by defining the extent of British jurisdiction, the "Bond" implicitly constituted an affirmation of the independent position of the States.

The policy which confined the exercise of authority within the limits to be secured by agreement with the native Chiefs was carried further when a large assembly of Chiefs and Elders met at Cape Coast in 1852. The meeting resolved itself into a Legislative Assembly which, seeking to raise revenue for the extension of local services, voted a Poll Tax of one shilling a head for every man, woman and child in the Protectorate. But no regular machinery existed for levying the tax, and its collection was abandoned in 1861, nor did the so-called Protectorate Legislative Assembly repeat its meeting of 1852. Such legal powers as the British authorities exercised still lay in the field of criminal justice. The Supreme Court Ordinance of 1853 provided that appeals from the judgment of the Judicial Assessor in cases arising in the "Protectorate" were to be tried by the Governor and Legislative Council sitting with the Judicial Assessor; but such cases were as before only criminal and did not include civil issues.<sup>1</sup>

If this was the policy in the 'fifties of last century, it may well be asked how it came to pass that the whole of the Gold Coast area was declared to be a Colony in 1874, with all that this might involve in the extension of judicial and administrative authority? Whatever the need which the Cape Coast Government may have felt to extend its authority beyond the judicial field to which the Agreement of 1844 properly related, the resources available to it for such a consolidation of power were entirely inadequate. Its total revenue

<sup>1</sup> The post of Judicial Assessor and that of the Chief Justice was held by the same person. The Gold Coast Legislative Council, a body with a purely official membership, had been established in 1850.

in 1860 amounted only to £3,947, in addition to the Parliamentary Grant of £4,000. The explanation for the change of policy is to be found in the formation of the Fanti Confederation and the promulgation by it in 1871 of a constitution, generally known as the Mankesim Constitution.

#### THE CONFEDERATION OF FANTI CHIEFS

The Confederation of the Fanti Chiefs was in its origin a military union arising out of the situation caused by the transfer of forts as between the Dutch and British in 1867. This, among other things, involved a direct conflict between the Fanti Chiefs and the Ashanti,<sup>1</sup> and had as one of its results the campaign which ended with the capture of Kumasi by Sir Garnet Wolseley in 1874. The promulgation by the Confederation of the Mankesim Constitution seems to have been largely due to the growing belief, founded on the proceedings of a Select Committee of Parliament in 1863, that British policy pointed to the eventual abandonment of such rule as it exercised in the Gold Coast. "The object of our policy," in the words of one of the Resolutions of that Committee "should be to encourage in the natives the exercise of those qualities which may make it possible for us more and more to transfer to them the administration of all the Governments. The Protectorate should only be retained while the Chiefs may be as speedily as possible made to do without it."

The Mankesim Constitution was an ambitious scheme, involving extensive projects of education and the improvement of communications and agriculture, to be financed by local taxation.<sup>2</sup> In terms, it was to act as an executive body for carrying out the wishes of the British Government, but in effect it projected a very practical measure of self-government, and this was a development which the Home Government of the time was not prepared to accept. As all the records of the time show, the Home Government continued to view with dislike any extension of British sovereignty. But the course of events had resulted in creating an anomalous situation in which, to quote the language of the most recent of the historians of the Gold Coast, "a mass of tribes, responsible for their own defence, owning their own land, independent of British authority, and yet subject in many respects to British law, were indissolubly linked with the British settlements both in commerce and in their preoccupation with the danger from the common enemy."<sup>3</sup>

#### THE ESTABLISHMENT OF THE COLONY

In the view of the Government there appeared to be no middle course between abandoning all political authority and assuming full rights of sovereignty. However unwillingly, it elected for the latter course, and in 1874 issued the Letters Patent and the Order in Council which created the Gold Coast Colony.<sup>4</sup> But the terms of the Order in Council reflected the air of hesitation which characterized the policy of the Government in this matter. It avoided the formula of annexation; it made no specific mention of the Protectorate; and it did not define the areas to which the Order applied. It was in form therefore a mere extension over an undefined area of the powers conferred on the Crown under the Foreign Jurisdiction Act of 1843. It was not until 1901 that an Order in Council was issued which defined the boundaries

<sup>1</sup> See History of the Gold Coast, W. E. F. Ward, 1948, pages 231 following.

<sup>2</sup> The Constitution is printed at page 199 of *The Fanti National Constitution*, J. M. Sarbah, 1906.

<sup>3</sup> W. E. F. Ward, *A History of the Gold Coast*, 1948, page 256.

<sup>4</sup> Letters Patent 24th July, 1874, and Order in Council of 6th August, 1874.

of the present Gold Coast Colony and declared the area thus defined to be annexed to His Majesty's Dominions.<sup>1</sup> The Order coincided with a similar Order announcing the annexation of Ashanti.<sup>2</sup>

### THE EFFECT OF ECONOMIC DEVELOPMENTS

It has been necessary to give this account of the earlier relations of the British with the Akan and Fanti States in order to explain the conditions which determined the approach of the Government of the Colony to the problems involved in the introduction of a system of native administration. But a period of some length intervened before any such measure became possible. The Order in Council of 1874 provided, by implication at all events, the necessary authority for an extension of jurisdiction, but it was long before the Government had the resources necessary for the purpose. As shown above, its revenue in 1860 had been less than £8,000; it rose to £30,851 in 1870 and £67,378 in 1875, but it was only towards the end of the century that an improvement in economic conditions began to provide resources which permitted of any substantial expansion of governmental activity. When however that time came, the conditions were no longer the same, for economic advance was producing far-reaching changes in the social structure and in the political conditions to which the framework of administration had to be adjusted. It will be convenient therefore at this stage to note the nature of this development and of the changes it created.

The extent of the progress achieved in the development of the resources of the Colony is best measured by the fact that the total revenue of the Government as shown in the estimates for 1947-1948 was £9,968,500, apart from the contribution from the Colonial Development and Welfare Vote of £263,000.<sup>3</sup> This improvement in economic conditions has only been due in part to the exploitation of the mineral resources of the country by European agencies. The first steps to develop the gold mines with European capital were taken in 1877, but progress was delayed by difficulties of transport, and it was not until 1902 that the average out-turn exceeded 20,000 ounces. It then increased rapidly, and the annual value of the output between 1920 and 1930 varied between £709,000 and £1,045,327. By 1947 it had risen to a value of £5,220,000. The mining of manganese began in 1915, but it was only in 1925 that it began to reach its present proportions; with the relatively high prices of 1947 the export was valued at £2,233,000.

Diamonds were an even later article of export, the value in 1947 amounting to £746,000. Bauxite began to appear as an export in 1941, and rose to a value of £379,000 in 1947. Until 1943 the contribution made to Government revenues by the mineral industries was mainly in the form of royalties or export tax, but since that date they have contributed largely to the income tax, the receipts from which amounted to £3,500,000 in 1947-1948. Their contribution in other respects can best be judged from the fact that in 1947-1948 the total number of persons employed in the mines of the Colony was 21,905.<sup>4</sup>

The most substantial factor in economic advance has, however, been the

<sup>1</sup> Order in Council, 26th September, 1901 (Statutory Rules and Orders revised to 1903, Volume VI).

<sup>2</sup> See page 229.

<sup>3</sup> The amount of currency in circulation in West Africa increased from £10,605,545 in 1923 to £47,786,348 in 1948.

<sup>4</sup> Report of Labour Department, 1947-48, page 11.



growth of the cocoa industry. Export began with an experimental shipment of 80 lbs. in 1891 ; it represents now 45 per cent. of the world's production of cocoa. In 1947 it was valued at £10,279,000, or over 50 per cent. of the total exports from the territory, which amounted to £20,376,000. The crop of 1948, the largest for many years, was valued at over £32,000,000.<sup>1</sup> The effect produced on the social structure by the expansion of the cocoa industry has been all the greater because the crop is mainly the production of small-holders, the usual area of a cocoa farm in the Gold Coast Colony being from 2½ to 6½ acres.<sup>2</sup>

The introduction of a semi-permanent crop of this magnitude, extending over an area of roughly one million acres in the Colony and Ashanti, has created an individualistic outlook among peasant cultivators which has materially affected their attitude regarding the institutions established by previous custom and towards the Chiefs as the traditional trustees of Stool lands. It has led some of the Chiefs to seek independence from their Councillors and Elders by increasing their personal incomes through the sale or leasing of unoccupied lands. But there is more than this. The African is being given a bigger stake in commerce through the organization of co-operative societies ; those connected with the cocoa industry handled in 1948 a production estimated at a value of £3,500,000. Again, though the final handling of the crop is mainly in the hands of European exporters, the intermediate trade is in the hands of African middlemen, and this has helped to create a class, novel in most African experience, which can most aptly be described as a well-to-do and progressive middle class.

It is this class which has produced the numerous African lawyers, journalists and professional men who now figure so prominently in the life of the coastal towns, and have assisted to give the Gold Coast its character as the territory in which Africans have taken an earlier and more prominent place in political life than in any other British Colony. It would be out of place here to deal at length with their influence on the course of constitutional development, but it will be necessary to describe subsequently the part they have taken in the controversial legislation which has determined the form taken by the institutions of native administration and local government, for the Colony has been singular in respect of the degree to which the issues of native administration have formed the topic of political discussion.

### THE INTRODUCTION OF THE SYSTEM OF NATIVE ADMINISTRATION

The history given in the preceding pages of the early relations of the Cape Coast Government and the States ended with the creation of the Gold Coast Colony in 1874. The first step for the extension of administrative control was taken in 1878, and it is characteristic of the strength of the tradition created by the Bond of 1844 that the Ordinance issued in that year was termed the Native Jurisdiction Ordinance, and was described as a measure "to facilitate and regulate the exercise in the Protected Territories of certain powers and jurisdictions by Native Authorities." It gave powers to such Head Chiefs of Divisions as might be brought by Order within the operation of the Ordinance

<sup>1</sup> This is calculated at the price paid to the producer by the Cocoa Board in 1948.

<sup>2</sup> See Report of Commission on the Marketing of West African Cocoa, Cmd. 5845, and C. Y. Sheppard, Report on Economics of Peasant Agriculture in the Gold Coast, 1936.

to enact Byelaws "with the concurrence of their Chiefs, Captains, Headmen and others who by Native Customary Law were the Councillors of their Stools"; such Bye-laws were, after approval, to become as valid as if they had been enacted in the Ordinance. It also provided that such Head Chiefs and the Chiefs of Subdivisions or Villages should "with their Councillors authorized by native law" form Native Tribunals to try breaches of the Bye-laws and exercise civil and criminal jurisdiction in a number of offences of a minor character described in a Schedule attached.

Civil jurisdiction was limited to land issues under native tenure and to personal suits in which the subject matter did not exceed the value of seven ounces of gold or £25 sterling. Criminal powers did not extend to the imposition of imprisonment as a substantive sentence, but were limited to the imposition of a fine which might vary from one *ackie* of gold up to 30 *ackies* of gold, though in default of payment an offender might be punished by personal detention up to a period of three months.

This Ordinance was not put into force till 1883, when it was repealed and re-enacted, with one modification. In the 1878 Ordinance a person aggrieved by the order of a Native Tribunal might appeal to a Divisional Court of the Supreme Court; the 1883 Ordinance required him to apply for relief in the first instance to the Commissioner, who was defined as the Secretary for Native Affairs or other officer appointed by the Governor for the consideration of matters relating to the Native Tribunals. This officer could refer a case to the Divisional Court, and could not refuse to do so in the case of land issues, but he had himself no power to revise an order of a Native Tribunal.

This extension of jurisdiction had one feature which was afterwards to have great significance for the Colony. In most of the African Colonial territories, the extension of sovereignty, whether expressed in the constitutional form of a Protectorate or a Colony, was marked by the imposition of a direct tax, usually in the form of a Poll Tax, and, apart from any contribution this might make to government revenues, great importance was attached to the payment of the tax as a recognition of the sovereignty of the Crown.<sup>1</sup> Whether as the result of the abortive introduction of a Poll Tax in 1852 or for other reasons, the enactment of the Ordinance of 1878 was not accompanied by the imposition of a Poll Tax, and it is noteworthy that opposition to the payment of any form of direct tax became subsequently part of the standing creed of political elements in the Colony. It was not indeed till 1943 that the Government finally succeeded in securing the agreement of its Legislative Council to the imposition of an Income Tax.

The Ordinance of 1883 remained in force, without any substantial amendment, for 44 years. It was inevitable that long before that period had elapsed the system thus introduced should have proved inadequate to meet the needs created by social and economic changes. But even in the earlier stages its deficiencies were apparent. The Chiefs and their Councils were unwilling or unable to make Bye-laws which would meet with any opposition from their people, for if they attempted to enforce them, this might result, and did result in some cases, in their destoolment. At the same time, there was no provision such as has normally been made elsewhere by which Administrative Officers could issue Bye-laws in default or enforce their observation. As a consequence, the Government had to secure by Ordinance a number of local regulations urgently required in the general interest, such for

<sup>1</sup> Lord Lugard, *The Dual Mandate in British Tropical Africa*, 1923, page 218.

instance as the measure for dealing with the pests attacking cocoa, for which provision had to be made in the Pest Ordinance 37 of 1923.

But the system was equally inadequate in providing for measures required in the real interests of the Stools themselves. In the absence of any provision for the establishment of Treasuries or for their control when established, Chiefs and their Councillors were left free to dispose of the proceeds of concessions or of the revenues derived from the sale or leasing of Stool lands, with only such check as might be provided by the discontent of those who had not shared in the proceeds.

There were similar results in the administration of native justice. As the Court fees and fines were appropriated by the Court, the right to hold a Native Tribunal became a valuable privilege, and in the absence of any procedure prescribing that Tribunals should be constituted by warrant or order, numbers of petty Tribunals were established by minor Chiefs who would not have been permitted this right at an earlier period. The Ordinance provided no procedure by which Administrative Officers could supervise the procedure of the Tribunals or revise their decisions. Much abuse also arose from the existence of the Akan and Fanti custom of "swearing the Chief's Oath." This is not the place to describe the full implications of this peculiar feature of local native law, which was originally designed to provide a means of removing a dispute from the sphere of possible private settlement and securing a trial *in judicio*.<sup>1</sup> It is enough to say that the swearing of the Chief's Oath by one of the parties to the dispute made it necessary that the case should come to the Chief's Court of which the Oath had been taken, and since the question whether it had been correctly used was also an issue, the general result was to increase both the fees payable to the Court and the range of fines imposed.

Looking at the Ordinance of 1883 in the light of experiences subsequently gained elsewhere in Africa, it is easy to recognize its deficiencies. But it is reasonable also to recognize the circumstances in which it was enacted. As already pointed out, the approach of the Government was dominated by the tradition which had treated the States as independent authorities over whom control could only be secured by their individual agreement. Moreover, the terms of the Order in Council of 1874 left some legitimate ground for doubt as to the extent of the jurisdiction it conferred on the Government. The Foreign Jurisdiction Act of 1843 had merely given legal cover to the exercise of jurisdiction already established by cession or usage, and it was not until this Act was revised and re-enacted in 1890 that the full scope of the authority conferred on the Government in both the judicial and administrative fields could be clearly appreciated.

Nevertheless, the manner in which the Ordinance was applied did nothing to lessen and indeed seemed actually to strengthen the claim made by the Chiefs that in judicial matters at all events they exercised inherent powers, derived from their appointment as Chiefs by their own community, and independent of any authority derived from the Crown as sovereign power.<sup>2</sup> The juridical basis of that claim is an issue which today has only an academic interest, though it is clear that whatever the position created by the Order of 1874, any claim

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<sup>1</sup> R. S. Rattray, *Ashanti*, page 124, and J. B. Danquah, *Akan Laws and Customs*, pages 69-83. See also Report of Native Tribunals and Committee of Enquiry (the Blackall Report) 1943, page 14, and Sections 25 and 26 of the Native Courts Ordinance 22 of 1944. For some of the administrative implications of the Oath, see page 13 of the Report of the Commission on the Marketing of West African Cocoa, Cmd. 5845.

<sup>2</sup> See Sir W. B. Griffith. Note on History of Gold Coast Colony, 1936.

to the existence of inherent rights became legally untenable after the annexation Order of 1901. But the claim had for long the strenuous advocacy of the educated community whose support the Chiefs at one time secured, and was persistently used as an argument in the opposition offered to the reform of the system inaugurated in 1878.<sup>1</sup>

A study of the long period during which the Native Jurisdiction Ordinance was in force leaves one in doubt whether the Government felt any serious concern to secure a better agency of local administration, and its attention seems to have been focused on the failure of the Ordinance to provide a better system of native justice. In more than one statement, it characterized the Native Tribunals as inefficient and corrupt, and between 1894 and 1922 it put forward no less than five Bills designed to secure a reform of the judicial system. But these efforts fell into a period in which the Chiefs, with the support of the West African Aborigines Rights Protection Society,<sup>2</sup> were opposing a series of Government measures dealing with land questions, namely, the Ordinance of 1894 for the control of Land Concessions, the Land Bill of 1897, and the Forestry Ordinance of 1911.<sup>3</sup> The Bills for the reform of the Native Tribunals were abandoned in face of a criticism which took the ground that they invaded the inherent rights of jurisdiction possessed by the Chiefs. The only measure of any importance bearing on native administration enacted during this period was the Chief's Ordinance of 1904, which empowered the Governor to confirm the election and installation of a Chief, but this provision was only intended to render the position of a Chief unassailable in law; it did not enable the Government to maintain that a Chief can exercise no legal powers till formally recognized as a Native Authority.

#### THE REFORMS OF 1927

The reform in the system of native administration which the Government was at length able to effect in 1927 was rendered possible by the growing cleavage between the Chiefs and the more politically minded section which had acquired the leadership in the Aborigines Rights Protection Society. The alliance between these interests began to break down when recognition was given in 1925 to the three Provincial Councils, consisting of Paramount Chiefs, as electoral colleges for the purpose of electing six African members to the Legislative Council.<sup>4</sup> The Aborigines Society felt that the position thus gained by the Provincial Councils would provide the States with a powerful organ for voicing their views, to the detriment of the position which the Society then claimed as the most influential representative of African opinion.

But there were other causes which widened the rift between the Society and the Chiefs. It was well known that the Gold Coast Government had been urged to reform its system of native administration on the principles of which Northern Nigeria was then affording the most conspicuous example. But Indirect Rule was viewed by progressive opinion in the Gold Coast as a retrograde system, which might transform the "constitutional" Gold Coast Chiefs into autocrats, and would in any case tend to foster a form of organization

<sup>1</sup> See for instance the arguments used in the Papers Relating to the Delegation from the Gold Coast Colony and Aborigines Protection Society, 1934.

<sup>2</sup> This Society was founded in 1897 to oppose the Land Bill, and membership was in the first instance composed of Chiefs and a number of prominent lawyers.

<sup>3</sup> The history of these abortive measures is given in Chapter 50 of Vol. I of *The Native Problem in Africa*, R. L. Buell, 1928. See also page 220.

<sup>4</sup> Gold Coast (Legislative Council) Order in Council, 1925, Section 16. For the Provincial Councils see pages 45 to 53 of M. Wight, *The Gold Coast Legislative Council*, 1947.

in which educated commoners would neither command influence nor find employment. Members of the Society were already beginning to express their preference for a system of direct administration through a cadre of African officials, and the replacement of the Native Tribunals by Courts subordinate to the Supreme Court.

It is to these circumstances, not less than to the increasing public disapprobation of the misuse of Stool revenues and the maladministration of native justice, that the Government owed the initiative taken by some of the more influential Chiefs in the preparation and enactment of the Native Administration (Colony) Ordinance, No. 18 of 1927. It was actually put forward in the Legislative Council by an unofficial member, a prominent Paramount Chief. But though this measure constituted an advance on the Ordinance of 1878 it nevertheless had all the character of a compromise. It defined the position of the States' Councils and the relative positions of the Paramount Chief and other Chiefs. It prescribed a procedure for election and destoolment. It regularized and enlarged the powers of the Native Tribunals and instituted regular Native Courts of Appeal. It enabled the States Councils to formulate statements of the existing customary law which, when approved by the Governor, would be binding on the Native Tribunals.

In other respects however the Ordinance fell short of any effective measure of reform. It did nothing to show that a State Council, as such, could exercise powers only when so authorized by the Government, and only to the extent of that authorization. It did nothing to control the use of Stool resources by the establishment of Native Treasuries. In the judicial field the only control which it provided over the prerogative Native Tribunals consisted in the provision empowering a Provincial Commissioner to issue a writ transferring a case from a Native Tribunal to a Court under the control of the Supreme Court.

#### THE PERIOD BETWEEN 1927 AND 1944

In the years immediately following the enactment of the Ordinance of 1927, the increasing expressions of dissatisfaction by Administrative Officers and the criticisms of the Home Government forced the Gold Coast Government into renewed concern for reform of the system of native administration. It was now faced with the alternative between adopting some form of direct rule and continuing the use of the indigenous Native Authorities, though under a more systematic method of control. It had become apparent that there were two critical points, namely, the need for the introduction of an effective system of Native Treasuries and the reform of the Native Tribunals.

As regards the need for the establishment of a system of Native Treasuries, it will be recalled that there was still no procedure which compelled the Chiefs and the States' Councils to render any account of the expenditure of the revenues received from Stool lands. The members of the Native Tribunals still shared the benefit of the fees and fines of the Tribunals. Litigation concerning Stool property had plunged many Stools heavily into debt,<sup>1</sup> and it was customary for the States' Councils to meet this by special levies on the people in their jurisdiction, but without bringing the receipts to any form of public account. The opportunities thus presented for the use of Stool funds or of moneys raised from the public by levies led to an intense competition for the chiefship in some of the richer Stools, a constant source both of corruption and litigation.

<sup>1</sup> For a number of examples of the high cost of this litigation and the debts incurred see pages 31 to 33 of the Report of Commission of Inquiry, by C. R. Havers, K.C., 1945.

The mischief was obvious, but it was some years before the Government found it possible to apply the remedy. In 1932 it made an unsuccessful attempt to supply the States with a more regular source of revenue, as part of its own proposal for imposing a general direct tax in order to make up for the fall of revenue caused by the depression in world prices. The proceeds were to be shared by the Government and the States, and though two years later it was proposed that the whole benefit of the tax should accrue for the benefit of the States, the opposition was maintained and the proposal withdrawn.

The States were, however, encouraged to start Native Treasuries on their own account, and in 1936 an Ordinance (No. 25 of 1936) made provision for legalizing the imposition of levies by States which had established Treasuries. In a number of cases States availed themselves of these powers, but the value of the measure was reduced by the fact that there was no procedure for securing that all the revenues received should be brought to account, nor for the control by Administrative Officers of the expenditure incurred. Nevertheless, the results achieved were sufficient to allow the Government to secure the passing of the Native Administration Treasuries Ordinance, No. 16 of 1939, which enabled it to compel a State to establish a Treasury, and empowered it to frame Regulations under which estimates of expenditure would be subject to administrative sanction.

The second of the two critical points above referred to was the reform in the system of native justice. With the agreement of the Legislative Council, a Committee of Inquiry, which included a majority of African members, was appointed in 1942. Its Report presented to the public a convincing picture of the defects of the existing system. There was, as it pointed out, an unwarrantable multiplicity of Tribunals; one single District, for example, that of Winneba, had no less than 51, and the small Ajumaku-Esiam area in Saltpond District had four Paramounts' Courts and four of lower order. Frivolous litigation was in consequence fomented, and there were endless suits about jurisdiction between Chiefs. The Tribunals were composed mainly of persons holding office by hereditary right, to the exclusion of persons holding qualifications of education or experience of trading. There was no limit to the size of the bench which might hear a case, and large numbers, often as many as 15 or 20, might assert their right to share the sitting fees. The Paramount Chiefs were invariably Presidents; yet apart from the question of personal fitness, every consideration was in favour of relieving them of this position. But it is unnecessary to enlarge on this indictment of the existing procedure, for its truth was generally admitted.

#### THE NATIVE AUTHORITY ORDINANCE OF 1944

Fortified by this Report and by the acceptance given to the Treasuries Ordinance of 1939, the Government was able to proceed with the comprehensive measure of reform embodied in the Native Authority and Native Courts Ordinances of 1944.<sup>2</sup> It has been aptly said that the purpose of these measures was to secure that "the dual system of the Central Government and of Native Administration as two separate powers, which may co-operate but need not, should be replaced by a unified system in which the Central Government and

<sup>1</sup> Report of the Native Tribunals Committee of Enquiry (usually referred to as the Blackall Enquiry), 1943.

<sup>2</sup> Native Authority (Colony) Ordinance 21 of 1944, amended by 24 of 1945 and 13 of 1947. Native Courts (Colony) Ordinance 22 of 1944, amended by 76 of 1945 and 44 of 1947. Native Courts (Colony) Procedure Regulations, 1945. These Ordinances applied only to the Gold Coast Colony, not to Togoland.

the Native Administrations are both parts of the one governmental machine." Since these two Ordinances regulate the procedure of native administration at present in force, it will be convenient to deal first with the provisions of the Native Authority Ordinance, and to describe the conditions prevailing in regard to the administrative aspect of local government institutions, leaving for separate treatment the organization of native justice under the Native Courts Ordinance.<sup>1</sup>

The Native Authority Ordinance of 1944 made it clear that the organs of local government were to be Native Authorities, duly appointed as such, and not necessarily the Chiefs and the State Councils constituted by the traditional procedure already described. The State Councils were thus left in discharge of their ceremonial, social and ritual functions, together with certain constitutional functions within the field of native custom, as shortly to be described below, but they ceased to possess legal authority either in administrative or fiscal matters. The Native Authorities were to be appointed by the Governor, and if he found it inexpedient to appoint a Chief and Native Council or group of Native Councils, he might appoint any person, subject to the condition that such person should be a native of the area concerned. The period of such appointments was limited to a year, but might be renewed, the primary object being to make provision for cases where the succession to a Chieftom was in dispute or a State Council disrupted by quarrels. Failing the existence of a Native Authority, the Governor was empowered to appoint an Administrative Officer to discharge its functions.<sup>2</sup>

The Governor could revoke or suspend the appointment of any Native Authority, and where necessary remove to any other part of the Colony a Native Authority whose appointment had been revoked. The Native Authorities, besides having the powers and duties imposed by native customary law, were given a wide range of duties and corresponding powers for the maintenance of law and order and the performance of the functions of local government, the Ordinance following in this respect the model of the contemporary Ordinances of other British African Colonies. It was now provided, however, that if a Native Authority neglected to issue the necessary orders, the Provincial Commissioner might direct it to make such orders or in default make them himself.

On the fiscal side, the Ordinance made a comprehensive enumeration of the sources of revenue which were to be held as accruing to the Native Authority, which included not only all fees and fines of Native Courts, but all revenues from rents or royalties on Stool properties. The management of such moneys was to be in the hands of a Finance Committee, which was to be composed of members of the Native Authority or otherwise, and estimates of revenue and expenditure were to be approved by the Provincial Commissioner. The provision that the Finance Committee might include persons who were not members of the Native Authority was of special importance. The Native Authority was empowered to add to its revenues by imposing an Annual Rate on persons residing or owning immoveable property within its area. These fiscal provisions replaced those of the Treasuries Ordinance of 1939, which was repealed so far as regards the Gold Coast Colony but remained in force for South Togoland.

<sup>1</sup> Page 211.

<sup>2</sup> Appointments under this provision have recently been made in the case of the Shai, Agona, and Shama States. Owing to disputes within the Council, Shama State had had no Paramount Chief for seven years.

In regard to the State Councils, the Ordinance laid on them the duty to specify in writing the persons who are members of a Council, and conferred on the Council the authority to enquire and determine any constitutional matter arising within its area, subject to an appeal to the Provincial Commissioner in his administrative capacity. Such constitutional matters were to include the election, installation or deposition of a Chief or the recovery or delivery of Stool property. Chiefs were to maintain an inventory of Stool property, and any transactions involving its alienation or pledging was to be invalid. The Ordinance maintained the former provision giving the State Council power to record a declaration of what in its opinion was the customary law on any point, and such declarations, if approved by the Governor, were to have the force of law.

#### THE NATIVE AUTHORITIES AS NOW CONSTITUTED

In 1944 the Gold Coast Colony, including Togoland, had 63 recognized States. They ranged in size from Akim Abuakwa, which in the Census of 1931 had a population of over 150,000, to Himang, with a population of 830. Some of these had a very small area; there were for example two States, Upper and Lower Axim, whose Paramounts lived in the same town. One of the two Dixcove States, to take another example, had only six villages. But 26 of the less important States have now been grouped into seven Confederacies. The member States of these Confederacies are Native Authorities, but it is the Confederacy Council which exercises the power of making Rules, and maintains a Treasury and Appeal Court.

It may, however, be remarked that these Confederacies have as yet only a nominal value, since the component States retain Sub-Treasuries and their Councils act independently in a variety of other ways. There is also a Tongu Confederacy which does not consist of a federation of States, but is a union of ten Divisional Chiefs. Tongu has an Ewe population which was formerly allied to the Ada State, containing Adangbes, and the Akwamu State, containing Akans, and the Confederacy has been formed to obviate the differences arising from this association. Though therefore there are nominally 63 Native Authorities, the number has for practical purposes been reduced to 47.

Save in the case of the Confederacies, the Native Authority is gazetted as consisting of a Paramount Chief and the State Council. In Tongu, where there is no State with a Paramount Chief, the Native Authority is gazetted as the President and Council, the President being elected by the Council, which in this case consists of the ten Divisional Chiefs who form the Confederacy. In view of what has already been said regarding the dependence of Chiefs on their State Councils, it is important to note the present composition of the latter. There has been a growing tendency to include "commoners" in their membership and an analysis of the composition of the State Councils as a whole, shows that about 30 per cent. do not belong to the category of Divisional or Sub-Chiefs, stoolholders, or traditional title holders. In some cases, these are expressly chosen as representatives of different interests. Thus the State Council of the large State of Akim Abuakwa, of which the late Sir Ofori Atta, the most distinguished figure of recent years in Gold Coast politics, was the Omanhene, has 40 members. The majority is composed of Divisional Chiefs, Sub-Chiefs or Adikrofo, but there are in addition two representatives of the Scholars' Union, three of the Strangers' Community, the Legal Adviser of the Council (a barrister) and two representatives of the Churches. In the same way, there



are among the 24 non-traditional members of the Wasaw-Amenfi Council representatives of the "stranger" communities, of the Scholars' Union and the Churches, as well as some traders and craftsmen.

These examples are, however, somewhat exceptional, and there are wide differences among other States. Ten of them still have no "commoner" on their State Councils. It will be recalled that though the names of the members of the State Councils have to be declared to Government, they are not subject to its approval, nor does it appear that Administrative Officers normally use their influence to regulate the selection of members. Some of the State Councils are large bodies; Asebu for example has 81 members, and a number have over 50, the general average being about 40.

The quorum prescribed for a valid vote by a State Council varies, but as a rule the presence of about half the members is required to form a quorum, and it is clear that in practice the government would not accept the decision of a Council unless all its principal members were present and a majority had agreed. The standard of literacy appears to vary between five and 50 per cent., but it is noticeable that the membership includes very few men of higher education. The fact that the numbers are so large increases the tendency for the Paramount Chief, though in form only President of the State Council, to act in concert with a small inner ring of the Councillors.

Since the enactment of the provisions in the Ordinance of 1944 regulating the procedure of destoolment, the position of the Paramount Chief has become far more stable, and in the last year there were only three destoolment cases in which Paramount Chiefs were concerned. There is a growing tendency to endeavour to secure as Paramounts and Divisional Chiefs persons who are educated, or who have had experience either in some former Government employment or in trade, though these efforts are not always successful, owing to the reluctance of men of higher education to take a position when they will be so largely dependent on the support of illiterate Councillors.

It is not possible to give precise figures of the emoluments now received by the Paramount or Divisional Chiefs, since many Chiefs still have family farms (which they may retain if declared when they are enstooled) and augment their incomes in a variety of other ways. The tradition that a Chief when once appointed to a Stool is unable to hold private property is no longer observed in practice. The emoluments received through the Native Treasuries may be illustrated by two examples. In the large Akim Abuakwa State already referred to the Paramount received in 1947-48 a salary of £1,048 a year, seven Senior Divisional Chiefs received an average of £276, 12 Junior Divisional Chiefs £54 to £150, 147 Minor Chiefs from £6 to £108 a year; allowances to Councillors and Elders totalled £2,944; Linguists drew £12 to £48 a year, and the Native Authority Secretary £170 to £245. In this State four of the Chiefs also received car allowances. The total of these emoluments amounted to £13,300, but the State had a total expenditure of £81,544.

Taking the case of a Native Authority at the other end of the scale, in the Peki Native Authority the Paramount Chief received £96 a year, three Chiefs received £30 each, six Minor Chiefs £15 to £24, the total being £288 a year, to which must be added £48 a year given as allowances to the other 21 members of the Native Authority. The proportion borne by expenditure of this type is best indicated by the fact that in the Estimates of 1947-48 the head "administration" accounted for £88,285 out of a total expenditure of £474,754, or a little less than 19 per cent.

#### THE USE MADE OF THE POWER OF SUBSIDIARY LEGISLATION

The State Councils began about the year 1911 to make some use of the powers conferred on them in the 1878 Ordinance for the making of Byelaws, but in the majority of cases these followed a standard form and referred chiefly to such routine matters as ferry and market dues, the sale of palm wine, the control of fishing and hunting, sanitation, slaughter houses, the licensing of herbalists and the like. At a later date they added a number of Byelaws relating to the control of cocoa, palm oil or rubber crops and the maintenance of Forest Reserves.<sup>1</sup>

• These Byelaws were however as a rule made at the instance of Administrative Officers, and it is generally agreed that there was very little interest shown in enforcing any regulation which did not directly affect the fiscal interests of the Councils, such as market rules and the like. Most of these Byelaws were reaffirmed as Rules under the Ordinance of 1927, and a number of new Rules of the same nature, such as those regulating Lorry Parks, have been added. But, as will subsequently be shown, the State Councils have in the past shown little concern in the use of these powers as a means of furthering the economic interests or general welfare of the people of their States.

The States' Councils have also made only a limited use of their power for making Rules declaring or interpreting native customary law.<sup>2</sup> Manya Krobo had a Byelaw relating to the use of the Odente Fetish and one prescribing the list of persons entitled to elect a Paramount Chief. Akim Abuakwa and Akwapim have Rules regulating Funeral Customs, Charms and Fetishes, and one for the regulation of the custom of succession to the chieftdom. Akim Abuakwa also has a Rule of some importance regulating the succession to the property of intestates. But there is nothing which shows any general attempt to clarify the customary law in issues of such importance as land tenure or succession to land holdings.

#### THE NATIVE AUTHORITY TREASURIES

All the Native Authorities or Confederacies now have Treasuries, which number 47 in the Gold Coast Colony, excluding South Togoland, and measures have been taken to reduce the large number of Sub-Treasuries which were at the outset maintained in some of the Divisions of the States, the formation of the Confederacies having been of special benefit in this direction. It is only in the large Akim Abuakwa State that there are now any considerable number of Sub-Treasuries.

The measures taken to regularize Stool finances inaugurated by the Treasuries Ordinance of 1939, followed by the provision made in Section 40 of the Ordinance of 1944 for the levying of an Annual Rate, have resulted in a striking increase in the revenues brought to account in the Native Authority Treasuries. In 1938-39 the total revenues brought to account by the Native Administrations (including Togoland) amounted only to £47,599. For 1946-47 the revenues of the Native Authorities amounted to £373,974, and the estimated revenues for 1947-48 were £478,489.<sup>3</sup> These figures include the receipts from the General Development grants which Government has made to

<sup>1</sup> As regards Forest Reserves see page 222.

<sup>2</sup> Section 130 of Ordinance 18 of 1927 (Cap. 76) and 30 of Ordinance 21 of 1944.

<sup>3</sup> These totals do not include receipts of the special Treasuries established under the Asamankese Division Regulation Ordinance (Cap. 78).

the Treasuries since 1945-46.<sup>1</sup> The chief heads of revenue for 1947-48 are shown below:—

Annual Rate	Receipts from Native Courts	Receipts from Lands	Fees, Tolls, Licences	Miscellaneous and Interest	Grants-in-Aid	Transfer from Reserve Funds	Total
£ 132,104	£ 67,815	£ 101,210	£ 92,577	£ 14,471	£ 63,340	£ 6,972	£ 478,489

The Annual Rate thus contributes the largest item of revenue. The Rate varies in different Native Authority areas, the maximum being 10 shillings per male and 5 shillings per female, the minimum 2 shillings per male and 1 shilling per female. In a few instances some graduation is made, Paramount Chiefs paying £5, Divisional Chiefs £3, Adikrofo and Linguists £1 in the larger States, with proportionately lower amounts in the smaller.

The introduction of the Annual Rate met at the outset with many obstacles, not the least of which arose from the strength of the traditional feeling in the Gold Coast against the imposition of any form of direct taxation, though the people had, as already noticed, been accustomed to the payment of "levies" (often of a considerable amount) for the benefit of Stool revenues or for the liquidation of their debts. A further difficulty arose from the extensive transfer of population from one State jurisdiction to the other, partly due to sales of Stool property, and partly to cultivators taking over new cocoa farms as the result of the spread of the Swollen Shoot disease.

As will be explained elsewhere,<sup>2</sup> parent States had been in the habit of claiming that they retained jurisdiction over their emigrants to other States, including the right to collect State "levies" from them. The wording of Section 40 of the Ordinance of 1944 was explicitly framed to obviate this difficulty by providing that the Annual Rate should be payable by residents or owners of immoveable property within the area of the Native Authority imposing the Rate. But though the legal position has thus been met, collection of the Annual Rate is still impeded by the quarrels about jurisdiction which no legislative provision seems able to terminate.<sup>3</sup> Moreover, there is in a number of States no regular procedure for the preparation of a roll of taxpayers, and the collection is haphazard. It is at present collected by Headmen, who receive a rebate of 7½ per cent. for their services. Even at the present scale of Rates, the receipts could be largely increased by a more efficient system of administration.

The sum credited under the head "Lands" still falls short of the actual receipts from this source, in spite of the provisions of Section 32 (a) of the Ordinance. While moneys derived from concessions are now fully credited, there are said to be considerable amounts received from sale of trees other than in Forest Reserves, leases of Stool lands and the like, which are not so credited.

The system of Grants-in-Aid was originally introduced in order to encourage the imposition by Native Authorities of the Annual Rate, grants being made in proportion to the sums raised from the Rate. The grants now made are proportionate to the amount collected from this source, with the added condition that they must be expended on recognized Development projects.<sup>4</sup>

<sup>1</sup> See page 210.

<sup>2</sup> See page 224.

<sup>3</sup> See page 225.

<sup>4</sup> Financial Circular, 14th December, 1946.

There is a further provision of £25,000 made for Government grants for the development of Education in backward areas, these being credited to the Native Treasuries but actually expended through the District Education Committees.

#### THE CONTRIBUTION MADE TO LOCAL SERVICES

The expenditure included in the Estimates for 1947-48 amounted to £475,754, as shown below:—

Administration	Treasury	Native Courts	Police and Prisons	Agriculture and Forestry	Medical and Health
£ 88,285	£ 36,444	£ 41,458	£ 40,097	£ 4,120	£ 39,097
Education	Recurrent Works, Communications and Services	Miscellaneous	Extraordinary	Contributions to Reserve Funds	
£ 92,568	£ 34,294	£ 19,055	£ 73,731	£ 6,667	
Total .. £475,754					

The Estimates of expenditure are now prepared (though still in some cases with assistance from the District Officer) by the Finance Committees above referred to. The Ordinance prescribes for the Committees a strength of five members; in a certain number of cases, where the Council is lacking in members qualified by education to serve on the Committee, one or two have been appointed from outside, usually schoolmasters or traders.

The figures of expenditure invite some comment. Though the proportion borne by the item of Administration to the total expenditure is not unduly high, there are some cases in which it is excessive; in the Ada Native Authority, for instance, it is no less than 64 per cent. The profits (over £26,000) accruing to the Native Authorities from the working of the Courts are in excess of what would elsewhere be considered reasonable. Of the expenditure of £40,458 on Police and Prisons £6,361 is on Prisons. The condition of many of these prisons is so unsatisfactory as to make it desirable that they should be abolished, and it is indeed doubtful whether the maintenance of prisons by the Native Authorities is appropriate in the conditions of the Gold Coast. The Native Authority Police (34,097) are said to be efficient in a few of the larger States, but this is not the case in many of the smaller units. They are now trained by the Government Police and are used primarily for prosecution in the Native Courts, a function which could not be carried out by Government Police. The whole system is however in an experimental stage, and the fundamental value of Native Authority Police has yet to be proved. As the Cocoa "hold up" of 1937 showed, they are liable to be used for objects other than the maintenance of law and order or the purposes laid down in the Native Authority Ordinance.

The expenditure on Agriculture (£3,761) and Forestry (£359) bears so little relation to the importance of these subjects as to be negligible. The Medical expenditure (£1,835) is also negligible, for the Native Authorities do not maintain dispensaries, though two of them now have Maternity Clinics.

The item of Health (£37,202) refers mainly to expenditure on Sanitary Inspectors or Overseers with their staff, usually employed in the towns or markets in charge of the Native Authorities.

The expenditure on Education (£92,568), of which about half is derived from the Government grants-in-aid above referred to, consists in the main of contributions to Mission and other schools, these being made through the District Education Committees, on which the Native Authorities are represented. The number of schools for which the Native Authorities are directly responsible is relatively small. In 1946 they had three schools in the category of Assisted Schools and 33 "non-Assisted," the difference consisting in the qualifications of the teachers. The Non-Assisted Schools were nearly all of the Infant or Junior Grade, with inferior buildings and equipment. The Akim-Abuakwa State, however, had a State College, this being a school of the secondary grade.

As regards other activities, the Native Authorities provide and manage a number of markets and in a few cases have assisted in the provision of rural water supplies. The buildings provided by them, such as Court houses, are in many cases of a relatively poor standard. On the whole, it is fair to say that as compared with some other territories, including many with less resources, the Native Authorities in the Gold Coast Colony make as yet little direct contribution to the provision of local services, and their general tendency is still to look to the Central Government to provide services of this type. Nor have they, with rare exceptions, shown any active interest in co-operating with the work of the Government Departments such as those of Agriculture or Forestry, and except in regard to Education their chief concern appears to have been in those activities, such as markets, lorry parks and the like, whence they can draw fees for the increase of their own revenues. It is perhaps to this tendency as much as any other cause that we must attribute the fact that the better educated classes in the Colony hold aloof from the Native Authority organizations or are inimical to them.

### THE ORGANIZATION OF THE NATIVE COURTS

It is convenient to return now to the organization of the system of native justice, the discussion of which was deferred pending an examination of the effect produced by the Native Authority Ordinance of 1944 in the field of administration. The Native Courts Ordinance of that year marked the final rejection by the Government of the claim that the Chiefs or other Stoolholders possessed any right of inherent jurisdiction. In substance, it was designed to give effect to the more important of the recommendations of the Blackall Committee of 1943.<sup>1</sup>

For the Native Tribunals which had been recognized by the Ordinance of 1927 it substituted Native Courts which were specifically declared to be constituted by a Government Order in Council, and which were empowered to exercise only such jurisdiction as might be conferred on them in such Order. Their members were to be appointed *ex officio* or otherwise under a similar Order, and the only concession to the practice which had previously given the Native Tribunals a traditional composition lay in the provision that the Native Authorities should be consulted before any person was appointed as member of a Court, and that their Presidents were to be appointed by the Native Authority.

<sup>1</sup> Page 204.

The remuneration of members of the Courts was to be provided from the Native Authority Treasury, to which all fees and fines were to be credited.

The Ordinance provided for the establishment of Courts of four grades, described as A, B, C and D grades. Their jurisdiction extends over cases arising under native law and custom (subject to the limits to be mentioned below), the provisions of Rules and Orders issued under the Native Authority and Native Courts Ordinance of 1944, and the provisions of any Ordinance which a Native Court is empowered to administer by the terms of the Ordinance or by special Order of the Governor. The number of such Ordinances is, as compared with some other territories, very limited, being confined to Sections 12 and 13 of the Labour Ordinance (Cap. 72), the Mosquitos Ordinance (Cap. 62), the Native Custom (Colony) Ordinance (Cap. 77).

In criminal matters the Courts administer the Sections of Book II of the Criminal Code (Cap. 9), with the exception of title 12, their powers being thus limited to the category of cases described as "summary" as opposed to "indictable" offences. In these cases their powers vary from a fine up to £50 and imprisonment up to six months in the case of an A Court to a fine of £2 and imprisonment up to one month in the case of D Courts. In regard to certain criminal offences arising in native custom, such as putting a "person in fetish," recklessly swearing an Oath, or using insulting language to a Chief, they are subject to the similar limit of powers.<sup>1</sup>

As regards jurisdiction in civil issues, the position is summarized in the following statement :—

	Grade A	Grade B	Grade C	Grade D
Suits for the ownership of land	Unlimited	Unlimited	No jurisdiction	No Jurisdiction
Suits to establish the paternity or custody of children, or for divorce or matrimonial causes arising under native law	Unlimited	Unlimited	Unlimited	No jurisdiction
Suits for succession of property	Unlimited	Where whole value of property does not exceed £200	Where whole value of property does not exceed £100	No jurisdiction
Personal suits	Where debt or damage does not exceed £100	Where debt or damage does not exceed £50	Where debt or damage does not exceed £25	Where debt or damage does not exceed £10

As regards appeals, persons aggrieved by the decision of a Grade B, C or D Court may (subject to the exclusion of the right of appeal in cases of minor importance) appeal to a Native Appeal Court where such exists, or otherwise direct to a Magistrate's Court. Appeal from a Native Appeal Court or from an A Grade Court in a Land cause in which the cause is of the value of £50 or over lies to a Court of the Supreme Court expressly constituted as a Land Court.<sup>2</sup> Appeal from a Native Appeal Court or from an A Court in other than Land Causes lies (subject likewise to the exclusion of a right of appeal in minor issues) to a Magistrate's Court, and thence to a Divisional Court of the Supreme Court. The law provides, therefore, for a close connection through the channel of appeal between the Native Courts and the Courts sub-ordinate to the Supreme Court. Moreover a Magistrate (who is in most cases an Administrative Officer) is empowered, on the application of either party to a cause, to transfer any case (other than a Land cause) to his own Court.

<sup>1</sup> See First Schedule of the Native Courts Ordinance 22 of 1944.

<sup>2</sup> See page 225.

The Ordinance also made two important innovations in regard to the control of the proceedings of the Courts. An amending Ordinance of 1935 had introduced the procedure common in most other territories, by which Administrative Officers are empowered to review the proceedings of Native Tribunals, but this was limited to criminal proceedings and the costs in civil proceedings. Though in the debates on the Bill the members of the legal profession showed themselves to be opposed to any extension of administrative control over the Native Courts, the Ordinance of 1944 empowered a District Commissioner to review civil cases, except Land Causes, as well as criminal cases, and to pass on them any order which the Court itself could have passed.

The second innovation was also of special significance. Acting on the recommendation of the Blackall Committee,<sup>1</sup> the Ordinance provided for the appointment of a Judicial Adviser. He was to possess the same power of review and revision as an Administrative Officer, and if the Native Court objected to a review by the District Commissioner his decision was to be subject to confirmation by the Judicial Adviser. As the Committee pointed out, his position would enable him to make a valuable contribution to the development of the system of native justice by the preparation of rules for regulating Court procedure and by rendering advice to Native Authorities on subjects about which they were empowered to make declarations modifying the customary law.

The promulgation of the Ordinance was accompanied by the issue of the Native Courts (Colony) Procedure Regulation, No. 10 of 1945, a measure that was the more necessary because, while some Courts had no settled procedure, others had begun to adopt a procedure modelled on that of the Supreme Court, which was clearly unsuited to their conditions.<sup>2</sup> The Regulations also prescribed a scale of fees applicable in all Courts, a greatly needed reform, for the fees charged were in some cases more numerous and higher than those charged in the Supreme Court. Among other changes, it abolished the "judgment" and "sitting" fees which had at one time been used as a means of adding to the revenues of the Courts.<sup>3</sup> The Judicial Adviser shortly afterwards began the issue of a series of Circulars for the guidance of Administrative Officers in supervising the proceedings of the Courts.

The reorganization for which the Ordinance of 1944 made provision is still being carried out and it is only possible to give here some of the more significant results as seen in 1948. The most important of these is the reduction effected in the multiplicity of Courts to which the Report of the Blackall Committee and the subsequent Commission of Enquiry by Mr. C. R. Havers in 1945 had called attention. During the currency of the Native Administration (Colony) Ordinance of 1927 there were in being, if not in actual operation, 324 Native Tribunals, with an unknown number of members. By the year 1948 the number of Courts in the Gold Coast Colony, apart from South Togoland, had been reduced to 146, on the principle that there should be not more than one Court for every 10,000 people, and that there should not be a Court unless there is a likelihood of its dealing with about 200 cases a year. The 146 Courts are of the following grades (See next page).

The number of Courts is still being adjusted, particular attention being directed to the reduction in the number of the lower grade Courts. The former practice by which a Chief and his Councillors sat as of right in a Tribunal by

<sup>1</sup> See Report, page 6.

<sup>2</sup> See Havers Report, pages 9 and 11.

<sup>3</sup> As regards the need for Rules of Procedure and the abuse of the use of fees, see pages 12 and 13 of the Blackall Report, 1943.

Grade D Courts	Grade C Courts	Grade B Courts	Grade B and Native Appeal Courts	Grade A and Native Appeal Courts	Native Appeal Courts
20	56	43	11	12	4

virtue of their own prerogative is no longer in force. In practice a number of Chiefs have been appointed by office as Court members, but in a growing number of cases, Chiefs have preferred not to be included in the duty roster, and there are now only a few instances in which a Paramount Chief presides over a Court. In place of the indeterminate number of members, mostly traditional Councillors or placemen, who sat in the former Tribunals, the Courts have now a body of appointed members who vary in number according to the importance of the Court, the average being about 20. They sit by roster on benches which normally number from five to seven persons.

The members of the Courts are appointed on the recommendations of the Native Authority, and there is considerable diversity in their composition. In a few of the more conservative States, the members are almost entirely traditional office holders or placemen, but there are on the other hand States in which the Courts include as many as 50 per cent. of persons who hold no office or position in the State organization. It would seem that taking the Courts as a whole, they contain from 15 per cent. of persons who hold no traditional or other office, and there is a growing tendency to appoint representatives of the Zongo or Stranger communities. On the other hand, the standard of literacy of the members of the Courts is by no means high, the average ranging between five and ten per cent., and they so far contain few professional men or persons of higher education.

#### THE STATISTICS OF COURT CASES

There would seem to have been some increase in the number of cases heard by the Native Courts since the passing of the 1944 Ordinance. In the years 1945-1946 to 1947-1948 they were as follows (excluding South Togoland):

1945-46			1946-47			1947-48		
Civil	Criminal	Total	Civil	Criminal	Total	Civil	Criminal	Total
10,281	29,238	39,519	13,402	34,734	48,136	14,760	42,294	57,054

The apparently disproportionate amount of criminal cases is due to the inclusion of the numerous petty offences against Health and Sanitation Rules, which in some Districts amount to 75 per cent. of the criminal cases heard, and also prosecutions for non-payment of the Annual Rate. Of the civil cases, the majority relate to the recovery of debts in the urban areas; it is noticeable that Land Causes account for only seven per cent.

There are no figures available for appeals filed in the years 1945 to 1947, but for 1947-1948 the appeals to Native Appeal Courts numbered 253 (of which 92 were successful) and appeals to Magistrates' Courts 141, of which 58 were successful. The reduction in the number of Courts has made possible an increased amount of supervision by Administrative Officers, and it is now usual for the major Courts to be inspected monthly, though at longer intervals in the case of the minor Courts. From such figures as are available, it does not appear that the power of revision is widely used, and it is for the most part



exercised as the result of personal complaints made to District Commissioners. The extent to which it is used is illustrated by the fact that eight cases were reviewed in 1946-1947 out of 2,650 in the Courts of the Ahanta Confederacy ; in the Akim Abuakwa Courts, 14 out of 9,003 ; in the Ajumako Courts, two out of 664.

In the present organization the position of the Registrar of the Courts is of much importance, and it is indeed observable that in some of them the Registrars exercise a direct influence over their decisions. The standard of education of this class has until recently been low, but an important step was taken in 1945 by the issue of the Native Courts Registrars Regulation No. 11, which provided for the examination of candidates for the post of Registrar, and restricted the employment of persons who were not on an approved list. Their pay has recently been raised, and there are instances in which a Registrar is now paid £120 a year, though in the minor Courts the pay is still only from £48 to £60 a year.

As has been explained, the preceding observations apply only to the Courts in the Gold Coast Colony itself. The Ordinance of 1944 did not apply to South Togoland, where the system of Native Tribunals is still that established under an Ordinance of 1932, which was based on the system prevailing in the Colony up to 1944.<sup>1</sup> There are in South Togoland 67 Native Tribunals, being one for each of the Divisions which have been federated into the so-called "States,"<sup>2</sup> and the number of Courts is therefore much in excess of that justified by the size of the population. Though some economy has been effected by grouping them together for the provision of clerical services, the present organization clearly demands reform. Difficulty is, however, likely to arise from the fact that when the Divisions were federated into "States," a promise was given that this would not impair the status of the component units, and the abolition of a Tribunal would be regarded as a blow to their prestige.

Up to 1933 the Courts would seem to have consisted of an indefinite number of members, mostly of traditional standing. In 1933 however an Order (No. 2 of 1933) prescribed the membership of the Court members by name and also laid down that not less than three or more than seven persons should form the bench. Exceptions were made in the case of Akpini, Asogli, Awatime, and Buem in certain respects. Another Order (No. 3 of 1933) made provision for appellate tribunals. The volume of work is small. In 1945-1946 there were only 2,220 cases (860 civil and 1,360 criminal) and in 1946-1947 the number was only 2,179 (866 civil and 1,313 criminal).

### THE URBAN COMMUNITIES

Whatever may be the propriety of using the terms "tribalized" and "detrIALIZED" as applied to Africans elsewhere, they can have little significance in connection with the population of the Gold Coast Colony. As already explained, the different Akan and Fanti States were political rather than tribal units, and the differences in respect of culture, social status or occupation are of greater importance than those based on tribal affiliations. The relevance of a study of the conditions of Africans living in urban conditions consists of the fact that the towns contain so large a number of Africans who

<sup>1</sup> Togoland Native Administration Ordinance, No. 1 of 1932 (Cap. 90).

<sup>2</sup> Page 206.

either on account of their education or because their chief interest lies in their professional or commercial life have shown a growing estrangement from the interests represented by the Paramount Chiefs and the traditional organization of the States.

There are no doubt many of this class who retain a feeling for the Stools in which their original homes lay, as institutions reflecting a past in which the Europeans had no part and as the repositories of customs and traditions which appeal to their national sentiment. But they tend to resent the political developments which have of recent years appeared to result in the alignment of the Paramount Chiefs on the side of the Government, and they hold that the political future of the country is prejudiced by the official tendency to rely on the Native Authorities as the agencies of local rule.

On the other hand, the history of the municipal or other institutions introduced by the Government in the towns illustrates the strength of the opposition which the Chiefs have, as a body, been able to offer to any invasion of their customary jurisdiction. It will be realized that for those Chiefs who have been most closely affected as holding jurisdiction in the coastal towns, the issue has not been merely one of prestige. Their States are for the most part small, and the sale or leasing of sites in the towns and the receipts from fees in their Courts have formed a large part of their revenues.

The three chief towns are Accra, with a population of 135,456, Sekondi-Takoradi, with 44,130, and Cape Coast with 23,061. There are, however, a number of smaller towns, such as Koforidua (17,715), Winneba (15,920), Keta (11,373), and 11 other towns with populations varying from 2,000 to 8,500. The extent of the population living in urban or semi-urban conditions is therefore a feature of growing importance in the social and political life of the Gold Coast. So far, however, as concerns the introduction of a system of municipal self-government, attention has hitherto centred on the three chief towns above mentioned.

#### THE MUNICIPALITIES

The history of the introduction of municipal institutions in these towns goes back into a surprisingly distant past. As early as 1858 the British Government decided on the institution of municipalities in two of their coastal "settlements," Cape Coast and James Town, Accra. The preamble of Ordinance No. 20 of 1858 referred to the uncleanly and disorderly conditions prevailing in those settlements, and pointed to the necessity for placing on the inhabitants at large the burden of keeping their towns in order, a task which they had hitherto been unable to accomplish "owing to the imperfect nature of their town government and the want of self-reliance, partly caused by the presence of the Government and its interference in past times with matters of detail foreign to its proper object." The Ordinance, as the preamble went on to explain, was designed to "accustom the people to orderly self-government in local affairs." It provided for the establishment of Town Councils, consisting of a Mayor and six councillors with powers which included the imposition of a Town Rate. The Mayor and Councillors were to be elected by the inhabitants on a franchise which gave every male adult a vote, with an additional vote, up to four votes in all, for each two pounds of Town Rate paid.

As was inevitable, this attempt to introduce the African to the principle of local self government speedily proved to be premature, and three years afterwards the law was repealed by an Ordinance (No. 1 of 1861) which consisted

almost entirely of a long and depressing Preamble. It explained that in the existing conditions "the satisfactory working of such elective municipal institutions is impracticable, particularly in consequence of the co-existence of the courts of the native kings or chiefs, and from the want of a sufficient proportion of educated residents . . . and from the utter inexperience and want of confidence of the people in such institutions." It went on to admit that the establishment of the Town Councils had resulted in "serious quarrels, disturbances and ill will between the different classes of people."

There the matter rested till 1889, when the Government enacted a Town Councils' Ordinance, but for reasons not now obvious this was left in abeyance till 1894, when it was re-enacted as Ordinance 17 of that year. Town Councils were established in Accra, Cape Coast and Sekondi. Their constitution was given a more practical form, in so far that half of their members were to be nominated and half elected, and they were to have an official Chairman, whose casting vote could secure a majority for the official half of the Council. But the elective principle was slow to win general interest, and in 1922, twenty-eight years after the establishment of the Town Councils, only 47 persons voted out of a voting list of 1,117 in Accra, two out of 200 in Sekondi, and none out of the 717 possible voters in Cape Coast.

It is noteworthy that no provision was made at this stage for representation of the States in whose jurisdiction the towns were situate. A committee which reported on the Town Council system in 1923, while holding that the English system of local self-government had proved to be foreign to the African genius and alien to its institutions, was not able to suggest how native institutions could be reconciled with this type of municipal government, other than by the suggestion that the Paramount Chief of the locality could be given the right to a seat on the Council but without a vote.<sup>1</sup>

The policy to be observed in the establishment of Town Councils shortly afterwards became an issue in the political controversy arising from the proposals for the revision of the constitution of the Gold Coast Colony, which, as shown above, was brought in effect in 1925. The scheme then under discussion contemplated that of the nine elected seats in the Legislative Council six should be elected by the Provincial Councils, composed of Paramount Chiefs, and three by the municipal electorate in the three towns with Town Councils. The Chiefs, whose suitability as an electorate was being criticized by the educated and progressive members of the community, demanded on their part that the composition of the Town Councils should recognize the fact that the municipal areas were within the jurisdiction of the States. The Government had in 1924 enacted an Ordinance, the Municipal Corporations Ordinance of 1924, designed to promote a greater interest in local self-government by providing the Town Councils with an elected majority and a non-official mayor, but the rivalry of the two parties, added to the disinclination of the townspeople to face the reorganization of the rating system implied in the Ordinance, made it impossible for the Government to put it into effect, and it joined the list of abortive measures which appear with such frequency in the legislative record of the Gold Coast.<sup>2</sup>

In 1943 the Government again took up the question, this time on lines designed to find some common ground between the points of view represented in the controversies in 1924 and 1925. It enacted separate Ordinances for

<sup>1</sup> Gold Coast Sessional Paper XVII, 1922-23.

<sup>2</sup> Gold Coast Sessional Paper I of 1925-26.

each of the three towns, but these differed only in minor details.<sup>1</sup> In each town the Council was given an elected majority, but its membership was to include representatives nominated by the local Native Authority—the Ga (for Accra), the Ogwaa (for Cape Coast) and the Ahanta Confederacy (for Sekondi-Takoradi). As a result, the composition of the Councils consisted in 1948 of three (or in the case of Sekondi-Takoradi two) members nominated by Government (who are not necessarily officials); two (or in the case of Sekondi-Takoradi three) members nominated by the local Native Authorities; one nominated by the local Chamber of Commerce; and seven elected, being one from each Ward of the towns. The President of the Council is at present appointed by the Governor from among the members of the Councils, but the Ordinances provide that the Councils may subsequently be authorized to elect their own Presidents.

The franchise is exercised by all adults who have for six months before the date of the election owned any premises assessed to the Town Rate, or rented a living room in assessed premises, or occupied any part of assessed premises by virtue of their employment. There has clearly been some increase of interest in the elections, as is illustrated by the figures given below:—

Town	Year	Total number of Registered Voters	Wards Uncontested	Number of persons who voted
Accra .. ..	1947	11,130	3 out of 7	4,452
Cape Coast	1945	4,379	3 out of 7	2,707
Sekondi-Takoradi	1945	1,400	5 out of 7	26 per cent. in A Ward and 84 per cent. in B Ward.
	1946	793	5 out of 7	123

The financial position of the three Councils is as follows:—

Town	Year	Revenue	Expenditure
Accra .. ..	1947-48 Estimates	£ 205,582	£ 204,978
Cape Coast .. ..	1948-49 Estimates	22,218	21,292
Sekondi-Takoradi ..	1948-49 Estimates	72,938	69,973

These figures are not on a true accounting basis, as they are swollen by the inclusion of the gross income and expenditure on commercial services (such as the Municipal bus services in Accra and Sekondi) instead of the net figures of profit and loss. The Town Rate varies from 1s. 6d. to 1s. 8d. in the pound on annual assessed values, but it is generally agreed that the assessed values are on a very low basis. The revenue includes a Government contribution of £10,300 in the case of Accra, and £7,200 in the case of Cape Coast.

Judged from the standpoint of their activities, the Town Councils represent at present only an early step in the system of municipal self-government.

<sup>1</sup> Accra Town Council Ordinance 26 of 1943, amended by 44 of 1940, 1 of 1944, 23 of 1946 and 20 of 1948.

Cape Coast Town Council Ordinance 18 of 1944, amended by 24 of 1946 and 21 of 1948.

Sekondi-Takoradi Town Council Ordinance 29 of 1945 amended by 12 and 35 of 1946 and 22 of 1948.

They are not responsible for major services such as education, medical, lighting, water supply, or the major communications, and the quality of the services provided in towns such as Cape Coast and Sekondi are very far from impressive. The Councils do not deal with the question of re-housing, which remains the concern of the Government.

In Accra, the housing scheme undertaken as the result of the earthquake of 1939 was estimated to cost about £235,000, and has provided over 1,200 houses of a temporary type; the additional accommodation provided up to 1948 has involved a further cost of £177,445. The newer structures are permanent and of good character, but the rapidly increasing population of Accra has left a serious problem of overcrowding. A small housing estate (Siwundu) has been started at Cape Coast, and Sekondi-Takoradi has two housing estates, Adiembra and Effiekuma, of which the former is of considerable size, and has a layout and amenities comparing very favourably with any to be seen in British Colonial Africa.

The modern composition of the Town Councils has resulted in attracting to their membership persons of higher educational qualification and wider experience than those usually found in the Native Authority Councils. But it is doubtful whether the inclusion of representatives of the Native Authorities is of the same value as it has proved to be in the case of Kumasi, to which reference will subsequently be made.<sup>1</sup> This observation applies particularly to the case of Accra. Of the native population of Accra only one quarter are Ga, and the Native Authority as now constituted has little influence even among the Ga people. The Ga State is, as previously remarked,<sup>2</sup> somewhat of an artificial creation, and the position of the Ga Mantse as Paramount has no warrant in previous custom. The lands in Accra are attached to the Stools of Divisional or sub-Chiefs, with the added complication that the system of Divisional Chiefs is an innovation, following the form common among the Akan, but not traditional among the Ga people.

Judged in the light of its contribution to municipal progress, the maintenance of the jurisdiction of the Native Authority in the three Towns, though of some importance from the political aspect, does little to justify itself. The development of Accra in particular is severely handicapped by the conflicts between different Ga authorities as to the right of disposing of lands in the town area. In spite of the fact that the towns contain so large an element of "stranger" natives, the Native Courts follow the normal form of the Native Authority Courts, and are not specially constituted to provide for the hearing of "mixed" cases.<sup>3</sup> It is true that in Accra each "stranger" community has a Headman who may be asked to attend when cases involving members of his community are being tried, but this does not provide a substitute for a true Urban Court, which could, among other things, be empowered to deal with breaches of Municipal Byelaws.

#### THE TOWNSHIPS

The system of Town Councils has not so far been extended to other towns. An Ordinance was enacted in 1940 (No. 50 of 1940) for the purpose of setting up a Township Board at Tarkwa, designed to regularize the activities of a Voluntary Board which had been providing local services for this mineship

<sup>1</sup> Page 194.

<sup>2</sup> See page 248.

<sup>3</sup> See on this point Blackall Report, page 7.

area, but the Ordinance has not yet been brought into operation. Non-statutory Boards of a somewhat similar nature have been constituted at Bogosu, in the vicinity of the Marlu goldmining area, and at Jabesu near the Ntubia mine. There was at one time a non-statutory Board at Bibiani, a mining area, lying within the jurisdiction of three Stools of which two are in Ashanti, and having a large "mixed" population. Difficulties arising from this conflict of jurisdiction have now been solved by establishing Bibiani as a separate Native Authority on which all three States are represented. It has a Native Court, which now contains representatives of the various "stranger" communities.<sup>1</sup> A scheme is now under consideration for creating an Urban Authority at Koforidua, in the area of the New Juaben Native Authority.

Elsewhere the numerous small towns remain within the jurisdiction of the Native Authorities, subject to the provisions of the Towns Ordinance 13 of 1892.<sup>2</sup> This Ordinance has now been extended to over 160 towns but it is of a very unpractical type. It confers on certain Government officers, such as the District Commissioner, the Director of Works, or Health Officers, powers to issue orders in respect of building lines, repair of streets, sanitation, abatement of nuisances or control of infectious diseases. It is therefore impossible to say what authority is actually responsible for taking the initiative in these matters, and as a result they seem to be neglected by all the authorities concerned. Moreover, the Ordinance does not provide for the creation of any form of Town Council or Committee, nor for the levying of local rates, and any finances required for effecting improvements or engaging staff must therefore be obtained from the Native Authority Treasury, or from such grants as Government may make for the purpose.

Apart from considerations based on the growing political importance of the urban populations, the position of all these towns demands a far more comprehensive treatment than has hitherto been given to them by the Gold Coast Government. The problem is of older standing in the Gold Coast than in many other of the Colonial territories in which it has already received the attention of their Governments, and the increase of the population of the towns in recent years has created conditions which afford a legitimate subject of reproach to the Administration.

## LAND PROBLEMS

### THE POSITION OF THE GOVERNMENT

The very voluminous literature dealing with land problems in the Gold Coast Colony has been summarized in Chapter XIV of Dr. C. K. Meek's *Land Law and Custom in the Colonies* (1946), and it will accordingly be sufficient to refer here to the present position in regard to some of the issues with which that Chapter deals. After the failure to secure the enactment of the Land Bill of 1894 and the Public Lands Bill of 1897 the Government made no attempt to secure comprehensive legislation for dealing with the position of the Crown in regard to native lands. The small area of lands held by the Crown<sup>3</sup> has been acquired either by purchase or by utilizing the provisions of Ordinance 8 of 1878 regulating the acquisition of lands for public purposes,

<sup>1</sup> Order No. 73 of 1947 and Order in Council No. 102 of 1947.

<sup>2</sup> The numerous amendments to this Ordinance are embodied in Cap. 69 of the Laws.

<sup>3</sup> The latest available figures give this as only 89,323 square miles in the Colony and 1,291 square miles in South Togoland.

or as the result of the Agreements of 1850 and 1868 by which lands in the vicinity of the "forts" were taken over from the Danes and the Dutch.

The only laws enacted by the Government which have involved the assumption of any measure of control over other lands are the Concessions Ordinance of 1900 and the Forests Ordinance of 1927.<sup>1</sup> The Concessions Ordinance was designed to control the extensive alienation of lands to Europeans resulting from the gold mining boom at the end of the last century, and it is a significant fact that at the period at which the Ordinance was enacted it was estimated that the Chiefs and their Councils had granted mining concessions extending over 25,508 square miles, an area exceeding that of the Colony itself.<sup>2</sup> The Ordinance provided for an enquiry into these concessions and for their validation by judicial proceedings taken in the Supreme Court. The process had defects which have more than once been pointed out,<sup>3</sup> and it compares unfavourably with the system adopted in Ashanti to which reference will subsequently be made<sup>4</sup> but it has nevertheless served a useful purpose in so far that it has greatly reduced the area of concessions and has provided for an authoritative survey of their boundaries. It has incidentally secured to the Government a royalty of five per cent. of the revenues payable by concessionaires.

The latest available figures give the total area in the Gold Coast Colony alienated under the Concessions Ordinance as 10,087 square miles. No land is now recorded as alienated or held under the Minerals Ordinance and no land is shown as alienated in South Togoland. The total area alienated shows a considerable increase over that recorded as alienated 10 years ago, when the figure stood at 4,552 square miles, but there were at that time a number of cases under the Concessions or Minerals Ordinances still undecided, and of late years the demand for concessions has been revived by the interest shown in the timber and diamond industries. For our present purpose the chief relevance of the subject lies in the evidence which the judicial proceedings continue to provide of the difficulties arising from the absence of any legal determination of the limits of the jurisdiction of the Stools and from the conflict of claims as between Paramount and Divisional Chiefs.<sup>5</sup>

The enactment of the Forestry Ordinance No. 13 of 1927 was forced on the Government by the events following its inability to secure the passing of the earlier Forestry Bill of 1910, a measure which had been pressed on it by expert opinion as essential in order to safeguard the maintenance of the cocoa industry. Between the years 1910 and 1925 the Government sought to secure the reservation of forest areas by means of Byelaws to be made under the provisions of the Native Jurisdiction Ordinance of 1878, but by 1926 the States had passed Byelaws providing for the setting aside of only six Reserves, totalling 240 square miles, and had taken no practical steps for the enforcement of the Byelaws.<sup>6</sup>

The Forest Ordinance of 1927 provided for a procedure by which, failing the enactment of suitable Byelaws by Native Authorities under its Section 8, a Reserve Settlement Commissioner can, after due enquiry into any existing rights, establish a Forest Reserve. The Commissioner is given for this purpose

<sup>1</sup> 14 of 1900 amended 3 of 1903 and re-enacted in revised form by 19 of 1939. Forests Ordinance No. 13 of 1927.

<sup>2</sup> R. Buell, *The Native Problem in Africa*. Vol. I, page 822.

<sup>3</sup> See for instance Sir H. Belfield's Report on Legislation of Native Lands in Gold Coast, Cmd. 6278 (1912).

<sup>4</sup> See page 251.

<sup>5</sup> See further on this point page 224.

<sup>6</sup> Sir F. G. Guggisberg's Review of the Events of 1920-26, page 64.

the powers of a Court. A Forest Reserve thus constituted does not become Crown property, but is managed by the Forest Department under Regulations framed under the Ordinance. Where the Native Authorities have made approved Byelaws for constituting Native Authority Forest Reserves, the Forest Department acts in an advisory capacity, but permits for felling or the making of farms issued by the Native Authority require the countersignature of the Forest Officer. Proposals are, however, now being considered for giving the Forest Department the right to manage the Native Authority Reserves where this is proved to be necessary.

The present position is that out of the total area of what is for technical purposes described as the Closed Forest Zone, comprising 30,385 square miles in the Gold Coast Colony and Ashanti, the area under Forest Reserves amounts to 6,252 square miles, namely 3,665 in the Colony and 2,587 in Ashanti. The progress so far made in constituting Native Authority Reserves and "Ordinance" Reserves respectively is shown below :—<sup>1</sup>

	Reserves Constituted		Reserves Approved but not Constituted	
	N.A. Byelaw Reserves	Ordinance Reserves	N.A. Byelaw Reserves	Ordinance Reserves
Gold Coast Colony ..	2,028	602	—	1,035
Ashanti .. ..	2,389	51	146	—

The formation of Native Authority Reserves is still in process of negotiation. There seems to be some uncertainty in practice regarding the respective position of the Chief as representing the Stool and the Native Authority, as such, in this matter. The Ordinance makes mention only of the Native Authority, but in practice the Chief appears to take a leading part in these transactions, and to claim a part of the revenues received from royalties or felling permits. There is, however, evidence of a tendency on the part of those concerned with the revenues of the Native Treasuries to secure for the latter a due proportion of the proceeds of the sale of timber and there are a number of cases in which they have been successful in doing so.

#### THE RIGHTS IN NATIVE LANDS

Turning now to the second branch of this subject, that namely which relates to the nature of the private rights in native lands, it will have been gathered from the references quoted above, that the Crown has not in the Gold Coast claimed the power, such as it has affirmed for example in the legislation of Northern Nigeria or the greater part of its East and Central African Colonies, of "disposing" of rights in the native lands. Some attempt was made in this direction in the abortive Land Bill of 1897, but it is unnecessary to enter here at any length into the considerations which have since that date deterred the Government from proposing legislation of a similar character.

Whatever the political colour taken by the local opposition to the proposals of 1894 and 1897, its real strength lay in the determination of the stoolholders to maintain their right to dispose of Stool lands or to enjoy for their personal benefit the revenues derived from them. Apart, however, from political considerations, legislation would have involved exceptional difficulties owing

<sup>1</sup> Report of the Forestry Department, 1947-48.



to the fact that numerous land transactions, on the part both of Stools and private individuals, had created classes of rights to which neither the customary law nor European law were strictly applicable.

Admitting however that circumstances made it impossible, or at all events impolitic for the Government to attempt to assert any superior rights or ultimate proprietorship over the lands in the Colony, the same circumstances nevertheless made it desirable that it should endeavour to legislate in order to clarify the nature of the rights of the various parties, whether Stools or individuals, who occupied the lands or claimed a right to dispose of them. The need for such a measure was greater in the Gold Coast than in many other African territories, owing to the large number of transactions involving the disposal of land rights, and the great uncertainty in respect of the rights acquired by such transactions, or indeed the rights of individuals who held lands under the customary form of land tenure.

Though however the need for such legislation was obvious, the Government could on its part claim that it stood in one respect in the same position as most African Colonial Governments, since none of these Governments has as yet faced the task of legislating to define the character of the land rights or tenures arising in the customary law. Where this task has been undertaken elsewhere than in Africa, as for example in India or Egypt, it has been accompanied by some form of cadastral survey on the basis of which rights of individual holders have been systematically recorded in terms which have either been defined in a Land Law framed for the purpose or clearly established by judicial practice. This has therefore involved a double process, that of survey, and that of a detailed local enquiry in order to determine and describe in appropriate terms the categories of rights to be entered in the record. The success of any operation of the kind depends largely on the propriety of the terms used in describing the rights found to exist in the customary law.<sup>1</sup>

While, however, we must take due account of these difficulties, the fact remains that nothing has been done to remedy a situation which is detrimental to the economy of the Colony and reflects unfavourably on its Government. It is unnecessary to repeat here the official references to the fact that there exists what the Governor of the Colony described in 1929 as an "exasperating uncertainty" regarding the nature of the titles in land,<sup>2</sup> and it will be sufficient to recall the striking description given of the chaotic character of these conditions in the report of the Enquiry conducted by Mr. C. R. Havers in 1945.<sup>3</sup> Though the most prominent result has been a volume of litigation without example in native Africa and of indebtedness resulting from it, the situation has also involved other consequences which have seriously prejudiced the building up of the economic life of the rural community.

A lack of title militates against the development of a semi-permanent crop such as cocoa, and necessarily involves improvident husbandry. The indeterminate nature of the tenure by which lands are held has prevented the development of a system of agricultural credit, and encouraged the exorbitant rates of interest now charged by moneylenders. The position has in late years been aggravated by the numerous transactions following on the demand for farms to replace those affected by the Swollen Shoot disease of cocoa. Whole tracts of the State of Akim Abuakwa have been acquired by Akwapims; about

<sup>1</sup> See on this point the Introduction of Dr. C. K. Meek's work referred to in the text.

<sup>2</sup> Address to Legislative Council, 1929, page 97.

<sup>3</sup> Report, page 36.

half the population of Manya Krobo are now farming in the Akwamu and Akim Abuakwa States and elsewhere in the Birim District, and there are many similar instances.

#### LAND LITIGATION

An analysis of the facts regarding land litigation shows that it is of two different types. The first has had its origin in disputes between Stools regarding the boundaries of their jurisdiction and the rights over Stool lands which flow therefrom. This has been the most frequent cause of the Stool indebtedness, of which many typical examples are given at pages 31 to 33 of Mr. Havers' Report. The most conspicuous cases are perhaps that of the Asamangkes Division, as the result of which a special Ordinance had to be passed in order to control the finances of the Stools of the Division,<sup>1</sup> and Himang, where litigation began in 1872 and still continued in 1948.

Disputes of this type, however, involve two separate issues, though they have often been confused in practice, namely, the justiciable issue regarding the ownership of particular Stool lands, and the constitutional issue regarding the limits of a State's jurisdiction. In the African conception, jurisdiction and ownership are necessarily co-terminous. It has frequently happened therefore that where subjects of one State have acquired lands in another, the parent State has claimed that lands thus acquired fall within its own jurisdiction, together with the reversionary rights possessed by a State under customary law. Reference has already been made to the fact that when the system of an Annual Rate was introduced, a number of States claimed that members of their community who had taken up lands in the areas of other Stools were not thereby released from allegiance to their own Stool, and that an Annual Rate imposed by the Native Authority of the latter was payable to its Treasury even though the assessee had moved into the area of another State.<sup>2</sup>

It was at one time hoped that legal conflicts arising between different States or between Paramount and Divisional Chiefs might be curtailed as the result of the authority which Section 97 of the Native Administration Ordinance of 1927 conferred on the Provincial Councils to determine disputes between Chiefs where questions of jurisdiction or of occupation of lands were at issue. But cases tried by the Judicial Committee of the Provincial Councils proved to be unduly costly and subject to intolerable delays in hearing,<sup>3</sup> and the judicial powers conferred on the Councils were accordingly withdrawn by the Native Authority Ordinance of 1944. Proposals have at various times been considered for the appointment of a Boundary Commission to determine the limits of the jurisdiction of the different States, and this course was recommended in 1945 by Mr. C. R. Havers.<sup>4</sup> But this would not in itself provide a solution. The decision of a Boundary Commission might determine the limits of jurisdiction, but would not be adequate to resolve disputes regarding the ownership of lands; on the other hand, judicial decisions of the civil Courts on land issues could not deal with the constitutional question of jurisdiction.

It would seem therefore that in the circumstances a solution is to be found only in some form of Statutory Commission which would have final powers to deal with both the justiciable and the constitutional issues above referred to. This remedy is admittedly drastic, and might have to be imposed by the

<sup>1</sup> Asamangkes Division Regulation Ordinance, No. 3 of 1935 (Cap. 78).

<sup>2</sup> See page 209.

<sup>3</sup> Blackall Report, page 15, Havers Report, page 13.

<sup>4</sup> Report, page 35.

Government in spite of local opposition. But the continuance of the present situation would gravely prejudice the orderly development of any system of local administration.

Assuming, however, that a remedy can be found which will curtail the litigation arising from this particular source, there would still remain some of the difficulties arising from the second type of litigation, which has its origin in the uncertain nature of the rights in individual holdings, or arises from the application of the customary law of succession or testament. Land cases are only a small proportion of the litigation coming before the Courts, but they are the most contentious and most prolonged. The reorganization of the Native Courts following on the enactment of the Native Courts Ordinance of 1944 will doubtless result in some improvement in the procedure for the decision of land suits in the Native Courts. It will not, however, solve the difficulties arising as the result of transfers to or appeals to the Supreme Court.

Following the recommendations made by the Blackall Committee,<sup>1</sup> the Courts (Amendment) Ordinance 23 of 1944 provided for the creation of a Division of the Supreme Court to be known as the Land Division, with appellate jurisdiction and also exclusive original jurisdiction in land cases where no competent Native Court existed or where a case had been transferred from a Native Court. The Havers Report of 1945 seems to have assumed that the Lands Division would be a specialized Court dealing only with Land cases, and thus acquire an exceptional experience of native custom and the problems arising in land issues.<sup>2</sup> The scheme was widely welcomed when the Ordinance was passed, but its purpose has been largely frustrated by the practice followed in the constitution of the Lands Division. This has not become a specialized Court, and it shows no sign of making a judicial contribution to the clarification of the land law of the Gold Coast.

#### PROPOSALS FOR THE REGISTRATION OF TITLES IN LAND

It is obvious that the improvement of the procedure for the trial of land issues in both the Native Courts and the Supreme Court requires much further consideration from the Government. But though improvements in the judicial organization may diminish the uncertainties and the cost of litigation, they will not remove its root cause, namely, the uncertainty of the character of land titles, nor will they remove the obstacles to economic progress created by the same cause.

The solution for these basic difficulties is to be found only in the creation of machinery for the systematic registration of titles in land.<sup>3</sup> Whatever may be felt as to the necessity for the introduction of this system in some other African territories, there can be no question that it is now required in the Gold Coast Colony.

It is understood that the Government has had under its consideration proposals for legislation on the subject, but that it has hesitated to adopt them in view of the complicated nature of the problems involved, the expenditure which must be incurred, and the possibility of political opposition. But the complications now involved are due in large measure to the past failure of the Government to enact legislation on the subject of land rights. As for the

<sup>1</sup> Report, page 9.

<sup>2</sup> Report, page 19.

<sup>3</sup> For a discussion of the various procedures adopted for this purpose, see Chapter XXIII of Dr. Meek's book.

expense of carrying out a survey and providing the machinery for registration, it can be said with confidence that there is no item in the Government's present programme of development which is likely to yield so speedily an economic return as the systematic registration of land titles.

In the unstable circumstances of Gold Coast politics, it is difficult to forecast the degree of opposition which this measure may arouse. It will be recalled that the ostensible ground of opposition to the Land Bill of 1894 and the Public Lands Bill of 1897 was the possibility that the Government might use these measures in order to gain possession of the native lands. But that was the ground taken also in the opposition to the Forestry Bill of 1910, and the operation of the Forestry Ordinance of 1927 must have it made amply clear that the Government has now no intention of invading the private rights in the land held by Africans.

### CONCLUDING NOTE

#### THE FUTURE OF THE SYSTEM OF NATIVE ADMINISTRATION

It is difficult to forecast with any confidence the effect which the reforms of 1944 are likely to have on the future of the system of local administration. That is not merely because the interval has been too short to provide sufficient experience of the working of the present system, but because any speculation as to its future must take account of the past history of the bodies which had now become Native Authorities. The Paramount Chiefs had not in the past been accustomed to see themselves as agencies of local government, or as integral parts of the machinery of Government. All their earlier history shows them as contending with the British authorities for the maintenance of freedom from any measure of control, and if today they have acquiesced in some measure of control, it is because acceptance of the status of Native Authorities has seemed preferable to the future indicated for them by the more radical outlook of the progressive section in Gold Coast politics. In the future therefore the performance of their functions as Native Authorities is likely to be influenced mainly by a consideration of the manner in which it may affect their position in political life or the recognition given to them in constitutional developments.

But the future of the system of local administration does not depend merely on the attitude of the Paramount Chiefs. Tradition has given them a position of great influence, which has been enhanced by the formation of the Provincial Councils and by the prominent part taken by some of their leading members in the proceedings of the Legislative Council and in the higher counsels of the Government. It would therefore be unreasonable if any constitutional developments now in contemplation should fail to take account of the position occupied by them in the life of the Gold Coast. But there is a further consideration. The part which the Native Authorities are likely to play as agencies of local government will be largely determined by the composition of the State Councils over which the Paramount Chiefs preside and on whose support they are in practice so largely dependent.

As has been shown, the composition of these Councils is still largely traditional, and indeed it is often difficult to determine whether action taken on any particular matter of local concern is that of a State Council, concerned primarily with Stool interests, or a Native Authority, charged with the obligations imposed on it by the Native Authority Ordinance. As a consequence of their traditional composition the State Councils have failed to attract the

membership of men of higher education and professional attainments. In only a few cases have they been able to offer emoluments adequate to secure the services of a competent staff, and, as has been made clear, the interest taken by them in developing local services compares unfavourably with that shown by Native Authorities in many other territories. It is at the same time proper to add that if they have failed in this last respect, a share of the responsibility rests on the Government, which for a long period seemed to have no clear policy as to the lines on which a system of local administration should be developed, or if it had, failed to exert its influence to give effect to it.

It is not therefore unreasonable that there should today be many to whom it seems debateable whether the present system of local administration should be maintained or whether it should be radically revised, as for example by the substitution of a system of local or District Councils designed to contain a considerable proportion or even a majority of elected members. It would however be inadvisable to force this issue to a decision until a serious effort had been made to adjust the existing system of Native Authorities to the requirements created by modern developments in the Gold Coast. It would be a mistake to conclude that the State Councils are an outmoded institution which can have no use in modern conditions, or that the population of the Gold Coast contains a majority of advanced and progressive people, keenly desirous of taking a more direct part in the management of their local affairs.

If however the Native Authorities are to gain acceptance as the best available agencies of local government, it will not be sufficient to take a stand on the reforms introduced in 1944. They must be followed by measures which will, in the first place, place the administration of the numerous towns on a basis at once more efficient and more acceptable to urban residents.<sup>1</sup> The traditional composition of the State Councils must be revised. Measures must be taken to stimulate the popular interest shown in the development of local services and to improve the organization available to the Native Authorities for their development. These measures may involve some break with past tradition, but as it has been necessary to observe elsewhere, traditional institutions can survive only so long and in such measure as they can be of effective service to the community.

#### THE FUTURE OF THE JUDICIAL SYSTEM

Looking at the present position of the judicial organization in the Gold Coast Colony, there can be no doubt of the value of the reforms effected under the Ordinance of 1944. But it is not as yet possible to judge how far the changes in organization have made a radical improvement in a system which, as previously pointed out, had been publicly characterized by the Government as inefficient and corrupt. It is difficult to arrive at an objective judgment on the question of corruption. On the one hand, litigants hesitate to complain of the integrity of Courts which they still regard as representing a State or Stool Tribunal, while on the other hand the Courts are subject to attacks which have been inspired mainly by political considerations or the prejudice of professional lawyers.

Apart from any question of corruption, the reforms have already gone some way to remove the defects in procedure to which the two Enquiries previously quoted drew attention. Nevertheless the system is still open to

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<sup>1</sup> See on this point page 219.

criticism at many points. It is, for example, difficult to justify the retention of a number of the Courts with lower powers. No remedy has yet been found for a matter which has, as has been pointed out in dealing with the problem of land rights, constituted the most persistent source of expensive litigation, namely, the conflicts of Stools regarding the boundaries of their jurisdiction and lands.<sup>1</sup> The result of the creation of a Land Court of the Supreme Court has been disappointing. There is still much to be done in providing the Courts with guidance which can only be gained as the result of a more systematic study of the customary law, especially in regard to land issues.

Clearly therefore there remains an extensive field which requires the further consideration of the Government, and this is the more necessary in view of the special position occupied by the Native Courts in the Gold Coast Colony. They exist side by side with the Courts subject to the Supreme Court, which in the Gold Coast deal with an unusually large volume of litigation and engage the services of an African legal profession far more numerous and more fertile in legal expedient than that of any other area in British Colonial Africa. That lawyers are here, as elsewhere in the British Colonies, debarred by law from access to the Native Courts,<sup>2</sup> does not mean that they abstain from an active interest in the litigation in those Courts. It is inevitable accordingly that the administration of the native system of justice should be increasingly judged by the standards attained by the Magisterial and Divisional Courts subordinate to the Supreme Court.

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<sup>1</sup> Pages 209 and 224.

<sup>2</sup> Section 22 of the Native Courts (Colony) Ordinance of 1944.

## SECTION II

### ASHANTI

#### GENERAL

It is unnecessary to refer at any length here to the long series of Ashanti wars which have formed so important a part of Gold Coast history.<sup>1</sup> For the present purpose, the most important dates in the modern history of Ashanti are the declaration of the Protectorate and the appointment of a Resident in 1896, followed by the declaration of annexation in 1901.<sup>2</sup>

Under the Order in Council of 1901 the Governor of the Gold Coast was empowered to administer and legislate for Ashanti, for which purpose he either enacted Ordinances in the form of those passed by the Gold Coast Legislature or enacted separate Ordinances. There was, however, a progressive process of unification with the Gold Coast, both in economic and administrative matters. In 1934 the Executive Council of the Gold Coast Colony became the Executive Council for Ashanti and the Northern Territories, and in the same year a Gold Coast Ordinances Order in Council was issued, enabling laws to be enacted either for the Colony and Ashanti together or for the Colony. The effect of this was to enable Ordinances to be passed which would be enacted by the Governor and Legislative Council in respect of the Colony, and by the Governor in respect of Ashanti.

This procedure reflected the position created by the Order in Council of 1925, under which the membership of the Gold Coast Legislative Council was confined to representatives from the Gold Coast Colony. The situation has, however, now been radically changed as the result of the introduction of the revised constitution of 1946, which provided representation for Ashanti in the Legislative Council. This was to be known henceforth as the "Legislative Council of the Colony and Ashanti." Of the six ex-officio members one, the Chief Commissioner, represents Ashanti; of the 18 elected members, four are elected by the Ashanti Confederacy Council and one, representing the Kumasi Town, is elected directly by the electorate in the Town. The Governor is now empowered to legislate for the Colony and Ashanti, with the advice and consent of the Legislative Council.<sup>3</sup>

Ashanti is now divided for administrative purposes into four Districts, under a Chief Commissioner, with his headquarters at Kumasi. The area

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<sup>1</sup> The history of these wars is narrated at length in *The History of the Gold Coast and Ashanti*, W. W. Claridge, 1915, and more shortly in *The History of the Gold Coast*, W. E. F. Ward, 1948, Chapters VII, VIII, X.

<sup>2</sup> Order in Council, 26th September, 1901. Amending Orders were passed on 6th July, 1907, 8th May, 1919, and 14th July, 1922.

<sup>3</sup> Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946. For the history of these developments see *The Gold Coast Legislative Council*, M. Wight, 1946.

and population of the four Districts, as shown in the Census of 1948, are as follows:—

District	Area	Population	Density per Square Mile
Kumasi .. ..	5,910	376,283	63·7
Mampong .. ..	6,955	102,758	14·8
Bekwai .. ..	2,220	157,894	71·1
Wenchi-Sunyani .. ..	9,294	182,009	19·6
Total .. ..	24,379	818,944	33·5

The process of administrative and legislative unification above described has had its corollary in the increasing importance of Ashanti in the economy of the Gold Coast territory as a whole. The northern portion is largely composed, like the Northern Territories, of "savannah" or "orchard" bush, and is mainly devoted to subsistence cultivation, but a recent survey seems to indicate that an area of approximately 800 square miles may be suitable for the production of ground nuts by mechanized process, and proposals have been under discussion for undertaking a pilot scheme to test the possibilities of this area. The southern half of Ashanti lies in the tropical rain belt of which the most characteristic feature is the production of cocoa, and in 1949, Ashanti contributed 44 per cent. of the total export of cocoa from the Gold Coast. There are large areas, placed by some estimates between two and three million acres, which are available for the future development of cocoa farms.

The development of the large Forest areas has only recently been taken in hand, but it has revealed the existence of a considerable amount of valuable timber. Obuasi, on the southern border of Ashanti, is the headquarters mine of the Ashanti Goldfields Corporation, which in 1946-1947 accounted for about one-third of the total amount of gold produced in the Gold Coast territory. The capital town of Ashanti, Kumasi, has a smaller population than Accra, but has advantages in position and layout which would make it the most suitable centre for the capital of the whole territory, if a change in this respect could now be regarded as practicable.

#### THE SOCIAL STRUCTURE

For the purpose of the present survey, however, the social factors are perhaps more important than the economic, and it is necessary to deal with them in some detail. Ethnographically the Ashanti country is a single unit, speaking the same language, with dialectical variations, and with the same kinship and religious institutions, again with local variations. But it has a characteristic feature in the predominance of the Ashanti, distinguishable as a political rather than an ethnical group, which is most strongly represented in the present Kumasi District, but constitutes nearly two-thirds of the population of the area as a whole.

The Ashanti are a branch of the Akan people of the Gold Coast and the neighbouring part of the French Ivory coast. They speak dialects that fall within the Twi division of the two dialectical divisions, Twi and Fanti, into which the language used by the Akan people is commonly divided. Their



earlier history is obscure, save in so far that it is accepted that they migrated in successive waves from the north and north-west. They were then by tradition a nation of hunters, and R. S. Rattray, the author of the most comprehensive study of the history and social structure of the Ashanti,<sup>1</sup> describes them as being at this period in the neolithic stage. He has traced their subsequent evolution, firstly by formation into larger groups, some of which are reproduced in the "Divisions" of the present day,<sup>2</sup> and finally by the union of these groups into a federation which formed the basis of the modern Ashanti Confederacy.

This federation had its origin in the time of Oti Akentin, leader of the Kumasi clans, who died in 1660. But it was consolidated by a subsequent head of these clans, Osei Tutu (1697-1731), largely as a means of securing freedom from the rule of the Denkyera State, to which the Ashanti had been subject.<sup>3</sup> In this effort Osei Tutu had the powerful aid of another great figure in Ashanti history, the priest Okomfo Anokye, whose magic, as tradition relates, brought down the Golden Stool from heaven, and who certainly succeeded in establishing it as the visible symbol of Ashanti nationhood. Freedom from Denkyera rule was achieved as the result of the battles of Feyiase, near Kumasi, and the Ofin River in 1700 and 1701.

The federation originally adopted for military purposes was followed in the post-Feyiase period by a growing measure of political union. The Golden Stool became a factor of increasing significance in Ashanti, and the leading Chiefs, though politically independent in their own Divisions, swore allegiance to the Head Chief of the Kumasi Division, as the Asantehene and occupant of the Stool. The military organization, kept in being by the persistence of Ashanti raids on their neighbours, was reproduced in the formation of the political and social structure. The Mpanyimfo, the group of Elders who acted as Counsellors to the Chiefs, acquired military titles, such for instance as Ko'ntire and Akwamu (first and second in command) or Benkum Hene and Nifa Hene (leaders of the Left and Right Wings) and they came to exercise in peace time an authority similar to that held in war.

Subsequent developments have tended to strengthen the sense of political union among the members of what was in its origin a military organization. The Asantehene remains the Head Chief of the Kumasi Division, and his titular authority extends only over the Kumasi clan chiefs; but he is the central figure in the Confederacy, and the allegiance which the Divisional Chiefs owe to him as occupant of the Golden Stool has something more than a ceremonial and ritual significance. As will subsequently be seen, the Divisional Chiefs have come to recognize the need for contributing to the support of the Stool from their Divisional revenues. But the sense of political unity has been promoted in even greater measure by the position now acquired by the Confederacy Council, which will be described at a later stage.

Looking at the social structure as it exists at present, there is now a practical identity in the procedure to which different grades of native authorities owe their appointment to the Stools which they occupy. As elsewhere in the Gold Coast, the village is the basis of the social structure, its affairs being managed by a council of family heads among whom the headman (Odekuro

<sup>1</sup> R. S. Rattray, *Ashanti*, 1923; *Ashanti Law and Constitution*, 1929.

<sup>2</sup> The "Division" is now defined as "a territorial area in respect of which a person is elected and installed as Head Chief" (*Native Courts Ordinance 2 of 1935.*)

<sup>3</sup> For the history of the Denkyera State, a Fanti State which achieved considerable power early in the 17th Century, see *History of the Gold Coast*; W. E. F. Ward, page 48.

or Odikro) is the principal figure. He is selected by other Elders from a traditional leading family, and can be removed or "destooled" by them. Subchiefs and Chiefs are appointed to their Stools by a similar process and are liable to removal in the same manner. In practice, the chiefship is vested in a family or families following the principle of matrilineal lineage, any member of which is eligible to be a candidate. The same principle of selection applies in the case of the Asantehene. The other Divisional Chiefs have no voice in his selection; he owes his position to selection by the "Clan" Chiefs in the Kumasi Division, and as Omanhene of that Division he is the occupant of the Golden Stool.<sup>1</sup> The position occupied by the "Clan" Chiefs in the Kumasi Division will be subsequently explained.<sup>2</sup>

While this procedure places great weight on the position of heads of traditional "chiefly" families, it differs widely from a feudal system in which the commoner is subject to the rule of a dominant aristocracy. The Chiefs are of the same stock as the commoners. The tradition that a family head can act only in consultation with members of his family persists also in the relation of a village head with other family heads or of a Chief with his Councillors. The position of a family head is thus that of "a chosen representative of a group, bound together by a common tie of blood, and he administers an estate in which everyone of his kinsmen has a stake." The relation of a village headman to other family heads is that of a head of a household whose members he is bound to consult; and in the same way, the power of a Chief lies in the fact "that when he speaks in his official capacity it is not himself, but the general voice speaking."<sup>3</sup>

The observance of these principles has no doubt depended in practice on the personality of the headman or Chief. But its observance was assisted by an institution shared by the Ashanti with some other of the Akan tribes. They were organized in actual warfare in companies of warriors known as Asafu, who were grouped in bodies based on paternity as opposed to the matrilineal system prevalent in other features of the social organization. In peace time the Asofo formed two recognized bodies, the Asafu Kyirem being concerned mainly in such functions as settling the price in markets, material assistance in housebuilding and the like, while the Asafu Kyenku acted as representatives of the common people in dealing with the Chiefs. It is clear that they have often constituted an effective opposition to the Chiefs and a check on the arbitrary use of their powers. The practice of destoolment is no longer as common in Ashanti as in the Gold Coast Colony, but there is evidence that considerable use was at one time made of it.

## THE PRESENT ORGANIZATION OF NATIVE ADMINISTRATION

It is not unnatural that when the Government first entered on the administration of Ashanti, its outlook on native policy should have been largely dictated by military considerations. In 1896 the Asantehene and certain members of his family, together with seven of the Head Chiefs, had been deported. The Confederacy had been formally dissolved. Anything, therefore, which seemed likely to revive its former power was discountenanced; the pretensions of some of the smaller and better affected Chiefs were encouraged

<sup>1</sup> The Asantehene is defined in law as "the person who is recognized by the Governor as occupant of the Golden Stool of Ashanti" (Ordinance 21 of 1939).

<sup>2</sup> See page 237.

<sup>3</sup> R. S. Rattray, *Ashanti Law and Constitution*, page 18.

and in some instances Chiefs were recognized who had no traditional status. It is not necessary to deal here with the causes which produced a change in this policy; it was signalized by the declaration made by Government in 1921 that it made no claim to the possession of the Golden Stool of Ashanti;<sup>1</sup> by the reinstallation of Nana Prempeh as Omanhene of Kumasi in 1926; by the recognition of the Confederacy in 1935, with the Omanhene of Kumasi as Asantehene; and finally by the restoration of the Kumasi lands in 1943.<sup>2</sup>

The restoration of the Confederacy was an event of great political importance, and the regard thus paid to Ashanti tradition greatly improved the relations between the Government and the people. It did much also to revive the spirit of nationhood which has always been a marked feature of Ashanti history. This is a feature in the life of Ashanti to which it is not easy to find a parallel in West Africa, though some analogy exists in the spirit shown by the Baganda of East Africa and the Basuto of South Africa. It accounted, in part at least, for the disinclination shown for many years by the heads of the Confederacy to join with the Gold Coast Colony in a Legislative Council having jurisdiction over both areas. It was not until 1942 that they evinced an interest in favour of representation on a joint Council, an interest to which, as shown above, legislative effect was given in the reformed constitution of 1946.<sup>3</sup>

Apart from the effect of the incidents terminating in the action taken by the Government in 1896, it is clear also that at the outset exceptional difficulties were experienced in utilizing as Native Authorities the various categories of Chiefs and Stool holders, who enjoyed a marked measure of independence in their own local affairs. As part of the military organization they had been under the control of their Head Chiefs, but they themselves owed their position to selection by the traditional procedure above described, and in peace time they were in most matters subject only to such control as was exercised by their Councillors or other members of their own community. It was no doubt of some assistance that Administrative Officers were in a position to fix boundaries of jurisdictions by executive order, thus avoiding some of the uncertainties occasioned in the Gold Coast Colony by disputes in this matter.<sup>4</sup> Nevertheless, progress towards a normal procedure of native administration was for some time slow; there were in particular many complaints regarding the conduct of the Native Courts, and it was not found possible to control the Chiefs in their use of the funds of their Stools. When moreover the Confederacy was restored in 1935, it became necessary to make adjustments in the organization in order to provide for the position to be occupied by the Confederacy Council. Finally, many material changes have been made as the result of the greatly increased attention which has been given during recent years to the policy of native administration. It will be convenient therefore to proceed at once to a description of the system as it exists at present.

#### THE ASHANTI CONFEDERACY COUNCIL

The most characteristic feature in the political organization of Ashanti is the Ashanti Confederacy Council. Up to 1946 this consisted of the Asante-

<sup>1</sup> See R. S. Rattray, *Ashanti*, 1923, Chapter 23, *The Golden Stool*, E. W. Smith, 1926, and pages 37 to 41 of *The Gold Coast*, A. W. Cardinall, 1931.

<sup>2</sup> See page 247.

<sup>3</sup> For the part taken by Ashanti in this development see pages 200 to 203 of *The Gold Coast Legislative Council*, M. Wight, 1946.

<sup>4</sup> These decisions were afterwards affirmed by legislation; boundary disputes arising outside the range affected by them are decided by the Courts of law.

hene and 29 Chiefs, but it has now been reorganized on a wider basis. It has a membership of 56, namely the Asantehene as President, the Asantehemaa (Queen Mother), 24 Divisional Chiefs, nine Kumasi Clan Chiefs, 11 "additional representatives" of Divisions, and 10 persons of Ashanti birth nominated by the Asantehene with the approval of the Chief Commissioner.<sup>1</sup> The "additional representatives" are assigned on the basis of one additional member for each 20,000 of the population, Kumasi Division thus receiving five additional members out of the 11 above noted. These members are selected by the Divisional Councils concerned and are at present all of the grade of Chiefs. Of the 10 nominated members, two are Chiefs, four are non-chiefs who are members of the Gold Coast Legislative Council, and four are commoners representing business interests.

The full Confederacy Council meets only once or at the most twice a year, and its current business has since 1946 been transacted by an Executive Committee, of which the Asantehene is President, with six members of the Council selected by him from a list submitted by the Council, and six members of the Council nominated by him personally. In the absence of the Asantehene from either the Confederacy Council or the Executive Committee the Chief next in seniority presides. The Mamponghene is the next senior Chief and if he too is absent the next senior (Juabenhene) would preside.

The Executive Committee is the body which is in practice now consulted by Government on projects of legislation or administration affecting Ashanti, and though it is of recent origin it appears likely to attain increasing importance in the future. It may be noted that an Ashanti Advisory Council was projected in 1943, partly as a body available for consultation by the Government, and partly as a means of finding a place for some of the younger educated men as well as Chiefs.<sup>2</sup> Though formally promulgated in 1943, the Advisory Council never actually met, and its purpose is now served by the Executive Council of the Confederacy.

The Confederacy Council exercises the powers detailed by sections 6 to 8, and 15 to 17 of the Native Authority Ordinance of 1935,<sup>3</sup> which refer mainly to the issue of Orders and Rules for the "peace, good order and welfare" of natives within its jurisdiction, including the number of purposes specified in section 8 of the Ordinance. In this capacity, its jurisdiction extends to all Ashanti, except to the Divisions of Attabubu and Banka and the Volta River Federation, but the total population of these Divisions is only of the range of 10,000 or 15,000. Attabubu, in the Mampong District, is inhabited mainly by the Brong, a people of Akan stock closely allied to the Ashanti;<sup>4</sup> the Volta River area in the same District contains three small non-Akan tribes, and the heads of its villages are now grouped into a Federation.

The financial resources of the Confederacy Council are derived from a third share of the proceeds of the Ashanti National Fund Levy and the fees of the Asantehene's "A" Court and a grant-in-aid from Government on the same basis as other Native Authorities.<sup>5</sup> The revenue realized in 1946-1947 amounted to £10,717, and was administered by a Finance Committee of 33

<sup>1</sup> Ashanti Confederacy Council Order 41 of 1947, passed under the Native Authority (Ashanti) Ordinance (Cap. 79).

<sup>2</sup> For the establishment of this Advisory Council see The Gold Coast Legislative Council, M. Wight, 1947, pages 192 and 201.

<sup>3</sup> Cap. 79 of Gold Coast Laws.

<sup>4</sup> R. S. Rattray, *Ashanti*, 1923, page 114.

<sup>5</sup> See pages 240, 241, also page 209.

members, representing different Divisions ; it was for the most part expended on the provision of National Fund scholarships, the maintenance of the Confederacy Court, and part of the salary of the Secretary to the Council.

In this respect the Confederacy Council has a somewhat limited range of functions, and much of its importance lies in other directions. Since 1946 it has acted as the electoral college for the Gold Coast Colony and Ashanti Legislative Council. It constitutes an Appeal Court, and sits as a Native Court having criminal jurisdiction in certain offences against native law and custom.<sup>1</sup> It also provides a Court of Reference for certain constitutional matters, which are in practice mainly issues relating to destoolment, a special Committee of the Council being appointed for each case.<sup>2</sup> By virtue of its being a Native Authority for the whole of the Confederacy area it is the principal source of subsidiary legislation for Ashanti, the number of Rules or Orders issued by Divisional Native Authorities being comparatively few.

There is a list of some 37 Rules or Orders issued by the Council, a number of which confirm Resolutions passed by it at an earlier date. Of these, some 23 refer to matters regarding Native Law and Custom, an Amending Ordinance (2 of 1940) having conferred on it special powers to define and record native law and custom, and to make recommendations regarding its modification. Rules and Orders in this category include such matters as Enstoolment and Destoolment Rules, Funeral Custom Observances, Marriage Expenses Byelaws, Native Marriage Regulations, and a Rule for the standardization of Adultery Fees. Two Rules in this category are of special importance, since they deal with the native law relating to Land and to mortgage of Farm Lands, and will be noticed in a subsequent part of this Section.<sup>3</sup> The Council succeeded in passing in 1942 the Rule for the Establishment of a National Fund Levy above referred to.

As regards Rules relating to other matters, there are three which call for special mention, the Prohibition of Further Planting of Cocoa Byelaw of 1938, the Swollen Shoot Disease Order of 1946, and the Cocoa (Control of Planting) Order of 1947. These latter Rules were passed by the Council at the instance of Administrative Officers, in the interest of the measures taken for the regulation of cocoa cultivation, and the reservation of adequate areas for subsistence cultivation ; it is noteworthy that the Swollen Shoot Disease Order of 1946 preceded the similar Ordinance passed by the Gold Coast Legislative Council. The Rule prohibiting the further planting of cocoa has subsequently been rescinded.

#### THE DIVISIONAL CHIEFS AND OTHER NATIVE AUTHORITIES

While the Confederacy Council is thus a Native Authority for the range of purposes above defined, it is the Divisional Chiefs and other Native Authorities who are in the main responsible for taking executive action in exercise of the powers conferred by the Native Authority Ordinance. Their action in this respect is however now subject in actual practice to one limitation. No Divisional Native Authority would run counter to a Confederacy Council Native Authority Order. Conversely no Order would be made by the Confederacy Council Native Authority which was opposed by the majority of the Divisional Native Authorities.

<sup>1</sup> See page 244.

<sup>2</sup> Sections 11A to 11G added to the Native Authority Ordinance of 1935 by Amending Ordinance 2 of 1940.

<sup>3</sup> See page 251.

In view of what has been said in regard to the position of the Chiefs in the Gold Coast Colony, it is of importance to note that in the case of Ashanti a Chief is defined as "a person whose election and installation as such in accordance with native law and custom is recognized and confirmed by the Governor by notification in the Gazette," and this definition includes the Asantehene. A Native Authority is defined as "any Chief or other native or any Native Council or group of natives or Native Councils declared by Government to be a Native Authority."<sup>1</sup> It is further important to note that it has been the invariable practice to gazette as Native Authorities the Head Chiefs or Chiefs "and their Councillors."

In the majority of cases the Councillors are gazetted by title, these titles indicating either a former military office or some territorial or other position now held. In the Kumasi Division, for example, there are as many as fifty-nine Councillors gazetted by title; in the comparatively small Wenchi Division only five. In seven of the Divisions the Councillors are not gazetted by title. Where they are gazetted by title they form Subordinate Native Authorities, exercising powers conferred by Sections 5 to 7, 16 and 17 of the Native Authority Ordinance of 1935; when they are not so gazetted, they exercise as Subordinate Native Authorities powers under Section 5 to 8 and 15 to 17 of the Ordinance. The Orders issued by them in the use of these powers are subject to the approval of the Native Authorities to whom they are subordinate.

The existing organization of Native Authorities is shown in the following table:

District	Native Authorities	Councillors gazetted by title	Councillors not gazetted by title
Kumasi .. ..	5	83	—
Mampong .. ..	7	37 in 4 Divisions	There are ungazetted Councillors in 3 Divisions.
Bekwai .. ..	6	32 in 4 Divisions	Ditto in 2 Divisions
Wenchi-Sunyani ..	10	56 in 8 Divisions	Ditto in 2 Divisions

The figure for the Mampong District includes the Volta Federation Native Authority, consisting of the heads (Ahenfo) of four villages and their Councillors.

The preceding table requires some further explanation. The Councillors shown above, over two hundred in number, consist actually of Chiefs of different categories, traditional office holders, and stoolholders of various degrees of importance. Many of these had at one time, as already explained, a considerable measure of local independence. Despite the form in which their position has been recognized in the Ordinance, they still retain much of that position, and part of the difficulty encountered in organizing an appropriate system of native administration has been due to the reluctance shown by them and their local communities to accept a greater measure of centralization in regard to such matters as the organization of native justice or the control of Stool funds through the establishment of Native Treasuries.

<sup>1</sup> Section 2 of Ordinance 1 of 1935 (Cap. 79) as amended by Amending Ordinance 21 of 1939.

In the second place, it is necessary to appreciate the distinction between the Native Authority, which consists (as has been shown) of the "Chief and his Councillors," and the Chief acting with the Divisional Council. The Councillors are those recognized as such by the Government, and they, like the Chief, may be suspended as member of the Native Authority. On the other hand, the Divisional Council is a customary body with no statutory powers; it is only limited by law from doing anything contrary to justice and equity. If its members are destooled that is the result of action taken by the customary authorities to whom they owe their position, not the action of Government. The Divisional Council is normally presided over by the Chief as such, not in his capacity as the Native Authority, though this is not invariably the rule, because the Chief may, as Native Authority, have been suspended by Government from the exercise of his functions.

The Divisional Council thus contains as a rule a number of persons who are not members of the Native Authority. Thus, taking as an example the Bekwai Division (one of the six Divisions in the Bekwai-Obuasi District) the Councillors as gazetted by title number seven. But the Divisional Council comprises 20 members, the number being made up by the addition of various office holders (the Chief Drummer, the Cemetery Guardian, the Chief Stool Carrier, the Treasurer, etc.), and certain minor Stool holders. On the other hand, Adansi in the same District has a Council of 16, the only addition to the 15 gazetted Councillors being that of the Queen Mother. Generally speaking the Divisional Councils include only Chiefs or office holders, mainly holders of traditional offices, but in several cases "commoners" have been appointed to the Divisional Councils, and this movement has been encouraged by Administrative Officers. At the same time it will be realized that the "commoners" have a well-known customary way of bringing their grievances before the Council, namely through the Odikro and the Wing Chief, and they are not backward in doing so if they really have a grievance.

#### THE KUMASI CLAN CHIEFS

The special circumstances of the Kumasi Division require separate notice. Reference has been made above to the fact that the nine Kumasi Clan Chiefs have always been members of the Confederacy Council. The clan formation had much importance in earlier Ashanti history,<sup>1</sup> but the use of the word "clan" in the present connection is somewhat misleading, since the actual jurisdiction of the Kumasi Clan Chiefs is not associated with the control of kinship groups. As the result of historical developments, they had under their control a number of villages, some 500 in all, which formed enclaves within other Divisions and would thus normally have been under the jurisdiction of the Head Chiefs of those Divisions. Their function was two-fold; they were the chief advisers of the Asantehene in matters relating to his own Division, and they were, with their sub-chiefs, "caretakers" on his behalf of the outlying lands of the Kumasi Division.

This situation led to many difficulties in practice. Villages adjacent to each other might serve different Clan Chiefs. With one exception, the Clan Chiefs had their Courts in Kumasi, and (save in the rare case where a junior chief held a Subordinate Court) it was necessary for villagers to travel to Kumasi in order to have their cases heard. The revenues of these Clan Courts

<sup>1</sup> See R. S. Rattray, *Ashanti Law and Constitution*, 1929, page 62.

were not accounted for to a Treasury, but were shared by the Court members, and it was generally agreed that many of the Courts were inefficient and corrupt. As "caretakers" of the lands in their areas, the Clan Chiefs retained the major part (roughly two-thirds) of the revenues from these lands, but with the exception of some small sums paid into the Kumasi Division Stool Treasury, none of these moneys thus retained by them (estimated in 1946-47 at £15,700) were spent on public purposes.

The system called strongly for reform, and this was effected as the result of discussions which commenced in 1943, a decision being accelerated by the announcement made by the Governor in July 1945 that the Clan Courts must be closed unless they were attached to properly constituted Treasuries. With the full co-operation of the Asantehene, the Kumasi Division has now been divided into 32 Local Area Administrations, each under an Area Committee. The Committees consist usually of ten members or less, and are composed of representatives, who may be Adikrofo or Elders, or "Young Men,"<sup>1</sup> appointed by groups of villages within the area. The Clan Courts in Kumasi have been closed, and replaced by a Kumasi Division "C" Grade Court. Each Local Administrative Area has been given its Court and Sub-Treasury, the Courts being composed of the Adikrofo in each area, sitting in rotation.

The reformed system has now been in force for two years, and though it presents a number of problems which still have to be solved, it is said to be working satisfactorily. In particular, the new Courts are a marked improvement on the former system, and the association of commoners in the Area Committees has provided an opportunity for them to take a more direct part in the management of local affairs. The Clan Chiefs have lost their Courts, but they retain their position on the Confederacy Council, and are members of the Kumasi Division "B" and "C" Courts. The traditional connection of the Clan Chiefs with what are now the Local Administrations is maintained by forming the latter into groups in nominal charge of the Clan Chiefs, but this does not confer on the latter any executive or administrative authority. The change in the position of the Clan Chiefs is also signalized by the fact that as "caretakers" of Kumasi Division lands they now have only 40 per cent. of the revenues from these lands for their personal and household use, 60 per cent. being spent through the Treasury on public purposes. More than half of this is spent in the areas of origin.

As the result of these changes, the constitution of the Kumasi Divisional Council has also been revised. It now consists of the Asantehene and 91 others, namely, the nine Clan Chiefs and 35 of their Councillors; three office holders and eight "Linguists"; one member from each of the six Kumasi Municipal Wards, who are appointed by the Asantehene, and 30 members representing the Area Administrations above referred to, chosen by the members of the Area Committees. The modern constitution of the Council provides therefore for a considerable representation of commoners.

#### THE POSITION OF THE DIVISIONAL AND OTHER CHIEFS

As regards the emoluments now enjoyed by the Divisional and other Chiefs, the position in regard to what may be called the Privy Purse provision has not yet been fully regularized. Apart from the sanctioned emoluments as shown in the accounts of the Native Treasuries, it is stated that some Chiefs

<sup>1</sup> "Young Men" is the term in common use for persons holding no traditional status, such as Elders, Headmen or Chiefs.



still add to their personal incomes the sums received for the settlement of disputes by arbitration or other extra-judicial processes, and many draw an income from a share in the proceeds of leasing or letting the communal lands. Thus, as has just been shown, the Kumasi Clan Chiefs have 40 per cent. of the revenues from these lands for their personal use, and there are a number of similar instances.

Taking however the emoluments as drawn from the Treasuries, the scale is best illustrated by the case of the Kumasi District. In 1947-1948 the Asantehene received emoluments amounting in all to £8,000. Of this sum, £2,000 was derived from Kumasi ground rents,<sup>1</sup> and the remainder from his share of the revenues collected by the Kumasi Clan Chiefs as "caretakers" on lands in his Division. It is stated however that money paid to the Asantehene is regarded by the Kumasi Divisional Council as a contribution to the upkeep of the Golden Stool and not as personal allowance. The Queen Mother received £120 a year. The nine Clan Chiefs drew from the Treasuries sums ranging from £144 to £24 a year. In the other four Divisions of the District the Divisional Chiefs drew sums ranging from £360 to £159 a year, Queen Mothers sums ranging from £60 to £18 a year, and Councillors sums ranging from £30 to £13 a year, with, in some cases, a share in the revenue from land.

In other Districts the emoluments of Divisional Chiefs had a wide range of variation, the highest figure being that of the Adansi Divisional Chief in Bekwai District (£480), but there were cases, as in the Wenchi-Sunyani District, in which Chiefs of this rank received only £30 or £48 a year. Smaller sums were paid to Councillors or Elders as such, a usual rate being £12 a year. The numerous Village Headmen do not as a rule receive salaries.

As regards the personal qualifications of the Divisional and other Chiefs, there is considerable diversity in the measure of their educational attainments. The Asantehene is unusually well qualified in this respect, and of the other four Divisional Chiefs in Kumasi District three are literate. Of the 10 Divisional Chiefs in the Wenchi-Sunyani District only three are literate, and three out of the six Head Chiefs in Mampong District. There appears to be a lower measure of literacy among the minor Chiefs or Stool holders. There is similar diversity in the degree of efficiency shown by them. The more important continue to maintain the apanages and ceremonial of a Court, and in some cases on a scale higher than their sanctioned emoluments would seem to justify. As a whole however they undoubtedly command a large measure of prestige, though their authority is not, as the disturbances which occurred early in 1948 showed, adequate to deal with widespread troubles originating outside the areas in which they have jurisdiction.

As has been already explained, the practice of "destoolment" has of late years been confined mainly to minor Chiefs or village headmen, a few of the major Chiefs having preferred to abdicate rather than to face the prospect of destoolment. This change is partly due to the action taken by the Confederacy Council, which has ruled that destoolment requires its assent,<sup>2</sup> but it has no doubt been due also to the growing control which the establishment of Treasuries has exercised over the power of Chiefs to utilize for their own purposes funds derived from Stool lands or the grant of concessions.

<sup>1</sup> The position regarding the Kumasi ground rents is explained at page 248.

<sup>2</sup> Enstoolment and Destoolment Rule, No. 1 of 1935.

## THE NATIVE TREASURIES

As will have been gathered, one of the most significant of the changes in native administration effected in recent years has been the establishment of a regular system of Native Treasuries. It was the one which perhaps presented the greatest difficulties. In Ashanti, as in the Gold Coast Colony, there had been no system of direct governmental taxation, such as has been utilized in many other territories as a basis for supplying resources to local Treasuries. The Chiefs, as "caretakers" of the native lands, had been accustomed to utilize moneys derived from this source either for their private expenditure, or on the maintenance of their traditional ceremonial. It had been usual for them, as in the Gold Coast Colony, to meet expenditure on what appeared to be public purposes, such as debts incurred in litigation regarding Stool boundaries, by levies from the people in their jurisdiction, but only a small part of such funds was expended on genuine local services. The Native Authority Ordinance of 1935 empowered the Governor to require a Native Authority to establish a Treasury, into which all moneys received by it by way of "dues, rates, fines, fees, grants, rents or royalties" should be paid. But for some years this provision failed to be effective, owing to the lack of means for ensuring that sums received were brought to account, or for preventing Chiefs from incurring debts on behalf of their Stools.

The position has, however, now been to a large extent regularized. This process has been assisted partly by the fact, above referred to, that the Confederacy Council succeeded in 1942 in gaining general assent to the imposition of a National Fund Levy and partly by greater insistence on the Rule issued in 1935 requiring the approval of Administrative Officers to the incurring of debts by Native Authorities. An Ordinance of 1940<sup>1</sup> made it illegal, under heavy penalties, for a Native Authority to alienate, pledge, or mortgage any Stool property without such assent, and also provided that Stool property could not be seized in execution of debt. There still remains, however, the difficulty due to the general reluctance to agree to the centralizing of funds raised locally, and, as will subsequently be shown, the existing system of Treasuries and Sub-Treasuries leads to the dispersal of funds which could be better administered under a more centralized system.

This is best illustrated by the fact that in 1947 there were 43 main Treasuries (namely, 27 Divisional, two Federal and 14 Sub-Divisional), and 37 sub-Treasuries. One Native Authority (Abeasi) has no Treasury, and that at Banka is inactive. The existence of the Sub-Divisional Treasuries is due to the fact that many Sub-Divisions established Treasuries before the Divisions of which they are part did so, and the process of integration with the Divisional Treasuries has been slow, but the Estimates of 10 of them have now been incorporated with those of the Divisional Treasuries. Generally speaking, the practice is for the funds raised in the area of a Sub-Divisional Treasury or Sub-Treasury to be earmarked for expenditure within its own area.

It is significant that the total revenue of the Treasuries existing in 1938-1939 amounted to only £27,994, whereas, as the result of the progress since made in the establishment of Treasuries and in bringing revenue to account, their total revenue, including that of the Confederacy Council, amounted in 1946-1947 to £264,500, and the estimated figure for 1947-1948 was £309,255. There were at the end of 1947-1948 surplus funds amounting in all to £126,051.

<sup>1</sup> The Stool Property Protection Ordinances, 22 of 1940 and 25 of 1941.

The sources from which the revenue is estimated to be derived in 1947-1948 are shown below :—

Annual Rate	Native Courts	Lands	Fees, Tolls and Licences	Interest	Miscellaneous	Grants-in-Aid	Total
£ 104,573	£ 31,941	£ 83,735	£ 28,653	£ 413	£ 9,578	£ 50,374	£ 309,255

The annual rate represents the proceeds of (a) the National Fund Levy, (b) the Development Levy and (c) the Special Levies. The facts regarding the establishment of (a) the National Fund Levy have already been given. Two-thirds of the collections are retained by the Treasuries in whose areas the tax is collected, and one-third credited to the Treasury of the Confederacy Council. The tax is everywhere the same, namely, 2s. for males and 1s. for females. The Development Levy (b) has replaced in part the levies formerly made by Chiefs, to which reference has already been made. It varies in different Divisions, being as high as 20s. per male and 10s. per female in the Denyasi Division of the Bekwai District, but this rate is unusual, and in general it ranges between 12s. and 4s. per male, with smaller amounts for females.

The Special Levies (c) are applied in certain areas mainly for the purpose of paying off debts accumulated in the past by the Stools, there being 10 of such areas in 1947-1948. The figure in one small area of Kumasi Division, Nkwakwangya, amounted to no less than 76s. per male and 36s. per female, but there were other cases in which the amounts were relatively small. It would be unreasonable to take the Special Levies into account in calculating the average tax now paid by the Ashanti, but if they are excluded, the average incidence is roughly between 10s. and 14s. per male with a lower figure per female. The number of cases in which a Special Levy is imposed is being progressively reduced as debts are liquidated.

The revenue derived from lands is derived partly from rents on lands occupied by "stranger natives" or Ashantis coming from other localities, following the system which will be subsequently described,<sup>1</sup> and partly from concessions for felling timber or (as most notably in the Bekwai District) from mining concessions. Some details will be given subsequently regarding the sums received on this account.<sup>2</sup> But in some cases only a proportion of the total receipts accrues to the benefit of the Treasury; in the case of the Kumasi Clan lands, for instance, the income was till recently shared between the Asantehene (30 per cent.), the Clan Chiefs (60 per cent.), and the Native Authority Treasury (10 per cent.), but the question of the readjustment of these shares has lately been re-considered, and the Clan Chiefs now draw only 40 per cent. as their personal share. The sum credited to the Native Treasuries as Grants-in-Aid in 1947-1948 represented in part the provision made for expenditure on the Gold Coast Development programme.

THE CONTRIBUTION MADE TO LOCAL SERVICES

The chief items of expenditure as shown in the Estimates for 1947-1948 are as follows :—

Adminis- tration	Treasury	Lands	Native Courts	Police and Prisons	Agriculture and Forests	Medical and Health
£ 55,937	£ 18,757	£ 4,264	£ 23,243	£ 14,634	£ 1,908	£ 18,081

<sup>1</sup> See page 253.

<sup>2</sup> Page 251.

Education	Works	Miscellaneous	Extraordinary	Reserve Funds	Total
£ 71,272	£ 19,626	£ 31,790	£ 66,286	£ 3,487	£ 329,285

The proportion expended under the head of Administration, 34 per cent., is not unduly high. It will be seen, however, that the expenditure incurred by the Native Authorities on the provision of local services, other than Education, is noticeably small. They have taken little direct share, other than by the passing of the Cocoa and similar Rules issued by the Confederacy Council, in the activities carried out by the Agricultural and Forest Departments of the Government. They have a few dispensaries, but their main expenditure under the head Health Services is on the provision of a small and generally inadequate sanitary staff in some of the small towns or markets. They manage a number of markets, and expend a small sum of money on wells.

The sums spent on roads has hitherto been small. As compared with the Colony and the Northern Territories the road system in Ashanti is good. More roads are however certainly required, but until recently expenditure on roads was not recognized as developmental expenditure and consequently development levies could not be spent on roads. Roads are however now recognized as development, and the only thing which prevents the rapid development of new roads is the dearth of surveyors and contractors to undertake them. The Native Authorities maintain a small staff of Native Authority Police who deal with petty cases of crime, but all serious offences are dealt with by the Government Police. Only two of the Native Authorities maintain their own Prisons. The Native Authorities are not encouraged to maintain Prisons owing to the difficulty of proper supervision. In the past the privilege of having a "bush prison" was badly abused.

The very substantial amount expended on education is mainly in the form of contributions to Mission or other "recognized" schools, and there is so far only one school for which a Native Authority supplies the funds and management. The Ashanti people have of late years shown a greatly increased interest in education and the area has now, as compared with the Northern Territories, a liberal provision of schools, there being altogether four Government, 224 "approved" and 83 "assisted" schools, besides nearly 550 private or unrecognized schools. In 1947 there were 46,116 pupils in the schools, of whom 15,372 were girls, but the numbers in the higher classes were very small; and Ashanti is badly provided with Senior Schools and Secondary Schools. A Secondary School for Girls was opened in Mampong in 1947 and the first Secondary School for Boys was opened early this year in Kumasi. The great demand at present is for more approved senior schools (standards IV to VI). Though an Advisory District Education Committee has now been established in each of the Ashanti Districts, beginning with Bekwai in 1942, the Native Authorities were in 1948 only beginning to be formally associated in its membership.

In all cases, the Divisional Councils now have Finance Committees. Reference has already been made to the Finance Committee in Kumasi Division.<sup>1</sup> In a few Divisions the tendency has been to secure for these Committees the services of others than Chiefs or Stoolholders. Thus the Finance Committee of the Bekwai Divisional Council includes, besides Chiefs, one

<sup>1</sup> See page 238.

letter-writer, one contractor, and one trader, all of whom are literate. In the majority of cases, however, these Committees contain only Chiefs or Stoolholders, and their membership does not include literate or educated commoners.

Apart from the conservative composition of the Finance Committees, part of the difficulty encountered in furthering the supply of local services by the Native Authorities has been due to the lack of competent subordinate staff, but steps have recently been taken to improve the position in respect of the clerical posts. The Chief Secretary of the Confederacy Council now has a salary of £600, half being contributed by the Kumasi Divisional Council, of which he is also Secretary. The Private Secretary of the Asantehene has a pay rising from £239 to £315 a year. The Financial Secretary of the Council and the Officer in Charge of the Kumasi Lands Office<sup>1</sup> have salaries rising from £324 to £405, these rates being about 10 per cent. less than Government posts of equivalent standing.

In the Kumasi Division the Senior posts are of two grades, the first receiving £198 to £225, and the second £115 to £180. The Junior posts carry pay in the first grade at £70 to £108, and in the second grade at £48 to £138. The salaries paid in other Divisions are on a lower scale, but efforts are now being made to raise them to a closer approximation to the Government scales. The deficiency in point of staff is now most strongly marked in respect of technical appointments, and this necessarily restricts the ability of the Native Authorities to extend their local services beyond the very limited range now provided.

#### THE SYSTEM OF NATIVE COURTS

Turning now to the organization of the Native Courts, its history shows that some of the obstacles encountered in the development of the executive side of native administration were experienced also in the judicial field. The existence of a large number of Stoolholders of different grades of importance, not merely appointed but liable to removal by a body of local selectors, meant that there were numerous authorities who claimed to exercise judicial functions in their own right, independently of control by superior authority, and it will be realized that, apart from any question of prestige, the right to try cases was often a valuable source of income.

The existence of Native Tribunals was recognized by the Ashanti Native Jurisdiction Ordinance 4 of 1924, but the system of Native Courts did not take its present form until the passing of the Native Courts Ordinance 2 of 1935. This laid it down that the only authorities entitled to exercise jurisdiction were the Courts established under an Order of Government, which would at the same time define for each Court the civil and criminal powers it was competent to exercise. Any attempt to exercise jurisdiction otherwise than by virtue of powers conferred under the Ordinance was to constitute a penal offence. This provision was of some significance, in view of what has been said in the Section on the Gold Coast Colony regarding the claims made by Native Authorities to an inherent right of jurisdiction.<sup>2</sup>

Though, however, this measure made a substantial advance in regularizing the system of Native Courts, the administration of justice continued to suffer from the fact that in a large number of instances Court fees and fines continued to be paid to the members of the Courts, and it was not found possible to curtail the opportunity thus given to malpractices, until the development of the system

<sup>1</sup> See page 248.

<sup>2</sup> Page 201.

of Native Treasuries enabled the Administration to refuse recognition to Courts in which the fees and fines were not brought to account in a Native Treasury. The development of the system of Native Courts has, therefore, to this extent been linked up with that of the Native Treasuries.

Under the Ordinance of 1935 and its amending Ordinances the Native Courts in Ashanti have civil and criminal jurisdiction in issues to which natives are parties, natives being defined as all persons of African descent, save those belonging to a class of persons who have not ordinarily been subject to the jurisdiction of Native Tribunals. The Courts administer not only native law and custom and the Rules and Orders issued under the Native Authority Ordinance, but also certain Government Ordinances, the chief of which are the Masters and Servants Ordinance (Cap. 70, part 10 of the Gold Coast Laws) the Loan Recovery Ordinance (Cap. 146) and the Stool Property Protection Ordinance (22 of 1940). In criminal cases they are empowered to administer Books I and II of the Criminal Code (Cap. 9), other than Title 12, and thus can deal with what are classified as "summary offences" of assault, mischief to property, misappropriations and fraud, and public nuisances. They cannot deal with cases of forgery, or the "indictable offences," including criminal homicide, as detailed in Book III of the Code.

The Courts are of four grades, described as A, B, C and D.<sup>1</sup> There is only one Court of Grade A, namely, the Asantehene's Court at Kumasi, which has jurisdiction in all civil disputes relating to the ownership or occupation of lands arising between two or more Head Chiefs or Chiefs belonging to different Divisions within the Confederacy. This Court has also appellate jurisdiction in land cases arising from the Grade B Courts in the Confederacy. As already noted,<sup>2</sup> the Confederacy Council also sits as a Native Court having criminal jurisdiction in "constitutional" offences against Native Law and Custom, and can in such cases punish by fine not exceeding £100 or 12 months imprisonment and in addition by banishment.

There are 12 Courts of Grade B, these being the Courts of the larger Divisions in the four Districts of Ashanti. They have original jurisdiction in suits regarding the ownership and occupation of land, and in civil issues involving a subject matter valued up to £100. In criminal cases their powers extend to a fine of £50 or imprisonment up to six months, or whipping. There are 26 Courts of C grade, these being for the most part Courts of smaller Divisions or of Sub-divisions; their powers extend to civil actions of which the subject matter does not exceed £50, and in criminal cases to a fine of £25 or imprisonment up to three months, or whipping.

There are 41 Courts of D grade. These include the 22 "area" Courts in the Kumasi Division to which reference has previously been made.<sup>3</sup> The powers of the D Courts extend to civil actions in which the subject matter does not exceed £25, and in criminal cases a fine of £5, or imprisonment up to one month or whipping. In all the above Courts whipping, which may extend to 12 strokes, is confined to male persons under sixteen years of age.

There is now a well established system of Native Appeal Courts, though their jurisdiction is in this respect confined mainly to land cases or civil issues. The Asantehene's Court and the B Courts function as Appeal Courts in this respect. In ordinary civil cases, the appeal lies from the C and D Courts to

<sup>1</sup> First Schedule to Ordinance 2 of 1935 (Cap. 80).

<sup>2</sup> See page 235.

<sup>3</sup> See page 238.

the B Courts, save that when the issue relates to the ownership or occupancy of land the appeal lies to the Asantehene's Court where the land is situated in Divisions forming part of the Confederacy, and to the Chief Commissioner's Court in other cases. Appeal from a Native Appeal Court, other than the Asantehene's Court, lies to a Magistrate's Court, and thence to the Chief Commissioner's Court; appeal from the Asantehene's Court lies direct to the Chief Commissioner's Court. Appeal from his Court lies to the West African Court of Appeal. In criminal cases, the appeal from a Native Court of criminal jurisdiction lies direct to the Magistrate's Court, and thence to a Divisional Court of the Supreme Court.

The system of civil justice was modified in one important particular by an Ordinance, No. 27, passed in 1945. Under this Ordinance the Supreme Court was given exclusive jurisdiction to hear all suits relating to the ownership of lands arising between a Paramount Chief or Chief in the Colony and a Head Chief or Chief in Ashanti, or between a Head Chief or Chief in Ashanti and a Head Chief or Chief of the Northern Territories.

#### THE COMPOSITION OF THE NATIVE COURTS

Experience elsewhere has shown that in assessing the value of a system of native justice, the actual composition of the Courts is often of greater importance than the range of powers conferred on them. It is characteristic of Ashanti that the composition of the Native Courts follows conservative lines and does not so far provide for a membership other than that prescribed by previous tradition. The Asantehene's Court consists, under the presidency of the Asantehene, of 20 Head Chiefs, the Kumasi Clan Chiefs, and the Asantehene's "Linguist." The Rules provide for a quorum consisting of a maximum of five and a minimum of three members, of whom one must be a Head Chief when the cause of action relates to land. The Divisional Court of Kumasi consists of the Asantehene and the Kumasi Clan Chiefs, together with the other Chiefs and Sub-Chiefs of the Kumasi Division, with the Asantehene's Linguist; the quorum consists of a maximum of three and a minimum of two members.

The composition of the B Courts of other Divisions is on similar lines. The C and D Courts are composed of the local Chiefs and Sub-Chiefs, together with the Elders who, according to native custom, are the Councillors of their respective Stools, and there is a similar provision for the constitution of the quorum. In the case of the recently constituted Kumasi Local Area Courts the membership consists of the local Chiefs and Sub-Chiefs and the Elders of the group of villages and towns in the area. There is a slight but unimportant variation in the case of the Courts of those Divisions which are not members of the Confederacy.

Normally the Chiefs are Presidents of the Courts, the only exception being in the Volta River Federation Court where the President is specially appointed by the Chief Commissioner. The Elders who are Councillors of their respective Stools, and who in many cases are the Odikro or headmen of villages or towns, are regarded as having an inherent right to sit as members of the Courts; their position is therefore, like that of the President, treated as permanent, unless they are removed by the process of destoolment.

It will thus be seen that though in some cases the Elders may represent interests other than those of the Chiefs or Sub-Chiefs, there is no provision for the inclusion in the Courts of persons whose qualifications are those only of

education or experience in trade or farming. This applies equally where there is a strong "stranger" element of traders or the like, as for instance in Attabubu, but proposals have recently been made for the inclusion of two "stranger" members in the Court at Obuasi town in the Adansi Division.<sup>1</sup> It is stated that it is not at present the practice for Administrative Officers to take measures to influence the selection of membership of the Courts.

Members of the Courts now receive in every case salaries, usually on a monthly basis, at the charge of the Native Treasury. The amounts vary in each Division; in the Kumasi Division, for example, the President of the B, C and D Courts receives as such £10 a month and the members £8 a month, with smaller amounts in the Area Courts. In other Divisions Presidents receive salaries varying from £5 to £2 a month. In some cases the sum provided in the Treasury estimates is divided each month between the sitting members. The Linguists normally receive £2 to £1 a month, but some have a salary as low as 10s. a month.

The Ordinance gives to Administrative Officers the usual power of access to Court records, and power of revision both in civil and criminal issues or of transfer to other Native Courts or to a Magistrate's Court. Court records are in practice inspected once a month. In view of the growth of the system of Native Appeal Courts, relatively little use is now made of the power of revision.

Orders passed in 1936 under Section 9 of the Ordinance prescribe the fees to be charged and the records to be kept by the Courts. The fees generally are on a moderate scale, though noticeably higher in respect of land cases. The practice of swearing the Chiefs' Oath to which reference has been made in connection with the judicial procedure in the Gold Coast Colony, prevails in Ashanti also, but rules limiting penalties for its abuse have been made in an order passed under Section 8(a) of the Ordinance.<sup>2</sup>

As regards the procedure of the Courts, some difficulty has been experienced in the past owing to the lack of Registrars of sufficient education, but steps have been taken recently to improve their pay, which in the larger Divisions is now at the rate of £76 rising to £108 a year. The Chief Registrar of the Asantehene's Court draws pay at the rate of £239 rising to £315, which is approximately 10 per cent. less than a comparable post in Government employ. The quality of the Registrars is a point of some importance, as the Court records are kept in English, and a proposal is under consideration for giving a course of training to them but this, together with other matters relating to the procedure of the Courts, has awaited the appointment of a Judicial Adviser. Provision for this post was made in the Government Estimates for 1948-1949.

#### THE STATISTICS OF COURT CASES

As compared with the figures of cases heard in other areas with a population of comparable size, the number coming before the Ashanti Native Courts has not been considerable. The statistics for the year 1946-1947 are as follows :—

Criminal	Breaches of Native Authority Rules (included in criminal cases)	Civil	Total	Appeals from the Native Courts
13,876	3,153	6,538	20,414	231

<sup>1</sup> For Obuasi see page 249.

<sup>2</sup> Order No. 7 of 1935.



It is noticeable that of the civil cases, 122 were heard by the Asantehene's Court. The figures available do not show the number of appeals from Native Courts of first instance to Native Appeal Courts. Of the total appeals heard, 64 were allowed, 88 dismissed, and 24 pending at the end of the year. Some further reference to the character of the judicial organization will be found in a subsequent part of this survey.<sup>1</sup>

## URBAN CONDITIONS

### THE POSITION OF KUMASI

Problems arising from the residence of Africans in urban conditions occur chiefly in connection with the town of Kumasi, and also, though to a lesser degree, with Obuasi. Kumasi has a population now estimated at 70,705, which includes a considerable proportion, estimated at 15 per cent., of Africans from the Gold Coast Colony and other West African territories. Whether or not Kumasi justifies the claim that it is a model city, it certainly compares favourably with any town in the British West African territories.

It owes this largely to its unusual history. A large part of the town was destroyed after its capture by Sir Garnet Wolseley's force in 1874. In 1901, when Ashanti was annexed, the Government took possession of the Kumasi Town Lands, which were treated as vested in the Crown by right of conquest.<sup>2</sup> Various Stool heads whose followers resided in Kumasi were permitted to occupy plots at nominal rents; other plots were from about 1904 onwards assigned on long lease terms to commercial firms, and on shorter lease terms to Africans for various purposes. At this period the area vested in the Crown occupied about four square miles, but this was extended in 1914 by agreement with the Kumasi Clan Chiefs, and the extension area was also vested by Ordinance in the Crown.

The assignment of plots was made on an approved layout, and the management of the Town was from 1925 conducted by the Kumasi Public Health Board. This, under the constitution as revised in 1937, consisted of 10 members, of whom five were Government officers, two were nominated by the Asantehene and the Kumasi Clan Chiefs, two by the Kumasi Chamber of Commerce and one, an African ratepayer, not being a native of Ashanti, by the Chief Commissioner.<sup>3</sup> The Board was responsible for certain municipal services and sanitation, but not for education or medical services. It levied rates and took the benefit of licences and similar receipts; the ground rents were credited to Government, but the latter made grants, which in 1942 amounted to about half the value of the ground rents, for the maintenance and development of the town.

### THE KUMASI LANDS

While this arrangement served to preserve the layout of the town and to improve its amenities, the vesting of the Kumasi Lands in the Crown was viewed with much concern by the Ashanti, and for reasons which went beyond the financial results involved. Kumasi, as they pointed out, was the seat of the Golden Stool, but the Asantehene, its occupant, was in effect reduced to the position of a "landless chief." This was true in the sense that the Kumasi

<sup>1</sup> Page 255.

<sup>2</sup> Order in Council 26th September, 1901, which recites the fact that "the territories hitherto known as Ashanti have been conquered by His Majesty's Forces."

<sup>3</sup> Kumasi Public Health Board Ordinance, No. 18 of 1937.

Clan lands, for which the Clan Chiefs were "caretakers," were situated within the Divisions of other Chiefs, and the Asantehene was left without the direct control of lands in his own Division.<sup>1</sup> In 1943 the Government, in pursuance of previous measures designed to recognize the strength of Ashanti sentiment, decided to vest in the Asantehene, "for the support of the dignity of the golden Stool," the ownership of the lands comprised within the boundaries of the town of Kumasi. Certain areas, consisting mainly of the Government residential area and the Railway lands, were declared to be vested by the Asantehene in the Governor in trust for Crown purposes, while certain others, mainly held by the Health Board, were vested in the Governor for public purposes.<sup>2</sup>

The Ordinance provided for the safeguarding of all leases formerly granted by the Crown, while giving the Asantehene the benefit of the rentals, subject to his payment to the Health Board of an annual sum equivalent to one-third of the rentals, or £6,000, whichever was greater. The total collection of rentals in 1946-1947 was a little over £15,000. All future leases of land were to be made in the name of the Asantehene, subject to the approved layout, and subject also to a form of lease and a Schedule of rates provided by the Ordinance.

The Asantehene maintains for this purpose his own Lands Office, but no lease or transfer of rights is valid until it is registered in the local office of the Lands Department of the Government. The total number of leases in being in 1947-1948 was roughly 2,000. Suitable provision was made in the Ordinance for the maintenance of the privilege by which natives of the Kumasi Division could "in consideration of their allegiance" secure residential sites on preferential terms. The provisions embodied in the Ordinance did not amount to that complete restoration of rights in the Kumasi Lands for which the Ashanti had pressed, but they were not unreasonable, in view of the necessity of safeguarding the development of Kumasi on suitable lines.

#### THE KUMASI TOWN COUNCIL

The position in regard to the lands was not altered when the Public Health Board was replaced by a Town Council in the same year, 1943. The Council is at present composed of an official President, six elected members (one for each ward of the Town), all being Africans, three members nominated by the Chief Commissioner (one being an official), one member representing the Kumasi Chamber of Commerce (at present a European) and two members (who are Africans) nominated by the Asantehene.<sup>3</sup> The elective principle has, however, been slow to establish itself. In 1943 some 821 persons voted out of a registration of 3,805; in 1947 out of the number of 7,042 persons on the revised register, only 1,014 availed themselves of the vote, but in two of the wards seats were not contested. The members elected in 1947 were four business men or traders, a barrister and a school teacher.

In the Estimates for 1947-1948 the revenue of the Council was shown as £140,877, of which £24,982 was derived from Town and Water Rates, £28,220 from fees of various kinds, £30,000 from profits of the Municipal bus service, and £21,334 from grants in aid, which included the £6,000 paid by the Asantehene under the provisions of the Ordinance. Water rates are

<sup>1</sup> Page 232.

<sup>2</sup> Kumasi Lands Ordinances, No. 17 of 1943 and 14 of 1945.

<sup>3</sup> Kumasi Town Council Ordinances 18 of 1943 and 34 of 1946.

collected by the Town Council on behalf of Government and are paid over to Government (which maintains and operates the water supply) less a small commission to cover the cost of collection. The chief items of expenditure were on sanitation (£27,632), Town Engineer's Department and Town Works (£54,143) and maintenance of the bus service (£39,861).

The Town Council, has, therefore, like the previous Public Health Board, a somewhat limited range of activities. The Government Departments maintain the Water and Electric installations and the Educational and Medical Services: it is noteworthy that the Government contemplates the creation of a new Hospital, at a cost of nearly £900,000, and a Mental Hospital at a cost of £700,000.<sup>1</sup> In respect of town planning, the Council is subject to the control of the Central Town and Country Planning Board, established in 1945.<sup>2</sup> Owing to the recent increase of population, there is now considerable congestion in Kumasi, and though no survey of the new accommodation required has been undertaken, it is stated that additional quarters are required for 5,000 inhabitants. Some relief will be afforded by the scheme for the Asawasi Housing Estate, the cost of which (approximately £161,000) is being undertaken by the Government. It provides for 1,036 single labourers quarters and 198 two or three room cottages. Building was started in 1945 and is approaching completion.

It is perhaps inevitable that the members of the new Town Council should already have shown a desire for a revision of its position in relation to Government and for the allocation to it of a larger field of municipal activities. No difficulties seem to have arisen, however, in its relations with the Asantehene and his Council, who have co-operated fully with it; the management of town affairs can indeed be said to be shared between the Council and the Native Authorities. While in certain matters the population is subject to Municipal Rules, in others it is subject to the Rules and Orders issued by the Native Authority and civil suits and minor criminal cases come before the Native Authority Courts.

The Native Authority has a Prison and maintains a small Police Force. In addition to the Kumasi Division Court, and the "C" Court above referred to as replacing the former Clan Courts,<sup>3</sup> the Asantehene maintains an Appam (D Grade) Court at Kumasi, which is presided over by a Chief nominated by him. It is true that Kumasi owes its development to European auspices, governmental and commercial, but it remains essentially an African town. It is, however, an African town with a difference, for it has advantages in layout and town services which are lacking in most other African towns in British West Africa.

#### OTHER TOWNS

The town of Obuasi is in the vicinity of the Obuasi mine of the Ashanti Goldfields Corporation, which in 1946-1947 gave employment to 6,195 Africans and 112 non-Africans. The labour is not recruited on contract, and is largely of a fluctuating nature, consisting of immigrants from French West Africa, Nigeria and the Northern Territories. Partly no doubt for this reason, no special arrangements have been made similar, for instance, to those on the Northern Rhodesian Copperbelt, for a special Court for trying issues arising

<sup>1</sup> While the new hospital is largely for the benefit of Ashantis, the mental hospital is to serve the Gold Coast as a whole and will replace the present inadequate mental hospital at Accra.

<sup>2</sup> Town and Country Planning Ordinance, No. 13 of 1945 (Cap. 68).

<sup>3</sup> See page 238.

between labourers, nor for the local management of native affairs within the mining area.<sup>1</sup> The Corporation is building an African employees club and has under contemplation a township—The Batty Township—for its own employees. This, however, has been postponed owing to the increased cost of production. A Government housing scheme on the lines of the Asawasi Estate in Kumasi has been approved for Obuasi.

Obuasi town itself, with a population of 15,833 in the Census of 1948, lies within the jurisdiction of the Divisional Chief of Adansi, but has a Sanitary Board constituted in 1935,<sup>2</sup> replacing a Sanitary Committee established in 1909. The Board is composed of the District Commissioner as President, two Government nominees, three nominees of the Ashanti Goldfields Corporation (of whom one is an African) and two African nominees of the Adansi Native Authority. It had in 1946-1947 a revenue of £15,719, derived from the imposition of sanitation fees, market rents and fees and licences. It has passed a considerable number of Byelaws, including Building Byelaws, and is empowered to administer a number of provisions of the Criminal Code, to the exclusion of the jurisdiction of the Native Authority.<sup>3</sup>

Bekwai Town, with a population of 4,499, is in the jurisdiction of the Divisional Chief of Bekwai. A Town Committee has recently been established, with the co-operation of the Bekwaihene, largely with a view to planning the development of the town. The District Commissioner is chairman, and its membership includes 10 members of the Native Authority. It has as yet only advisory functions.

The other towns in Ashanti are controlled by the Native Authorities within whose jurisdiction they are situated. Reference has already been made to the inadequacy of the sanitary and similar services they provide.

## LAND PROBLEMS

### THE POSITION OF THE GOVERNMENT IN REGARD TO LAND

In Ashanti, as in the Gold Coast Colony, the legal position of the Crown in regard to the native lands differs materially from that prevailing in the Northern Territories,<sup>4</sup> for save in the case of the Kumasi lands already referred to, the Crown has asserted no proprietary or similar rights over the land. It has been suggested that Great Britain, as a conquering power, was in a position to assert such rights,<sup>5</sup> but the legal convention regulating the extent to which sovereign rights acquired by conquest justify interference with private rights might have raised debatable issues in regard to some of the areas outside Kumasi, for in the last Ashanti war of 1900 the British had as allies many of the Ashanti states.<sup>6</sup> Moreover legislation of the type of that embodied in the Ordinances in force in the Northern Territories or in Tanganyika or Northern Nigeria, has had its justification not so much from claims based on conquest or cession, as from the necessity for providing a legal basis on which the Government can protect the interests of the native community by controlling the use of its lands.

<sup>1</sup> Chapter VI, pages 145 to 151.

<sup>2</sup> Ordinances 36 of 1935 and 20 of 1944.

<sup>3</sup> The Obuasi Sanitary Board Order, 27 of 1935.

<sup>4</sup> Page 273.

<sup>5</sup> See page 171 of *Land Law and Custom in the Colonies*, C. K. Meek, 1946.

<sup>6</sup> See Privy Council Reference re Southern Rhodesia (1919), AC 211. For the question whether Ashanti can rightly be said to have been conquered see Mr. C. Kessie's Note on page 76 of the Report of the Committee on Constitutional Reform, 1949 (Col. No. 248).

The latest available figures show that the area known as Crown Land amounts to only 81 square miles, or approximately the same as in the Gold Coast Colony.

Though the Government has not enacted legislation of this nature for Ashanti, it has nevertheless taken certain measures of a narrower scope designed to protect native interests. These have, in the first place, taken the form of the Concessions Ordinance 19 of 1939, which replaced the older Ashanti Ordinance 3 of 1903. The 1939 Ordinance, the general provisions of which apply both to the Gold Coast Colony and Ashanti, contains an important provision (Section 11) which applies only to Ashanti. In the Gold Coast Colony a claim for the validation of a concession is submitted direct to a Divisional Court of the Supreme Court; in Ashanti the law prescribes a preliminary procedure which brings the matter within the purview of executive officers of the Administration. Any person desiring to obtain a concession must apply to the Chief or Chiefs concerned, after giving notice in writing to the Chief Commissioner, who is empowered to enquire into and determine the consideration to be given for it, and these terms must be embodied in a statement, executed in his presence, which must also contain full particulars of the boundaries of the concession. The area recorded in 1948 as alienated under the Concessions Ordinance amounted to 2,381 square miles, as compared with 10,087 square miles in the Gold Coast Colony.

#### THE POSITION OF THE CHIEFS

The Stool Property Protection Ordinance No. 22 of 1940 to which reference has already been made,<sup>1</sup> is also of importance as controlling the disposal of land, since it prohibits the sale, pledge, or mortgage of any Stool property (which includes land) without the consent of the Chief Commissioner. In the third place, the Administration has interested itself in the promulgation of certain Rules by Native Authorities which have an effect on the disposal of native lands, such as the two Rules passed by the Confederacy Council, No. 2 of 1938 (Native Custom regarding Ownership and Alienation of Land) and Rule 1 of 1943 (Mortgage of Farm Lands and Building Plots). The Administration has finally concerned itself in enacting the special procedure regarding the trial of land issues which has been described in the paragraphs of this Section dealing with the jurisdiction of the Native Courts.<sup>2</sup>

It is accordingly of interest to examine the extent to which Ashanti affords evidence of troubles arising from the disposal of Stool or other lands by a Chief or Chiefs. Though statistics on the former point are not available, it is clear that the disposal of rights in land by Chiefs has been much less extensive in Ashanti than in the Colony areas. Certain instances are quoted, as for instance in the Adansi Division of the Bekwai District, in which disposals of land have taken place, but these preceded the Rules of 1938 and 1943. In a number of cases Stool lands have been recovered or mortgages paid off, as the result of the Special Levies imposed under the Treasury system as now in force.

The only mineral concession of any importance is that relating to goldfields in the Obuasi Division. This is a concession of very old standing, which was taken over in 1897 by the present Ashanti Goldfields Corporation, and the Native Authorities, which derive only £600 a year from it, have advanced a claim to a

<sup>1</sup> See page 240.

<sup>2</sup> See page 244.

share of the royalty now derived by Government from the mine.<sup>1</sup> Mining rents in the Bekwai Division brought in a revenue of £3,043 in 1946-1947. A number of timber concessions have been given of recent years, but these have all been made subject to the provisions of the Concessions Ordinance. The proceeds are in some cases considerable; in Adansi Division for example £8,775 was derived in 1946-1947 from this source, and the contract in Ahafo brought in a sum of £10,000. All proposed concessions are said now to be fully considered in the Divisional Councils, and are not left to the individual action of the Chiefs.

It is also clear that, on the whole, expenditure due to the litigation arising from land issues has been less extensive than in the Colony. Such litigation has arisen mainly about the boundaries of Stools, or the right of different Chiefs to the benefit of revenue derived from Stool lands. A considerable amount of indebtedness was at one time incurred on this account by certain of the Stools, but the action of the Confederacy Council has restricted the powers of Chiefs in this direction, and under the present Treasury system, some of the accumulated debts have already been paid off. Nevertheless, the expenditure incurred by litigation on land issues is still unduly high.

Some light has been thrown on the protracted nature of these proceedings by a study recently made of the history of the land disputes in the Adansi Division.<sup>2</sup> It shows that difficulties have arisen in part from the lack of any adequate land survey; it does not, for example, conduce to the clarity of judicial proceedings when the pleadings can (as in one case quoted) describe a disputed boundary merely as "two empty gin bottles and Kofi Mensah's farm." Partly also they have been due to the lack of a clear definition of the respective spheres of jurisdiction of the Native Courts and the Magistrates' Courts, and a further cause has been the lack of any rules of procedure for curtailing adjournments. The Report by Mr. C. R. Havers, K.C., to which reference has been made in connection with the judicial organization of the Gold Coast Colony, calls attention to these and similar points also in regard to Ashanti, and there can be no doubt that the improvement of the judicial procedure for trying land issues must form an important feature in the consideration given by the Government to the problem of land policy.

#### THE CUSTOMARY RIGHTS IN LAND

Turning now from questions arising from the position of Government in relation to the native lands to those arising in the field of native law and custom, it should be explained that land custom in Ashanti does not differ in any material respect from that in the Gold Coast Colony. In both cases the conception now prevails that land is, to employ terms familiar in European law, vested in the Chiefs in trust for the community. But such authority as flows from this conception is in practice normally exercisable in respect of the unoccupied lands within the Stool boundaries rather than those already farmed by persons who are accepted by local custom as members of the community.

A member of the community has an acknowledged right to take waste land into cultivation, after obtaining the assent of the Odikro or an Elder representing his group and for this purpose he may have to make a customary

<sup>1</sup> This case is exceptional. The normal provision under the Concessions Ordinance has been for a Company to pay 5 per cent. of its profits as royalty to the Native Authority and 5 per cent. of its profits to Government.

<sup>2</sup> Unpublished Report by Mrs. Matson, 1946.

gift, usually described as being in the nature of drink or a sheep. But when assent has been given, he is entitled to the permanent use of the land, without any obligation by way of rent or other dues, other than the obligation to contribute to the services of the Stool. The tenure on which he holds the land is hereditary, but Ashanti custom is strongly opposed to the sale of land so held, since it is the "inalienable possession of the Earth Goddess and the spirits of the Tribal Stool."<sup>1</sup>

A house therefore may be sold but not its site. A holding may pass by will to kindred connections, and an old standing holder can pledge it in payment of debt or even mortgage it, so long as he retains the right of redemption. If a holding is abandoned, it reverts to the community, though practice differs as to the period after which this may occur, it being commonly said that it reverts "after a generation." The above principles are generally accepted and normally enforced in the decisions of the Courts of the Confederacy, though followed less firmly in the small Divisions outside it. There are, for instance, said to have been instances of outright sale in Attabubu.

The authority exercisable by Chiefs as trustees in respect of the occupied lands is therefore to be viewed mainly as flowing from an obligation to protect the interests of the holders and to safeguard the observance of the customary law applicable to them. In respect of lands not occupied by members of the community, trusteeship has a different aspect, since these lands are a source of revenue to the Stool, more particularly in the areas in which mining or timber concessions have been obtained or where cocoa farming is practised.

Some details have already been given regarding the legal procedure regulating the grant of concessions in Ashanti. As regards land for farms, the customary procedure is normally as follows. Persons seeking to take up land, whether Ashantis from other localities or "stranger natives," have in the first instance to gain the consent of the Chief, and to pay him certain customary dues. In one case examined, these were described as consisting of "sheep money" and "drink money" the latter being 13s., the traditional equivalent of two bottles of gin; the "sheep money" was stated to be £8 3s. 6d., credited to the Head and other Chiefs. It would, however, be unwise to treat this as more than an illustration of the practice in a single area.

Where the land is farmed for cocoa, an annual rent or "tribute" is paid. This was at one time at the rate of  $\frac{1}{8}$ d. a tree, but has been replaced by a return to an earlier practice under which an "annual sheep" is paid to the owner of the holding, though the value of the "sheep" is calculated so as to be the equivalent of "eight sheep to the penny." Land held by a "stranger" if abandoned or left uncultivated reverts to the Stool at a much shorter period than in the case of land held by a member of the community.

The considerable revenues from the use of the Stool lands are, as already indicated, shared in various proportions by the Chiefs concerned. The history of the process by which this system came to be established is far from clear, but the present procedure in some instances is illustrated by the facts already given in regard to the Kumasi Clan lands.

In view of what has been said in a previous part of this Chapter regarding the development in the Gold Coast Colony of the conception of individual rights in land and the practice of sale of holdings, it is natural to enquire how far these observations apply to Ashanti. It is clear that in the Divisions within the Confederacy at all events, the influences making for the maintenance of

<sup>1</sup> R. S. Rattray, *Ashanti Law and Constitution*, 1929, page 349.

previous custom have been far stronger than in the Gold Coast Colony. There is far less evidence of the growth of the practice of sale of private holdings, nor has there been the same tendency to use documents which describe land transactions in terms of European law and claim, in effect, to be proofs of the transfer of freehold rights. Nor is there the same evidence of the existence of large holdings, acquired by the methods adopted in the Gold Coast Colony, the average size of cocoa farms in Ashanti being only two to two-and-a-half acres.

In Ashanti, the chief requirements at the moment would seem to be the need for some system of survey, which would curtail litigation regarding the boundaries of holdings, a closer study of the customary law, in order to provide a guide to the Native Courts in the trial of land issues, the clarification of the law regulating the respective jurisdiction of the Native Courts and the Magistrates' Courts, and the promulgation of Rules of Procedure for the Native Courts which would prevent the inordinate delays in trial of land issues to which reference has been made above.

#### A CONCLUDING NOTE ON ASHANTI

Looking at the present position, as presented in the previous pages, there can be no question of the very substantial advance made during recent years in the development of the system of native administration in both its executive and judicial aspects. But the process is still in a transitional stage, and it is not easy to forecast the direction which further development may take. It is in particular difficult to foresee the position likely to be occupied by the Confederacy Council. At one period Ashanti national sentiment undoubtedly looked forward to the evolution of the country as a separate political unit, in which the Confederacy Council would be the recognized organ of legislative and administrative authority. But the political integration of Ashanti with the Gold Coast Colony effected by the constitution of 1946 has for the time being diminished the general interest in this aspiration, nor does there in fact appear to be any substantial grounds for its revival. Ashanti has interests of its own, which may require the provision of an organ of Government serving local purposes, but neither ethnic nor economic circumstances exist which would justify any scheme that involved complete political separation of Ashanti from the Gold Coast Colony.

For present purposes therefore, our chief concern lies in the position now occupied, or likely to be occupied in the near future by the Confederacy Council in relation to the Divisional and other Native Authorities. The Council is now well established as the principal if not the sole source of subsidiary legislation for them. But in other ways, its position is less strong. Its own finances are restricted, and it has no control over the numerous Treasuries and Sub-Treasuries which are now responsible for the expenditure of the growing revenues available for local services. There can be no question that some measure of centralization in this direction would be to the public advantage, and given this, the Council could be of great value in co-ordinating expenditure on local services, or in making provision for the training of the establishment required for their operation.

But the influence exercised by the Council might be even more important from another aspect. As has been shown, it is only in the Council itself or in the Council of the Kumasi Division that there has been recognition of the need



for modifying the formation of the Native Authority organization by the admission of persons holding no traditional status. But Ashanti has begun to share with the Gold Coast Colony some of the social results of economic advance described in the previous Sections of this Chapter, and there is, especially in Kumasi, a growing "middle class" which shows an increasing interest in educational progress and in political movements.

It is true that its activity has not as yet resulted in the same development of political Associations as is seen in the Gold Coast Colony. The principal Association of this type is the Kotoko Society, founded in 1916, which has taken its name from a word at one time used in describing the Akan people.<sup>1</sup> Its declared object was to advise the Chiefs on matters of administration, and it showed itself active in pressing for the return of the Asantehene to his position in Kumasi, for the recognition of the Confederacy, and for the restoration of the Kumasi Lands. Up to the present therefore its concern has been shown mainly for purposes appealing to the spirit of Ashanti nationalism, rather than other types of political movement, but its membership of 400 now includes many persons of education with a progressive outlook. Other Associations, such as that of the Mampong District Native Authority Officials or the Sunyani Literate Aborigines Society represent purely local interests, and at present show very little or no activity. Ashanti, it may be added, does not contain a large number of soldiers with war experience; it provided only 5,561 recruits out of a total enrolment of 40,847 in the recent War.

It cannot however be assumed that the more progressive elements in Ashanti society will continue to accept a type of local administration which rests so strongly on a traditional basis, nor that they will refrain from pressure for the widening of its present composition. This is likely to be seen, in particular, in regard to the judicial organization. In the Report already referred to, Mr. C. R. Havers remarked on the multiplicity of the Courts in comparison with the relatively small volume of work with which they dealt. But their composition and procedure is even more open to criticism, in view of the nature of the judicable issues created by modern economic developments. The Chiefs and other traditional authorities no doubt regard the exercise of judicial functions as evidence of their status and essential to the maintenance of their prestige; but apart from the interests of justice, strict adherence to a privilege of this character may become a menace to the authority of the chiefly order itself, and to the traditions which it represents.

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<sup>1</sup> R. S. Rattray, *Ashanti*, page 211.

## SECTION III

# THE NORTHERN TERRITORIES

### THE ESTABLISHMENT OF THE PROTECTORATE

THE Northern Territories came within the British sphere of influence in 1897, after the conclusion of agreements with some of the Chiefs, and as the result of negotiations with France and Germany.<sup>1</sup> The Protectorate over these Territories was established in 1901, by virtue of an Order in Council giving the Governor of the Gold Coast authority to exercise jurisdiction and administration "over areas under the protection of His Majesty," which were thenceforth to be described as the Northern Territories of the Gold Coast.<sup>2</sup> Under this Order in Council and the subsequent amending Orders, the Northern Territories are administered by the Governor of the Gold Coast Colony. Civil Administration, under charge of a Chief Commissioner, was established in 1907. Since 1934 legislation can be passed by the Gold Coast Legislature or the Colony, Ashanti and the Northern Territories together as though they were a single territory, but such legislation acquires legal force in the Northern Territories through separate "enactment" by the Governor.<sup>3</sup>

The circumstances in which the northern portion of what was formerly German Togoland is administered as part of the Northern Territories have already been explained.<sup>4</sup> This portion of Togoland is some 10,597 square miles in area and has an estimated population of 180,000. Out of the five Districts of the Northern Territories, one, Krachi, is wholly situated in Togoland, and three, namely Mamprusi, Dagomba and Gonja, include areas situated in it. The area and population of these parts of Togoland are included in the following table, which gives the composition of the Northern Territories in 1948:

District	Area in Square Miles	Population	Density per Square Mile
Mamprusi .. ..	6,376	531,130	83.3
Wa .. .. .	7,227	205,042	28.4
Dagomba .. ..	9,611	224,506	23.4
Gonja .. .. .	14,469	84,415	5.8
Krachi .. .. .	3,380	31,603	9.4
Total .. .. .	41,063	1,076,696	26.2

### ECONOMIC CONDITIONS

The Northern Territories have all the appearance of a fortuitous addition to Ashanti and the Gold Coast Colony. They lie within the Sudanese zone, and their physical conditions are in strong contrast with the country lying

<sup>1</sup> The German Protectorate over Togoland was declared in 1884 and the boundary demarcated between the years 1888 and 1890.

<sup>2</sup> Order in Council 26th September, 1901. The Amending Orders are 6th July, 1907; 8th May, 1919; 14th July, 1922.

<sup>3</sup> The Gold Coast Ordinances Order in Council, 9th November, 1934.

<sup>4</sup> Section I, page 190.

further south. As one passes northwards from Ashanti, the tropical rain forest belt gives place to "savannah" or "orchard bush" country, with a lower rainfall and sparse forestation. The general character of the "orchard bush" country is that of a vast plain, in some places flat, in others gently undulating and diversified by an occasional range of hills or steep scarps.

The Gambaga Scarp, in the Mamprusi District, creates a dividing line between the two prevailing types of cultivation. The relatively high plateau north of the Scarp is well drained by streams flowing into the White Volta River; cultivation, mainly of cereal crops, is of a permanent type, and the population is more dense. In the country round Navrongo, for example, the density is noticeably high, rising in some localities to over 400 to the square mile, and the family holdings average not more than six or seven acres. In the lower altitudes south of the Gambaga Scarp the population is scantier, shifting cultivation is customary, and yams are grown on a large scale alongside the millet and guinea corn.

Throughout the whole area, however, the prevailing economy is that of subsistence farming. In the south-east of the Krachi District, where conditions approximate to those of north-eastern Ashanti, there is some production of cocoa. Rice, ground nuts and shea-butter are exported to a small extent, and from the fertile Krachi, Kpandai and Bimbilla areas in particular there is a large trade in yams to Accra and Kumasi, which is of some local economic value. There is also a considerable trade in dried fish, caught in the rivers of the Volta system by seasonally immigrant Ada fishermen. But apart from this there is little production of export crops. Cotton has been tried but has so far proved a failure as an export crop, although there is a good deal of local utilization.

The relative isolation of the Northern Territories, and the great distance from the railhead at Kumasi, would in any case tend to make export production unremunerative. The general standard of living is lower than in most parts of Ashanti or the Gold Coast Colony, though there is no evidence of famine conditions on any considerable scale. The people are of an agricultural rather than pastoral habit, and derive little benefit from their cattle, though these are numerous in relation to the rest of the country, for the Northern Territories have about 250,000 out of the total of 300,000 in the country as a whole. But the unhumped variety which predominates here is small sized, and though it has acquired some tolerance of local disease, it has little value either for the beef market or for use in ploughing. The valleys of many of the streams are infested with fly, but the chief menace to cattle appears to be rinderpest rather than trypanosomiasis.

The Northern Territories therefore make little contribution to the economy of the country as a whole, so far as regards the production of that surplus over subsistence requirements which will provide the State with revenues and the community with the means for achieving social advance. The position may be somewhat modified if schemes now under consideration for developing the production of ground nuts and rice come to fruition. It has been suggested that there are roughly two thousand square miles suitable for the production of ground nuts, but for the present action has been limited to taking the preliminary steps to lease 32,000 acres for a pilot scheme at Damongo in the Gonja District. It seems in any case clear that success for any scheme for large scale production of ground nuts could only be achieved by the use of mechanization. The recent African Rice Mission has pointed to four localities in the

Mamprusi, Wa and Gonja Districts as containing areas which might be suited to rice cultivation if the necessary irrigation works were provided, but these proposals await detailed examination.

Apart from these possibilities, the Northern Territories convey a general impression of backwardness as compared with Ashanti or the Gold Coast Colony. There is a most regrettable shortage in the provision of communications. Education is provided by three Government schools including a girls' school and a teachers' training college, eight Mission and 63 Native Authority schools, 36 of which have only been opened in the last three years, but the enrolment is only about 3,550, a very small proportion of the children of school-going age, which must number about 200,000. The bulk of those attending school stop at Standard III, and there are only 111 in Standard VII. The Native Authority schools include two senior, one senior-junior and 11 infant-junior boarding schools; the Mission Schools include one senior and two infant-junior boarding schools and a teacher-training college.

Medical facilities are also poor; there are Government Hospitals at Tamale and Bawku and also one (but without a resident doctor) at Yendi. There are in the Northern Territories only seven medical men, of whom four are stationed at Tamale; it may be noted however that the Government is constructing a Model Health Centre at Bimbilla, and a large hospital is contemplated for Bolgatanga. The working strength of the Agricultural Department is five officers, and it has been possible to do little except in the more congested areas situated in the north of the Territories, where some progress has been made in soil conservation by means of a system of mixed farming and by control of bushburning.

#### THE SOCIAL STRUCTURE

So much for the economic conditions of the Northern Territories. The racial composition of the population presents a similar contrast to that of Ashanti or the Gold Coast Colony. Viewed from the linguistic standpoint, the greater part of the Northern Territories is occupied by people speaking different forms of the Moshi-Dagomba language. Between the Moshi-Dagomba area and Ashanti the Gonja language is spoken by the ruling aristocracy, this being one dialect of a language spread over a considerable part of the Gold Coast and Togoland. It is known by the name of Guang and though it is now being superseded as a language by Twi, Fanti or Ewe, it is assumed that there was once a Guang tribe or group of tribes formerly inhabiting the regions in which the language is now spoken. How far this is correct it is now difficult to say.<sup>1</sup> It is more important for our present purpose to note that the present tribal distribution in the Northern Territories is due to the fact that it represents the result of a fusion between the indigenous people and the immigrant tribes which have conquered them.

Of the aboriginal people, traditionally the Vagala, Tsala and others, little is known; their own traditions are lost, and those which they relate to-day are the traditions of the conquering tribes. But certain facts can be established regarding the course of these conquests. Without dwelling at length on the incidents connected with the break-up of the Sudanic Empires, it suffices to say that the growth of Mohammedan influences from the eleventh century A.D. onwards was responsible for a western movement of warrior bands belonging to some of the pagan tribes on the southern fringe of the Sahara who refused

<sup>1</sup> See pages 36 to 38 of *The History of the Gold Coast*, W. E. F. Ward, 1948.

to accept the new religion. Among these were bands representing sections of the Mamprusi, Dagomba and Moshi peoples, who inhabited the neighbourhood of Zamfara, in the heart of the early Songhai kingdom on the west of Bornu. The arrival of the Mamprusi and the Dagomba in what are now the Northern Territories of the Gold Coast and of the Moshi in the French Upper Volta Colony appears to have taken place at the end of the twelfth and the early part of the thirteenth centuries.<sup>1</sup>

It seems to be agreed that the ruling classes of the Mamprusi, Dagomba and Moshi were of the same stock, and that Gambaga, in the present Mamprusi District, was the central point at which this movement first came to rest. From this point they radiated in their expeditions, as the result of which one kingdom was established by the Mamprusi, while another branch went south to found the Dagomba kingdom, and another went north to found the Moshi kingdom in what is now French territory. The Mamprusi leader was from the first recognized as the titular head or paramount of these branches. There is a blank between these events and the foundation of the Gonja kingdom, about the seventeenth century, by invaders also coming from the west, who drove back the Dagombas from some of their southern and western strongholds. It is generally accepted that the founder of the Gonja kingdom was a member of a family holding authority in the old Mali Empire of the Mandingos.<sup>2</sup>

Soon after this period, Ashanti levies made a number of incursions into the Northern Territories, and this, combined with the introduction from Ashanti of the Dane gun, caused a widespread upheaval throughout the greater part of this area. Bands of marauders, including Dagombas, Tampoulimas and Gonjas over-ran the country between Lawra and Wa in the north-west, with the result that the Wa Kingdom was established by the Yelia family, together with a large number of smaller kingdoms in the vicinity. The various movements of population described above did not, however, extend to the present Krachi District, where there were a large number of indigenous tribes, clearly originating in the south or south-east, since a number of them are Twi-speaking.

These movements did not end the series of tribal upheavals to which the Northern Territories were subjected. Towards the end of the nineteenth century they formed part of the extensive area devastated by the activities of Samory, a slave raider who for many years ravaged the French Sudan, and who was not captured by the French until 1899. They also suffered from the raids of Babatu, one of the claimants to the chiefship of the Grunshi country between the Mamprusi and the Moshi countries. The raids for which he was responsible only ended with his death at Yendi in 1906.

Returning now to the circumstances in which the immigrant groups above referred to established their authority over the indigenous tribes, it is important to note that they encountered an institution, mainly religious but partly political, which had its influence on the form taken by their rule, and is also reflected in the form subsequently taken by the organization of native administration. Throughout the Northern Territories, as indeed among many of the West African peoples from the Senegal to the Niger,<sup>3</sup> all religion centred

<sup>1</sup> R. S. Rattray, *Tribes of the Ashanti Hinterland*, 1932; *The History and Social Organization of the Peoples of the Northern Territories of the Gold Coast*, St. J. Eyre-Smith, 1933; *Natives of the Northern Territories of the Gold Coast*, A. W. Cardinall, 1920; *Brief History of Dagomba People*, E. F. Temakloe, 1931; *The Dynamics of Clanship among the Tallensi*, M. Fortes, 1945; *The History of the Gold Coast*, W. E. F. Ward, 1948, pages 120-126. *The Web of Kinship among the Tallensi*, M. Fortes, 1949.

<sup>2</sup> See Chapter IX, page 294.

<sup>3</sup> See *The Peoples of Southern Nigeria*, P. A. Talbot, 1920, Vol. II.

on the worship of the Earth God and of the ancestral spirits. The land itself was mapped out into a network of well-defined areas (*tengani*) each of which had its own particular designation, as a domain of the Earth God. The principal mediator between the people and the Earth God was the *Tendana*,<sup>1</sup> a priest holding an hereditary office, who lived the life of a recluse in communion with the God and the ancestral spirits, and had considerable control over the lives of the people in his particular "tengani" area. Since the *Tendana* of one area could not propitiate the Earth God or ancestral spirits of another, the area for which a *Tendana* was responsible came to be recognized as a land unit, with its own established boundaries. The land itself was regarded not as the property of a family or other unit, but of the Earth God; the *Tendana* was its trustee, and was the final authority in any issue such as the allocation of the "bush" for cultivation.

On such evidence as is now available, the political constitution of the indigenous tribes might be described as having been a collection of autonomous *Tengani* areas owing allegiance to no secular chief, but directed by a council of Elders with the support of the *Tendana*. Save in a few instances, the leaders of the invading bands did not interfere with the religion or the land organization of the people, and contented themselves with appointing their relatives or leading supporters as subchiefs to administer the existing "tengani" areas. It is not improbable that the indigenous religion and land organization of the areas they conquered was similar to that of the country from which they came, but whatever be the truth of this, it is clear that their ready acceptance of local custom not only secured for them a general acquiescence in their rule, but led to their ruling Chiefs being credited with magico-religious powers.

Thus the Chiefs came in time to lead a life apart, surrounded by numerous taboos, exercising little or no executive authority over their subchiefs, and such control as they possessed was largely by virtue of the supernatural position or sanctity with which they were invested. The "tengani" areas, which started as subject States under the subchiefs imposed on them, tended to become semi-independent, and in time the Mamprusi, Dagomba and Gonja kingdoms represented, in effect, a collection of federalized units. The principal binding force which held these loosely constituted kingdoms was, and still is, the popular belief in the supernatural powers of the ruling Chiefs. This position does not seem to have been affected by the fact that in certain areas, as for example in Dagomba District, a considerable section of the population have professed the Mohammedan faith. The tenets of Islam are, to all appearances, very lightly held, and there is little knowledge of its ritual or its discipline.

It is now difficult to draw any clear line of distinction between the invading or immigrant tribes and the medley of indigenous tribes over whom they established control. There has been a marked degree of fusion, and the tribal distribution is now best stated in terms of linguistic divisions. Thus in Mamprusi District, the Mamprusi themselves (60,000 in number) form part of a group including the Fra Fra (160,000), Kusasi (110,600) and Busanga (30,000) which has linguistic affinities. The Kassena (55,500), Builsa (48,400), Nankanni (36,000), Bimoba (24,000) and Konkomba (6,000) are not linguistic-

<sup>1</sup> This is the word used in the Dagati language. *Tensoba*, *Tengansobe*, *Tigatu*, *Tengyona*, are local variations of the title. See *Natives of the Northern Territories of the Gold Coast*, A. W. Cardinall, page 15; and page 6 of the Report on Togoland to the United Nations Organization, 1948. For the position of the *Tendana* in the present times see pages 270 and 276. In the Krachi District the *Aseswura* performed functions similar to those of the *Tendana* in the rest of the Protectorate.

ally akin to the first group and there are also marked differences of dialect among them. The Konkomba are credited with being among the oldest inhabitants of the area ; the Bimoba are clearly a recent local migration.

In Wa District the Wala (20,000) have no language affinity to the other tribes in the District although Wala is akin to Dagomba. The Lobi (36,000) and Dagarti (99,000) have affinity with the Dagomba although the true Lobi language has no such connection ; the Sissalla-Grunshi (47,000) are a distinct tribe, having no affinity with their neighbours either in custom or language.

In Dagomba District the Dagomba (150,000) and Nanumba (10,000) are related and speak the same language. The indigenous Konkomba, Komba and Chimba (roughly 25,000) have a dialect different from that of the Dagomba though related to it. The Chokosi (5,000) have no affinity with the others ; they are of Akan stock and arrived originally as mercenaries or slave raiders.<sup>1</sup>

In Gonja District, the Gonja (75,000) seem to stand in a group by themselves, their language being a mixture of Guang and a dialect of the Moli group. Gonja is the language of the hierarchy and numerous aboriginal dialects still exist in the area, such as Vagella and Safaliba in the West, and Nchumuru in the east. The Brong (8,000) have racial and linguistic affinities with the Akan. The Mo (1,800) are racially and linguistically allied with the Grunshi ; most of the Mo live south of the Volta and as a result of long contact with the Ashanti the tribe has adopted a good many Akan customs and most of its members are bilingual. There are also a number of local immigrants such as the Basare, Konkomba and Kotokoli.

In Krachi District there is a great variety of tribes, none of them large in numbers. The Krachi (8,050), Pai-Akrosu (3,800) and Tapa (1,800) are immigrants from the south. The Ntrubu (4,700), Adele (3,300), Adjuati (2,200) and Nchumuru (7,500) are politically distinct units, and have separate dialects, bearing some affinity to those of the Akan group. In the town of Kete there is a large Hausa community and elsewhere also there are small settlements of Hausa. The number of Konkomba settlers is increasing annually.

#### THE POSITION WHEN CIVIL ADMINISTRATION WAS INTRODUCED

It has been necessary to make some reference to the historical background, in order to explain the situation as it existed in 1907 when Civil Administration was first instituted. The delimitation of the boundary with Togoland and the fixation of the boundary with French territories along the line of the seventh parallel of N. latitude had cut off parts of the Mamprusi and Dagomba kingdoms on the north-east and also divided some of the tribes in what is now the Wa District in the north and north-west. Taking the present Districts in the order in which they stand in the list given on a previous page, the situation was briefly as follows. In Mamprusi District the predominant authority was the Na Yiri, representing a Mamprusi dynasty, with a number of subchiefs, over some of whom, however, he had only a nominal authority. Here the traditional position of the Tendanas had been respected by the invaders. In the Wa District the Wa Na, or Na of Wala, who represented the more permanent result of the local upheaval described above, exercised a considerable measure of power, but the other tribal groups did not recognize any central authority.

Dagomba District had two rulers of invading stock, the Ya Na of Dagomba and the Bimbilla Na of Nanumba, with a considerable number of subordinate

<sup>1</sup> For the Akan see page 191.

Chiefs. Here the invading rulers and their subordinate Chiefs had largely supplanted any authority held by the Tendanas. In Gonja District the Gonjas, representing as has been explained, an invading tribe under Mandingo leadership, had a principal Chief, the Yabumwura, but there were also a number of indigenous tribes, such as the Brong, who are racially connected with the Akan of Ashanti, and occupied a more or less independent position.

In Krachi District there were a number of autonomous groups, of whom those bordering on Ashanti had traditional "stool holders". While there was no direct allegiance to a paramount in this area the Dente fetish at Krachi exercised a powerful influence. The Germans destroyed the fetish and hanged its priests, but the power of the fetish survived this blow to such an extent that it was subsequently possible to form out of the seven autonomous groups a Native Authority based on a vague common allegiance to Dente.

Administration was limited at the outset to making provision for the maintenance of law and order, and where traditional Chiefs appeared to have the necessary authority, they were recognized as agencies for this purpose. In other cases chiefdoms were created by the appointment of persons who seemed to possess local prestige or authority. No steps were taken to define the extent of the powers to be exercised by them, and an Ordinance which was issued in 1906 merely empowered them to "exercise the jurisdiction heretofore exercised by them in the same measure as such jurisdiction has been heretofore exercised".

There is a general agreement that the results were unfortunate in more than one direction. The backing of the Administration gave a coercive power to Chiefs whose own position was in many cases that of religious rather than secular heads, and they used it for their own private gain, either by extortion or by levying in the form of money the ritual tribute accorded to them by religious custom. The division of the country into Administrative Districts divided tribal units and often took no account of Tenganian boundaries. Finally, the authority given to Chiefs tended to invade the field of functions of the Tendanas, to the prejudice of the customary system of land organization.

#### THE INTRODUCTION OF THE NATIVE AUTHORITY SYSTEM

In 1929 the system came under review, as the result of studies which District Officers were directed to make of the history and social customs of the people. The position was discussed in conferences attended by the Chiefs and people, and the former showed themselves to be more amenable to projects of reform than had at first seemed possible. As a result, Ordinances were enacted in 1932 for the constitution of Native Authorities, Native Courts and Native Treasuries,<sup>1</sup> embodying in a somewhat simplified form the lines of the corresponding legislation in Northern Nigeria and Tanganyika.

In 1934 a further step was taken, designed to put the Native Authorities as now reconstituted in a position to act as agencies for the supply of local services to the community. As shown in Section I, the Gold Coast had a long tradition of immunity from any form of direct taxation, and it was therefore a tribute to the manner in which the reorganization had been carried out when the Native Authorities agreed to accept the imposition of a local tax.<sup>2</sup> Its acceptance was no doubt assisted by the fact that it replaced the payments

<sup>1</sup> Native Courts Ordinance, 1 of 1932; Native Authority (Northern Territories) Ordinance, 2 of 1932; Native Treasuries Ordinance, 10 of 1932.

<sup>2</sup> Regulation 5 of 1934 under the Native Treasuries Ordinance, 1932.



previously made to Chiefs in the form of tribute in labour or kind—it bore in fact the name of the Tribute Tax—and also that the whole of the proceeds were credited to the Native Treasuries. It is noticeable that the adoption of this measure in the Northern Territories preceded its acceptance in the Gold Coast Colony.

As stated above, the Native Authority Ordinance of 1932 reproduced in a simplified form the provisions of the analogous legislation of Northern Nigeria, but subsequent amendments amplified the subjects on which Native Authorities might issue orders.<sup>1</sup> The Ordinance also reproduced the provisions by which a Native Authority can make Rules providing for the peace, good order and welfare of the natives of the area over which its authority extends. The provisions of the Native Courts Ordinance will be referred to subsequently when dealing with the present organization of the system of native justice.<sup>2</sup>

#### THE PRESENT NATIVE AUTHORITIES

In the reorganization carried out in the years 1932 onwards an effort was made to reduce the large number of Chiefs exercising independent authority, and to relegate them to the position of Subordinate Native Authorities. But even so, the present position, as will be seen from the statement below, represents a considerable diffusion of political and administrative authority. This extends indeed further than the statement would seem to show, for the gazetted Native Authorities in some cases exercise only a nominal control, the real power resting with the Subordinate Native Authorities, and there are in addition a considerable number of subchiefs who exercise some measure of authority but are not gazetted as Subordinate Native Authorities. Mamprusi District, for example, has altogether 135 subchiefs, of whom only 39 are gazetted as Subordinate Native Authorities.

The Authorities shown overleaf are partly traditional and partly represent creations made during the years preceding the reorganization of 1932. In the Mamprusi District the Authorities, with the exception of the Fra Fra Chiefs, and those in the Builsa and Kassena-Nankanni area, are traditional and hereditary, in the sense that they must be drawn from certain families and in some cases must be related within certain defined degrees to previous Chiefs. In some cases the Subordinate chiefs are selected by the Chief above, in others they are elected by the headmen or householders concerned. The procedure for selection of the traditional Chiefs has, however, some unfortunate results. There is in effect a hierarchy, sub-chiefs being promoted from a lower to a higher grade, with the consequence that a man only becomes a recognized Native Authority or Subordinate Native Authority when his age equals or even exceeds that of his predecessor, so that ordinarily a Chief does not succeed until he is so advanced in years as to have lost any power of initiative. The selection of the "created" Chiefs does not follow the same procedure, and there is a general agreement that they are for this reason more virile and efficient.

In the Wa District the Wa Na Chiefdom is hereditary, the Chief being chosen from one of three families each of which provides a candidate for the "skin" in rotation. The other Chiefs in the District are of the order described above as "created", but the chiefdoms are becoming hereditary in certain families. Where there is a dispute as to the succession, it is becoming the practice to hold a secret ballot among the "compound heads".

<sup>1</sup> Ordinances 42 of 1935; 19 of 1936.

<sup>2</sup> Page 269.

District	Native Authority Area	Native Authority	Subordinate Native Authorities
Mamprusi	Mamprusi	The Na of Mamprusi and Council	The Fra-Fra Federation of 5 Chiefs 5 Chiefs and their Councils President and members of Tallensi Federation 2 Town Authorities 2 Chiefs and Councillors, in respect of Town affairs
	Kassena-Nankanni	10 Chiefs and their Councils acting jointly	The 10 Chiefs acting individually
	Builsa	Sandemnab and his Council	12 Chiefs and their Councils
Wa	Wala	The Wa Na and his Council	13 Chiefs and their Councils
	Lawra	The President and Chiefs of the Lawra Confederacy	4 Chiefs and their Councils
	Tumu	The Tumukoro and Chiefs of the Tumu Confederacy	5 Chiefs and their Councils
Dagomba	Dagomba	The Ya Na of Dagomba and his Council	13 Chiefs and their Councils
	Nanumba	The Bimbilla Na and his Council	3 Chiefs and their Councils
Gonja	Gonja	The Yabumwura of Gonja and his Council	7 Chiefs and their Councils
	Brong Confederacy	The Sarikin Zongo Prang, and the Yejihene and their Councils	2 Chiefs and their Councils
	Mo	Confederacy of 7 Chiefs	—
Krachi	Krachi	The Krachiwura and his Council	—

In the Dagomba District all Chiefs are traditional and hereditary, the rule being that candidates must be of a certain patrilineal descent, though there are some exceptions to this, as in the case of the subchief of Zabzugu, who is usually a nephew of the Ya Na on the matrilineal side. At present all subchiefs in the Dagomba Native Authority area are appointed by the Ya Na, the system having the same characteristic defect as in Mamprusi. The Chief Commissioner has, however, recently ruled that a subchief cannot be recognized as Subordinate Native Authority unless he has the support of the people of his area.

In the Gonja area of the Gonja District the chiefdoms are hereditary in the patrilineal line. In the Prang area the head of the Strangers community (mainly composed of Hausa) is the Native Authority, and it is noteworthy that both the Pranghene and Yejihene are subject to the custom of destoolment common in the Gold Coast Colony.<sup>1</sup> In the Krachi District the Krachiwura and other Chiefs hold chiefdoms now treated as hereditary, succession passing as a rule to the eldest nephew on the father's side.

It will be noted that the Native Authorities and the Subordinate Native

<sup>1</sup> See page 192.

Authorities have in the majority of cases been gazetted as composed of a Chief and his Council. The composition of the Councils is governed by local custom, and it does not appear that the Administration has so far taken steps to regulate their membership. In Mamprusi District the Council of the Na is composed of his traditional courtiers and some of his subchiefs; elsewhere, as in Fra-Fra, it is composed of subchiefs, except in the case of the two Town Authorities, where it consists of representatives of the various Stranger communities.

In Wa District, the Council of the Wala Native Authority consists of hereditary office holders and some subchiefs; in the Lawra and Tumu areas of the District it consists of such subchiefs or headmen as may be called in for the purpose. In Dagomba District the Na's Council is composed of his traditional Elders. In the Gonja area of Gonja District the Council itself has a traditional structure, but an Advisory Council to the Native Authority has been recently instituted. In Yeji the Council has largely a traditional basis, and in Prang it consists of members chosen by the Native Authority.

The Advisory Council in Gonja is an interesting innovation. Gonja has been split up into twelve constituencies, one for each of the Subordinate Native Authorities, together with special representation for two urban areas, for the two major immigrant areas, and for an area directly administered by the Yabumwura. Any adult Gonja male can stand for election, and any stranger who has been resident for three years. All adult males have a vote. The first election was held in January, 1949. There were 81 candidates for the 12 seats, and a thirty per cent. poll was recorded. Successful candidates included Government and Native Authority teachers, farmers, cattle traders and one Tendana. The new Council met when the Gonja Native Authority Estimates were being considered in February, 1949, and examined the Estimates in detail, being responsible, among other things, for the rejection of a proposal to increase the salaries of the Chiefs for the coming year. It has formed various committees to examine projects such as the development of water resources, and the possibility of running a Native Authority transport service.

The degree to which the Native Authorities are dependent on the advice or support of their Councils varies greatly. In the period preceding the reorganization of 1932 the tendency of many of the Chiefs was to become autocratic. The traditional Councillors or "placemen" who are attached to some of the senior Mamprusi, Dagomba or Gonja Chiefs are conservative, and are seldom able to exercise any wholesome influence over the Chief. Many of the Chiefs of more recent creation are, on the other hand, said to have Councillors of a more progressive character and to be themselves in closer relation with the people.

Looked at from another standpoint, the chief weakness of these Councils lies in the fact that, with few exceptions, there is no regular provision for the inclusion in them of the more educated and advanced elements in the population. As already shown, the general standard of education in the Northern Territories is low, and few of the Chiefs themselves are educated. In Mamprusi only three, in Wa three, in Lawra three, in Dagomba nine, in Gonja two and in Krachi one of the total number of Native or Subordinate Native Authorities (including Councillors and minor Chiefs) are literate, and this fact reinforces the argument in favour of associating with them such educated members of the community as are available.

The emoluments of the Native Authorities and their Councils are shown overleaf:

District	Area	Pay of Chiefs	Pay of Sub-Chiefs	Pay of Councillors or others
Mamprusi	—	Varying from £210 a year downwards	—	Headmen: Unpaid except for 10 per cent. of the tax, for the collection of which they are responsible
	S. Mamprusi	—	£1 to £2 a month, when attending at N.A. Headquarters	—
	Kusasi	—	Salaries averaging £2 10s. per month, plus duty allowance for attendance at N.A. headquarters (£3 per month)	—
	Fra Fra	—	Salaries averaging 25s. per month, plus duty allowance for attending at N.A. headquarters (£1 per month)	—
Wa	—	Salaries vary from £84 a year in the case of certain Presiding members to £6 a year in the case of their less important Councillors	Sub-chiefs' and headmen's salaries vary from £30 to £6 per annum	Some headmen receive no salaries
	Tumu and Lawra	Where Presiding members act as Treasurers, they also receive allowances varying from £36 to £12 per annum		In some areas 2 Councillors selected for a month at a time to attend the Presiding member, each receives £1 in addition to their salaries
Dagomba	—	The Ya Na £250 p.a.	£48 or £60 p.a.	Members of the councils of N.A. £12 p.a.
	Nanumba	The Bambilla Na, £120 p.a., plus entertainment allowances up to £60 p.a.	Few sub-chiefs below the rank of sub-divisional chief receive any pay	
Gonja	—	The Yabumwura, £240 p.a.	3 village chiefs £30 to £21 p.a.	7 Elders £36-£9 p.a.
	Gonja Sub-Divisional	6 N.A. members, £108 p.a. each	28 village chiefs, £30 to £9 p.a. each	5 Elders £10 10s. p.a. each
	Yeji	The Yejihene, £84 p.a.	—	8 Elders at £12 p.a. each
	Prang	The Serikin Prang, £126 p.a. The Pranghene, £104 p.a.	—	6 Elders at £24 p.a. each
	Mo	7 N.A. members £24 p.a. each	—	—
Krachi	—	The Krachiwura, £122 p.a.	£36 p.a.—if they have a Court; £24 p.a. without a Court	Elders £24 p.a. No headmen receive pay

## THE NATIVE TREASURIES

On the executive side, the principal activity of the Native Authorities consists in the maintenance of law and order and the collection of the Tribute Tax.<sup>1</sup> They have in the former capacity the services of a body of uniformed Native Authority Police, maintained from Native Authority Funds.

The Native Treasuries were, as already explained, instituted in 1932, but the complete development of the system has been hindered by the disinclination of many of the Native Authorities to amalgamate for the purpose of establishing the Treasuries on a District basis. The number of separate Treasuries and sub-treasuries is in consequence considerable.

District	Treasuries	Sub-Treasuries
Mamprusi .. ..	3	15 in Mamprusi Native Authority area
Wa .. .. .	3	There are a number of sub-treasuries not officially recognized as such
Dagomba .. ..	2	13 in Dagomba Native Authority area
Gonja .. .. .	2	11
Krachi .. .. .	1	—

Where there are sub-treasuries they keep their own accounts and surplus cash, but the Native Authority Treasury acts as a Central Treasury, maintaining a joint account, and the Central Treasury clerk is as a rule responsible for inspecting the local accounts. Finance Committees are being formed for all the Native Authority Treasuries, and it is of interest to note that in most cases these include persons who are not members of the Native Authority or its Council, such as teachers, traders or Ministers. Hitherto the preparation of the Estimates has in most cases been in the hands of the District Officer and his staff, as the Native Authorities themselves have not been capable of it, but with the development of the Finance Committees this position may improve. In one District the 1949-50 Estimates were entirely prepared by the Finance Committee and presented to the Native Authority Council by the Finance Committee's Chairman.

The chief source of revenue has been the Tribute Tax imposed by the Native Authorities. This is at the rate of 3s. per male in Mamprusi, (with the exception of one subdivision where it is 2s.) Wa and Dagomba Districts, and until 1948 was 6s. in Krachi and the Brong area of Gonja. In 1948-49 Krachi and Yeji both increased their tax to 10s. per male and, for the first time in the Protectorate, levied a female tax of 2s. and 1s. per head respectively. In the Gonja Native Authority area of that District the tax (which is there known as Head Tax) is levied on an assessment basis, which works out at 5s. 6d. a head in the poorer parts and 6s. elsewhere.

As has already been shown, there is no Native Tax imposed by Government. The Tribute Tax is usually collected by village headmen, who receive a rebate of 10 per cent. on monies collected during the first month and 5 per cent. thereafter. The nominal rolls are prepared by the Native Authorities or Subordinate Native Authorities.

<sup>1</sup> See page 263.

The figures of revenue and expenditure in 1946-47 are shown below :

Native Authority Treasuries	Revenue	Expenditure
Mamprusi .. .. .	£ 56,721	£ 53,938
Wa .. .. .	27,764	26,165
Dagomba .. .. .	28,892	28,302
Gonja .. .. .	16,787	18,238
Krachi .. .. .	9,644	10,173
Total .. .. .	139,808	136,816

#### THE CONTRIBUTION MADE TO LOCAL SERVICES

Approximately two-thirds of the revenue is derived from the Tribute tax and Court fees, ferry and market fees, etc., and of the expenditure approximately 40 per cent. is incurred on items classified as Administrative, 35 per cent. on the combined heads of Education, Medical, Agriculture, Animal Health, Forestry and Water Supplies and 25 per cent. on capital works. The proportion expended on items classed as Administrative, which includes provision not only for the Native and Subordinate Native Authorities and their clerks, but for the Native Authority Police and the Courts, is by no means abnormal.

Though the remainder available for expenditure on local services, about £102,000, is not an impressive sum, there is evidence that it has succeeded in creating a general interest in the provision of facilities, and this was all the more necessary in view of the relatively small attention previously paid to the Northern Territories by the departments of the Central Administration. The funds available have been utilized for the construction of markets, for provision of dams or other local water supplies, for sanitary services, and in some cases for the maintenance of small cattle farms or agricultural demonstration farms.

The Native Authorities have no European technical staff of their own, and are mainly dependent on the services of the District Officers and of the technical departments of Government in this respect. They do, however, employ a considerable number of Africans who are trained for them by the Government Departments, e.g., Sanitary Overseers, Dressers, Agricultural and Veterinary Overseers, Water Foremen, and Road Foremen. For the most part these do not reach a standard of technical competence equivalent to Government Second Division Staff, but they do very useful work in the field. The Sanitary Overseers are in particular said to have done good work in the Krachi District. There are a growing number of dispensaries with a staff which has received some training in the Government Hospitals; there are for example five such dispensaries in Krachi and four in Gonja Districts. Several of the Native Authorities maintain vaccinators or Health Overseers who are qualified as vaccinators. In this and in similar directions, the scope for expansion is limited by the lack of suitable candidates for training, and the field will not increase until there has been a considerable extension of educational facilities.

There is considerable interest in the expansion of education, and reference has already been made to the number of Native Authority schools now estab-

lished in the Territory.<sup>1</sup> The major proportion of the expenditure on maintenance of schools is however met by the grants from Government, the part taken by the Native Authorities being limited to the provision of buildings and equipment, and though they are represented on the local School Committees, it cannot be said that they take any direct share in the management of the schools. In this and some other respects, progress has been restricted by the feeling that local men should be employed for local work when possible. This feeling was at one time very strong, but seems now to be somewhat less marked. There is now a substantial element of local men in the local Training School maintained by the Government, and it is estimated that in about ten years time the great majority of teachers in the Northern Territories will be drawn from local sources. It is noteworthy that owing to the great variety of dialects in use, instruction in English begins at a very early stage in school life, and it is not improbable that English may become the lingua franca of the Territories.

#### THE USE MADE OF RULE MAKING POWERS

The Native Authorities have since about 1935 made considerable use of the Rule making powers provided in Section 17 of the Native Authority Ordinance 2 of 1932. The Rules made, which range from 14 to over 40 in different Districts, deal for the most part with matters lying within the ordinary field of Native Authority activities, as for instance the provisions for regulating hawkers' licences, fees for cattle pounds and slaughter houses, rules for village sanitation, the control of fishing, and the like.

There are only two or three Rules which deal with matters of wider scope, such as the protection of forests and trees or the control of grass burning. In the majority of cases the Rules owe their origin to the influence exercised by Administrative Officers, rather than to the initiative of the Native Authorities. The titles of some indeed are clear indications of their origin, as for example the Mamprusi Rule regarding the use of humane bits on horses, or the Gonja Rule for the Protection of Ancient Monuments or the Krachi Rule regarding a local Game Sanctuary.

It would seem that the Native Authorities themselves show little interest in securing the observance of Rules which do not concern their immediate interests, and it is clear that though here, as in many other areas, the Native Authority may provide a convenient machinery by which the Administration can secure the issue of local regulations, the measure to which such regulations are observed in practice depends almost entirely on the personal activity of Administrative or Departmental Officers. None of the Rules deal directly with matters affecting native law or custom.

#### THE NATIVE COURTS

As already stated, the reform of the system of native justice formed part of the general reorganization effected in 1932 and the following years. The Native Tribunals Ordinance 1 of 1932, as amended by the Native Courts Ordinance 31 of 1935,<sup>2</sup> was, like the Native Authorities Ordinance of the same year, framed generally on lines similar to those of the Native Courts Ordinance of Northern Nigeria.<sup>3</sup> The Courts were to be constituted and their powers

<sup>1</sup> See page 258.

<sup>2</sup> Ordinance 31 of 1935 was further amended by Ordinances 3 of 1936, and 24 of 1940. (Cap. 85 of Laws of Gold Coast).

<sup>3</sup> Chapter VII, page 14.

prescribed by warrant, though the Ordinance laid down in a schedule the limits of the powers which might be conferred on each of the three classes of Courts (known as A, B and C Courts) for whose establishment provision was made. The Ordinance also provided for the establishment of Native Appeal Courts, and conferred on Administrative Officers the power of inspection of Courts and review of their decisions.

In addition to administering native law and custom and the Rules made by Native Authorities, the Native Courts have been empowered to administer the sections contained in Book II of Cap. 9 of the Laws of the Gold Coast (The Criminal Code), except Title 12, which deals mainly with forgery. The A Courts have also been authorized to administer the Native Courts (Offence under Native Law and Custom) Order of 1936.

The civil and criminal powers now possessed by each class of Courts may be summarized as follows. The Courts classed as A have powers in civil actions in which the subject matter does not exceed £50, and unlimited powers in cases relating to land and matrimonial causes. In criminal matters they can deal with offences which can be adequately punished by a fine of £50 or six months imprisonment, or in the case of males under 16 years of age, by whipping not exceeding 12 strokes. For B class Courts the corresponding limits for civil issues are £25 and for criminal offences a fine of £25 or imprisonment up to three months or whipping up to 12 strokes. For C class Courts the limits are £10 for civil issues, and for criminal offences a fine of £5 or one month's imprisonment or 12 strokes.<sup>3</sup>

Appeals from Courts of first instance lie in civil cases to a Native Court of Appeal where such has been constituted, or if there be none, to a Magistrate's Court (that is the Court of an Administrative Officer sitting as Magistrate) and thence to the Chief Commissioner's Court, except in cases relating to the possession or occupation of land, when the appeal lies direct to the Chief Commissioner's Court. Appeal from the latter lies not to the Supreme Court but to the West African Court of Appeal. In criminal cases the appeal lies direct to the Magistrate's Court, and thence to the Divisional Court of the Supreme Court. In this respect therefore the procedure differs materially from that adopted in those Colonial territories in which appeals are confined as far as possible to Courts presided over by Administrative Officers as such.

The Native Courts as now gazetted are shown in the following table, but it may be remarked that a number of the gazetted C Courts in the Wa District have never actually functioned. The 10 Courts classed as A and the Fra-Fra Federal Court in Mamprusi District, classed as B, function also as Native Appeal Courts.

District	" A " Courts	" B " Courts	" C " Courts
Mamprusi .. ..	3	3	12
Wa .. .. .	3	5	9
Dagomba .. ..	2	2	14
Gonja .. .. .	1	8	—
Krachi .. .. .	1	1	2
Total .. .. .	10	19	37

<sup>3</sup> Schedule to Ordinance 31 of 1935.



The composition of the Courts corresponds generally to that of the Native Authorities. Each Court consists of the senior Chief as President, with a number of other Chiefs, sub-chiefs or Elders who sit in rotation. The members are selected by the Native Authorities, subject to the approval of the Chief Commissioner, but in practice the selection of persons other than Chiefs or sub-chiefs is confined to those who have by tradition or custom been regarded as entitled to act as judges. It is of some interest to note that in five instances the Courts include the local Iman (here known as Liman), and in seven include the Tendana.<sup>1</sup>

It does not appear that the Administration has so far taken any special measures to secure the appointment to the Courts of educated persons or others who are not members of the customary organization of Native Authorities. The strength of the benches as prescribed in the warrants is normally five as a maximum and three as a minimum, but there are some local variations to this rule. The rates of remuneration given to members of the benches vary widely. In some Districts Native Authorities or members of their Councils receive no additional salary for Court work, but those who receive no salaries in other capacities are paid sitting fees. In others, as in Krachi, the Presidents receive £36 a year and members £12 a year.

The findings of the Courts are recorded in English, but save in a few cases there is no record of evidence. The Native Authorities have lock-ups, but no Jails of their own. When a person is convicted in a Native Court, the warrant is countersigned by a District Commissioner before imprisonment in a Government Jail, thus giving him an opportunity of appealing if he desires to do so.

## THE STATISTICS OF COURT CASES

Such statistics as are available of cases heard in 1946-7 are as follows :

District	Criminal Cases	Civil Cases	Appeals
Mamprusi .. ..	1,149	2,334	28
Wa .. .. .	419	372	—
Dagomba .. ..	637	167	11
Gonja .. .. .	121	154	1
Krachi .. .. .	150	109	3
Total .. .. .	2,476	3,136	43

Out of the total of 5,612 civil and criminal cases, 3,554 were concerned with the administration of the customary law or with breaches of Native Authority Rules or Orders. The results of the 43 appeals are not available, nor is there any record of the action taken on cases in the course of revision.

The numbers of cases heard are not swollen, as in some other Colonial areas, by the inclusion of charges relating to default in the payment of a Government Tax. But it will be noted that the Courts in Mamprusi have been responsible for a large proportion of the total number of cases, and that there was comparatively little resort to the Courts in some of the other Districts.

There is a general agreement on the part both of Administrative Officers and others that though the Courts as now organized are an improvement on the

<sup>1</sup> See lists in Order B (6) of 1935, and subsequent lists, issued under Ordinance 1 of 1932.

earlier Tribunals, there are many which still give rise to complaints of corruption and partiality. This criticism applies in particular to the Courts presided over by some of the older traditional Chiefs ; some of the Courts presided over by Chiefs belonging to the class described as " created " have a much better record in this respect. Inspections of Courts by Administrative Officers are where possible carried out monthly, but at longer intervals in areas to which access is more difficult.

### THE TERRITORIAL AND DISTRICT COUNCILS

Up to a comparatively recent time, various taboos prevented certain of the principal Chiefs from meeting one another, a fact which made it difficult to institute any form of assembly representative of the Native Authorities in the Protectorate as a whole. In spite of this, however, a number of meetings were held, as for instance a Conference in 1938 and a Durbar in 1945. The success of these meetings, and the growing interest shown by Chiefs in the working of the Native Authority system made it possible to establish a Territorial Council, which assembled for its first meeting in Tamale in 1946. It is at present on a non-statutory basis, and its main functions have been declared to be (a) to discuss matters of common interest to the Northern Territories and make recommendations to the Chief Commissioner, and (b) to advise the Chief Commissioner on the distribution of Government grants.

The Council was to be composed of :—

1. The Presidents of the twelve Native Authorities or their representatives.
2. The President of the Kusasi Subordinate Native Authority or his representative.
3. The President of the Five Chiefs Federation of Fra-Fra or his representative.
4. An additional Dagomba Native Authority member to represent Western Dagomba.

To this a member of the newly-formed Mo Native Authority was added at the Third Session (March, 1948) and a member for Western Gonja at the Fourth Session (November, 1948).

The institution of a Territorial Council has already done much to break down suspicion and reserve between the Native Authorities. A good deal of consultation is noticeable among the younger members of the delegations, who are often literate minor Chiefs ; a real exchange of views takes place, and there is considerable realism in debate. This is strengthened by the growing practice of appointing literate representatives. In the Fourth Session of the Council it extended its previous functions by electing four members to represent the Protectorate on the Committee which was set up to consider the constitutional implications of the 1948 Report on the Disturbances in the Gold Coast.

Another important decision taken at this Council was to the effect that members of Finance Committees should in future rank as members of the Native Authorities. The importance of this lies in the fact that most members of Finance Committees do not belong to the traditional hierarchy and are either literates or business men.

At the Third Session (March, 1948) it was decided that the conciliar system should be extended by setting up District Councils, composed of adjacent Native Authorities. With one exception these Councils, of which there

are now four, do not overlap District boundaries, the exception being the Southern District Council, which comprises the Native Authorities in the Krachi and Gonja Administrative Districts. Several meetings of the new Councils have been held, at which the Territorial Council agenda are discussed and delegates briefed. The full implications of these bodies have not however been worked out, and some doubt exists whether their purpose is not already served by the establishment of the Territorial Council. Their principal value lies for the moment in the fact that they provide a machinery which enables neighbouring Native Authorities to meet under the Chairmanship of the District Commissioner in place of the informal gatherings previously held.

### THE URBAN AREAS

The residence of Africans in urban conditions does not as yet give rise to any considerable problem in the Northern Territories. The only town of any size is Tamale, which owes its growth to the fact that it was in 1907 substituted for Gambaga as the headquarters of the local Administration. It has roughly 17,000 inhabitants, of whom about two thirds are Dagomba, and the remainder traders or other "stranger natives" belonging to different communities. Bolgatanga in the Mamprusi District has a population of about 3,000, mainly indigenous, and Bawku in the same District is somewhat smaller, but with a larger proportion of "stranger natives". There are Hausa trading communities in the small towns in the Krachi District. In all towns mentioned, however, the greater part of the population, with the exception of the "stranger natives", still practices some form of agriculture and retains its tribal connections.

Tamale is within the jurisdiction of the Gulkpena, a Native Authority subordinate to the Ya-Na of Dagomba. He is an Elder of the Ya-Na's household appointed by the latter to be head of the Gulkpeogu Subordinate Native Authority. He ceased to operate as such during the German occupation of Togoland, but was re-instated in 1933. There is a Sanitary Board upon which the Native Authority is represented and the Government allows half the rents received for house sites on Crown Land to go to the Native Authority as part of its general revenue. In effect, Government supplies all essential services, the Native Authority being responsible mainly for the maintenance of the Native Court, the Native Authority Police and the markets. In the Native Court, over which the Gulkpena presides, he has the assistance of seven headmen, belonging to different stranger communities, who act as assessors when the rights of persons belonging to their communities are involved. Steps were under consideration in 1948 for the creation of a Town Board for Tamale, with powers to impose a local rate.

Bolgatanga and Bawku are in the jurisdiction of Native Authorities subordinate to the Na of Mamprusi. In both cases, representatives of the stranger communities have been included in the membership of the Councils of the two Chiefs.

### THE NATIVE LANDS

#### THE RIGHTS OF THE GOVERNMENT OVER LAND

In the Northern Territories, the position of the State in relation to the land differs materially from that existing in Ashanti and the Gold Coast Colony. By the Land and Native Rights Ordinance No. 1 of 1927, which followed in

principle the model of the Northern Nigerian Legislation, and that of Tanganyika,<sup>1</sup> all lands were declared to be "public lands", vested in the Governor with the qualification that the validity of existing titles would be recognized. Provision was made for the grant of Certificates of Occupancy, for a term not exceeding 99 years, and it was laid down that no native could alienate his land to a non-native without the assent of the Governor.

The object of this measure was primarily to safeguard native lands from alienation by Chiefs of the same type as that described in the parts of this Chapter dealing with the Gold Coast Colony. At the date at which the measure was passed there had in fact been little alienation of this nature in the Northern Territories, though in the lower parts of the Krachi District there had been a certain number of cases in which "stranger natives" had been allowed to occupy lands as cocoa farms.

In the Ordinance, No. 8 of 1931 which repealed the 1927 Ordinance, the term "native" was substituted for "public" lands, and a declaration was added that these native lands were at the disposal of the Governor "for the use and common benefit of the natives" of the Territory. The term "native" was defined as a person whose parents are or were members of some tribe indigenous to the Protectorate, or to the Northern Section of Togoland and any descendant of such person. The term was to include also any native of Africa who had obtained a certificate showing that it was his intention to make the Protectorate his permanent domicile and that he had obtained the consent of the communities concerned.

Where land is required for Government purposes, the law as contained in the Administration (Northern Territories) Ordinance, Cap. 95 of the Laws of the Gold Coast, provides that notice of intended acquisition must be given to Chiefs or owners; compensation is to be given for growing crops or buildings situated on the plot or near by. By subsequent Ordinances, namely, the Mineral Ordinance 20 of 1936, 17 of 1937, and 18 of 1942, it has been laid down that the property in all mineral rights, and all rivers and watercourses is vested in the Governor. The area actually acquired by Government under the provisions of Cap. 95 of the Laws is small; the total area of Crown lands was shown in 1948 as amounting only to 54½ square miles. The area alienated to non-natives is confined to a few plots held by Missions and to trading companies.

Some doubts have lately been expressed as to the interpretation to be placed on the terms of the Ordinance of 1931 in regard to the powers possessed by the Governor in respect of the grant of Certificates of Occupation, whether to natives or non-natives. Section 3 (a) of the Ordinance purports to recognize "the validity of any title to lands or interest therein lawfully acquired before the date of the passing of the Ordinance." It has been doubted whether or not this prevents the issue of a Certificate of Occupation over lands occupied by natives under the customary native law, or protects such natives from dispossession, even though compensation may be granted to them.

It will be recalled that a somewhat similar question has been raised regarding the terms used in the Ordinances of Northern Nigeria and Tanganyika on which the Ordinances of 1927 and 1931 were modelled. A study of the proceedings leading up to the issue of the 1931 Ordinance shows that the intention of its framers was to give the Governor powers to dispose freely only of native lands "which are not occupied in the widest sense of the word,

<sup>1</sup> See Chapter VII, page 90, and Chapter III, page 354.

that is, lands which no native or native community uses in its farming rotation." "The Governor" it was added, "is bound to recognize the validity of the title unless it can be questioned under native customary law." But it was added, on the other hand, that the "Governor may dispose of occupied native land subject to such compensation as appears equitable, not only for government purposes, but also in order to grant Certificates of Occupancy to non-natives if he is satisfied in any case that the grant of such Certificate to a non-native would be of use for the common benefit, direct and indirect, of the natives."<sup>1</sup>

Experience shows that in drafting land legislation it is essential to exercise close supervision over the legal draftsmen, who as a rule are not acquainted with the native customary law or the indigenous system of land tenure. On this occasion the intentions of Government, as shown above, were obscured in the Ordinance as enacted. That the point did not receive sufficient attention at the time is no doubt due to the fact that in 1927 and 1931 there appeared to be large areas of land which were not under beneficial occupation, and were therefore available for the issue of Certificates of Occupation, should this course appear desirable in the general interests of the community. Since then, however, circumstances have altered. The northern belt of the territory is now known, in the words of an official Report, to be populated "to the saturation point" by homestead farmers. The fact that the Forestry Department is pursuing a policy of forest reservation, and that an extensive groundnut farm scheme is being contemplated at Damongo raises an important question regarding the rights over unoccupied lands. More particularly, however, the issue has arisen in regard to the grant of Certificates of Occupancy to the Prang Native Authority in order to provide for the needs of the Hausa community in the Prang Zongo, or the similar step contemplated in favour of the Native Authorities in charge of the growing towns of Bolgatanga and Bawku, which have large "stranger" communities requiring the provision of shop or house sites.

But though this issue has presented itself, and may require clarification by legislation amending the 1931 Ordinance, its general importance must not be exaggerated. For the most part, it appears to be accepted that occupiers of native lands, holding under native law and custom, have sufficient security of tenure without obtaining a Certificate of Occupancy from the Government, with the possible obligation to pay rent. The fact that there has been no important mineral discovery in the Territories and that only a portion of Krachi District is suited for cocoa farms, makes it unlikely that non-natives will now seek to acquire rights on any material scale in the native lands. Any movement in that direction is likely to come rather from "stranger natives", and it is mainly in the Krachi District that they have sought to obtain Certificates of Occupation. Some 5,753 acres were alienated before the Ordinance was passed and these are now regarded as held in freehold.<sup>2</sup> Since the passing of the Ordinance, Certificates of Occupation have been issued over areas extending approximately to 22 square miles.

It would seem that serious difficulties have been encountered here, owing to the refusal of the Lands Department to register a Certificate without an accurate survey of its boundaries. In the Krachi District two thirds of the rents paid on lands held under Certificate are refunded by Government to the Native Authorities. Certificates are registered, and a successor in title

<sup>1</sup> Despatch G. C. No. 971 of 21st November, 1930.

<sup>2</sup> Report to United Nations Organization, 1948, page 91.

must secure a transfer form. In cases where no Certificate of Occupancy has been obtained the Native Authorities charge a rent for land bearing cocoa trees at the rate of  $\frac{1}{2}$ d. per tree.

#### THE NATIVE AUTHORITIES AND THE LAND

As has been indicated earlier in this Chapter, there has been a large infiltration of "stranger natives" into many parts of the Protectorate, and though something is known of the way in which they have acquired their holdings in the Krachi District, there is little precise information regarding the manner in which they have acquired holdings in other parts of the Protectorate. But it would not appear to have been the custom for the Chiefs to dispose of the community lands in the manner which became such a characteristic feature of the rural economy of the Gold Coast Colony.<sup>1</sup> It is indeed clear that indigenous custom had the effect of placing a definite restriction on the powers of the Chiefs in this respect.

Some reference has already been made to the tradition that the land was held to be the property of the Earth God, for whom the Tendana was the trustee, a conception which has been expressed alternatively in the axiom that "the Earth is God and cannot be owned."<sup>2</sup> For practical purposes this conception had two consequences, in the first place, it was the Tendana, and not the Chiefs, who could allocate the community lands, and secondly, land could not in any circumstances be disposed of by sale, for land could not become private property. When a holding was abandoned it was to the care of the Tendana that it reverted. No rent was paid, but the holder had to observe land custom and provide sacrifices of sheep and chickens for the Tendana when he deemed it necessary to propitiate the spirits.<sup>3</sup>

Though an informative study has been made of the system of landholding among the Tallensi in the Mamprusi District<sup>4</sup>, similar studies are lacking elsewhere, and it is in particular unfortunate that we have little exact knowledge as to the position now occupied by the Tendana (or the corresponding Asasewura of the Krachi District) in regard to the land. It is however clear that the Native Authorities are now beginning to exercise the functions formerly discharged by the Tendana in regard to the land, and though this is not an unnatural development, and may indeed be desirable, it would be of advantage to know whether in fact native sentiment objects to it as an undue invasion of traditional usage.

From such evidence as is available, it seems that in some areas such as Gonja, the Tendana still has the control and disposition of land in addition to the duty of performing the necessary rites to the Earth God. In Western Dagomba, however, the Tendana has already disappeared, for he was exterminated by the conquering Dagomba when they overthrew the autochthonous inhabitants. In Eastern Dagomba the Tendana is said to have lost all control except over the performance of ritual, and in the Krachi District the Asasewura now confirms himself to religious observances. Thus in certain areas at all events the power of allocating or "disposing" of land is passing into the hands of the Native Authorities, and some competent observers have expressed the view that the day is not far distant when all Tendanas will have lost to the Native Authorities the right to "dispose" of land.

<sup>1</sup> See pages 203 and 221.

<sup>2</sup> Page 260.

<sup>3</sup> Report to United Nations Organization, 1948, page 89.

<sup>4</sup> The Dynamics of Clanship among the Tallensi; M. Fortes, 1945, pages 177 to 187.

Some of these who hold this view, however, consider that regard should still be paid to the position of the Tendana. They would take steps to associate him with any action taken by the Native Authorities in regard to the allocation or disposal of land. When Government acquires land for public purposes under the provisions of Cap. 95 of the Laws, its arrangements are now made with the Native Authority, but it is suggested that provision should be now made for formal consultation with the Tendana, and a similar suggestion has been made in regard to the issue of Certificates of Occupation. It has again been urged that a Tendana should normally sit with a Native Court as an assessor in all suits relating to land.

These suggestions are, it is understood, now being considered by Government. They involve a number of difficulties because the boundaries of the "tengani" areas are now hard to identify, and the identity of the particular Tendana responsible is often doubtful. But the matter is of interest because it relates to the transfer of functions, hitherto discharged by a traditional authority intimately connected with a religious cult, to Native Authorities established under a statutory law. At present the Native Authorities are Chiefs or sub-chiefs, but in the Northern Territories as elsewhere the Native Authority organization will change with the times, and will increasingly include elements which have no traditional standing.

#### STUDIES OF NATIVE SYSTEMS OF LANDHOLDING

Reference has been made to the lack of specific studies of native land custom, other than that relating to the Tallensi. It is in particular desirable to acquire information as to the extent to which the marked pressure of population in some localities, such as the Navrongo area, has led to changes in the customary system of landholding. It is said that the practice of "pledging" or "borrowing" land is common, but that the religious sanctions attaching to the possession of ancestral lands have prevented the transfer of rights in a more permanent manner, save possibly in the Krachi District. This point is likely to become of increasing importance, especially where there is any considerable influx of "stranger natives" coming either from British or French territories.

#### CONCLUDING NOTE

Looking at the present position of native administration as a whole, both in its executive and judicial aspects, there can be no question of the significance of the change effected by the reorganization introduced in 1932. Evidence of this is to be seen in a variety of ways. Chiefs who were previously prevented by religious taboos or local jealousies from meeting each other now join freely in District Conferences or in the Territorial Council. Some of the Chiefs of newer creation, as notably those of the Fra-Fra Federation, have given proofs of energy and public spirit. The people themselves have shown a growing interest in the measures taken to supply them with local services, and have readily acquiesced in the payment of the Tribute Tax imposed for this purpose by the Native Authorities.

Nevertheless there are many Administrative Officers who are to-day more impressed by present deficiencies than by the contrast with the conditions as they existed before 1932. They characterize some of the traditional Chiefs, who owe their appointment to an unsatisfactory method of selection, as effete and largely in the hands of their own "placemen." They feel that the

existing organization, embodying so large a number of Subordinate Native Authorities and sub-chiefs, involves an undue diffusion of executive authority. The Federations of Chiefs established in some Districts exist in name only, and do not represent any effective agency of administration. It is felt, again, that a considerable number of the Native Authorities lack initiative in regard to the provision of local services and are unduly dependent on the activity of the Administrative or Departmental Officers. Finally, the work of the Courts is unequal, and some of them have an unenviable reputation for corruption.

It must be admitted that there is a large measure of truth in these criticisms, and though the present procedure of administration has effected a very marked improvement in a number of directions, it has some obvious defects which call for remedy. It is clear that the Administration must now exercise its influence to secure a more suitable procedure for the selection of Chiefs in certain of the areas, and to reduce the number of sub-chiefs holding the position of Subordinate Native Authorities. There must be some effective measure of amalgamation of Treasuries. Measures must be taken to regulate the composition of the Native Courts in those areas in which they comprise mainly the "placemen" of the Native Authorities.

All these measures involve some departure from practice sanctioned by tradition, and in the Northern Territories tradition must have a stronger hold than in areas where education and economic changes have produced a larger proportion of the progressive element in local society. But this consideration merely indicates the need for the use of these methods of persuasion which were so successfully employed by the Administrative Officers who initiated the reorganization of 1932. The people of the Northern Territories have not been resistant to change; they have, as already indicated, willingly accepted the imposition of a tax for expenditure on local services; they have shown a growing interest in the proceedings of their District and Territorial Councils, and if the procedure adopted for the establishment of an Advisory Council in Gonja<sup>1</sup> is any indication, they are prepared to accept modification of a relatively advanced order in the Native Authority organization.

While however some defects need to be remedied in the present procedure of native administration, this is less important than the improvement of the economic and social conditions of an area which is still in many respects so undeveloped as to be almost primitive. Some observations have been made on this point in the earlier parts of this survey,<sup>2</sup> and it is certainly one which has a strong claim on the attention of the Gold Coast Government.

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<sup>1</sup> Page 265.

<sup>2</sup> Page 257.



## SECTION IV

# THE POSITION OF NATIVE ADMINISTRATION IN RECENT SCHEMES OF CONSTITUTIONAL REFORM

THE preceding survey of native administration in the territory was drawn up on material collected and enquiries made towards the end of the year 1947 and the early part of 1948. Since that time, however, references to the working of this system have been made in the Report of the Commission of Enquiry into the Disturbances of February, 1948 and in the Report of the Committee on Constitutional Reform published in October, 1949, and it seems opportune therefore to add here some observations on the recommendations made on the subject in those Reports.

The Report of the Enquiry on the Disturbances presented a view of the position occupied by the Chiefs which appears to have been unduly influenced by the opinions expressed by the witnesses described by the Commissioners as representing Africans with a modern political outlook.<sup>1</sup> In the White Paper which conveyed the views of the Home Government on this Report reasons were given for holding that the Chiefs had a more essential part to play than that which the Commissioners had assigned to them,<sup>2</sup> and the recommendations made by the Committee of 1949 strongly supported this view. In the terms used by that Committee, the whole social framework of the country is based on the rule of the Chiefs, and proposals made by it for the composition of the future Local Authorities reflect its conviction of the need for maintaining the link between these Authorities and the traditional institutions of the community.<sup>3</sup>

It has been proposed therefore that, except in the urban areas, one third of the membership of the Local Authorities should be reserved for the appointees of the traditional States' Councils, the remainder of the seats being filled by some form of popular election. Chiefs or their representatives would normally preside over the rural Local Authority Councils, though each Council would have the power to elect its own Chairman, who would be deputy to the President.

The present States' Councils would continue as traditional bodies, but would have no part in the functions of local government assigned to the Local Authorities, their field of activity being limited to determining customary issues and making declarations having the force of law on matters lying within the field of customary law. They would remain in charge of the Stool finances, retaining for this purpose an agreed proportion of the sums received by the Stools as custodians of the communal lands, the remainder being placed at the disposal of the Local Authority concerned for expenditure on local services.

This scheme will doubtless be modified in its details as the result of the consideration which will be given to it. But if the conclusions to be drawn from the material embodied in this Chapter are correct, the broad principles

<sup>1</sup> Colonial No. 231, page 25.

<sup>2</sup> Colonial No. 232, page 7.

<sup>3</sup> Colonial No. 248, pages 7, 22-27, and 74.

of the scheme are likely to have general support. The obstacles encountered will, it would seem, arise not so much from opposition to the composition proposed for the Local Authorities, as from the difficulties inherent in the effort to adjust it to the circumstances prevailing in the different areas over which they will have jurisdiction. These are likely to be felt in particular in the Northern Territories, and to some extent also in Ashanti.

In the first place the principle of popular election on a wide franchise is new to the rural areas, and as has been shown, it for many years made little headway in the Municipal towns.<sup>1</sup> But the most serious obstacle lies in the difficulty of obtaining by this method persons qualified to be of real value to the new Local Authorities. If the elected members are popular representatives only in the sense that they represent the common level of education and social experience in their communities, then the Local Authorities will not show any marked superiority over the existing States Councils. Will this method, in short, attract to the membership of the Local Authorities the educated and progressive class which has so far failed to be attracted into the organization of the traditional bodies? The personnel of this character is much more limited than is often assumed to be the case, particularly in some of the rural areas.

The competence of the Local Authorities will doubtless be increased if the Administration gives serious attention to the recruitment of a better type of clerical and other officers, and in ensuring that they receive an adequate scale of remuneration. But looking to the Local Authorities as functioning bodies, their elected members are not likely to maintain a sustained interest in their activities, unless the resources at their disposal can be largely increased. It is unnecessary to repeat here what has already been said on this subject in the earlier parts of this Chapter, and the Report of the Committee of 1949 shows that it has fully appreciated the obstacles that are likely to be encountered in any attempt to secure larger resources by local taxation.<sup>2</sup>

While the Local Authorities are to be to a great extent autonomous, their work will be co-ordinated and to a certain extent controlled by the proposed Regional Councils. Though, however, it seems essential to maintain some form of Regional Administration, such as is now represented by the three Chief Commissionerships, the suggestion that the proposed Council should control the Local Authorities seems of doubtful value; two members of the Committee indeed have advanced very forcible arguments against this proposal. The creation of a Regional Council in Ashanti appears to present particular difficulties, in view of the position now attained by the Council of the Ashanti Confederacy.

It would be out of place to discuss here the proposals of the Committee in regard to the composition and functions of the Legislative and Executive Councils, since these have little direct relation to the problems arising in the field of native administration. One may however be permitted the reflection that the constitutional institutions of the Gold Coast have a singular air of impermanence. If a constitution introduced in 1946, with to all appearance a large measure of general approval, has to be radically modified in 1949, then a constitution of 1949 seems likely to have a slender survival value. It would be unfortunate if it provided yet another addition to the long list of abortive reforms and frustrated legislation which has characterized the past history of the Gold Coast.

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<sup>1</sup> Page 217.

<sup>2</sup> Colonial No. 248, pages 29 to 31.

## CHAPTER IX

# Sierra Leone

### SECTION I

## THE COLONY AND PROTECTORATE

The problems arising in the Colony area of Sierra Leone are mainly those of an urban or suburban population, and one moreover which differs both in origin and social structure from the indigenous people of the Protectorate. It will therefore be convenient to deal separately with the Colony and Protectorate areas, giving at this stage only such facts regarding the territory as a whole as are relevant to the purpose of the present survey.

The following statement of area and population is taken from the figures of the Census of the Colony and Protectorate of Sierra Leone of 1948.

#### THE COLONY

	Area in Square Miles	Population	Density per Square Mile
Freetown .. .. .	4·8	64,576	13,452·9
Rural Areas .. .. .	251·2	52,469	208·1
Sherbro Judicial District .. .. .	12·58	7,612	605·2
Total .. .. .	268·58	124,657	464·1

#### THE PROTECTORATE

PROVINCE			
South-Western .. .. .	7,789	659,231	84·6
South-Eastern .. .. .	6,005	362,175	60·3
Northern .. .. .	13,875	712,212	51·3
Total .. .. .	27,669	1,733,618	62·7
TOTAL FOR WHOLE TERRITORY	27,938	1,858,275	66·4

The small Colony area contains the peninsula of Sierra Leone, which consists almost entirely of a range of thickly wooded hills rising to a height of 2,000 to 3,000 feet. The Protectorate contains two types of country, similar in general character though differing somewhat in detail. The northern and eastern portion consists of savannah country rising to form an upland plateau with a general elevation of 1,500 feet, broken by irregular ranges of mountains which attain a height of 3,000 feet in the north and over 6,000 feet in the east near the French border. The western and southern portion consists of rolling wooded country, with ranges of hills rising to 1,000 feet or more.

As a whole, the country is well watered by numerous rivers, and has a high rainfall, but it attains only a very moderate standard of agricultural production, and its economy provides it with only a limited access to the export market.

Its most consistent agricultural export has hitherto been palm kernels, the average exported between 1920 and 1938 being 69,342 tons, with a value of £596,795. The tonnage has increased only slightly in recent years, for it was 61,241 tons in 1947, 66,431 in 1948, and over 70,000 in 1949, though its value is now higher owing to the post war increase in price, the value of the export of 1948 being £1,744,591. It would seem that the variety of palm grown in Sierra Leone has a thinner pericarp and a greater percentage of kernel to fruit than that grown in Nigeria, a fact which explains the relative absence of an export of palm oil from the former. Some cocoa, kola and coffee are exported, but the only other agricultural export of any value is piassava, the high quality of which commands a good market. The export of 1946 was valued at £688,840.

For the rest, the agricultural production is mainly of a subsistence type. The returns to animal husbandry are negligible, and it is estimated that there are not more than 40,000 cattle in the territory, and these of a small and inferior type. The staple food of the inhabitants is rice, but hitherto the production has been barely sufficient for local needs. From 1920 to 1931 there was an average import of 1,204 tons, and though this position was reversed from 1932 to 1940, the tonnage exported was small, seldom amounting to more than 300 tons. There was an export of less than 100 tons in 1947 and 1948.

In the Agricultural Report for 1946, it was estimated that there were roughly 420,000 acres under rice cultivation, of which 360,000 acres were under upland and 60,000 under swamp rice. The cultivation of upland rice has, however, created a serious problem of soil degradation, and of recent years the Government has given much attention to the expansion of the cultivation of swamp rice, partly in the flood areas of the Scarcies and Waanje Rivers, and partly in the saline littoral areas. A Government scheme for reclamation on the Scarcies River, which was undertaken in 1942 with the aid of a grant from the Colonial Development and Welfare Fund, unfortunately proved unsuccessful owing to the development of chemical action in the soil, but since then the question of rice cultivation in the Protectorate at large has been investigated by the British West African Rice Mission. Its Report envisages an ultimate addition to the present rice area of some 190,800 acres, to be achieved in four stages, the first of which, involving an area of 71,560 acres, would entail a capital expenditure of £4,240,000 with a recurring expenditure of £897,000 on drainage, irrigation and similar engineering works. These proposals are now under consideration.

The mining developments are of comparatively recent date. Iron ore is mined at Marampa in the Port Loko District, the export being valued in 1947 at £761,547, and the labour force then employed averaging 2,542 persons. There is a small production of chrome ore at Hangha in the Kenema District, employing an average of 1,045 persons, the export being valued in 1947 at £82,250. The Sierra Leone Selection Trust holds a monopoly of the production of diamonds over practically the whole territory. Its diamond field at Yengema in the Kono District employed in 1947 some 2,689 persons, and the total export of stones was valued at £1,211,108.

Up to comparatively recent years, the revenues available to the Govern-

ment were on a very limited scale, and partly for this reason it was unable to make adequate provision for the requirements of the Protectorate in the development of communications or of economic and social services. With the expansion of the mining industry, and the development of communications to open up the country, and also with the growth of the agricultural export industries and of Income Tax, there has been a substantial improvement in the revenues available. The total revenue of 1938 was £886,149, including grants from the Colonial Development and Welfare Funds, but this had risen by 1948 to an estimated revenue of £2,503,931, while there was an estimated balance of £1,756,214, plus a General Reserve Fund of £326,941. The requirements of the Protectorate have now received fuller consideration, and in the recent Ten Year Development Programme, which contemplated a total expenditure of £5,256,575, a major part of the available funds were to be devoted to its needs. It was to receive the greater part of the provision made for Roads (£380,000), Agriculture, Irrigation and Drainage (£610,000), Forestry (£196,500), Water Supplies (£160,000), and also a considerable part of the provision for Medical Services (£1,000,000) and Education (£720,875).<sup>1</sup>

The provision proposed for the Medical and Education services is of special importance to the Protectorate. At present the Colony has (apart from its Mental and Infectious Diseases Hospital) hospital accommodation amounting to 365 beds and has in addition eight dispensaries. In the large Protectorate area the Government has hospitals with 238 beds and 17 dispensaries, though one is at present closed through lack of staff. There are in addition two Mines hospitals (with 47 beds) and six Mission hospitals with 112 beds. The total provision is therefore very disproportionate.

As regards Education the Protectorate is equally lacking in facilities. The total enrolment in all schools in 1948 was only 15,327 pupils, and it was calculated in 1946 that only 4.17 per cent. of the children of school age were receiving instruction. The two Government schools at Bo and Koyeima had in all 423 pupils, the remainder being enrolled in the 165 primary schools maintained by the Missions and the 18 Native Administration primary schools, but the great majority of these were in the lower standards, very few proceeding beyond the fourth year of schooling.

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<sup>1</sup> Sessional Paper, No. 4 of 1946.

## SECTION II

# THE COLONY

### THE HISTORY OF THE COLONY AREA

The history of the Colony is intimately connected with that of the West African Slave Trade, for though the Company of Adventurers, which received its Charter in 1618, and the Royal African Company and the Company of Merchants Trading to Africa, dating respectively from 1672 and 1750, carried on some trade in ivory and gold, their most substantial interest was in the traffic in slaves. The existing Colony, however, has not grown out of the establishments maintained by those Companies, but owes its foundation to the philanthropists who sought to alleviate the lot of those who had been victims of the Slave Trade. In 1786 Dr. Henry Smeatham, who had lived for four years on the West Coast, put forward a scheme for founding on the peninsula a colony for negroes discharged from the Army and Navy at the close of the American War of Independence, as well as for what were then known as the Poor Black, namely, the slaves who had obtained legal freedom in England as the result of Lord Mansfield's judgment of 1772, but who were for the most part living in destitution on the streets of London. The scheme gained the support of philanthropists such as William Wilberforce, Granville Sharp and Henry Thornton, and in 1787 the Settlement was begun with 351 ex-slaves and 60 Europeans, these being mostly women taken off the London streets.<sup>1</sup>

A grant of 20 square miles of land was obtained from a local Temne Chief, which became Crown property by purchase in the following year. By 1791 disease and the attacks of local inhabitants had reduced the immigrants to 64 ; but in 1792 John Clarkson, the brother of Thomas Clarkson the Abolitionist, brought over to Sierra Leone 1,131 ex-slaves who had fought for the British in the American War of Independence and had been settled in Nova Scotia. They joined the remnants of the settlers of 1787 in founding the town of Freetown. In 1800 the Settlement was increased by the arrival of 550 Maroons,<sup>2</sup> refugee slaves who had after a long resistance to the Jamaica Government been taken by agreement with the latter to Halifax and who were thence moved again to Sierra Leone.

Up to this point the Settlement had been administered by the promoters of the enterprise, who had been incorporated as the Sierra Leone Company, but the latter ceased to exist when the Settlement was handed over to the Crown in 1808. The population of Freetown itself was then about 1,000, but the number of inhabitants in the Settlement numbered altogether 1,871. A new phase in the life of the Colony began in 1808 when, following on the passing of the British Act for the Abolition of the Slave Trade in 1807, a Vice Admiralty Court for adjudication on the captures of slave ships was constituted at Freetown. This Court, followed by the Mixed Commission Court established in 1819, dealt with numerous cases in which large sums of money were at stake, and

<sup>1</sup> The neighbouring Republic of Liberia was founded under somewhat similar auspices in 1822. See R. L. Buell, *The Native Problem in Africa*, II, page 705.

<sup>2</sup> For the use of this term and the history of the Maroons see *Sierra Leone in History and Tradition*, F. W. Butt Thompson, 1926, page 120.

brought to Freetown a number of Europeans of different nationalities connected as lawyers or otherwise with the litigation involved.

The establishment of these Courts inaugurated a period in which many Liberated Africans in the Settlement began to distinguish themselves as teachers, lawyers, doctors or officers of Government. Meanwhile the population of the Settlement was growing, for although numbers of the Africans on the captured slave ships returned to their own countries, there were others who remained, thus adding a new element which had not passed through the same experiences as those who had been slaves in America or the West Indies. In 1814 the population was estimated at 5,520. The area of the Colony was also enlarged by acquisition of the Isles de Los and the Banana Islands as the result of the Treaties made with local Chiefs.

In 1821 the Company of Merchants Trading to Africa was abolished and the Colony was established by Royal Charter, the population being then estimated at 15,081. In the years 1824 and 1827 the Crown acquired by Treaty the whole of the coastal area and the islands between French Guinea and Liberia. These, with the areas already acquired, now form the Colony area of Sierra Leone, with the exception of the Koya country, which was ceded to the Chiefs and people in 1872. In 1888 Sierra Leone, which had at different times shared its administration with the Gold Coast or Lagos or the Gambia, was created a separate Colony.<sup>1</sup> In 1896 the hinterland was declared a British Protectorate, in circumstances which will be described in the succeeding Section of this Chapter.

### THE PRESENT SOCIAL STRUCTURE

The population of Freetown increased only slowly between the years 1822 and 1850, and in the latter year was estimated at a little short of 17,000. In recent years it has grown rapidly, and as already shown the population of the Colony was in 1948 estimated as 124,657 of which 64,576 were in Freetown. The composition of the population is given below :<sup>2</sup>

	Africans	African Non-Natives	Europeans	Asiatics	Total
Freetown .. ..	46,081	17,331	372	792	64,576
Rural Areas .. ..	41,503	10,719	202	45	52,469

The majority of those shown above as African Non-Natives belong to the class which are usually described as Creoles or Sierra Leoneans, and are mainly the descendants of the Liberated Africans. It includes many who have intermarried with the indigenous natives of the Protectorate, and it is indeed possible that a majority of the poorer members of the community have now some " Protectorate " strain in them. As a class, however, the true Sierra Leoneans are distinguishable from the natives of the Protectorate by the fact that they have for generations lived a non-native mode of life, and have neither an African language nor tribal affinities. They speak a language which varies from a correct form of English among the educated to a pidgin used by the uneducated which can be comprehended only by those who have made a special

<sup>1</sup> Letters Patent 28th November, 1888.

<sup>2</sup> These figures do not include the Sherbro Judicial District.

study of it. Their social outlook is directed to making as near an approach as their circumstances permit to a European manner of living, though there are many whose attachment to European institutions is not supported by their economic situation or their capacity for improving it.

The philanthropic societies which supported the first settlements had at an early period supplied the repatriates liberally with schools, and the foundation of the Fourah Bay College by the Church Missionary Society in 1827 helped to give Freetown a reputation as the intellectual centre of West Africa. As already shown, the community produced in the last century a number of men who won distinction in Government service and professional employment, and Sierra Leoneans found posts readily available for them in the West African territories as far afield as the Belgian Congo and Nigeria, where they enjoyed a reputation for superior education and for respectability of their manner of life. With the advance of education in those countries the openings for the Sierra Leoneans have been greatly restricted, and they have not been able to take full advantage of the commercial or industrial development of their own Colony. For a considerable period they took little part in agriculture, though of recent years some of the more progressive have begun to interest themselves in it. Much of the local trade has unfortunately passed into the hands of immigrant Syrians.

It might appear inevitable that a community so circumstanced, faced by the fact that its social standards have become increasingly out of relation to its capacity to support them, should exhibit signs of political instability. But its record during the last ten years compares favourably with that of other coastal communities in West Africa, for though it has had differences with the Government on a number of matters in which it felt close concern, such as the constitution of the Municipality, they have been adjusted without serious disturbance or those appeals to "Positive Action" which have now become common in Nigeria and the Gold Coast. Apart from any activity which the Sierra Leoneans may show in the political field, they can take credit for the fact that they have in the past produced a number of men of undoubted ability and character, and that there are today many with the same qualities in the service of Government or the educational employ of the Missions.

It has been necessary to give prominence to this community, because of the part it has hitherto taken in the political and social life of the Colony, for though the Protectorate-born Africans largely exceed the Sierra Leoneans in number, they are mainly of the working class in Freetown or cultivating tenants in the neighbouring Rural areas. The greater number belong to the Temne and Mende tribes of the Protectorate, though there are smaller numbers of the Limba, Loko, Bullom and Susu tribes, and Kroos from the Kroo coast of Liberia.

The Colony is for judicial purposes divided into three Districts, the Freetown Police District, containing the city of Freetown and a number of neighbouring villages; the Headquarters Judicial District, which contains the rest of the peninsula and the Banana Islands; and the Sherbro Judicial District, which comprises York Island and the small islands adjoining it and the town of Bonthe on Sherbro Island.<sup>1</sup> The Commissioner of the Freetown Police District and the Headquarters Judicial District is responsible for the administration of the Colony. For our present purpose, however, this division into Judicial Districts is of little practical importance, and attention will be concentrated

<sup>1</sup> Courts Ordinance, No. 7 of 1945, Cap. 50 of 1946 Edition of Laws.



on three local government institutions, the Freetown Municipality, the Rural Areas Council, and the Board which controls the local affairs of the Sherbro Judicial District.

### THE FREETOWN MUNICIPALITY

Some indication has already been given of the history of the city of Freetown and its development. In the earliest stage, the native town appears to have been divided into "tithings", or units of ten families, each of which selected a "tithing-man" to represent it. Every ten "tithing-men" elected a "Hundred-man", and these in turn elected one of their number to be Headman of the Town. The first Headman was Thomas Peters, one of the contingent from Nova Scotia who had fought for the British in the American War of Independence, where he had the rank of Battalion Sergeant Major. When at a subsequent period the Sierra Leone Company obtained a charter, it appointed one of its officials as Town Mayor, and Peters became Town Marshal. The Mayor had a Court, and there was a Court of Requests for dealing with issues involving petty debts. After the Settlement was handed over to the Crown in 1808 the town came under direct official control, and this system continued until 1893, when Freetown was constituted a Municipality with a City Council.<sup>1</sup>

The establishment of the Municipality has sometimes been referred to as the first experiment made by the British Government in the introduction of self-governing institutions in Africa. It was, however, preceded by the creation in 1858 of the Municipalities of Cape Coast and Accra, to whose short and unfortunate history reference is made in the Chapter on the Gold Coast.<sup>2</sup> It is on the other hand true that the constitution given to the Freetown Municipal Council in 1893 was more liberal than that of any other African town at that period, in the sense that it had an elected majority, and a greater freedom from control in its expenditure. Freetown did not in consequence pass through the experience common to the other civic bodies created at about the same time, which had an ex-officio Chairman and an official majority.<sup>3</sup> Its Council consisted of fifteen elected and three appointed members, and it elected its own Mayor. With the exception of the three appointed Councillors, who were in practice officers of the technical departments of Government, all the members of the Council were Sierra Leoneans.

If the history of this Council was not as short or as unfortunate as that of the Gold Coast Town Councils of 1858, it was nevertheless not a happy one.<sup>4</sup> Its start was unpropitious, for the people of Freetown objected to the imposition of a City Rate, which they stigmatized as an attack on real property. The electorate was small, for though in 1900 it numbered 848, it was reduced by 1924 to 674, owing to electors being struck off the roll for non-payment of the City Rate, but even so, the conduct of the elections gave rise to a number of complaints of corrupt practices. The Council itself showed lack of efficiency in its conduct of affairs. There was frequently a difficulty in securing a quorum; the collection of the City Rate was frequently in arrears; and in

<sup>1</sup> The Freetown Municipality Ordinance, No. 6 of 1893.

<sup>2</sup> Page 216, Chapter VIII.

<sup>3</sup> See for example the constitution of the Town Councils of Accra, Sekondi and Cape Coast, established in 1889 and 1894, page 217, Chapter VIII.

<sup>4</sup> For its history up to 1927 see R. L. Buell, *The Native Problem in Africa*, Vol. 1, pages 882 to 889.

1912, following an investigation by an outside expert, the Council was relieved of its duties in regard to sanitation and public health. Matters came to a head in 1925, when several of the town officials were convicted of fraud, and a Commission of Enquiry appointed by the Colonial Office recommended a radical change in the constitution of the Council.<sup>1</sup>

Local patriotism has never failed to insist that the Commissioner's report was prejudiced or to attack the legality of the conviction of the Mayor, who had been involved in the criminal proceedings. The Government itself appears to have had some doubt as to the complicity of the Mayor, and he was released before he had served a third of his sentence. But it enacted in 1927 an Ordinance which replaced the Council by one consisting of an ex-officio President, with four appointed Councillors (of whom three were to be Government officials) and three elected Councillors. A fourth elected Councillor was subsequently added.<sup>2</sup> The post of President was in practice filled by the Commissioner of the Colony. This constitution remained in force, with the brief interruptions to be subsequently noted, until the middle of 1948.

The change effected in that year was the result of a conflict of views which had formed from 1944 onwards the most absorbing topic of local politics. The Report of a Committee appointed in 1944 proposed the establishment of a Council with an elected majority, but accompanied this with the recommendation that the Estimates of expenditure should be subject to the approval of the Governor. When the substance of this proposal was embodied in an Ordinance (No. 1 of 1945) enacted in the following year, this clause met with strong opposition, and there was a general refusal to apply for enrolment in the register of voters. The Ordinance was accordingly withdrawn, and the former Ordinance 38 of 1927 re-enacted, but in 1946 the elections held under that Ordinance produced only 719 voters out of 3,035 on the roll. In 1947 the Ordinance of 1945 was re-enacted, but the attempt to put it into force failed for lack of a qualified electorate, and the Ordinance of 1927 again became operative.<sup>3</sup>

In 1948 the Government renewed its endeavour to find a solution, and following on the unanimous Report of a Committee of which twelve out of the fifteen members were Africans, it enacted a new Ordinance, the Freetown Municipality (Amendment) Ordinance, No. 4 of 1948. This provided that the Council should consist of six members (not less than two of whom should be Africans) appointed by the Governor in Council, and twelve elected members, four being elected from each of the three wards of the city. These eighteen Councillors were to elect three Aldermen, one from the successful candidates of each ward, and a Mayor, for which post anyone elected or qualified to be elected was eligible. The control of the Governor was to be limited to the appointment of the Medical Officer of Health and the Chief Sanitary Superintendent; the Estimates were not to be subject to his approval, but were to be forwarded to him for his information. This measure appears to have succeeded in gaining a sufficient measure of public support, as shown at all events by the result of the first election, held in November, 1948, when 2,009 votes were polled in the Central Ward, 1,867 in the East Ward and 1,211 in the West Ward. The Mayor elected was a African medical man whose father held the post of Mayor six times between 1915 and 1922.

<sup>1</sup> Sir Charles O'Brien, Report of Commission of Enquiry into the Affairs of the Freetown Municipality, 1926.

<sup>2</sup> Ordinances No. 38 of 1927 and 12 of 1934.

<sup>3</sup> Ordinance No. 19 of 1947.

The Ordinance of 1948 constitutes therefore a liberal measure of local self-government. The activities of the Council are, however, like those of the Council constituted under the Ordinance of 1927, likely to be limited by the extent of its resources. That Council had in 1947-48 a revenue of £60,473 including a grant-in-aid £6,022. Of this revenue, the City Rate (which is 2s. in the pound on the assessed annual value of properties) only brought in £13,302. The services administered by the Council did not, in fact amount to much more than a market system, a water supply (which is greatly in need of rehabilitation and expansion), a fire brigade, and some recreation grounds and cemeteries. Educational expenditure was limited to £200 on scholarships; medical work to £200 as allowance to the City Medical Officer; and the expenditure on streets amounted to £280 for weeding unmetalled roads. The new City Council is therefore likely to suffer from the same fate as so many other similar bodies. They are given self-government, but their available resources are so inadequate that they are condemned to inefficiency, unless they abate their claim to independence by seeking the necessary finance from the Government.

Though the older part of Freetown was planned and built with some regularity, the town now contains slum quarters which testify to the low standard of life of a large number of its inhabitants. There is much overcrowding, but so far only a small sum has been expended on a pilot scheme for rehousing. The Ten-Year Development Programme contemplates schemes for slum clearing and similar improvements, and £200,000 has been provided for Freetown town planning in the ten-year period.

### THE INDIGENOUS AFRICANS IN FREETOWN

As will have been gathered, the City Council has been almost entirely the preserve of Sierra Leoneans, though they number only 17,331 as against 46,081 other Africans. Some of the latter may be eligible for the Municipal franchise, but it is understood that very few have sought to be placed on the register. Hitherto their affairs have been regulated under a system dating from an earlier period which was given legal form under the Tribal Administration (Freetown) Ordinance, No. 19 of 1905. This Ordinance authorized the Governor to recognize as a Tribal Ruler any Chief or Headman who was endeavouring to form a system of tribal administration for the well being of his fellow tribesmen in Freetown. Such Tribal Rulers were empowered to make Rules for members of their tribe in respect of debts, burial, education and the observance of sanitary and municipal laws, and also to impose fees for settling disputes and certain communal purposes. The Tribal Rulers held informal Courts for settling disputes, but breaches of the approved Rules were tried in the Court of the Police Magistrate.

The system was revised in 1932, partly, it would seem, to meet difficulties arising from the exercise by Tribal Rulers of the power to hold Courts for settling disputes. Ordinance 48 of 1932 (The Tribal Administration (Colony) Ordinance)<sup>1</sup> replaced the Tribal Rulers by Tribal Headmen, who, however, no longer had the legal authority to make Rules or to decide disputes. The power to make Rules was now vested in the Governor, who appointed an Advisory Committee for this purpose. The most important of the Rules so made imposes on every tribesman arriving in Freetown the obligation to report

<sup>1</sup> Cap. 244 of the Laws.

his arrival to the Tribal Headman within 24 hours of arrival. Every tribesman was to pay sixpence a month to the Headman, to form a fund to be disbursed on objects for the good of the tribesmen, including poor and sick relief or burial of paupers. These Rules have been applied to all tribes except the Kroo and Bassa.

There are now fourteen Tribal Headmen in Freetown, but they have failed to fill effectively the position which it was hoped to secure by the Ordinance of 1932. Their accounts are irregularly kept, and such funds as they collect serve little purpose other than to defray burial expenses. The Kroo community is some exception in this respect, as it at one time provided a school and dispensary and contributed to the stipend of a Kroo Pastor. The Kroo community, however, occupies a special position in the Colony. As already noted, it originated from the Kroo coast of Liberia, and there were Kroos in Freetown when Sierra Leone was declared a Colony in 1808.<sup>1</sup> They are remarkable among the West Coast tribes in that they earn their living on sea-going vessels, and for this purpose form gangs under their own headmen; their tribal fund is mainly contributed from a percentage of the fees and the headmen.

It was expected in 1932 that the Tribal Headmen would take an effective part in dealing with one of the most difficult problems of Freetown, the influx of labour from the Protectorate. The opportunities which the Port provides for casual labour have been a continual source of overcrowding and recurrent unemployment. Moreover, since the tax payable by the Protectorate native in the Colony is only 5s. as compared with 9s. or 10s. in the Protectorate,<sup>2</sup> there is an additional incentive to resort to Freetown, increased by the fact that it is comparatively easy to avoid payment, owing to the absence of any regular procedure for collection. Formerly the Tribal Rulers could repatriate unemployed labourers and those convicted of crime, but the Tribal Headmen have ceased to exercise a similar authority.

Owing to the large influx of labour into Freetown during the War, a system of permits for entry was introduced, but attempts by the Police to enforce the system proved to be ineffective. In 1947 the Government enacted a Registration of Employees Ordinance, No. 8 of 1947, which was made applicable throughout the Colony. Under Section 5 of the Ordinance the Commissioner of Labour can refuse an application for registration, but it is doubtful whether this affords the means of regulating the influx of labour, in the absence of any procedure for dealing with those who have been refused registration. It is true that at the moment there does not seem to be any serious problem of unemployment, as judged by the statistics of the Freetown Labour Exchange now operated by the Labour Department, but the problem is one which is always liable to recur.

The Report of the Committee set up in 1944 to deal with proposals for the reconstitution of the City Council made special reference to the circumstances in which the large Protectorate-born population of Freetown is left without direct representation on the Council. The Committee was opposed to giving the Protectorate natives any special position, as it considered that the aim should be to instil a civic sense in the individual and to avoid any course which might lead to the exhibition of tribal consciousness. No exception could be taken to this principle as a long term policy, but meanwhile

<sup>1</sup> For the Kroos in Liberia see R. L. Buell, *The Native Problem in Africa*, Vol. II, page 774.

<sup>2</sup> See page 308. The rate in some chiefdoms in the Protectorate is being increased to 15s. in 1950.

the facilities provided for the indigenous Africans in Freetown compare unfavourably with those of the native community in many of the urban centres noticed in the course of this survey. There is no organization, of the nature of an Advisory Committee or otherwise, for representing their special interests to the City Council. They have no Native Courts specially adapted for dealing with their civil issues. No separate consideration seems to be given to their requirements for housing. Unless greater attention is given to the social needs of the Protectorate-born community, it is unlikely to achieve the progress which will fit it to take its part in the civic activities of the City.

### THE RURAL AREAS OF THE COLONY

The term Rural Areas is applied to those areas in the neighbourhood of Freetown which are administered as part of the Colony under the system to be shortly described. They include a number of suburban villages and hamlets, with a population of 52,469, of whom 10,719 are classed as Non-Native Africans and 41,503 are Africans. The former class consists mainly of Sierra Leoneans who are ex-employees of Government or commercial firms, or petty traders or landowners. The landowners do not cultivate the land themselves, and employ Africans on a profit sharing basis, but the system of farming is inferior and the production poor. The chief industry is fishing.

Up to 1937, the attempts made to introduce a system of local government took the form of an arrangement by which one fourth of the House Tax collected in the first four months of the year was reserved for expenditure in the village by elected Headmen acting with elected Village Committees. The balance of the tax was credited to a separate fund, administered by a District House Tax Advisory Board, consisting of the District Commissioner as President and 12 persons resident in the District nominated by the Governor. But the number of the units concerned, some 49 in all, militated against the success of this scheme, and in 1937 a new system of administration was introduced.<sup>1</sup> This created a District consisting of the Headquarters Judicial District and the Police District of Freetown, excluding the area lying within the limits of Freetown. The 49 units or groups of villages in this District ceased to be administrative units and were grouped into four Rural areas, namely (a) Wilberforce, one third of the population of which is Creole, (b) York with a population mainly of Creole and Sherbro, (c) Waterloo, of which almost one eighth is Creole, but the area includes also British Koya, populated by Koyas who are of Temne stock, and (d) Kissy, an urban area, with a Creole population a little less than one third of the whole.

Each Rural Area has a Rural Commissioner, who is an officer subordinate to the District Commissioner, and a Rural Advisory Committee, consisting of the Rural Commissioner as President and five members elected by the persons paying House Tax in the Area. These persons must be non-officials. The Rural Commissioners are Africans, the majority being ex-officials of the Government services. There was also created for the District as a whole a Rural Areas Council, consisting of the District Commissioner as ex-officio Chairman, five persons appointed by the Governor (not less than four of whom must be in the public service of the Colony) and one member elected by the Rural Advisory Committee in each of the four Rural Areas. The Rural Areas Council administers a Fund (the Rural Areas Administration Fund) constituted from

<sup>1</sup> Rural Areas Ordinance, No. 26 of 1937, as amended by No. 5 of 1943 (Cap. 208 of Laws).

the balances which had accrued under the House Tax (Colony) Ordinance of 1924 and from the annual revenue derived from the existing House Tax of 5s. a house and from licences.

Under this system the directive body is the Rural Areas Council, for which the Rural Commissioners act in effect as executive officers. The four Rural Areas Advisory Committees have little practical function ; in theory they prepare the Rural Areas Estimates for sanction by the Council, but in practice this work is discharged by the Rural Commissioners. The Council has, however, very limited resources, the revenue of the Fund for 1947 being estimated at only £3,616, to which was added £1,000 from Reserve Investments. Of the revenue £2,034 was derived from the House Tax, which is at the rate of 5s. a house with an "Improvement Rate" of 1s. in the pound in the Kissy Urban Division. Grants from Government under various heads contributed £780.

The major item of expenditure was on Personal Emoluments, the total being £1,579, of which the stipends of the Rural Commissioners accounted for £492 and those of their clerks for £450. The Fund was therefore able to contribute little in the way of services to the Rural Areas, the major items being £875 on roads, £490 on sanitary staff and £455 on markets. It may be added that there are no Courts in the Rural Areas District other than the Magistrates' Courts established under the Courts Ordinance.<sup>1</sup>

The system introduced in 1937 is a more effective executive organisation than that which preceded it, but it is not popular. The village units are intensely parochial, and claim that all moneys raised within the unit should be spent in the village itself. They urge moreover that the stipends paid to the Rural Commissioners and their staff are an unduly heavy charge on the funds available. The system above described was brought under review by a Committee appointed in 1946. This Committee found that the system lacked the true character of local self-government, and that the only existing element of self-government was the Village Union, an officially unrecognized survival of the Village Committees which operated under the Headman's Ordinance. It considered however that acceptance of every one of the 115 villages as a separate administrative unit would be impossible, and therefore recommended that groups of villages should be formed, each group having a Village Committee consisting of six members elected by popular vote who would elect one of their number as Chairman, that six Rural Districts should be formed instead of the present four, and that in respect of each there should be a Rural District Council consisting of six members, elected by the constituent Village Committees.

The Council would elect its own Chairman and would also elect one of its members as its representative on the Rural Area Council. The latter body would consist of the six members elected by the Rural District Councils, and a President who for the first three years would be appointed by the Governor. The President should, by virtue of his office be a Justice of the Peace, and if an appointed Government Officer, also be the Commissioner of the Headquarters Judicial and Freetown Police Districts, and in any case he should be the Chief Executive Officer of the Council. After a period of three years the Council should be empowered to elect one of its elected members as President. The Bill incorporating the recommendations of the Revision Report, together with amendments to these recommendations suggested by the public and by

<sup>1</sup> Cap. 50 of the Laws.

various organizations in the Rural Areas was introduced into the Legislative Council in December, 1949, and became Law as the Rural Area Ordinance, No. 11 of 1949.

### THE SHERBRO JUDICIAL DISTRICT

This small area forms an enclave within the Bonthe District of the South-Western Province of the Protectorate, and owes its separate existence to the fact that Bonthe is the second most important port in the country. It is visited by sea-going vessels and handles a large amount of the river borne trade of the southern half of the Protectorate. The population of the Sherbro Judicial District was given in the 1948 population estimates as 7,612, of which 5,921 live in the town of Bonthe and the remainder in York Island and the surrounding villages. They consist for the most part of Sherbros and Mendes, with a proportion of natives of northern tribes. There are no native Chiefs or Headmen.

The Sherbro Judicial District was declared to be a "district" of the Colony by the Sherbro Judicial District Ordinance, No. 28 of 1923,<sup>1</sup> which, as subsequently amended, provided for the establishment of a Board consisting of the District Commissioner of the Bonthe District as ex-officio Chairman, the Medical Officer at Bonthe, and four unofficial members, of whom two were to be appointed by the Governor and two elected by the adult males paying House Tax. The Governor was empowered to make Rules for the control of markets, sanitation, and similar local government purposes. The Ordinance created a fund (the Sherbro Judicial District Fund) into which were to be paid all moneys standing to the credit of the former Port of Sherbro Fund and which was to receive the House Tax and other moneys collected under the Rules referred to above, together with £300 a year from the House Tax collected on Sherbro Island outside the limits of the Judicial District. The Tax levied under the House Tax (Colony) Ordinance,<sup>2</sup> is 5s. per house, with a rate of 1s. in the pound (which can be increased by order to 2s.) on houses with an annual value over £5.

While in theory the administration of the Rules made under the Ordinance and the management of the Fund is carried out by the Board, the latter is in practice only advisory to the District Commissioner, who is the sole executive. There are a certain number of literate residents in the community, and some dissatisfaction has been expressed with the existing system of local government. The matter has formed the subject of enquiry by a Committee which submitted a Report in 1948. It may be added that there are no Native Courts in the Judicial District, the Courts being those of the Magistrates, as established under the Courts' Ordinance.

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<sup>1</sup> Cap 210 of the Laws.

<sup>2</sup> Cap. 104 of the Laws.

## SECTION III

# THE PROTECTORATE

### THE INVADING TRIBES

The relevance of a study of the earlier history of the Protectorate lies in the light it throws on the arrival of the invading tribes which go to make up the present pattern of its tribal structure. Broadly speaking, these tribes comprise nearly half of the present population of the Protectorate, the remainder consisting of tribes which were either autochthonous or were at all events much earlier arrivals in the country. The most important of the invading tribes was that of the Temne, who in the early sixteenth century moved down from the Upper Niger country, in what is now French Guinea, and established themselves along the Sierra Leone River and the Port Loko Creek, ousting the indigenous Susu and Mende who then occupied that area. Their leader, Farama Tami, "The Conqueror", founded a dynasty which remained in power until the end of the eighteenth century. Its kings were men of considerable power and intelligence, and the last of them, Naimbanna II (1720 to 1793) included Europeans in his Council of State, and employed a Secretary educated in England. It was from the Temne kings that the British secured the land on which the early settlements of the Colony were started. The Temne have recently been estimated to number about half a million, the majority of whom are now to be found in the Districts of the Northern Province. Large sections of the tribe are Muslim.

There is less certainty as to the date of the movements of the Koranko and Kono, who are connected both in origin and language with the Mandingo of French Guinea.<sup>1</sup> The Koranko were recently estimated to number about 75,000 and the Kono 79,000. Both tribes are still almost entirely pagan, except for the influence exercised by the Missions in Kono. The Koranko are now found mainly in the north-eastern corner of the Protectorate, and the Kono in the Kono District of the South-Eastern Province. The Susu, estimated to number 41,000, and their offshoot the Yalunka (28,500) are also connected with the Mandingo of the French territory; they are now found mainly in the north and north-west of the Northern Province. Both tribes are becoming Mahommedanized.

The Kisi (43,000) belong to a tribe which is now divided equally between the Protectorate and French territory; they are found mainly in the south-east Province. It is not clear whether the Limba (174,000) should be correctly classed among the invading tribes, though they resemble the Temne in custom and to some extent also in language. They are now much scattered and mixed with other tribes, but the majority are to be found in the Northern Province, where they contain a considerable proportion of Muslims. It is possible that the small Benta tribe (4,600) in the South-Western Province are not autochthonous, but are a branch of the Temne.

Though the history of the Temne is sufficiently well known, there is a noticeable lack of knowledge regarding some of the other invading tribes, and

<sup>1</sup> For the Mandingo, who are one of the most important groups in French Senegal, see *Races of Africa*, C. G. Seligman, 1930, page 59; H. Labouret, *Les Manding et leur Langue*, 1934.



much remains to be done in studying both their language and custom. The figures of tribal distribution given above are only rough estimates, and the estimates given by different authorities vary widely.<sup>1</sup> Accurate information is in particular lacking as to the extent to which these tribes have adopted Mahommedanism, for the estimates made in the Census of 1931 are clearly inapplicable to-day.

### THE AUTOCHTHONOUS TRIBES

Some of these observations apply also to the tribes classed as autochthonous. Of these the principal are the Mende, now estimated to be nearly 600,000 in number and occupying some 10,000 square miles in the central and South-Western part of the Protectorate. Except for a few villages in the North-West of Liberia, the Mende appear to be confined to Sierra Leone, but they are connected with the Mandingo people, and speak a hybrid form of their language. The Loko (estimated to number 74,000) are a branch of the Mende, though separated from them geographically. The major body of Loko inhabit part of the Northern Province, and speak the same language as the Mende, but with marked dialectical differences, many of the Loko having assimilated some of the Temne vocabulary.

The Bulloms (147,000) at one time stretched along the Sierra Leone coast as far as the French Guinea border, but invading Temnes drove a wedge between them, occupying much of their country and absorbing a part of the tribe. They are still mainly a coastal people, whose chief occupation is fishing. In the Bonthe District they are called Beh-se-bura or Syebora (*anglice* Sherbro), but their true name seems to be Bullom, Syebora being a place rather than a tribal name; a section lives also in French territory, where it has the local name of Mandenye. They have an unenviable reputation as the originators of the Human Leopard and Alligator Societies.<sup>2</sup> The Krim (46,000) are allied to the Sherbros, though most Krims now speak Mende.

The Gallina (Vai), estimated at 35,000, are also mainly a coastal people, who form a branch of a tribe occupying an extensive area in Liberia. They were at one time regarded as being one of the most primitive of the tribes in Sierra Leone, and it was thought that their country was the original home of the Poro society to which reference will be subsequently made.<sup>3</sup> Doubts have however now been cast on this view, and it is thought that the resemblance of their dialect to Kono may indicate that they came with the Kono from the north and went on while the Kono "waited." They are distinguished by the fact that alone of the African tribes in West Africa they have a written script, invented by one of their number about a century ago.<sup>4</sup> The Gola (11,000), living in the south-east of the Protectorate, near the border of Liberia, are part of a Liberian tribe.

### THE PRESENT SOCIAL STRUCTURE

Whatever may have been the original differences in the custom of the invading and the autochthonous tribes, the distinction is now by no means clearly marked. If it is now anywhere apparent, it is to be seen mainly in the

<sup>1</sup> The statistics so far published of the 1948 Census do not include figures of tribal distribution.

<sup>2</sup> See page 298.

<sup>3</sup> See page 297.

<sup>4</sup> The Bassa of the coastal area are also said to have had a script, but this has now disappeared from use. See R. T. Buell, *The Native Problem in Africa*, II, page 705.

more general spread of Mahommedanism among the invading tribes, in the fact that among the Temne the Chiefs have traditionally a more dominant position and stronger hereditary status than among the Mende, and in the survival among the latter of the influence of the Secret Societies, such as the Poro or Bundu. Broadly speaking, however, the social structure now follows a pattern which obtains, with some local variations, throughout the Protectorate.

As in most West African societies, the basic unit was originally the village settlement, derived traditionally from a single founder, with colonies thrown off by the founder village and owing some measure of customary allegiance to the founder's family. The countryside was therefore under the control of the so-called "towns"<sup>1</sup> where the representatives of the principal or "ruling" family resided. Every such "town," whether village or hamlet or group of hamlets, had a headman (*santigi*) chosen by the "ruling" family of the village, the post being hereditary only to the extent that the person selected came preferably from the "ruling" family. The "towns" were grouped for administrative purposes into sections under Subchiefs (*alimami*, an adaptation of the Arabic word *al-imam*), normally chosen from certain of the "ruling" families in the section. It seems to have been usual for the principal "town" headman to nominate a Subchief and to submit his name to the local Head Chief for approval, but it would have been unusual to appoint any one who was unacceptable to the headmen and people, for a post so held would be in practice untenable. West African custom provides no machinery by which an unacceptable or unpopular Chief can maintain his position.

The process by which the sections came to be grouped into territorial units under a single Head Chief was due to a variety of causes. Among the Mende there survives a tradition of the existence at a very early stage of chiefdoms of a considerable size, under a Mahei or overlord, but at a later period the continuous state of petty warfare, aggravated by the raids of Fulas and Mandingos, led to the division of authority among a number of smaller Chiefs who had gained their position as war leaders. Among the Temne the Head Chiefs seem to have represented the leaders of original invading groups, and this may account for the fact that, as already noted, their Chiefs have occupied a more dominant position than those of the Mende. But whatever the origin of the formation of the chiefdoms, the status of the territorial Head Chief became well established, and it was enhanced by the attribution to him of the spiritual authority which West African custom readily accords to a leading Chief. Among the Mende and the tribes associated with them, the spiritual influence of the Head Chief was strengthened by the support afforded by his connection with the Poro Society. The dominant position attained by the Chiefs was recognized by the regular payment to them of tribute in the form either of kind or of services, it being accepted as a customary obligation to provide labour for their farms. As will be shown later,<sup>2</sup> this obligation was reproduced in the earlier Protectorate Ordinances and still forms part of the current law.

There is no indication of the existence in indigenous custom of any recognized body of Councillors on whose advice or support a Ruling Chief was dependent, and his rule would seem to have been largely personal, though the

<sup>1</sup> In older English the word "town" was used to denote the land surrounding or belonging to a dwelling, and sometimes included a parish. In Scotland, as readers of Sir W. Scott will recall, it had till a relatively late period the same sense and was often used for a single habitation. See also page 322 below.

<sup>2</sup> Page 303

extent to which he exercised individual authority must have depended on his own character and prestige. In most cases, however, he seems to have acted in concert with a small body of Section Chiefs and traditional office holders who constituted his immediate entourage. There was in the past little intercourse between Ruling Chiefs, a fact that was perhaps due to the tradition of previous hostilities or to the fear of a loss of prestige, rather than to ritual inhibitions.

### THE PORO

In some Chiefdoms, and most noticeably those of the Mende and associated tribes, the indigenous political organization was strongly influenced by the existence of the Poro Society to which some reference has already been made. It is only possible to give here a brief summary of the studies made of this characteristic feature in the social life of the Sierra Leone Protectorate.<sup>1</sup> The Poro is undoubtedly of ancient origin, and was peculiarly an institution of the Mende, but it is now found also among some other of the autochthonous tribes, such as the Gola and Bullom, and it has been extended to a few of the non-autochthonous tribes, such as the Kono, and part of the Kisi. It is not found among the Temne, save in some parts of the Port Loko and Bombeli Districts, and there are said to be no Poro activities among the Koranko, Susu and Limba.

It is common to speak of the Poro as a type of African freemasonry, but it is always dangerous to attempt to illustrate the character of African institutions by European analogies. On its religious side the Poro has its own priests and an occult ritual, the secret of which is carefully guarded. Boys receive at initiation an instruction the length of which varies according to the measure of the mysteries imparted, and initiates advance through various grades in the Society, promotion to which is largely determined by social position and considerations of age. There seem to be four recognized classes included in the Society, namely, the Paramount or leading Chiefs (Kaimahu); the Chiefs (Gbinima); commoners, messengers, dancers, etc. (Wujanga), and Mahomedans (Misibu). The Poro is the custodian of indigenous custom, both in religious and economic matters. Thus it declares the seasons for the preparation and harvesting of the food crops, such as rice, or the collection of palm nuts, and regulates a variety of other agricultural activities. In nearly every Mende village there is a Poro "bush," the locality of which is known to everyone, but which is regarded as sacrosanct, and closed to the entry of those who have not attained promotion to certain grades in the Society.

Apart however from its religious and social aspects, the Poro has a political aspect which has in the past been of great importance and is still of some importance to-day. It is characteristic that the earlier Protectorate Ordinances, when giving District Commissioners authority to enquire into and determine matters arising in native law and custom, make special reference to matters arising from action taken by the Poro. The secrecy which surrounds the Society makes it difficult to determine how far it intervenes to-day in the domestic conduct of the Chiefdoms or in regulating the relations between leading Chiefs. But it is described as having constituted in the past a "grand

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<sup>1</sup> See Anthropological Report on Sierra Leone, N. W. Thomas, 1916; F. W. Butt-Thompson West African Secret Societies, 1929; F. W. Migeod, A View of Sierra Leone, 1926, Chapter XIX; H. C. Warren, Secret Societies, Sierra Leone Studies, 1926; J. Wallis, The Poro of the Mende, Journal of Royal African Society, 1905; K. L. Little, Mende Political Institutions in Transition, Africa, January, 1947.

national Council controlling the otherwise independent Chiefdoms of the Mende," and it is said that a decision arrived at by the highest Poro authorities was virtually the law for all Mende speaking Chiefdoms.<sup>1</sup> When the rebellion of 1898 took place,<sup>2</sup> the Poro are described as having declared war on the Sierra Leone Government, and to have sent the fiery cross through the country.

But it is not clear whether the Society is now so organized as to enable it to act as a united body, or whether it is in the same position to control the relations between Chiefs. The Mende Chiefs are members of the Poro, but they are not necessarily members of its inner circle. Administrative Officers have expressed their belief that a number of matters of major significance are still settled in the Poro rather than by the Chiefs themselves, and there is evidence that the Poro has on occasions intervened in matters of succession. But though there is general agreement as to the influence which the Poro still exercises, it is difficult to obtain concrete evidence of its intervention in the current activities of the Chiefdoms. It is in particular difficult to obtain evidence of the survival of the practice by which local Poro Councils held secret tribunals whose decisions, extending to the execution of the death penalty, were carried out by its own members.

#### THE BUNDU AND OTHER SOCIETIES

The Poro is purely a male society, but has a female counterpart in the Bundu. The term is said to be Creole in origin; in Mende and Vai the term used is Sande. Its principal function, however, seems to have been the instruction given to girls in sex and domestic matters, and the Educational authorities have made some use of the Bundu as an agency for the education of girls.

There are a variety of other Secret Societies, but they are of less political importance than the Poro, and their function is in many cases doubtful. The only one that needs mention here is the Gbenle or Rabenle, a Temne society which is said to be concerned mainly with the election of Chiefs, and which may have been founded to counteract the extension of the Poro Society in Temne areas. The Human Leopard and Alligator Societies<sup>3</sup> have had at different periods a conspicuous place in the life of the Protectorate, and have been the subject of special legislation,<sup>4</sup> but they form part of criminal rather than administrative history.

#### THE ESTABLISHMENT OF THE PROTECTORATE

Up to the year 1880 the Government of the Sierra Leone Colony showed little concern to intervene in the affairs of the hinterland, where, as contemporary accounts show, there prevailed at the time an incessant state of intertribal warfare, which was further aggravated by the raids of Mandingos from French territory. In 1880, however, the Government began to take measures to combat the tribal disorder which was creating a menace to the trade of the Colony. It despatched a small military expedition to restore order on its immediate border, and from 1884 onwards British officers made a series

<sup>1</sup> F. W. Migeod, *Loc. Cit.*

<sup>2</sup> See page 299.

<sup>3</sup> See H. C. Luke, *Introduction to Bibliography of Sierra Leone*, 1925, and correspondence regarding Unlawful Societies, *Cmd. 696*, 1913.

<sup>4</sup> The Unlawful Societies (Human Leopard and Alligator) Ordinance, No. 28 of 1909 now embodied in the Unlawful Societies Ordinance, cap. 252 of Laws (1946 Edition).

of Treaties with Chiefs in the hinterland; these Treaties numbered over 156 in all and formed the basis of the subsequent extension of jurisdiction over the Protectorate area.<sup>1</sup> It is of some interest to note that a sum of £1,305 was included in the Sierra Leone budget for 1949 for the payment to Chiefs on account of the Treaties. A Frontier Police Force was created in 1890. The Anglo-Liberian frontier had been partly defined by the Anglo-French Treaty in 1885, and there was a further Agreement on the Liberian boundaries in 1892,<sup>2</sup> but in the north-east of the country troubles, arising partly from the expansionist policy of the French, and partly from the need felt by both countries for dealing with the incursion of the famous freebooter, Alimani Samodu or Samory, led in 1895 to the conclusion of the Anglo-French Agreement for the delimitation of the boundary of French Guinea.

An Order in Council dated 24th August, 1895, which was enacted under the Foreign Jurisdiction Act of 1890, extended the jurisdiction of the Crown over the area included in the territory thus delimited, and on 31st August, 1896, a Proclamation was issued declaring the existence of a British Protectorate in this area. The Order in Council provided that the Legislative Council of Sierra Leone should be the legislative authority for the area, and since that date the Governor of Sierra Leone has enacted laws for the Protectorate with the advice of his Legislative Council.

#### THE PERIOD BETWEEN 1896 AND 1935

An Ordinance, No. 20 of 1896, enacted immediately after the declaration of the Protectorate, embodied in a comprehensive form the administrative and judicial system which was to apply to it. It declared slavery in any form to be illegal, but it did not claim any rights for the Crown in native lands, other than rights over minerals, and it recognized the jurisdiction of the Chiefs and their Courts, though supplementing this by the establishment of British Courts which had sole cognizance of the more serious forms of crime. In view of the Treaties previously made with the Chiefs, the Ordinance, which was by no means illiberal in its general terms, might well have been accepted without opposition, but for the inclusion in it of a provision which required every Chief to collect a Hut Tax of 10 shillings a year for every house with four or more rooms or 5 shillings for a house with three rooms or less.

In 1898, following the refusal of a Temne Chief, Bai Bureh, to collect the tax, disturbances broke out which later extended to the Mende tribes, and led to the massacre of a number of missionaries and officials and of native police. At some places, and notably in Mofwe in the Lubu country, churches full of Christian converts were set on fire. Reference has already been made to the part played by the Poro Society in this movement. The disturbances were soon quelled by military action, but a Commission appointed to enquire into their origin expressed the view that the Hut Tax was oppressive both in its incidence and in the measures taken to collect it, and that it was resented by the people as an attack on their rights and their property.<sup>3</sup> The Sierra Leone Government challenged these conclusions, holding that the disturbances were due to other causes, among them being the abolition of slavery, and in the result the Hut Tax was continued with the approval of the Secretary of State.<sup>4</sup>

<sup>1</sup> See Appendix I to Handbook of Sierra Leone, T. N. Goddard, 1925.

<sup>2</sup> The Liberian frontier was finally demarcated in 1903.

<sup>3</sup> Sir D. Chalmers, Report on the Subject of the Insurrection in Sierra Leone Protectorate, 1898 (C.9388).

<sup>4</sup> The Hut Tax remains in the form of the House Tax described on page 308.

Though, however, the tax was maintained, the Commissioner's Report had results in another direction. The Commissioner, Sir D. Chalmers, recommended that the only practicable form of government in the Protectorate was a regulated system of administration through the Chiefs, a method to which, as he said, the people were accustomed, and which was capable, with some guidance and control, of keeping the peace and doing substantial justice. It was largely due to this recommendation that the Government enacted between 1901 and 1905 a series of Ordinances which gave a new direction to the policy of native administration in the Protectorate, and formed the basis on which the present system has been built up.<sup>1</sup> But for some years little activity was shown in its practical development, partly, no doubt, on account of the relative isolation of the Protectorate due to lack of communications, and it was not indeed until the early 'thirties that Protectorate policy received the closer attention which has resulted in the development of the institutions of native administration in their present form.

### CHANGES IN THE ADMINISTRATIVE ORGANIZATION

Meanwhile a number of changes have taken place in the administrative organization of the Protectorate, of which it is necessary to mention some of the most recent, since they illustrate the growing importance of the position occupied by the Protectorate in the affairs of the territory as a whole. Up to 1940 the Protectorate was in charge of a varying number of Provincial Commissioners who corresponded direct with the headquarters of the Government in Freetown. That procedure, however, left the Government without any one officer responsible for rendering advice on Protectorate affairs, and in 1940 a system was adopted under which the Provinces were abolished, the twelve Districts then existing being divided into four Administrative Divisions under Commissioners, and an officer appointed who was designated as Secretary for Protectorate Affairs. He was a member of the Executive Council, but the value of the appointment was diminished by the fact that he had no executive authority in the administration of the Protectorate and remained part of the establishment at Freetown.

This was recognized in a reorganization which took place in 1946. The four Divisions were replaced by three Provinces under Provincial Commissioners, and the Secretary for Native Affairs became the Chief Commissioner of the Protectorate, with headquarters at Bo, and with a general responsibility for co-ordinating Government policy in the Protectorate. Measures were at the same time taken to locate at Bo or its neighbourhood the heads or senior representatives of the Departments which are directly concerned with the development of the Protectorate area.<sup>2</sup>

### CHANGES IN THE SYSTEM OF NATIVE ADMINISTRATION SINCE 1935

As previously indicated, the system of native administration in its present form does not constitute a departure in principle from that inaugurated in the Ordinances enacted between 1901 and 1905, but is a fuller expression of it, with the addition of some features which changing circumstances have rendered

<sup>1</sup> The Protectorate Ordinance 33 of 1901, the Protectorate Courts Jurisdiction Ordinance 6 of 1903, the Protectorate Native Law Ordinance 16 of 1905.

<sup>2</sup> Sessional Paper 7 of 1945.

practicable. The legislation which regulates it is embodied in a number of Ordinances, of which the most important are the Protectorate Ordinance 32 of 1933, the Tribal Authorities Ordinance 8 of 1937, the Chiefdom Tax Ordinance 10 of 1937, the Chiefdom Treasuries Ordinance 11 of the same year, and the Protectorate (Amendment) Ordinance No. 27 of 1945, which made legal provision for District Councils and a Protectorate Assembly.<sup>1</sup> The legislation dealing with the development of the system of native justice will be separately referred to.<sup>2</sup>

In this system the Tribal Authority is the primary unit of local rule, both for the maintenance of law and order and for the provision of local services. The Tribal Authority is defined as meaning the Paramount Chief, the Chiefs, the Councillors and men of note elected by the people according to native law and custom, when appointed by the Governor as the Tribal Authority for any specified area. The provisions of the Tribal Authorities Ordinance of 1937 follow generally those contained in the Native Authorities Ordinances of Nigeria and Tanganyika,<sup>3</sup> and as in those Ordinances the primary duty laid on the Tribal Authorities is the maintenance of law and order. As regards other matters which concern the welfare of the community and the provision of local services for its benefit, a Tribal Authority may issue Orders on its own authority or may make Bye-laws for these purposes, subject to the approval of the Governor.<sup>4</sup> As in those Ordinances also, the Provincial Commissioner may direct a Tribal Authority to issue Orders in any matter lying within the scope of the Ordinance and may in default issue such Orders himself. It may be remarked that in Sierra Leone the Tribal Authority is not given any specific power to make Bye-laws declaring or modifying native law and custom, this, as will subsequently be shown, being the function of the new District Councils.<sup>5</sup>

The Tribal Authority does not as such take part in the assessment or collection of the Government House Tax, as this is, in terms of the law, the function of the Chiefs and Headmen under the direction of the Paramount Chief.<sup>6</sup> Nor have the Tribal Authorities the power, frequently accorded elsewhere, of enacting Bye-laws imposing a Local Rate, though they have power to levy rates for sanitary purposes in the towns.<sup>7</sup> Their Treasuries are, however, credited with the collection of the annual Chiefdom Tax imposed under the provisions of the Chiefdom Tax Ordinance, No. 10 of 1937 (Cap. 29). This Tax is the main basis of the funds from which the Native Treasuries defray the emoluments fixed for the Chiefs and from which the Native Administrations provide local services for the community. The rate of the Chiefdom Tax is fixed by the Provincial Commissioner with the approval of the Governor, but the obligation for its collection rests on the Chiefs and Headmen.<sup>8</sup>

<sup>1</sup> Ordinance 32 of 1933 as amplified by Ordinance 27 of 1945, and other amending Ordinances, is now Cap. 185 of the Laws of Sierra Leone (1946 Edition). The Tribal Authorities Ordinance 8 of 1937 is now Cap. 245; the Chiefdom Tax Ordinance 10 of 1937 is Cap. 29; the Chiefdom Treasuries Ordinance 11 of 1937 is Cap. 30. The Protectorate (Amendment) Ordinance 27 of 1945 is incorporated in Cap. 185.

<sup>2</sup> See page 311.

<sup>3</sup> Page 14, Chapter VII; page 227, Chapter III.

<sup>4</sup> Sections 8 and 16 of Tribal Authority Ordinance 8 of 1937 (Cap. 245 of Laws).

<sup>5</sup> Page 315.

<sup>6</sup> Sections 12 to 22 of Protectorate Ordinance 32 of 1933 (Cap. 185 of Laws).

<sup>7</sup> For the towns see page 316.

<sup>8</sup> Sections 2 and 8 of Ordinance 10 of 1937 (Cap. 29), see also page 303.

### THE NUMBER AND POPULATION OF THE CHIEFDOMS

Before proceeding to examine the working of the provisions of this legislation, it will be convenient to give here the figures of the area and population of the twelve Districts of which the Protectorate is now composed, and the number of Chiefdoms in each District:

Province	District	Number of Chiefdoms	Population	Area in Square Miles	Density per Square Mile
South-Western ..	Bo	17	199,226	2,150	92.7
	Bonthe	16	100,350	1,350	74.3
	Moyamba	17	212,023	2,665	80
	Pujehun	15	147,632	1,624	91.1
Total .. ..		65	659,231	7,789	84.6
South-Eastern ..	Kailahun	18	131,754	1,548	85
	Kenema	16	139,102	2,279	61
	Kono	14	91,319	2,178	41.9
Total .. ..		48	362,175	6,005	60.3
Northern .. ..	Bombali	15	174,260	1,975	88.2
	Kambia	8	107,741	1,200	90
	Karene	—	115,099	2,557	45
	Koinadugu	26	89,143	4,680	19
	Port Loko	14	166,546	1,889	82.2
	Tonkolili	15	59,423	1,574	37.8
Total .. ..		78	712,212	13,875	51.3
Total for Protectorate		191	1,733,618	27,669	62.7

In 1948 there were thirteen Districts with 204 Chiefdoms, but in 1949 the Chiefdoms of the former Karene District were absorbed in the adjoining Districts of Bombali, Port Loko and Kambia, with the result that there are now twelve Districts, and the total number of Chiefdoms owing to this and other changes now stands at 191. But the number of Chiefdoms remains high, if considered in relation to the population concerned, for the general average per Chiefdom is just over 9,000, and in some Districts, as for instance in Koinadugu, it is less than 4,000. In other Districts, as for example Pujehun and Kono, it is between 6,000 and 7,000. Efforts have been made in recent years to secure the amalgamation of Chiefdoms for certain purposes, such as the formation of Treasuries, but progress in this respect has been slow. There is, it would seem, a feeling on the part of the Tribal Authorities that they will lose prestige if deprived of a Paramount Chief. It will be recalled that the Mende Chiefdoms, which were at one time of considerable extent, were split up as a result of the internal disorders which followed the declaration of the Protectorate, and a number of the smaller Chiefs who were recognized by the Government at that



date acquired vested interests which would be affected by amalgamation. The opinion of the Chiefs generally, as expressed in the Protectorate Assembly, is in favour of promoting the amalgamation of the smaller units, but mainly, it is said, in order to secure the increased emoluments which a reduced number of Paramount Chiefs would enjoy.

There is another feature of the development of the system now in force which it is important to explain at this point. There has been considerable delay in bringing the Chiefdoms within the full scope of the Ordinances above referred to, and they are now divided into two classes, known locally as the "reformed" and "unreformed" Chiefdoms, or alternatively, the Chiefdoms which do or do not constitute Native Administrations. In 1949 there were, out of the total number of 191 Chiefdoms, 136 classed as "reformed" (or Native Administrations), leaving 55 still "unreformed." Taking these figures by Province, in the South-Western Province 50 out of the 65 are "reformed"; in the South-Eastern Province 34 out of 48; in the Northern Province 52 out of 78. The Northern Province has therefore the largest number (26) of "unreformed" chiefdoms, the greater part of which (20) are in the district of Koinadugu, already noted as having a relatively large proportion of small Chiefdoms. The rate at which the application of the system has advanced may be judged from the fact that when it was first introduced in 1936 two Chiefdoms were reformed; in the following six years the average was between 15 and 16 a year; and in the years from 1943 to 1948 the average was between five and six a year.

The difference between the "reformed" and "unreformed" Chiefdoms, lies mainly in the fact that the Chiefdom Tax Ordinance does not yet apply to the latter and they have in consequence no Treasuries. By local custom Chiefs were in the past entitled to tribute from their subjects, and also to personal services for the cultivation of their lands or the maintenance of their buildings. Their right to the receipt of personal services has been maintained in the Forced Labour Ordinance No. 50 of 1932, subject to certain limitations,<sup>1</sup> but the effect of the levy of the Chiefdom Tax in the "reformed" Chiefdoms has been to replace the tribute by fixed emoluments from the Tribal Authority Treasury. In the "unreformed" Chiefdoms the Chiefs continue to receive tribute, but the people of these Chiefdoms do not receive the services which are provided from the funds of the Treasuries in the "reformed" Chiefdoms. The difference arising in respect of the Native Courts will be explained in the succeeding pages dealing with the system of native justice.<sup>2</sup>

The legal provisions regarding the constitution of the Tribal Authorities and the powers conferred on them are the same in the "reformed" and "unreformed" Chiefdoms. The Head Chiefs previously referred to are now universally known as Paramounts, though this title is commonly reserved in other territories for Head Chiefs having the allegiance of Chiefs who have some measure of independence in their own right.<sup>3</sup> The current practice in regard to the selection of Paramounts recognizes the existence of "Crowning Houses," a term applied to the families descended from a common ancestor who once

<sup>1</sup> As amended by Ordinance 11 of 1938 this now forms Cap. 82 of the Laws. For the limitations imposed see further on page 305.

<sup>2</sup> See page 313.

<sup>3</sup> The use of this title dates from the Protectorate Ordinance 33 of 1901, where the Paramount Chief is defined as "a Chief who is not subordinate in his ordinary jurisdiction to any other Chief."

ruled as Paramount Chief. There are usually two or more of such families in each Chiefdom, who normally succeed in a rotation fixed by local custom. When a vacancy occurs, the law lays on the Tribal Authority the duty of electing a successor, and it has for this purpose to nominate the correct Crowning House and to see that it produces an acceptable candidate.<sup>1</sup> In practice as many as four or five candidates may offer themselves for election, but the majority are usually content to stand down after securing a recognition of their eligibility.

It is customary for the Tribal Authorities to invite neighbouring Chiefs to be present at an election in cases where there is an old connection between the Chiefdoms on account of former alliances or a tradition of overlordship. Succession is generally in the male line, and this is always the case in the North, but in some Chiefdoms of the Bonthe and Pujehun Districts (as for instance those of the Gallinas, Krim and Jong) custom has admitted the election of women, and in one Chiefdom, that of the Messi Krim, it is not customary to elect a male chief if there is a suitable daughter to succeed. There are at present two female Chiefs in the District. There is also some diversity in the practice by which Crowning Houses share the succession in rotation; among the Limba, for instance, a son sometimes succeeds a father. There are also some instances where persons of local influence but without hereditary claims have been selected, though such instances are rare.

The Administration very rarely intervenes in the election of Paramount Chiefs, though it has intervened in some instances, as for example where disputes between rival candidates have proved irreconcilable. Failing such intervention the Chief elected is gazetted as Paramount, and is known thereafter by his official title, and not by his personal name except in the Southern Provinces. The custom of destoolment prevailing in the Gold Coast<sup>2</sup> does not obtain in Sierra Leone, but the law makes provision for the deposition of Chiefs. Under this provision a Provincial Commissioner may, subject to the Governor's confirmation, impose on a Chief a fine up to one hundred pounds; but if in the Governor's opinion the conduct of the Chief justifies deposition, he may appoint a Commission with one or more Chiefs as assessors to make an enquiry, and he may as a result depose the Chief. His order must, however, have the approval of the Secretary of State.<sup>3</sup>

The emoluments received by Chiefs differ materially in the "reformed" and the "unreformed" Chiefdoms. In the former, the salaries paid from the Native Treasuries vary in accordance with the size of the area, but in 1948 the average stipend in the "reformed" Chiefdoms was £175, the range running from £50 to a maximum of £650. In many cases the salary is clearly insufficient, and the Paramount Chiefs are in consequence tempted to recoup themselves by illicit means. In addition to their salaries, the Chiefs receive a share of Court sitting fees when they sit on the bench, but these do not amount to more than £1 to £4 a month.

As already noted, where the Chiefdom Tax is in force, the Chiefs no longer enjoy the right previously accorded to them of receiving tribute, but they may receive personal services within the limits laid down by the Forced Labour

<sup>1</sup> Section 8 (1) of Cap. 185 of Laws.

<sup>2</sup> See page 192, Chapter VIII.

<sup>3</sup> Section 36 of Protectorate Ordinance 32 of 1933 (Cap. 185). In the strict terms of the law this provision applies not only to Paramounts, but to such other Chiefs or Headmen as are Councillors or assistants of Paramount Chiefs.

Ordinance of 1932 (Cap. 82 of Laws).<sup>1</sup> This prescribes that the Labour shall be only on (a) the clearing, planting and maintenance of their farms or the reaping of the crops grown on them, or (b) the building and repair of their houses or (c) the transport of themselves and their stores. The maximum period for which any person can be required to render such personal services is 30 days in the year; it must not entail his removal from his habitual residence nor prevent his having time to cultivate his own land; and no person can be required to render such services on more than six days in any week.<sup>2</sup>

In the "unreformed" Chiefdoms the Chiefs do not receive regular salaries. They receive a rebate of threepence per house on the Government tax collected by them, but this they are supposed to share with their Headmen and Elders, and their principal source of revenue is the tribute received from their people in cash and kind, the fees and fines paid to their Courts, and the income from the cultivation of their farms. In some Districts efforts have been made to standardize the tribute, a common rate being a bushel of clear rice and from 1s. to 2s. 6d. from each taxpayer, but this practice is by no means universal. Their legal right to customary service is of course the same as that of the Chiefs in the "reformed" Chiefdoms, but though efforts have been made by Administrative Officers to reduce the demand by Chiefs for these services, the matter remains the subject of complaint, and dissatisfaction is in particular expressed regarding the size of the farms held by Chiefs in some of the "unreformed" Chiefdoms.

It is difficult to estimate the receipts from these sources, particularly as Chiefs have on occasion been able to exact money levies in addition to their customary tribute. There has been at least one case in which a Chief has been charged with levying an extra sixpence on each House Tax for his own benefit. The income of some of the Chiefs holding "unreformed" Chiefdoms has at all events been sufficient to add to their reluctance to come under the "reformed" system, for it is clear that they would lose materially by doing so, and the movement in favour of the "reformed" system has in many cases come from the people themselves, who have seen in it freedom from the demands which may from time to time be made on them by their Chiefs. This has especially been the case in the Mende country, and in some areas there has been an actual migration of people from the "unreformed" to the "reformed" Chiefdoms.

The general level of education among the Paramount Chiefs is not high, there being only some 45 literate Chiefs out of 191, of whom two-thirds are in the South-Western Province. It is of interest to note that the Government School at Bo which was established in 1906 as a boarding school for the sons and nominees of the Protectorate Chiefs, is no longer maintained purely for this purpose, as experience showed that owing to the method of selection a ruling Chief is seldom succeeded by a son and is frequently succeeded by a member of an entirely different family. A number of the present Chiefs have however had their education there. Recent appointments have tended to include a certain number of literate ex-Government employees, though the low scale of remuneration in the "reformed" Chiefdoms has reduced the number of candidates of this class.

Though however the standard of literacy is not high, there are at the same

<sup>1</sup> Section 2 (2) of Chiefdom Tax Ordinance 10 of 1937 which thus cancels in their case the provisions of the Protectorate Native Law Ordinance, 16 of 1905.

<sup>2</sup> Section 3 of Forced Labour Ordinance of 1932 (Cap. 82 of Laws).

time a certain number of the Chiefs who show a noteworthy measure of competence in the control of the affairs of their Chiefdoms, and who have taken a very creditable part in the work of the Protectorate Assembly.<sup>1</sup> As already indicated, the rule of the Chief is largely personal, though in terms of the Ordinance he shares his responsibilities with the other members of the Tribal Authority. The Government Notifications normally describe the Tribal Authorities as "The Paramount Chief and Elders of the Chiefdom and Council," though in some cases the Speaker is also included in this description.<sup>2</sup> In actual practice, the Councils may be regarded as consisting of the Paramount and his Speaker, the Section Chiefs and their Speakers, the Headmen of the larger "towns" or villages, and the recognized Elders or title holders. The Administration does not intervene to influence this traditional composition, save that efforts have been made in some Districts to secure a reasonable representation of different areas, as, for instance, by adopting the principle that the Council should include one representative for every 40 houses.

As a result, the persons entitled to take part in the Tribal Authority Councils are in some cases very numerous. In the Chiefdoms of the Northern Province, for instance, the average numbers vary from a minimum of 16 to a maximum of 83; in the South-western Province they vary from nine to 146, and in the South-eastern Province from 15 to 80. District Officers maintain a list of the names of the members of the Councils, and the list is revised annually, the object being to ensure that names are not removed without good reason, for a newly elected Chief has been known to remove summarily all who have opposed his selection and to replace them with his supporters or relatives. There are as yet very few persons on the Councils who do not belong to the traditional circle above described, and though some efforts have been made to induce the Chiefs to include persons with educational qualifications or wider experience, very few have been selected. It must however be realized that there are at present in the Protectorate a comparatively small number of persons so qualified, and there seems to be at present no desire on their part to join the Councils.

These large bodies meet only occasionally, as for example when a new Chief has to be elected, or, in the case of the "reformed" Chiefdoms, when the Estimates of the Tribal Authority Treasuries are under discussion. The day to day work of the Chiefdom is carried on by the Paramount Chief and a small body of Councillors, which may number from three to four Section Chiefs or Councillors in the smaller Chiefdoms, and from 10 to 20 in the larger, the full body of the Council being consulted only on important issues or where some matter of popular interest is at stake.

Some indication has already been given of the position occupied by Section Chiefs or Subchiefs in the indigenous system. In present circumstances the practice is for the principal Headmen to nominate a member of a traditional family and to submit his name for approval, nominally by the Tribal Authority, but in fact by the Paramount Chief and his inner Council. While this is the general practice, it is not universal, for it is stated that Section chieftainships have been occasionally obtained by direct purchase from the Paramount Chief. In a few Districts each appointment of a Section Chief is submitted to the District Commissioner for approval or review, and where the Subchief is deposed there is an appeal to the same authority. Though numbers vary

<sup>1</sup> See page 316.

<sup>2</sup> For the Chiefs' "Speakers" see Chapter VIII, page 192.

greatly in different Chiefdoms, there may be on an average from six to ten Section Chiefs in each Chiefdom. These Chiefs (Alimami) are the executives of the Tribal Authority in their own area. They receive no fixed salary, but in the "reformed" Chiefdoms are given a fee of from 4½d. to 6d. on each Government tax collected by them. At a rough estimate their emoluments from this source can average only from £2 10s. to £5 a year. In the "unreformed" Chiefdoms the Section Chiefs receive no percentage of the tax collection, but depend on the tribute paid by the people and on the proceeds of their farms.

The Headmen (santigi) are in the "reformed" Chiefdoms paid 3d. for each tax collected, but the average sum received from this source is only a few shillings a year. In the Bo District, for example, the average number of Headmen in each Chiefdom is 94 and the yearly emolument per head only six shillings. The appointment of Headmen is not formally recognized by Government.

#### THE MAKING OF BYELAWS OR ORDERS

The Tribal Authorities have made only a very limited use of their power to make Byelaws, and it would seem that where they have done so it has been almost entirely at the instance of Administrative Officers. There have, however, been a considerable number of Orders issued by different Tribal Authorities, dealing with such matters as the pollution of streams, the sale of food by itinerant traders, the registration of marriages, the reporting of deaths and births, the control of markets, hunting, or fishing or prescribing measures for dealing with an epidemic of smallpox.

#### THE NATIVE TREASURIES

Such information as can be given regarding the revenue now available to Tribal Authorities or the contribution made by them to local services is of course confined to the "reformed" Chiefdoms or Native Administrations, since the others have no Treasuries. The Treasury system was first introduced in 1936, when two Treasuries were established, followed by 18 in 1937, the total rising to 128 in 1948. Of these, four were joint Treasuries, three of them serving two Chiefdoms each in the Northern Province, and one serving three small Chiefdoms in the South-western Province. There remained in 1949 as many as 55 Chiefdoms which had not come into the Treasury system. In the "reformed" Chiefdoms the Estimates are considered annually at a full meeting of the Tribal Authority, presided over by the District Commissioner. In the more advanced areas there is some interest shown in the preparation of the Estimates, but in general this is the work of the District Commissioner, and in some cases the Tribal Authority is said to show little or no comprehension of the proceedings. The following statement summarizes the Estimates of revenue and expenditure for the year 1948:

Province	Number of Treasuries	Revenue	Expenditure		
			Administration	Agriculture	Education
South-Western	48	£ 59,065	£ 37,330	£ 428	£ 3,418
South-Eastern	34	34,312	23,819	1,985	514
Northern ..	46	40,925	22,721	1,967	2,633
Total ..	128	134,302	83,870	4,380	6,565

Province Expenditure (*Continued*)

	Forestry	Medical and Health	Miscellaneous	Works	Extraordinary	Total Expenditure
South-Western	£ 815	£ 3,135	£ 1,371	£ 2,711	£ 12,633	£ 61,841
South-Eastern	875	2,775	1,172	1,813	5,044	37,997
Northern ..	1,096	2,250	1,503	1,670	9,167	43,007
Total ..	2,786	8,160	4,046	6,194	26,844	142,845

The Chiefdom Tax contributes from a third to a half of the income in each Treasury; Government Grants contribute 16 to 17 per cent.; Court fees bring in from 12 to 25 per cent.; rents 4 to 7 per cent., and other items, including House Tax Rebate, 3 to 4 per cent.

Reference has already been made to the origin of the Chiefdom Tax,<sup>1</sup> which now varies between four shillings and ten shillings per house, but is more often at the lower figure. Lists of payees are drawn up by the Chiefdom Clerk, who also makes the actual collections. The Government Grants consist mainly of a contribution averaging 25 per cent. of the collections of the Government House Tax. This Tax, which as already shown, was first imposed in 1896 in the form of a Hut Tax, is now levied at the standard rate of five shillings a house occupied by a native resident in the Protectorate, or by non-natives other than those in Government service. The duty of assessment falls on Chiefs or Headmen under the direction of the Paramount Chief; the actual collection is made by Headmen, who are remunerated in the manner previously described.

The procedure for the assessment and collection of the House Tax is much less efficient than in many other territories. Receipts are given to the Headman, not to the taxpayer, so that it is difficult to check evasion by the individual. The District Commissioner's staff does not normally make any check of individual payments, and would only be directed to do so if collections seemed inadequate or if an assessment were contested. There is admittedly great difficulty in collecting the tax from persons working in the towns or mines, and though these are difficulties that have been encountered elsewhere, they are accentuated in this case by the absence of any procedure for the grant of individual receipts. A more efficient system of assessment and collection would undoubtedly increase the total receipts from the tax.

#### THE CONTRIBUTION MADE TO LOCAL SERVICES

As has been seen, the item of Administration accounts for 58 per cent. of the total expenditure, the major part of this representing payments to Chiefs and office holders and members of the Courts. The Native Administrations do not maintain a Police Force or Jails, though they have a paid body of Messengers who act in some measure as police, effecting arrests and serving summonses for the Courts. As is shown above, the expenditure on local services is very small, the sums allotted to Agriculture being only 3.5 per cent. of the whole expenditure, Education 4.6 per cent., Forestry 1.9 per cent. and Medical 5.7 per cent. An examination of the detailed Estimates shows that many of the

<sup>1</sup> See page 303.

Native Administrations provide no service at all under some of these heads; thus out of the 128 Chiefdoms which had Treasuries in 1948, some provision for Medical expenditure was made by 100, but only 51 made provision for expenditure on Agriculture, 56 for Education and 45 for Forestry.

In Agriculture, on which the total expenditure amounted in 1948 to £4,380, the Tribal Authorities maintain a certain number of small farms for the production and distribution of seed rice, the success of which depends largely on such enthusiasm as may be shown by individual Chiefs. An important contribution made in this respect, however, is in connection with the schemes for the development of swamp-rice cultivation. These schemes were started during 1946 and 1947 in three of the Districts, the funds being provided by the Protectorate Mining Benefits Trust Fund,<sup>1</sup> and in 1948 they had brought a total of 259 acres under cultivation. In these schemes the Native Administrations concerned undertake the swamp clearance and let out the land in one acre plots at a rental ranging from 5s. to 7s. 6d. an acre, of which sum one-third is paid to the swamp "owner" and two-thirds to the Treasury.

There is also in operation a scheme for clearing mangrove swamps for rice cultivation, loans being given to farmers for this purpose, this form of assistance having been adopted as farmers had on their own initiative already cleared considerable areas of mangrove swamp. In 1947 the total area cleared by assisted farmers was 3,230 acres, of which 1,326 had been planted with rice. In other respects, the Authorities have been of assistance mainly by the issue of Orders regulating bush fires, and by prosecuting breaches of these Orders.

Education accounted for an expenditure of £6,565, incurred by 56 out of the 128 Native Administrations. The major part of the expenditure consisted of grants to Mission schools, but there were also 18 Native Administration schools, of which eleven were in the Northern Province. These schools receive grants from the Government in the same manner as the Mission schools, the remainder of the expenditure being met by the Native Administration Treasuries. The schools are however small, their total enrolment being only 1,244 in 1947. The Native Administrations are now anxious to increase the number of their schools, and would, especially in the Muslim areas, prefer this to the extension of Mission schools, but their plans for extension are hampered by the lack of trained teachers, and though endeavours are being made to train teachers at the Njala Training Centre,<sup>2</sup> the supply is far short of the demand. An indication has already been given of the general lack of educational facilities in the Protectorate, but some progress may be expected if the Native Administrations accept the recent recommendations made by the Protectorate Assembly for a special education levy of sixpence per taxpayer to be devoted to educational purposes.

The expenditure on Forestry was £2,788, incurred by 45 of the Treasuries. The protection of forest areas is of great importance to the Protectorate, for according to the Forest Department Report of 1945 the country is suffering acutely from the uncontrolled destruction of hill forests and from bush and grass fires, with the consequence that there is a serious problem of soil deterioration. At the instance of Government officers, the Tribal Authorities have set aside some 36 Native Administration Forest Areas and have provided by Orders for their protection, but the areas are relatively small, and the

<sup>1</sup> See page 310.

<sup>2</sup> For expenditure on this institution, see page 311.

reservation of more extensive Forest Areas has now become a matter of urgency. In 1944 a system was introduced by which a Tribal Authority might declare an entire Chiefdom to be a soil conservation area, and as a first step promulgate Orders prohibiting the cutting and burning of vegetation on hill sides. The system was first applied in the Nongowa Chiefdom in Kenema District and some other Chiefdoms have now adopted it. A few Chiefdoms have shown an interest in starting small plantations along the main roads.

The expenditure on Medical and Health Services amounted to £8,160. The Native Administrations have made some contribution to the Government scheme for dealing with Sleeping Sickness and yaws, the cost of which is estimated at £30,000, and on which three Medical Officers are now engaged. For the rest, they maintain four dispensaries, but these have an untrained staff whose activities are limited to the distribution of simple drugs. There are four maternity centres in the Kailahun District to which the Administrations make a contribution, and in the south-east and south of the Protectorate they maintain a number of midwives, but there appears to be no provision for their supervision. As regards Health measures, the Administrations maintain a number of sanitary gangs in the towns and villages; the headmen in charge of these gangs are trained at the Bo Sanitary Training School, which was established in 1942, and financed from the Protectorate Mining Benefit Trust Fund. The sanitary gangs are supervised by the Health Authorities who will be referred to in the part of this Chapter dealing with urban conditions.<sup>1</sup>

In addition to these activities the Native Administration Treasuries are responsible for a number of works, such as the construction of roads or Court houses and the maintenance of ferries and markets. The main roads and ferries (which are numerous, owing to the large number of rivers in the country) are maintained by the Works Department of the Government, but there is a constant demand on the Native Administrations for minor roads and bridges. Here, however, as in other respects, they are hampered not only by the poverty of their resources but by the lack of qualified establishment.

It is obvious indeed that both in this and other respects the Native Administrations are dependent to an unusual extent on the activity of the District Officers, who have in the Protectorate to undertake a variety of tasks which would normally fall on officers of the professional departments of Government or on technical subordinates such as are elsewhere maintained by Native Authorities. This extends even to the management of the Native Administration schools, for though they are nominally managed by the Paramount Chief and his Council, they are in practice supervised by the District Officer.

#### THE MINING BENEFITS TRUST FUND

The somewhat rudimentary activities of the Native Administrations have received some assistance from the institution of the Protectorate Mining Benefits Trust Fund. This was established in 1932,<sup>2</sup> and receives credit for all moneys paid by virtue of the Minerals Ordinance (Cap. 144 of the Laws) on account of mining rights or leases. Expenditure from this Fund, which is at the sole discretion of the Governor, is not designed to relieve the Government budget of the cost of Works or services which would be normally financed therefrom, but to assist schemes which form legitimate charges against the

<sup>1</sup> Page 316.

<sup>2</sup> Ordinance 18 of 1932, which as amended up to 1945 is now Cap. 187 of the Laws.



Native Administrations but are beyond their existing resources. The revenue of the Fund in 1947 amounted to £14,797 and expenditure to £11,730. The major items of expenditure were incurred on the support of the Njala Training College, and the Sanitary Training School at Bo, and a sum of £1,500 was also contributed for the construction or maintenance of Native Administration roads.

### THE ORGANIZATION OF NATIVE JUSTICE

The earliest legislation on this subject was embodied in the comprehensive Protectorate Ordinance No. 20 of 1896.<sup>1</sup> This recognized three classes of Courts, namely, the Courts of the Native Chiefs, the Courts of the District Commissioner and Native Chiefs, and the Courts of the District Commissioners. The Court of the Native Chief was defined as the Court then existing according to native law and custom, and these Courts were given jurisdiction in all civil cases arising exclusively between natives, other than cases involving a title to land. In criminal cases their jurisdiction extended to all criminal cases arising exclusively between natives, other than cases of murder, slave dealing, and certain other serious crimes such as cannibalism, or offences relating to Secret Societies such as the Human Leopard or Alligator Societies. The powers of punishment were not defined, other than by the provision that a Native Chief should not inflict any punishment involving death, mutilation or grievous bodily harm. There was no provision in the law for an appeal from the decision of these Courts nor for revision of their decisions by Administrative Officers.

The Court of the District Commissioner and Native Chiefs was defined as consisting of the District Commissioner and two or more Chiefs, selected by him from such Chiefs as might be nominated for the purpose by the Governor. These Courts and the Courts of the District Commissioners had jurisdiction over practically all cases, including those excluded from the Courts of the Native Chiefs, with power to inflict sentences of death. Appeal from these Courts lay to the Supreme Court of the Colony.

The procedure introduced in 1896 was revised in the Protectorate Courts Jurisdiction Ordinance 6 of 1903.<sup>2</sup> The three classes of Courts recognized in that Ordinance were those of the Native Chiefs, those of the District Commissioners, and the Circuit Court of the Supreme Court of the Colony. The Courts in which the District Commissioners sat in company with Native Chiefs thus disappeared, and cases of serious crime, including murder, were reserved for the Circuit Court. The powers of the Courts of the Native Chiefs did not differ materially from those laid down in the Ordinance of 1896.

The system embodied in the legislation of 1903 remained in force till 1932, when it was again modified as part of the general reorganization of the system of native administration which resulted in the enactment of the Protectorate Ordinance No. 32 of 1933.<sup>3</sup> The Protectorate Courts Jurisdiction Ordinance of 1932<sup>4</sup> provided for three classes of Native Courts, namely, the Courts of the Native Chiefs (or "Native Courts"), the Native Appeal Courts, and the

<sup>1</sup> See page 299.

<sup>2</sup> This Ordinance, as amended up to 1924, formed Cap. 169 of Vol. II of the 1925 Edition of the Laws of Sierra Leone.

<sup>3</sup> Page 301.

<sup>4</sup> This Ordinance as amended up to 1945 now forms Cap. 149 of the Laws (1946 Edition).

Combined Courts, the last named being provided for trying certain classes of cases arising between natives and non-natives.<sup>1</sup>

The Ordinance did not go further than the previous Ordinances in prescribing the constitution of the Native Courts; in other words, it continued to recognize this class of Court as constituted under native law and custom, though it provided that a Provincial Commissioner might, for sufficient reason, remove a member of a Native Court. The powers of the Native Courts were now defined as extending to all civil cases triable by native law arising exclusively between natives, other than a case between two Paramount Chiefs or Tribal Authorities involving a question of title to land or a case in which a debt owing to him in connection with his trade is claimed by the holder of a trading licence. In criminal cases the Ordinance repeated the provision that any punishment inflicted must not involve death, mutilation or grievous harm, but now added that a sentence must not exceed a period of six months imprisonment or a fine of ten pounds.

The Ordinance provided that Group Native Appeal Courts might be established at the request of the Tribal Authorities of two or more Chiefdoms who desired to be served by a joint Native Court of Appeal, to hear appeals from the decisions of a Paramount Chief's Court. A Combined Court might be set up where a Paramount Chief applied to have a non-native joined with him, or with some chief assistant, to try disputes arising between natives and non-natives. The jurisdiction of the Combined Court was limited to civil cases between natives and non-natives where the subject matter actually in dispute did not exceed £5 in value or cases arising out of a common assault or the like which could be dealt with by compensation not exceeding £5. The decision of a Combined Court was, however, only to be binding if it was unanimous; if not, the parties were to be left to seek redress in a Magistrate's Court.

The Ordinance did not include any provision for an appeal to an Administrative Officer either from a Native Appeal Court or direct from a Native Court. On the other hand, it is laid down that where a person is sentenced by a Native Court to imprisonment exceeding fourteen days, he must be sent at once to the District Commissioner with a statement of the case, thus providing an automatic form of appeal, and the District Commissioner is empowered to revise the period of imprisonment or to substitute a fine or to quash the conviction. Moreover a District Commissioner may order the transfer to a Magistrate's Court of any case where a hearing is refused by a Native Court or which, in his opinion, is not likely to have a fair or impartial trial. Further, a District Commissioner<sup>2</sup> has at all times access to the Native Courts, both original and appellate, and may either on the application of the party concerned or of his own motion suspend, reduce or modify

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<sup>1</sup> The term "native" is defined in the Protectorate Ordinance No. 32 of 1933 as "any member of the aboriginal races or tribes of Africa ordinarily resident within the Protectorate or in the territories other than the Colony adjacent thereto, and not employed in the service of His Majesty." It therefore excluded "Creoles" or "Sierra Leoneans."

<sup>2</sup> Some doubt existed whether this power vested in the Magistrate or the District Commissioner. The point was of no great practical importance, since the District Commissioners are also Magistrates, but it needed to be clarified since, while a person aggrieved by the decision of a District Commissioner could apply to a Provincial Commissioner, the course of appeal from a Magistrate's Court is to the Supreme Court. Though the Ordinance gave revisionary power to the Magistrate, in practice it was exercised by District Commissioners. The position was clarified by Native Courts (Amendment) Ordinance No. 8 of 1949 which substituted "District Commissioner" for "Magistrate" in the appropriate sections.

any sentence or decision. This provision is considered locally as fulfilling the same purpose as a formal power of appeal. But the absence of any formal power of appeal means that the litigant in a Native Court has no recourse as of right either to higher Administrative Authorities or to the Circuit Court of the Supreme Court. In a strictly legal sense therefore his position is inferior to that of a person whose case is heard on transfer or otherwise in a Magistrate's Court.

In examining the practical application of this legislation, it is necessary to point again to the distinction between the "reformed" and the "unreformed" Chiefdoms. In the former, the Chiefdom Court is now the sole tribunal, the Administration having availed itself of the power conferred by Section 13 of the Ordinance to suppress all subordinate Courts, of which numbers previously existed. In the Chiefdom Court of the "reformed" Chiefdoms the Paramount Chief presides, though the Provincial Commissioner may appoint a President or Vice-President, this action being usually reserved for cases where a Chief has been suspended. The constitution of the Court is that prescribed by local custom, but in practice it usually consists of a bench taken from a panel of members of the Tribal Authority, including Section chiefs, selected by the Chief. The Chief's Speaker is invariably a member. No quorum is laid down, but normally a minimum of two to three Court members sit with the Chief and a maximum of eight to ten. In cases where the issue involves non-local natives, persons of a similar tribal origin may be included in the bench. So far no attempt has been made by Administrative Officers to secure that persons of higher education shall be included among the Court members, nor does that class seem to have shown any desire for this.

The members of these Courts are not paid salaries, but receive a percentage of the Court fees, varying from Chiefdom to Chiefdom, but usually about 50 per cent. This account is divided between the Paramount Chief and other members; one typical example shows a distribution of 33 per cent. to the Paramount Chief, 20 per cent. to the Speaker, 10 per cent. to Section Chiefs, and 37 per cent. to the Tribal Authority members. The Court records are usually maintained in English, but vary greatly in quality; in the South, some of them record evidence, but this is rare in the North, where there is little more than a record of decisions. The Court clerks are paid from 30s. to £4 a month, and those on the lower scale of pay are of very inferior qualifications, a point of importance, when it is realized that few of the members of the Courts have sufficient education to check the entries in the Court records.

In the "non-reformed" Chiefdoms there exist a number of Sub-chiefs' Courts and some Village Headmen's Courts, though the latter appear to be largely arbitrational, and in some cases a Paramount Chief has fixed a limit of £5 for civil issues in his subordinate Courts, reserving more serious cases for his own Court. In the Chiefdoms of this category all fees, fines or other monies received by the Court are divided among its members in the manner prescribed by local custom.

There are at present six Combined Courts, three new Combined Courts having been recently established at Kenema, Samu and Yonibana. The principle of the Combined Court has not been widely extended in the Protectorate, a matter for regret, since the disposal of the petty cases in which Syrian or Sierra Leonean traders are concerned imposes an unnecessary burden on the District Commissioners sitting as Magistrates.

So far only one Native Appeal Court has been constituted, designed to serve three Chiefdoms in the Kailahun District of the South-Eastern Province. This has, however, ceased to function for some time, and generally speaking the system of Native Appeal Courts has failed to make its way, owing to the reluctance of the Paramount Chiefs to share with other Chiefs the control over what they regard as their domestic affairs.

### STATISTICS OF COURT CASES

The statistics of Court decisions are incomplete as regards many of the "unreformed" Chiefdoms, but such information as was available regarding the cases heard in 1947 is given in the following statement.

Province	Total Number of Chiefdoms	Number of "Reformed" Chiefdoms	Criminal Cases	Breaches of Tribal Authority Orders	Civil Cases
South-Western	67	48	3,199	—	18,296
South-Eastern	48	31	714	147	5,032
Northern ..	90	42	1,374	362	3,090
Total ..	205	121	5,287	509	26,418

Province	Applications for revision	Cases in which Decisions Modified	Cases in which application Dismissed
South-Western ..	488	111	377
South-Eastern .. ..	110	87	48
Northern .. ..	192	51	141
Total .. ..	790	249	566

The number of cases coming before the Native Courts is thus by no means considerable, and there is evidence that in many of the more backward areas differences are still settled by the traditional method of arbitration in preference to a resort to the Native Courts. The fact that there are still so many "unreformed" Chiefdoms makes it difficult to assess the value of the present system of native justice, especially as many of these Chiefdoms are situated in hill areas where the lack of communications makes any form of supervision difficult. Some observers have stated that it gives general satisfaction, while others hold that a large number of the Courts are partial and corrupt. It must be realized again that complaints made against the decisions of the Chiefdom Courts are likely to be treated by the Chiefs as disloyalty, particularly in the North, where Chiefs are regarded as having a semi-divine status, and this adds to the difficulty of drawing any definite conclusion from the number of applications made to Administrative Officers for reviewing the decisions of the Native Courts, or from the extent to which decisions have been modified in review.

## THE DISTRICT COUNCILS

As far back as 1905 the Sierra Leone Government contemplated the formation of Local and District Assemblies of Chiefs on a tribal basis.<sup>1</sup> The Chiefs were to be grouped for the purpose of constituting a Local Tribal Assembly, and representatives of the Local Assemblies were to form a Tribal District Assembly, the District Assemblies in turn sending representatives to form a Tribal General Assembly. These Assemblies were to advise the Government on any legislation contemplated, and also to form bodies from which members could be selected to enquire into boundary disputes or complaints against Paramount Chiefs. This scheme does not appear to have been really practicable, in view of the dispersed character of the tribal distribution in the Protectorate, and if persisted in, it might have had the unfortunate result of developing rather than diminishing tribal differences. But these Assemblies did not actually meet and the Ordinance was to this extent inoperative.

The scheme for instituting Assemblies reappeared in the reorganization effected in 1933, though this time in the form of Assemblies of Chiefs only. No regular Assemblies were, however, held, action in this direction being limited to holding District Conferences where conditions seemed to make this useful. Ten such Conferences are recorded as having been held from 1940 onwards, and with some success, in spite of the traditional reluctance of Chiefs to leave their own Chiefdoms and to make contact with their neighbours.

In 1945 the Government, taking advantage of the progress made in the holding of District Conferences, returned to the policy of constituting Assemblies on a systematic basis, but this time with a wider objective. They were not merely to supply a field for the expression of local views, but to provide a means by which the Protectorate could take its share in the political life of the territory, which had up to this time been largely dominated by representatives of Colony interests.

The Ordinance No. 27 of 1945, which is now embodied in Cap. 185 of the Laws (1946), made provision for the establishment of District Councils and a Protectorate Assembly. The District Councils were to consist of two representatives of each Chiefdom in the District, one of whom was to be the Paramount Chief of the Chiefdom, and the other a member of the Chiefdom appointed by the Tribal Authority, though not necessarily a member of it. The constitution of the Protectorate Assembly will be referred to subsequently. The general functions of the District Councils were to advise the Government on any project of legislation brought before them, and also to make recommendations to the Protectorate Assembly, but they also had a more specific function in framing Rules altering or modifying native customary law in the District, which, when approved by the Governor, were to have effect in all the Native Courts of the District. The Councils were to sit normally under the presidency of the District Commissioner.

The District Councils first met in 1946. As was natural in the circumstances, they proved to be representative mainly of the interests of the Chiefs and the traditional office holders, for the Tribal Authorities had made very little use of their power to elect as "second members" any persons not belonging to that class, and the Councils included only a very small number of persons of the type of teachers or ex-Servicemen. There was nevertheless a marked

<sup>1</sup> Sections 2 to 11, The Protectorate Native Law Ordinance 16 of 1905.

freedom of discussion, nor was there any hesitation shown in commenting on Government schemes or proposals put forward on the authority of the Provincial Commissioner. In practice, the District Commissioner frequently withdraws from the meeting and when he does so the Paramount Chiefs present elect one of their number to preside. The discussions of the Councils have covered a very wide range of local affairs, some of which were of a contentious nature, such as the amalgamation of Chiefdoms, the establishment of Appeal Courts or the service of summonses from neighbouring Chiefdoms, but perhaps the most positive benefits have so far resulted from the opportunity given to Paramount Chiefs and their Councillors to meet their neighbours and to pool their experiences.

### THE PROTECTORATE ASSEMBLY

Under the provisions of Ordinance 27 of 1945 above referred to the Protectorate Assembly was to be a mixed body of ex-officio and unofficial members, 42 in all. The ex-officio members were to be the Chief Commissioner (or in his absence the Senior Provincial Commissioner), the three Provincial Commissioners, and representatives of six of the Government Departments. The unofficial members were to consist of two representatives from each District (26 in all) elected by the District Councils from their own number, four African members nominated by the Governor to represent interests not covered by the District Council representatives, and two members (either African or European) nominated by the Governor to represent commercial and Missionary interests. Like the District Councils, the Assembly was to be a consultative and advisory body, but it had also a special function as advising the Governor on expenditure from the Protectorate Mining Benefits Trust Fund.<sup>1</sup>

The Assembly has held three annual meetings. All but four of the 26 unofficial members returned by the District Councils have so far been Paramount Chiefs and of the six nominated members three are residents of the Colony. There is therefore at present little effective representation of the "commoner" element in the Protectorate, but the Assembly has shown independence in its expression of views and has already acquired considerable influence in the Protectorate as voicing its interests. It is said indeed that the interest shown in its proceedings far exceeds that felt by the Protectorate in the proceedings of the Sierra Leone Legislative Council.

Its proceedings could, however, be greatly improved by adopting rules of business which would confine discussion to regular agenda and permit of questions being asked on due notice, for at present the discussions range over an unduly wide field and are frequently lacking in point. So far as it has made any constructive contribution to questions of policy, this has been due to its Standing Committee, a body of six Paramount Chiefs, who are all literate and the majority of whom speak English. They have been of particular value in preparing the Protectorate representatives on the Sierra Leone Legislative Council to discuss projects of legislation or budgetary proposals affecting the Protectorate.

### URBAN CONDITIONS IN THE PROTECTORATE

There are in the Protectorate no towns of any size. No figures are yet available for the Census held in 1948, but that of 1931 showed that though there were 65 towns with a population of over 1,000, there were only six with

<sup>1</sup> See page 310.

2,000 or more inhabitants, Kailahun heading the list with 2,545. The population of some of these towns, and particularly that of Bo, has grown since then, but it would be out of place to speak of the existence of urbanized populations in the sense in which that word is used elsewhere, for, with the exception of the Syrians and Sierra Leoneans who make up the majority of the small trading community, the manner of life of the inhabitants in the towns differs little from that in the rural areas.

In general the towns remain under the same system of Chiefdom administration as the rest of the country, and Ordinance 8 of 1937, which prescribed the powers of the Tribal Authorities, made special provision for the making of Tribal Authority Byelaws regarding the construction of buildings, sanitation, the management of markets and so forth in the towns.<sup>1</sup> The Government has also made provision for reinforcing this system by the creation of Health Authorities. The Public Health (Protectorate) Ordinance 26 of 1926<sup>2</sup> provides that where any area is declared to be a Health Area, the Chief of the area is a Health Authority, but the Ordinance also provides that where there is a considerable non-native population a Special Health Authority may be constituted, consisting of the District Commissioner, the Medical Officer, the Paramount or local Chief, and such other persons as the Order may direct, one of whom is to be a non-native if there is any considerable non-native population.

A considerable number of Rules have been made relating to buildings, roads, refuse disposal, slaughter houses and so forth in the Health Areas. An "Improvement" Rate may be imposed in those areas to meet the cost of works carried out by the Special Health Authority. There is an additional provision for areas where there are large numbers of labourers, which can be declared to be Labour Health Areas under the Employers and Employed Ordinance No. 30 of 1934. Here, however, the responsibility is placed on the employer, who must make the necessary arrangements for housing, water supply or medical facilities.

The action taken under these Ordinances is shown in the figures below :

Province	Health Areas	Special Health Areas	Labour Health Areas
South-Western ..	17	6	1
South-Eastern .. ..	19	5	3
Northern .. ..	16	6	7
Total .. ..	52	17	11

These figures would, however, be misleading if taken as an indication of effective measures taken for the improvement of the conditions of the areas referred to. The Health Authorities have no executive powers. They supervise the sanitary gangs paid for by the Native Administrations, but they themselves have no power to levy a Town Rate, other than the Improvement Rate above referred to, and no steps have yet been taken to levy this in any centre. It is characteristic that in Bo, the headquarters of the Protectorate, the Native Administration pays for only six sanitary labourers, the remainder being provided directly by the Government. The most constructive contri-

<sup>1</sup> Section 16 of Tribal Authorities Ordinance 8 of 1937 (Cap. 245 of Laws).

<sup>2</sup> Cap. 191 of the Laws.

bution made to the improvement of the small town areas has been achieved by the co-operation of some of the Paramount Chiefs with District Officers in securing an improvement in their layout and dictating building lines. Here the results have in several cases been noticeably good.



## SECTION IV

# THE POSITION OF THE GOVERNMENT IN RELATION TO LAND

### LANDS IN THE COLONY

IN the Colony all land is, as a result of the various Treaties and Agreements under which sovereignty was acquired, treated as the property of the Crown. A number of areas have been alienated by Crown grant to firms and individuals, and also by lease to the British Government for military and naval purposes. Where it is considered necessary to regain possession for public purposes of land so alienated, the procedure is governed by the Public Lands Ordinance 32 of 1896<sup>1</sup>, which provides for the assessment of compensation by judicial process. Licences to occupy Crown land for the purpose of cultivation are issued at nominal rates, usually 1s. per acre. Questions of title are normally decided in terms of English law, and transfers of rights are expressed in a documentary form based on the English procedure. There has been for many years a regular procedure for the registration of documents relating to transfer of land rights, but no procedure for the general registration of titles.

### LANDS IN THE PROTECTORATE

In the Protectorate the Crown has not asserted any claim to the right of "superior" ownership in the lands similar to that asserted by legislation in Northern Nigeria or the Northern Territories of the Gold Coast. The first Protectorate Ordinance, No. 20 of 1896, enacted in the same year as the declaration of the Protectorate, asserted the right of the Crown to all rights in minerals, metals and precious stones, but as regards land rights it contained only three provisions of any importance. The first laid down that all dispositions or grants of rights affecting land, including rights to collect rubber or other produce, should be void unless they had the approval of the Governor. The second provided for the right of the Government to take up land required for public purposes on payment of compensation where it was occupied or under cultivation. The third empowered the Governor to authorize the occupation of any lands certified after enquiry to be waste or uninhabited. So far therefore as the land was concerned, this legislation did not claim any rights for the Crown other than that of "administrative interference".

The general position was subsequently clarified by two Ordinances, the Protectorate Land Ordinance No. 16 of 1927 and the Concessions Ordinance No. 29 of 1931, the former of which applied only to the Protectorate and the latter to both the Colony and Protectorate.<sup>2</sup> The purpose of the first of these two Ordinances was to control the use by Tribal Authorities of their power to permit the use or occupation of land by non-natives; that of the second was to prescribe the terms on which the Governor could allow of its alienation by concession or grant.

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<sup>1</sup> As amended up to 1945 the Ordinance forms Cap. 193 of Laws (1946 Edition).

<sup>2</sup> These Ordinances as amended up to 1945 form Cap. 186 and Cap. 42 of the Laws (1946).

The preamble of the Ordinance of 1927 laid down the general principle that all land in the Protectorate is vested in the Tribal Authorities, who hold such land for and on behalf of the native communities concerned. The Tribal Authority is defined as the Paramount Chiefs and their Councillors and men of note or Subchiefs and their men of note, and it is therefore essentially the same as the definition of the Tribal Authorities in the Tribal Authorities Ordinance 8 of 1937.<sup>1</sup> Under the terms of the Ordinance no non-native may occupy land without first obtaining the consent of the Tribal Authority and unless he has also obtained the approval of the District Commissioner he is to be treated as a mere tenant at will, his tenancy being liable to be determined without notice by the lessor, that is, the Tribal Authority. If the consent of both the Tribal Authority and the District Commissioner have been obtained, a memorandum of the terms of occupancy must be drawn up in a prescribed form. A non-native may not acquire an interest in land for more than 50 years, and the rental is to be subject to revision by the District Commissioner every seven years. All non-native settlers who do not hold a lease or who are not employed by a person holding a lease must pay a settler's fee in lieu of the customary present or contribution of labour sanctioned in native law in favour of the Paramount Chief;<sup>2</sup> there are, however, provisions for the remittance of the settler's fee in certain cases.

As regards alienation, the existing Concessions Ordinance 29 of 1931 (Cap. 42 of Laws) has a history of some length behind it. It will be recalled that the Protectorate Ordinance 20 of 1896 had asserted the rights of the Crown in all minerals and precious stones, but had not asserted any rights for the Crown in the ownership of the lands. Concessions for mining development could therefore be obtained only from the Crown, but towards the end of the last century much interest was being shown by European enterprises in securing concessions of land in West Africa for the exploitation of the palm oil industry. The attempts made to secure land from the Protectorate Chiefs for palm plantations led to the enactment of the first Concessions Ordinance of 1902, which provided that no Chief could alienate land above 1,000 acres in extent for cultivation without the assent of the Governor. In 1907 Lever Brothers failed to secure the Governor's approval to a proposal grant of land by Chiefs for this purpose,<sup>3</sup> but the oil interests subsequently succeeded in obtaining from the Government an Ordinance (The Palm Oil Ordinance of 1913) which permitted the Government to grant to a concessionaire the monopoly right to erect oil mills over an area of 10 square miles for 21 years.

These enterprises, however, proved for various reasons to be unsuccessful, and soon after the First World War the fear of competition from the palm plantations in the Far East led the Government to give its support to proposals which would permit a company owning a mill to acquire in addition an area for plantation in order that it might not be entirely dependent on the native cultivator bringing sufficient fruit to the mill. It was in these circumstances that the Ordinance was amended in 1922, in order to admit of the Tribal Authority giving leases up to 5,000 acres for the purpose of cultivating palm on scientific and commercial lines. Such leases had to be approved by the Governor, but were not held to be concessions within the terms of the Concessions Ordinance of 1902.

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<sup>1</sup> See page 309.

<sup>2</sup> See page 303.

<sup>3</sup> See the Native Problem in Africa, R. I. Buell, 1928, Vol. I, page 869.

The Concessions Ordinance was again amended in 1931, when it took its present form. For our present purpose it is of importance only so far as concerns the grant of land by the Tribal Authorities for purpose of cultivation, a term which in the circumstances has practical application mainly to plantations for palm. The Governor may approve concessions up to 1,000 acres ; grants of areas up to 5,000 acres may only be approved if they are for the benefit of the country as a whole ; the grant of areas above 5,000 acres requires the sanction of the Secretary of State. No land exceeding 50 acres in extent may be alienated for any term longer than 99 years otherwise than to the Government for a public purpose. The Ordinance provides for the establishment of a Court to deal with Concessions, and the Court may certify a Concession as valid only if it is satisfied, among other things, that the customary rights of natives in respect of shifting cultivation and other matters (including hunting and the snaring of game) are protected. A Concession may not be certified if it purports to grant rights by which natives may be removed from their habitations ; but there is on the other hand an interesting provision that any one attempting to invalidate a Concession by " putting a fetish " on the land is liable to a fine or imprisonment.<sup>1</sup>

The legislation which regulates the alienation of land by Tribal Authorities for the cultivation of palm is now of less practical concern, since it is unlikely that Concessions of any size will be proposed in the future, in view of the present attitude of the Tribal Authorities and of the Protectorate Assembly on the subject. The current problems regarding the native lands do not arise from this source, but from changes occurring in the customary system of landholding. It is true that such problems have not yet become acute, as there is no such pressure of population in the Protectorate as to produce this result, but as will subsequently be shown, circumstances have in recent years given some importance to the matter, particularly in connection with the cultivation of swamp rice.

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<sup>1</sup> The definition of "native" in the Concession Ordinance differs from that given on page 312. It includes all persons who by native custom are entitled to rights in land in the Colony or Protectorate.

## SECTION V

# THE TRIBAL AUTHORITIES AND THE LAND

IN this connection much interest attaches to the position accorded to the Tribal Authorities in the Ordinances above referred to, since, as other Chapters of this survey will have shown, it has been unusual elsewhere to invest the Native Authorities, as such, with the power to control the disposition of the community lands, the general tendency having been to leave this matter under the control of traditional authorities exercising powers based on the customary law.<sup>1</sup> The position in the Protectorate has recently been examined by the Chief Commissioner in a most useful article published in the *Journal of African Administration*.<sup>2</sup>

He has explained that there are some characteristic differences in the system of landholding among the Mende, Kono, and Temne respectively. Among the Mende, the conceptions regulating the possession of land rights are derived from the system under which "towns"<sup>3</sup> were in earlier times established by one or more families, together with their slaves or dependants, settling down and clearing virgin bush. Larger "towns" would throw off smaller, but these would still recognize the dominance of the parent "town". Families however, came in time to identify themselves increasingly with the land which they were farming, not so much as "owners" of the bush, but as families whose duty it was to hold it, not only for their descendants but for their forefathers, for veneration of ancestors is a very real part of Mende life. Though a great deal of partitioning of family bush has occurred, there is no sense of individual "ownership" in the European sense of the term. The term "landowner" is frequently used, both in official and other documents, and there has been some debate whether "landowner" or "landholder" would be the more appropriate term,<sup>4</sup> but whichever term is used, it should be understood in the above sense, and with the connotation that the prevailing conception of rights precludes the possibility of outright sale of land. No Tribal Authority, whatever its statutory powers, would venture to attempt either to acquire land outright or to sell it.

It is at the same time generally agreed that even a prolonged absence does not deprive individual members of families of their rights in family lands; and it is also agreed that a Chief, as such, has no rights over the lands occupied by families, though he may by virtue of his political position as Chief have a claim to the allegiance of the inhabitants in his jurisdiction. His rights as a "landowner" or "landholder" are limited to his share in his own family lands. By far the greater part of the upland bush is now held by families in this way, though Headmen may in some cases keep a small reserve of bush in case it is needed. But within this general framework certain cases

<sup>1</sup> See however recent legislation in Nigeria, Chapter VII, page 93.

<sup>2</sup> Vol. I, No. 3, July 1949. The material in this Article has been utilized in the succeeding pages.

<sup>3</sup> See for the use of this word page 296.

<sup>4</sup> See *Land and Labour among the Mende*, K. L. Little, *African Affairs*, January, 1948.

arise which have to be separately considered, namely, the position in regard to swamp lands, rights acquired by the "stranger" or "settler", the custom regarding permanent economic trees, and the rights arising from the "pledging" of lands.

The swamp land has only recently become more valuable, and the tenure is therefore less strict. Small swamps are treated as belonging to the families within whose bush they fall, but larger swamps are often regarded as the property of the village. This would seem to apply also to unfelled mangrove swamps. Lands in the larger unoccupied swamps are now in demand owing to the desire to extend rice cultivation or to replace lands which have fallen into disuse owing to soil deterioration. As already shown,<sup>1</sup> Tribal Authorities are now undertaking schemes for swamp clearance, and are letting them out on a cash rental. Some difficulties arise here, owing to claims made by Tribal Authorities to swamp lands over which families may assert their right, and these seem to be a matter for judicial decision. There are other difficulties which are, however, mainly of a political nature, since in some instances (as for example the swamp areas of the Scarcies River) strangers from other Chiefdoms have been allowed to clear plots for themselves while still residing in their old homes, thus contravening the accepted convention that a man cannot hold lands in two Chiefdoms.

As regards "stranger" or other settlers, it has for many years been the common practice for persons to obtain land from members of the "towns", making a small annual "shakehand" or present for the purpose. The "host" would introduce his "guest" to the Chief, to whom he would also make a small present for if a Chief were not informed of the settling of a stranger in his Chiefdom, he might punish both the "host" and his "guest". After a number of years the family may come to identify the stranger as one of themselves, in which case the small annual "shakehand" would be dropped, but in such a case the stranger would be expected to behave as part of the family and probably would have married into it. The "host" never in theory loses his reversionary right in the land, but it would be unusual to assert that right, unless the stranger abandoned the plot he has occupied. The stranger cannot himself acquire rights in the unoccupied bush, but if he has married a wife from the Chiefdom, his children can claim through their mother.

Permanent economic trees, such as cocoa or coffee or fruit trees, are regarded as the sole property of the man who has planted them. In some cases these may be growing on another family's land, in which case the owner of the tree is expected to pay a small "right-bone" to the landholder when he comes to market the crop. It is usually held that palm trees are a natural growth, and that there is no individual property in them, but that their fruit can only be gathered by the people of the "town" in whose area they are situated.

The practice of "pledging" is common, but pledges are of two kinds. A pledge may be for a definite period, and if at the end of that time the family has not redeemed the pledge in full, it loses the rights in the land. The pledge may, on the other hand, be for an indefinite period, and the payment of the debt may take so long that the original ownership becomes obscured, especially as the land may in the meantime have been pledged to a third party. Owing to the modern pressure for rice land in certain areas, questions connected with pledging are now a common cause of litigation, and give rise to issues of much

<sup>1</sup> Page 309.

complexity. Moneylenders are advancing considerable sums on the security of pledges, and there is some danger that large areas may pass into their hands.

Apart from the practice of "pledging", land is sometimes obtained by loaning, but this practice was more common at a period when land was more readily available than at present. Here also the custom was to secure the land by a small present in the nature of a "shakehand" (famalui), but this conveyed no security of tenure.

These observations apply in the main to the lands held by the Mende. Kono land tenures differ from those of the Mende in so far that in the Kono customary law the land is regarded as belonging to the whole community, under the supervision of the Village Headman, who is in return responsible to the Chief. As the representative of the pre-British ruling Chief or Mansa, the Chief is regarded as owning all the land in the last resort. There is not accordingly the same recognition of family rights as among the Mende, nor is there a practice of "pledging", since no one can pledge the Chief's land.

Among the Temne the system of land tenure resembles in most respects that of the Mende, except that the only land which the Temne regard as communal is the unfelled mangrove forest. Generally speaking, the Temne have an even stronger sense of "ownership" of the family lands than the Mende. There is an intricate system of subdivision of the family lands due to the system of inheritance, children of each wife having the right to farm the land which was first "brushed" by their father for their mother. The plurality of wives has in some cases led to an embarrassing measure of subdivision of lands.

It may be asked how far the position now accorded to the Tribal Authorities is compatible with that established in usage and custom as above described. The Tribal Authorities do not "own" the land, save perhaps swamp land, and even though in the Kono areas the Chief may have the final right in land, it is a right derived from his position as Mansa, not as part of the statutory Tribal Authority. But the Chief Commissioner, in the Article above quoted, considers that the position is not unreasonable. "The average Tribal Authority", he points out, "is composed of the heads of all the principal landowning families in the Chiefdom and as such they are as a body capable of determining the agricultural and land utilization policy of the Chiefdom. They are thus in a strong position to act as guardians of native land rights and the fertility of the soil". He adds however one caution. If land is leased, outside the urban areas, the families holding the farming rights are entitled to an economic share of the rent, and any attempt to ignore this would lead to serious dissatisfaction. In urban areas this does not apply, since land has always been more or less communal, and has been used only to a minor extent for productive agriculture. In urban areas the Tribal Authorities can acquire land for public purposes by simply allocating another area to the occupiers on which to rebuild and compensating them for disturbance.

The position accorded by law to the Tribal Authorities in respect of the land seems to be well accepted, and so long as this is the case there is an obvious advantage in maintaining it. The chief concern of the Administration must for the present lie in taking such measures as are necessary to clarify the customary law on certain points, as notably the distinction to be observed between communal or "family" swamps, or the complexities arising from the practice of pledging. They are matters on which both the Tribal Authorities and the Native Courts require guidance.

There is a further point which seems to require special study. There seems to be little information as to the extent to which the adherence of so large a part of the population to Mahommedanism is affecting the indigenous system of landholding, particularly in regard to rights of succession or the holding of land by women on inheritance. The Mahommedan Marriage Ordinance (Cap. 145 of the Laws) lays down that real estate shall be distributed in accordance with tribal law ; but it is not clear how far tribal law has been affected by the influence of Mahommedan law, a point which becomes of importance in Chiefdoms where Native Courts have to deal with mixed Muslim and non-Muslim communities.

## SECTION VI

# CONCLUDING NOTE

### THE COLONY

As has previously been remarked, the problems of the Colony are mainly those arising in connection with urban local government, for even in the Rural Areas of the Colony the dominant section of the population has the character of a suburban community, differing in its manner of life from the indigenous inhabitants of the country. The present constitution of Freetown Municipality only dates from 1948, and it remains to be seen how far it can satisfy the modern requirements of municipal local government. One reflects, however, that municipal government is usually at its best when control is in the hands of a body of persons primarily interested in their local problems, rather than in purely political issues, and who moreover possess the practical experiences of business or commercial life. The new Municipal Council does not, as a body, seem to have this character.

Freetown has moreover a special problem in Municipal government, arising from the existence of its large Protectorate-born population, greatly exceeding in number that of the "African non-natives". It is true that a part of this population is migratory or seasonal, but there must be a considerable proportion which is permanently resident, and one cannot help being struck by the inadequacy of the arrangements hitherto made for their welfare or for their participation in the management of local affairs.<sup>1</sup> Freetown is in this respect less advanced than many of the towns of East and Central Africa.

### THE PROTECTORATE

In the Protectorate the problems of development are of more immediate importance than those relating to the system of native administration. But there are nevertheless some points which call for comment here. There were in 1949 still some 35 Chiefdoms classed as "unreformed".<sup>2</sup> While it was no doubt advisable at one time to wait on the movement of public opinion in this respect, there can be now less reason for delay in bringing these Chiefdoms into the "reformed" category. In the second place the large number of relatively small Chiefdoms,<sup>3</sup> most of which have their own Treasuries, leads to a dispersal of available resources which could be remedied by an effective system of amalgamation into larger units, or better still, on a District basis, for the contribution which they can now make to local services is, as has been seen, very small.

Thirdly the "Councils" of Chiefs are often very large bodies, meeting irregularly, and having as a matter of fact far less influence than the small body of Councillors whom the Chief takes as his advisers. Though the Protectorate has hitherto had the reputation of being "backward", yet some of the Chiefs have shown themselves to be progressive in their views and competent

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<sup>1</sup> See page 291.

<sup>2</sup> Page 303.

<sup>3</sup> Page 302.



in the discharge of their functions. But the present system of native administration depends to an undue degree on the personality of the Chiefs, and a number of them are of poor calibre. There can be no doubt that the system would be strengthened by a systematic regulation of the size and composition of the Chief's Councils. These Councils now consist entirely of office holders or traditional Elders. Though there is no very considerable number of persons of education and experience in the Protectorate, their number is increasing, and the efficient working of the Tribal Authorities would be improved if some representatives of this class, where available, were brought on to the Councils.

The character of the Courts in the "unreformed" Chiefdoms adds a further argument for bringing these Chiefdoms as soon as possible into the "reformed" category. But even in the reformed Chiefdoms it would now seem necessary that the Administration should take a more direct part in prescribing the constitution of the benches, with a view to securing the inclusion of persons other than those who hold traditional posts either as Subchiefs or Elders. There are an increasing number of contentious issues in regard to land, including the right to swamp lands or lands held under the practice of pledging,<sup>1</sup> and the special position accorded to the Tribal Authorities in the matter of land makes it additionally advisable that the sitting benches should include persons who are not members of the Tribal Authority organization.

There is no doubt that the system of native administration in the Protectorate has benefited by the introduction of the system of District Councils in 1945, if only because this has resulted in greater intercourse between Paramount Chiefs, who were previously prevented by custom or considerations of prestige from meeting their neighbours. The institution of the Protectorate Assembly in the same year has been even more beneficial, in that it has for the first time given the different communities a sense of common interest in the affairs of the Protectorate as a whole, and stimulated a demand for a greater share of attention of the Government, as compared with the affairs of the Colony.

The Protectorate Assembly has produced in its Standing Committee a body of six Chiefs whose intelligence and practical common sense must go far to remove the impression that the Protectorate is still, in a political sense, a backward area. The Protectorate has, however, hitherto had only a minor share in the membership of the Legislative Council which is, as already shown, the source of legislation for both the Colony and the Protectorate.

### THE LEGISLATIVE AND EXECUTIVE COUNCILS

At present, the Legislative Council is composed of the Governor as President, eleven official members, three elected members, and seven nominated unofficial members.<sup>2</sup> The official members have included the Secretary for Protectorate Affairs to whose position reference has been made earlier.<sup>3</sup> Two of the three elected members represent the urban and one the Rural Districts of the Colony, the former consisting of the City of Freetown and the Sherbro Judicial District and the latter the remaining parts of the Colony situated in the Peninsula together with the Tasso and Banana Islands. The

<sup>1</sup> See page 323.

<sup>2</sup> Sierra Leone Legislative Council Order in Council, 16th January, 1924, as amended by the Order of 20th December, 1939.

<sup>3</sup> See page 300.

inclusion of the elected members, who are invariably " non-native Africans " is of relatively old standing, as it dates from 1924. Of the seven nominated unofficial members three are Paramount Chiefs of the Protectorate, two are Europeans from the Colony, and three are Africans, of whom one is a " commoner " taken from the Protectorate. There are therefore nine Africans among the 22 members of the Council. The revision of this constitution is now under consideration, and appears likely to result not only in the provision of an unofficial majority, but in increased representation of the Protectorate on the Legislative Council.

The Executive Council consists at present of the Governor as President, with eight members. Of these four are officials appointed by title, one a nominated official (who is normally the Secretary for Protectorate Affairs above referred to), and the three nominated unofficials. Up to 1948 there had been only two nominated unofficial members, one of whom had normally been a Paramount Chief from the Protectorate, and one an African commoner who might come either from the Protectorate or the Colony. In 1948 it was decided to add one of the elected members from the Colony ; as shown above, the elected members are invariably " non-native Africans ". The Paramount Chief appointed to the Executive Council has not normally been a member of the Legislative Council. The third nominated member is at present a " non-native African " from the Colony.

## CHAPTER X

# The Gambia

### SECTION I

### GENERAL

IT is the misfortune of the Gambia that the size of its population and the extent of its resources, which have been determined by accidents of history and geography, are such as must always make it difficult for it to achieve the reality of economic and political independence.<sup>1</sup> The earlier history of the country has, it is true, an unusual interest for the historian, for it is linked up with the events which in the tenth century A.D. brought Muslim rule south of the Sahara and in the fourteenth century established a strong centre of Islamic culture at Timbuctoo. But in later times the European powers, which approached the country from the Gambia River estuary, were concerned mainly in acquiring a hold on its waterway and showed little interest in the control of the surrounding territory. That is in particular true of the British, with the result that the Convention which they concluded with the French in 1889 left them with only a narrow strip of territory on both sides of the River. This strip extends 250 miles up stream, but is only about 30 miles wide for the first 65 miles, and thereafter is only 15 to 20 miles wide.

The relative unimportance of the area of the territory might be of less moment if its physical conditions offered greater opportunities for development. But the mangrove swamps and low sandy lands near the estuary produce little that is of value, and though the country further up the River rises higher, with ranges of park-like land, it is there that the strip of British territory is at its narrowest. All the indications are that in the past the population of the Gambia existed at a low subsistence level, with recurring "hunger" periods. Their traditional food was "coos", consisting of bullrush millet and inferior types of sorghum, but in more recent times this has been supplemented by rice and ground nuts. The ground nut is, however, mainly a cash crop, grown for export. It was introduced by the Portuguese, but appeared for the first time as an export in 1830. By 1848 the exports of ground nuts had risen to 8,636 tons, but the shortage of vegetable oils in the present century has stimulated its cultivation, and in the years 1912 to 1938 the average export tonnage was 62,739 tons.<sup>2</sup>

Though the ground nut has proved to be a profitable cash crop, this has been achieved at the expense of the cultivation of subsistence crops, and for some years preceding the War the Gambia was dependent on imports of rice from Burma. The immediate problem before the Administration is therefore to render the population self-subsisting in food crops. Pastoral conditions are

<sup>1</sup> The revenues of the Gambia amounted in 1947 to only £691,000 including a Grant-in-Aid of £98,400. The corresponding figures in the estimates for 1948 were £918,500 and £242,101.

<sup>2</sup> The export during War years was variable, being as low as 15,611 tons in 1942, but rose to 56,398 tons in 1946; in 1947-48 49,387 tons were exported. These figures refer to ground nuts in the shell, not decorticated. The price, which was £8 a ton in 1943, was £20 in 1945, and £18 14s. per ton in 1947.

poor, owing to the wide infestation by fly, and 90 per cent. of the cattle (estimated to number some 96,000) are affected with trypanosomiasis. Some improvement in the production of food crops may follow from the expansion of rice cultivation, for the recent West African Rice Mission reported that there were over 30,000 acres available for this purpose on some of the higher reaches of the River, with a possible further area in the swamp land near Bathurst, now subject to tidal flooding. But apart from the considerable capital expenditure involved by the latter scheme, any extensive cultivation of rice would depend on the use of mechanisation, since owing to the effects of trypanosomiasis the cattle break down at once if put to the plough, and manpower is also deficient in numbers. It is in this connection noteworthy that the production of ground nuts has been assisted by the seasonal immigration of "Strange Farmers" from French territory.<sup>1</sup> Not only is this influx a useful addition to the local manpower, but the labour of the immigrants is physically superior to that of the indigenous population, which has a high incidence of hookworm and malaria and, as recent Nutritional Surveys seem to show, of deficiency diseases.

The succeeding Sections will deal separately with the Colony area, in which the chief point calling for notice is the system of local government in Bathurst and the Kombo St. Mary Rural Area, and with the Protectorate, where are found the main problems connected with the system of native administration. It may be added here that the difference in the constitutional status of the Colony and the Protectorate is not material, so far as concerns the purpose of the present survey. The Colony, about 30 square miles in area, was acquired by cessions or Agreements made at various times from 1651 onwards. It underwent during the nineteenth century various changes in the form of administration, but was declared a separate Colony with its own Legislative Council in 1888.<sup>2</sup>

The Protectorate area is 3,978 square miles. The establishment of a Protectorate does not seem to have been effected by any specific declaration, but its *de facto* existence was assumed in view of the conclusion of the Anglo-French Convention of 1889 and the delimitation of boundaries which followed in 1891 and subsequent years. In 1893 the British Government, availing itself of the provisions of the Foreign Jurisdiction Act of 1890, took steps by Order in Council to extend administration over the territories "near or adjacent to the Colony of the Gambia, so far as Her Majesty had jurisdiction therein", and provided that the Legislature of the Colony should legislate for such areas. A Protectorate Order in Council of 1946 referred to these areas as the Protectorate of the Gambia, and defined its boundaries.<sup>3</sup> Under these Orders in Council the Governor is empowered to make laws for the Colony and Protectorate alike "with the advice and consent of the Legislative Council of the Gambia". The composition of the Council will be referred to in the concluding part of this Chapter.<sup>4</sup>

<sup>1</sup> For the conditions of tenure of the "Strange Farmers" and the numbers involved see page 347.

<sup>2</sup> Letters Patent dated 28th November, 1888.

<sup>3</sup> Orders in Council dated 23rd November, 1893 and 29th November, 1946.

<sup>4</sup> Page 349.

## SECTION II

# THE COLONY

### THE BATHURST TOWN COUNCIL

THE population of the area now administered as the Colony was shown by counts made in 1944 and 1946 as 28,263, that of Bathurst being 21,152, and that of Kombo St. Mary Rural Area 7,111. The town of Bathurst accounts for practically the whole population of the small St. Mary's Island, which was ceded by the King of Kombo in 1816 ; its area is about  $4\frac{1}{2}$  square miles. The Rural Area of British Kombo or Kombo St. Mary lies adjacent to Bathurst on the mainland, and represents the results of cessions made between 1840 and 1853. It is about 25 square miles in area.

The native population of Bathurst, which has grown considerably in the last thirty years now includes 20,875 Africans, the majority (10,130) being Joloff. There are also 2,412 Mandingo and 2,564 Aku, the local name for the class corresponding to that known as Creole in Sierra Leone. About half of the Africans were born in Bathurst ; 15,866 are Muslims, 4,995 Christians and 291 Pagans.

Bathurst, which had previously only an Advisory Town Council, was given in 1946 a Town Council with an elected majority.<sup>1</sup> The Council consists of the Commissioner for the Colony as ex-officio chairman, four members nominated by the Governor (two African and two European) and 15 elected members, being five for each ward. All the elected members are Africans. In 1947 there were 4,975 registered voters, but elections took place in only three of the five wards, and in these wards 693 persons recorded their votes out of a total of 3,530. It is difficult to estimate the result of the constitution of the Council on its new basis. Its revenues, derived in the main from Town and Water Rates and from an octroi on palm wine brought into the town, stood in the estimates for 1948 at only £13,235.

The Council has a very restricted range of functions, for the supply of electricity, water works, education, roads and hospital services are the concern of Government departments, which are also in charge of the enforcement of building regulations and the inspection of the health and sanitary services. In practice therefore the Council does little more than employ a staff for maintaining its buildings, cemeteries, markets, and recreation grounds, and cleansing its streets and drains. With such a limited range of functions, there is little to stimulate the interest or the sense of responsibility of the elected members of the Council ; and as it has no executive officer, and seems unwilling to delegate authority over its subordinate staff, there are inevitably many complaints of its lack of activity. Overcrowding has increased of late years, but this is not a problem with which the Council is able to deal with the limited sources available to it.

As regards the system of justice, there is no Native Court in Bathurst. Minor Civil cases are dealt with by a " Court of Requests " which consists of a panel of Justices of the Peace, who are both European and African. All criminal cases go to the Court of the Magistrate. There is, however, a Mohammedan Court for trying civil issues " between or exclusively affecting Mohammedan natives, relating to civil status, marriage, succession, testaments and guardianship."<sup>2</sup> The establishment of this Court is of some interest,

<sup>1</sup> The Local Government (Bathurst) Ordinance, No. 1 of 1946.

<sup>2</sup> Mohammedan Law Recognition Ordinance, 1905.

because though certain aspects of the Mohammedan Law of inheritance have formed the subject of legislation in various British Colonies, it is only in the Gambia and Zanzibar that Mohammedan Courts have been constituted with a separate statutory provision regulating their jurisdiction and procedure.<sup>1</sup> There is also a separate Ordinance regulating the registration of Mohammedan marriages and divorces.<sup>2</sup> The Mohammedan Court consists of a Cadi and, if the Governor so rules, two persons as assessors, appointed by the Judge of the Supreme Court. All its proceedings are recorded in Arabic. Appeals against the decisions of the Court lie to the Supreme Court if the subject matter is over £5 in value, and in such appeals a Tasmir, or person learned in Mohammedan law, acts as adviser to the Judge.

### THE KOMBO RURAL AREA

The small population of the Kombo Rural Area consists mainly of Mandingo and Jollofs, engaged partly in farming or market gardening and partly in trade. Some of them are freeholders or leaseholders; the remainder are classed as tenants of Crown property, paying an annual rental.<sup>3</sup> The majority are Muslims. Up to 1946 this area, though part of the Colony, was administered as part of the Protectorate, but Ordinances enacted in that year withdrew it from Protectorate administration and created a Rural Authority for its management.<sup>4</sup> The Rural Authority consists of the Commissioner of the Colony as Chairman and three ex-officio members (who are officers of Government departments), with such number of nominated members as the Governor may decide. These now number 23, of whom one is a European and the rest Africans, nine being headmen of villages and twelve being Elders or other prominent citizens. There is no attempt at tribal representation, nor is there at present any form of election.

The functions of the Rural Authority are in practice limited to the construction and maintenance of a certain number of village roads and markets, all other services, including control over the erection of buildings, being discharged by various departments of the Government. The finances at the disposal of the Authority are derived mainly from a Local Rate (at present 7d. in the pound of the assessed annual value of properties) and from market dues. The revenue as shown in the estimates for 1948 amounted to £1,812. At present therefore the Authority represents only the beginning of a local government institution.

While the Rural Area was administered as part of the Protectorate, it had a Native Tribunal, but after 1946 it came under the jurisdiction of the Kombo St. Mary Magistrate's Court and the Supreme Court.<sup>5</sup> Provision was made for the establishment of a Cadi's Court similar to that in Bathurst, but at the moment no Cadi had been appointed, and the Court is carried on by the two assessors appointed by the Governor under the provisions of the Ordinance.

Since 1947 Bathurst Town and the Kombo Rural Area have jointly elected a member to the Legislative Council.<sup>6</sup> There is a common roll for the electorate and it is noteworthy that there is no property, income or educational qualification for the franchise, which is virtually one of age and residence only. The qualifying term of residence is 12 months.

<sup>1</sup> See on the use of Mohammedan law generally, Chapter XIX of C. K. Meek, *Land Law and Custom in the Colonies, 1946*, and S. G. Vesey FitzGerald, *Mohammedan Law—An Abridgement, 1931*.

<sup>2</sup> Ordinance No. 1 of 1941.

<sup>3</sup> See page 345.

<sup>4</sup> The Colony Ordinance No. 14 of 1946 and The Kombo St. Mary Division Ordinance, No. 15 of 1946.

<sup>5</sup> Ordinance 15 of 1946, Sections 55-67.

<sup>6</sup> See page 349.

## SECTION III

# THE PROTECTORATE

### THE SOCIAL STRUCTURE

THE Protectorate had in 1947 a population estimated at 225,358, with an average density of 57 per square mile. This figure does not include the immigrant "Strange Farmers" to whom reference has previously been made. The five main tribes are the Mandingo (93,358); the various groups of Fula (58,303); Joloff (29,577); Jola (20,604); and Serahuli (10,921). Roughly 80 per cent. of the total population are Muslim by religion.

It is doubtful if it would be correct to describe any one of these tribes rather than another as indigenous to the Gambia, for they all belong to tribal units having their original homeland in French territory. The Mandingo, or more correctly the Mendi or Mandi, are one of the most important groups of French Senegal, and occupy also large areas in North-West Liberia and in the East of Sierra Leone. They are said by some authorities to be of mixed negro and Fula extraction, but with some infusion of Tuareg and Arab blood.<sup>1</sup> They had by tradition their original home in the Futa Jallon Mountains, between the head waters of the Senegal, Gambia and Niger Rivers. In the thirteenth century, and especially under their ruler, Mansa Musa (1311-1331) they established the Melestine Empire, the most powerful Sudanic State of which there is authentic record, and it was only in 1500, when their capital was captured by the Songhai King, Omar Askia, that it ceased to exist.<sup>2</sup>

The Fula, who are connected by race with the Fulani of Northern Nigeria, are said by some authorities to have originally been Berbers who drifted southwards, and are by others described simply as belonging to the group of Northern Hamites, but all authorities agree that they now represent the result of admixture with the indigenous negro population. They are said to have moved down to the neighbourhood of the Futa Jallon Mountains at the end of the sixteenth century, and so far as can be ascertained, they first came into the Gambia in the seventeenth century. The Joloffs or Woloffs are true negroes. They were known to the earliest Portuguese travellers as settled in Senegal, holding the country between Saloum and the lower Senegal river, and appear to have come into the Gambia at an earlier date than the Fula.<sup>3</sup> The old kingdom of Cayor, the largest of the former Joloff states in Senegal, has been preserved by the French, the Chief being taken from the ruling family.

The Jolas, known to early Europeans as the Feloops, never seem to have acquired the same strength as the tribes already mentioned, for they live mainly in small communal groups. Foni, their chief centre in the Protectorate, was overrun by the Mandingos, but it still contains the larger part of the Jola tribe. The Serahuli appear to have immigrated from Senegal into the Gambia valley in the course of the nineteenth century.

These tribes retain their own languages, though a growing number of them are now said, in the local phrase, to "hear" Mandingo. But they do not form separate territorial units, and there is hardly a District which does not

<sup>1</sup> Wanderings of Peoples; A. C. Haddon, 1911.

<sup>2</sup> The Races of Africa, C. G. Seligman, 1930, page 59-60.

<sup>3</sup> W. T. Hamlyn, Short History of the Gambia, 1931.

contain a population of mixed racial character. The Mandingo and the Fula are well represented in all the Divisions of the Protectorate; the Jollofs are also fairly evenly distributed in all but the Upper River Division, where the majority of the Serahuli tribe is centred. The Jolas are some exception to this general rule, as they are mainly settled in the Districts of the Western Division.

This intermixture of tribes is no doubt partly due to the manner in which they entered the Gambia, for the Gambia River clearly presented no barrier, and the process seems to have been one of infiltration rather than of concerted invasion or of mass movement. But the present position has doubtless been due even more to the long series of internal conflicts which were the most characteristic feature of the history of the Gambia between 1850 and 1887. In one sense these conflicts, which are known generally by the name of the Soninki-Marabout Wars, were wars of religion, since they had their origin in the differences between two sects of the Mohammedans. Islam was brought from the interior into the Gambia about the middle of the eighteenth century by Moorish traders or converts of Moorish traders, and early in the nineteenth century the local Mohammedans became divided into two sects.

Of these one, known as the Marabouts, represented the more orthodox or puritan element; the other, known as the Soninki, represented the less orthodox Mohammedans whose acceptance of Islam was qualified by the retention of a number of pagan customs opposed to strict Islamic law. The Marabouts were largely recruited from the traders who had close contacts with the interior; the Soninki had the adherence of most of the warrior class and the Chiefs' retainers. But though the conflicts which ensued were to this extent of religious origin, they also provided an outlet for the ambitions of numerous individual leaders, such as the notorious Fodi Kabba of Gunjur, whose activities first became conspicuous in 1833, and who was eventually killed at an advanced age during a raid undertaken in 1901.<sup>1</sup>

This long period of internecine strife had another consequence which has had a direct influence on the form taken by the system of native administration in the Gambia. With the possible exception of the Jola who, as already stated, live mainly in small communal groups, the political system of the major tribes had recognized the authority of Chiefs drawn from ruling families. The size of the groups recognizing this authority varied widely, but it seems clear that at all events in the tribes nearer the coast, the chiefship was hereditary, in so far that it went by rota from one of several "royal" families to another.<sup>2</sup> The Soninki-Marabout Wars wiped out many of the families which had the tradition of "mansa" or kingship, and left much of the Protectorate territory in a state both of political chaos and social disintegration.

The basic institution in most of the native communities in the Gambia was that of the "yard", a collection of one or more huts and their lands, originally held by a kindred group. Each "yard" had a "yard head" (Korda Tiyo). The "yards" were joined in "quarters", and the "quarters" into villages, under a Satiyo-Tiyo, a village head who is sometimes described as "owner", though this term does not indicate proprietorship, but points to the fact that he was normally the senior member of the family of the titular founder of the village, and was in practice usually the oldest living

<sup>1</sup> See Chapters XX, XXVI and XX XXVIII, of *The History of the Gambia*, Sir J. M. Gray, 1940.

<sup>2</sup> Ditto, page 328.



member of the family. For administrative and similar purposes, the villages were grouped in charge of an Alkali (plural Alkalolu) who by local custom was usually selected by the "quarter" or family heads, and was in a great number of cases himself a Satiyo-Tiyo.

Side by side with this organization there existed that of the age sets, known as Kaffu. Membership of these age sets was confined to youths and younger men who had passed the initiation stage; the youngest sets comprised those at the age of adolescence, the older sets the unmarried men and younger married men. The senior set, known as the Kambani Kaffu, was the more important of the sets, and was under the leadership of a Kaffu Tiyo or Bori Kuntio. It was virtually in charge of the recreational side of village life, and also performed certain communal services, such as mending a road, repairing the village moot hut (bantaba), or digging wells. It is the services of the Kambani Kaffu that are now being utilized in the campaign for the institution of a system of communal farming to which reference will subsequently be made.<sup>1</sup>

### THE EARLIER SYSTEM OF ADMINISTRATION

The conditions produced by the internecine strife of the Soninki-Marabout wars were perhaps more pronounced in the outlying parts of the Protectorate than in those nearer the Colony, where the local Chiefs or "kings" had had some measure of protection from raids. But when in 1893 the Government appointed two Travelling Commissioners, one for the north bank and one for the south bank of the river, to inaugurate administration in the Protectorate area, there were no tribal Chiefs, in the usual sense of that word, who could be used as agencies of local rule. A Protectorate Ordinance enacted in the following year accordingly divided the area into a number of "Districts" which were territorial not tribal units, placed under charge of Chiefs and sub-chiefs, under the supervision of the Travelling Commissioners.<sup>2</sup> A first list of 17 "District heads" was published in 1895, and included a certain number of Chiefs belonging to former "mansa" families, together with others appointed on purely personal grounds.

Subsequent Protectorate Ordinances have divided the Protectorate into Administrative Divisions, and Divisions into "Districts" and "Sub-Districts".<sup>3</sup> There are four such Divisions, the title having been changed from that of Provinces by an Ordinance of 1947 which also readjusted the Districts, now numbering 35 in all.<sup>4</sup> Each Division is in charge of a Commissioner, under the Senior Commissioner based on Bathurst; the "Districts" remain in charge of Chiefs as District Heads as in the original arrangement of 1894.

### THE SYSTEM AS SUBSEQUENTLY DEVELOPED

The rule exercised by the native "District Heads" under the supervision of the Travelling Commissioners was the subject of an Ordinance, No. 30 of 1913, which regulated their exercise of judicial functions through the Native Courts.<sup>5</sup> But a material change was made in the system of administration

<sup>1</sup> See page 341.

<sup>2</sup> Ordinance No. 11 of 1894.

<sup>3</sup> Ordinance No. 2 of 1935.

<sup>4</sup> Ordinance No. 2 of 1947.

<sup>5</sup> See page 342.

by an Ordinance issued in 1933.<sup>1</sup> This Ordinance was accompanied by the publication of two Political Memoranda by the Governor, which were, in the words used in their Introduction, "in essence an almost literal reproduction and in part an adaptation *mutatis mutandis* of the very lucid Memoranda issued by Sir Donald Cameron in Tanganyika in 1926".<sup>2</sup> They thus indicated the adoption of the principles and, so far as possible, the practice of the form of Indirect Rule which is based on the use of indigenous authorities or organizations as agencies of local rule. It was admitted that though the native policy sketched out in the Memoranda "was not inharmonious with the policy pursued by the best Travelling Commissioners" yet its interpretation in practice "must vary considerably in different districts, as well as the degree in which it is at present applicable all round in different Provinces". No too sudden change of established practice was desirable, but it was added that "Commissioners should do their best to conform to the spirit rather than the letter of the policy as laid down in the Memoranda".

The adoption of this system was supported on the ground that "the ultimate end of direct rule is inevitably either complete political repression or concession to political agitators, a class which has never failed to be created by systems of direct rule". One may reflect now that experiences in the Gold Coast and Eastern Nigeria have shown that the use of traditional authorities as agencies of rule is not in itself an infallible specific against the growth of this unwelcome class; but we are concerned here with the practical application of this system in the Gambia rather than with the merits claimed for it in 1933.

The development of the system pursued a slow and somewhat hesitant course. The Ordinance of 1933 followed the model of the Native Authority Ordinance of Tanganyika,<sup>3</sup> in giving the Governor power to create Native Authorities, these being any Chief or other native or a Native Council or group of natives constituted by order as such Authority. It laid on them duties for the preservation of law and order, and authorized them to issue Orders, enforceable in the Native Tribunals, for a variety of administrative purposes, and authorized them to make Rules, subject to the approval of the Governor providing for the "peace, good order and welfare", of the natives within their jurisdiction.

An Ordinance which followed in 1935<sup>4</sup> seems at first sight to be somewhat confusing, since without making direct reference to the 1933 Ordinance, it conferred on the Governor power to approve the appointment of Head Chiefs, exercising authority over a District, Deputy Head Chiefs and Sub-Chiefs. These were to have authority to maintain the peace, but they were given in addition the specific function of supervising the collection of the Government tax (called in the Gambia the Yard Tax)<sup>5</sup> and to receive from the Headmen the tax collected by them. Its main purpose was thus really fiscal.

Up to 1944 the Native Authority was thus normally a Head Chief, in charge of a District, who also was, as such, explicitly charged with the collection of the Yard Tax. In 1944 and 1945, however, revised Notifications made a material change, which took the form of introducing a system of informal Councils into the Native Authority organization. These Councils were to

<sup>1</sup> Native Authority Ordinance No. 2 of 1933.

<sup>2</sup> Political Memoranda for the guidance of Commissioners and other Government Officers working in the Protectorate, Bathurst, 1933.

<sup>3</sup> Chapter III, page 227.

<sup>4</sup> The Protectorate Ordinance, 2 of 1935.

<sup>5</sup> See page 338.

consist either of the District Head as President and all the Village Heads with their Advisers in Council, or the District Head as President and selected Village Heads with their Advisers in Council. There was another important addition to the system when, by Ordinances enacted in the same years, the Native Authorities were authorized to impose a local rate, under the name of a District Tax, and to establish Treasuries to administer the funds derived from the District Tax and other subsidiary sources of revenue placed at their disposal for this purpose.<sup>1</sup>

### THE COMPOSITION OF THE NATIVE AUTHORITIES

Under the system as it now stands, there are in the four Divisions of the Protectorate thirty-five Districts, under a District Head or Head Chief, the local term for whom is Seyfu (plural Seyfolu). Twenty-three out of the 35 Seyfolu are Mandingo and four Jola, while the Fula, Toranko (Fula), Serahuli and Joloff tribes have two each. Five of the Head Chiefs are of "mansa" or "kingly" families, and the balance belong to families of local prestige or have been subdistrict heads who have qualified by service as Town Heads or the like to be promoted to the position of Seyfu.

When a vacancy occurs, all village heads or their representatives assemble to make a selection for submission to the Governor. In a few cases a definite break is made with tradition and a member of a family which has never produced a Chief before is chosen, but in the majority of cases the candidate or candidates are chosen from a particular family or clan in patrilineal descent, on the ground that the family has held rights of office because one of its members appeared in the first list of seventeen District Heads in 1895. There is in general a tendency to appoint the son or descendant of a former Seyfu. Of the last six Chiefs chosen, three were Silver Badge messengers, that is, head messengers to a Chief, a post usually held by the person destined to be the Chief's successor, one was a Tribunal clerk and one a member of an ordinary family.

The emoluments received by the Head Chiefs, which are now a charge on the Native Treasuries, are based on percentage of the revenue of a District, the highest being £400 a year and the lowest £30. The average per District Head in 1947 was £99. Three of the District Heads are literate in English, but the majority can read the Arabic script.

Beneath the District Heads are the Alkalolu or Headmen. These are normally appointed by the Native Authority subject to the Commissioner's approval,<sup>2</sup> though in fact appointment amounts to no more than the confirmation of the selection made by "quarter" or family heads, when the Alkali is, as is usually the case a Satiyo-Tiyo.<sup>3</sup> In the event of the Satiyo-Tiyo being too old to attend the meetings of the Native Authority a representative known as the Tubag Alkali (the White Man's Alkali) attends in his place. In the semi-urban wharf towns along the river there are Alkalolu who are not Satiyo-Tiyo and are selected on personal qualifications. The Alkalolu are paid small salaries based on a percentage of the Yard Tax for the collection of which they are responsible.

<sup>1</sup> Native Authority (Amendment) Ordinance 19 of 1944; Protectorate Treasuries Ordinance 13 of 1945.

<sup>2</sup> The Protectorate Ordinance 2 of 1935, Section 13.

<sup>3</sup> See page 334.

The reconstitution of the Native Authorities on a conciliar basis is still in process of being worked out. The process has however already had one result. Beginning with the year 1945 a series of Notifications was issued with the assent of the Seyfolu themselves, by virtue of which the Native Authority was gazetted as consisting of the Seyfu as President and the Alkalolu with their Advisers in Council.<sup>1</sup> The majority of the Native Authorities have now been so gazetted, with the exception of some in the North Bank Division.

There is in practice a considerable difference between the numbers who, under the Notifications above referred to, have a right to attend meetings of the Native Authority and those who are likely to attend. All the Village Heads have a right to attend meetings if they wish, but it has been necessary to apply some limitation, as the area of a number of the villages is very small. Fulladu East District, for example, has 191 villages, but has a list of 67 members. In Upper Baddibu there are only 25 members, who are all Alkalolu, but they are entitled to bring their own "advisers" and if these come, they are treated as full members. It is at present difficult to determine how far these somewhat informally constituted Councils are to be regarded as working bodies. The Native Authorities have hitherto met only twice a year, under the chairmanship of the Seyfu, but efforts are being made to organize meetings on a monthly basis, except in the rainy season. Only in a few cases have regular records been kept.

### THE DISTRICT TREASURIES

Some of the difficulties inherent in the existing system have, as was to be expected, become apparent in the formation of the Treasuries. The first of these were established early in 1946, and by the middle of 1947 there were 12 Treasuries, covering the whole of the Protectorate. Of these, 11 were Group Treasuries serving from three to five Districts, and one, Kombo North in the Western Division, serving a single District. Apart from other considerations, the lack of suitable clerical personnel has made it impossible to establish more single-district Treasuries.

The Ordinance prescribes that a Treasury must be managed by a Finance Committee, which is to consist of a Chairman and not less than three members where the Treasury is for a single Native Authority or if for a group, of a sufficient number of members for each Authority to be represented by at least one member. These members need not necessarily be members of a Native Authority. The Group Treasury maintains separate accounts and cash books in respect of each District, which has also its own separate Estimates. The Group Finance Committees exist therefore, in effect, only for accounts purposes, and the District sends a representative once a month to check its vouchers. The preparation of Estimates and the current management of the Treasuries is almost entirely a function of the Commissioner of the Division and his office.

The principal source of Revenue is the District Rate for which, as already shown, provision was made in the Amendment Ordinance of 1944. Some explanation is required here. The Government Tax, called the Yard Tax, as imposed under the provisions of Part III of the Protectorate Ordinance 2 of 1935, was based on the fact that villages are divided into "quarters" and "yards," the term "yard" being used to include "every parcel, lot or enclosure of land, other than farm lands, containing one or more huts or houses." The "yard" is under a "yard-head" (Korda-Tiyo). The rate

<sup>1</sup> See proceedings of the Conference of Protectorate Chiefs, 1945, pages 5 and 17.

imposed by the Schedule to the Ordinance was (a) 5 shillings for every yard containing not more than four huts or houses, (b) 1 shilling 6 pence for every additional hut or house, (c) 2 shillings for every person residing in a yard other than a member of the family of the owner or occupier, or in other words a Lodgers' Tax, and (d) 8 shillings for every "Strange Farmer." The Yard Tax was collected by the Yard Head, who paid it to the Alkali, who in turn handed it to the Seyfu.

When the Treasuries were established and the District Tax was imposed by the Native Authorities, the Government ruled that persons who paid the District Tax should be exempt from the payment of Yard Tax, and as a result, the Government Estimates of the Gambia for 1948 contain no revenue derived from Yard Tax payable by natives in the Protectorate. The local rate (District Tax) is imposed on an annual basis, and the approved rate for 1947-48 for the various classes detailed in the preceding paragraph was for class (a) 10 shillings; for class (b) 2 shillings 6 pence; for class (c) 5 shillings, and for class (d) 10 shillings.

### THE CONTRIBUTION MADE TO LOCAL SERVICES

The total estimated revenue of the Protectorate Treasuries for 1947-48 amounted to £31,553, of which the District Tax accounted for £23,998. The expenditure was estimated at £27,221. The percentage of Administrative expenditure to the total Revenue ranged from 31 per cent. to 61 per cent. in different Districts. It has only been possible to provide for a very low scale of expenditure on local services. In Agriculture, the main contribution of the Native Authorities consists of the provision of ground nut stores, and though the expenditure here is not considerable, this has been of definite service to the community. There are a few small markets. In Education the Native Authorities have erected and maintain 11 schools, with the assistance of a grant from Government for certificated teachers. These are supplemented by one Government school (the Armitage School) and a small number of Mission schools, but the total provision is very inadequate, for there are not more than 500 children attending school (other than Koran schools) in the whole Protectorate.

There are a few sub-dispensaries, the buildings of which are provided by the Native Authorities and the staff and drugs by Government. The semi-urban wharf towns are under the Government Health Department, not under the Native Authorities, for health purposes. But it may be said that on the whole the medical facilities available to the people of the Protectorate are, in fact, on as poor a scale as those for education.

### THE USE OF THE RULE-MAKING POWERS

As already explained, the Native Authorities are empowered by the Ordinance to issue Orders on a variety of subjects, and to make Rules which, when approved by the Governor, are enforceable in the Native Tribunals. The Disease of Animals Ordinance 20 of 1944 also empowers them to issue orders for the prevention of disease among stock and the regulation of its movement. Most of the Orders issued have been verbal, but there have been some more general Orders, such as those referring to the prevention of grass

fires, or the cultivation of a minimum area of "coos" as a precaution against famine, or penalizing the adulteration of ground nuts.<sup>1</sup>

The Native Authorities have made only a limited use of their power for enacting Rules. In 1946 all the Authorities in the Protectorate issued Rules regarding the storage of ground nuts. These Rules, which have served a very useful purpose, require every cultivator of ground nuts to deposit five bushels of good quality with the Alkali, who is responsible for their custody till the following season, when the cultivator may withdraw four bushels for planting, the extra bushel forming a local reserve.

Eleven Authorities of the Central Division issued Prevention of Fire Rules in 1947, and in the same year eight Authorities in McCarthy Island Division issued Stock Market Rules. Eleven Authorities in the Central Division and eight in the McCarthy Island Division issued in 1947 Rules regarding the payment of Fees by Temporary Residents. The use of the system of subordinate legislation is for the most part recent, and in every case, except perhaps that of the Live Stock Market Rules, action has been taken at the direct instance of Administrative Officers. That the use made of it has not the wide range observable in some other territories would seem due to the relatively lower scale of activity by the technical departments of Government in the Gambia.

#### THE RESULTS ACHIEVED BY THE NATIVE AUTHORITY SYSTEM

Looking at the operation of the system as a whole, it will be seen that it is now passing from the stage in which the Native Authority has been mainly an agency for the maintenance of law and order and the collection of tax, to one in which it is viewed, in addition, as an agency for the provision of local government services. In the former capacity, the system has suffered from the disadvantage that owing to the force of circumstances it represents in effect the combination of two different methods of local administration. The Seyfolu are not true tribal heads and do not command the same measure of traditional authority as tribal heads elsewhere. The Districts of which they are in charge are territorial units, composed of a variety of tribal elements, a fact which might have proved an even greater obstacle were it not that the wide diffusion of Mohammedanism has acted as a solvent to tribal differences. They do not, on the other hand, represent a subordinate civil service selected and promoted on the ground of purely personal qualifications.

On the whole, however, the Native Authorities have been reasonably effective both as agencies for the maintenance of order and in the collection of the Yard Tax or the District Tax which has now taken on its place. As Districts Heads they have had the services of the "Badge Messengers" for whose employment as a police force provision is made in Section 17 of the Protectorate Ordinance 2 of 1935, and who now number some 200, in addition to a number of unpaid Messengers employed by the Alkalolu.

It still remains to be seen how far the Native Authorities as now constituted will be efficient as agencies for the provision of local government services. The association of the Alkalolu and their Advisers in Council with the Seyfu is designed to provide for a measure of popular representation, in so far that if these "Advisers" attend they will be treated as full members. But the bodies thus instituted will be somewhat unwieldy, and it will be difficult to stimulate their interest in the provision of services which have so slender a basis of finance

<sup>1</sup> Provincial Reports, 1939.

for their support. The Protectorate suffers moreover from the lack of the educated or progressive element which is necessary to give vitality to local government institutions.

There have recently been some developments which the Commissioners have regarded as promising an increased field of activity for the Native Authorities. They have taken the form of the schemes for Community Development, which as explained by the Governor in an Address to the Legislative Council on 26th April, 1949, are based on the stimulation of effort to carry out projects for defined local purposes. Examples of such schemes which have already been put in operation are the enclosing of two breaches of the river bank to prevent flooding, in order to eliminate mosquito breeding and provide cultivable land; a scheme for the provision of a bridge and causeways over a tributary of the main river; a scheme to deal with depredations of wild animals; and one for the acquisition of iron bars to manufacture farming implements locally. The Government has provided a grant of £5,000 for assistance to these schemes, which though they have secured the co-operation of the Native Authorities and the communities concerned, are mainly due to the initiative of Administrative Officers.

Hopes have also been entertained of the success of a system of communal farming, which was initiated in the Kantora District of the Upper Rivers Division in 1946. As already indicated,<sup>1</sup> the system largely depends on making use of the services of the members of the Kaffu, or age sets, under the leadership of the Seyfu or Alkali concerned, and it has become usual to speak of the communal farms as "Kaffu" farms. Those first established met with difficulties due to crop failures, but in 1948 some 39 villages were taking part in the scheme centred on Kantora and appeared to be making a surplus over cost of production. It is suggested that these farms may in time afford the most suitable structure on which to base any contemplated methods of mechanized farming, but it remains to be seen how far they can be adapted to this purpose.<sup>2</sup>

For some years the Divisional Commissioners have held conferences attended by the District Heads and a certain number of their advisers, with a view to affording guidance and securing co-operation on matters of common interest. These have hitherto been held once or twice a year, but will in future be held quarterly. Something of the same purpose, though on a more extended scale, has been served by Conferences of Protectorate Chiefs, which have been held annually since 1944. The proceedings of these Conferences will be referred to more fully in the concluding Section of this Chapter.<sup>3</sup>

### THE NATIVE TRIBUNALS

The organization of native justice has from the outset been developed in close association with that of the Native Authority system. The Ordinance 11 of 1894, above referred to, provided for the exercise of jurisdiction by the Chiefs and sub-chiefs of the Districts into which the Protectorate was then divided for administrative purposes. They were in this respect to be subject to the supervision and control of the two Travelling Commissioners, but the powers conferred on them were not defined, and though the Ordinance of 1894

<sup>1</sup> Page 335.

<sup>2</sup> See Dr. K. L. Little in *Journal of African Administration*, April, 1949.

<sup>3</sup> Page 349.

was amplified by the Protectorate Ordinance of 1913, it was not until 1933 that the system of Native Tribunals took its present shape.

Up to this time provision had existed for the Commissioner to preside, when necessary, over the Native Tribunals,<sup>1</sup> but under the system as embodied in the Native Tribunals Ordinance 4 of 1933<sup>2</sup> the position of the Commissioner became that of a supervisory and revising authority. As a Subordinate Protectorate Court, he continued to exercise concurrent jurisdiction with the Native Tribunals and was also empowered in that capacity to deal with cases in which one of the parties is not subject to the jurisdiction of a Native Tribunal or cases not cognizable by those Tribunals.<sup>3</sup>

Under the Native Tribunal Ordinance of 1933 the Tribunals have jurisdiction in respect of any member of an African race within the Protectorate. It is noteworthy that in addition to administering native law and custom, they are explicitly empowered to administer Mohammedan law "relating to civil status, marriage, succession, divorce, dowry, the rights and authorities of parents and guardianship wherever the parties are Modammedans." They administer the provisions of any Rules and Orders made under the Native Authority Ordinances, and are moreover empowered to administer such Ordinances (or Regulations made thereunder) as may be provided in the terms of the Ordinance or by special order in Council. So far, authority has been given to all Tribunals to try any offence under the Criminal Code which is triable by a Subordinate Court of the second class, the Farmers Trading Ordinance, 1922, and Section 26 of the Protectorate Ordinance 2 of 1935 relating to the Yard Tax. Tribunals in 19 Districts have also been authorized to administer any of the provisions of the Public Health Ordinance of 1935 which are in force in any town within their areas.

The civil and criminal powers of the Tribunals are prescribed in their warrants, subject to the general provision that corporal punishment shall not be inflicted on any person aged 16 or upwards. Under the warrants, and in virtue of the Native Tribunal Rules of 1946, there are now two grades of Tribunals, (a) the District Tribunals, which have powers up to six months imprisonment and a fine not exceeding £10 or both in criminal cases and a limit of £25 subject matter in civil issues; and (b) Group Tribunals, with power to hear criminal cases which can be adequately punished by imprisonment for a period not exceeding twelve months or a fine not exceeding £25 or both, and civil issues in which the subject matter does not exceed £50. These two types of Tribunal differ only in the extent of their powers, and there is no appeal from one class of Tribunal to the other.

There is no system of appellate Native Tribunals, nor of appeal to the Commissioners, as it is considered that the situation is sufficiently met by the exercise of the revisionary powers vested in the latter, and by their authority to transfer cases to their own or another Subordinate Protectorate Court, thereby taking it out of the range of a Native Tribunal.

There is no formal provision for appeal to the High Court of the Protectorate.<sup>4</sup> But under Section 297 of the Criminal Procedure Code a monthly

<sup>1</sup> Section 25 of The Protectorate Ordinance 30 of 1913.

<sup>2</sup> This has been amended, but only in detail, by Ordinance 3 of 1935, 11 of 1936, and 5 of 1947.

<sup>3</sup> See Section 13, The Protectorate Courts Ordinance 13 of 1944.

<sup>4</sup> Under the Protectorate Courts Ordinance No. 13 of 1944, the High Court of the Protectorate was established with the same jurisdiction as is exercised by the Supreme Court in the Colony. The Judge of the Supreme Court is also Judge of the Protectorate Court.



return is made to the High Court of all criminal cases and this operates as an appeal on behalf of every convicted person whose name is included in it. This provision is similar to that made in the judicial system of Kenya.<sup>1</sup>

Each of the 35 Districts has now a District Tribunal, of which the District Head or Seyfu is President. There are on the average six members of each Tribunal, or 212 in all, of which 117 are Alkalolu. The Tribunals are not constituted on a tribal or clan basis, and there are only three Tribunals in which members are all of the same tribe. Where, however, there are mixed tribes in a Tribunal area, they seem to be adequately represented. The appointment of members rests largely on the recommendations of the Seyfu, made after consultation with other Court members, but the final approval rests with the Senior Commissioner. While there seems to be no general policy directed to securing the appointment of educated persons to the Tribunals, it must be remembered that there are very few persons of education with sufficient standing in the District to ensure their decisions being accepted.

In addition to the 35 District Tribunals there are three Group Tribunals, one in the MacCarthy Island Division which serves three Districts, and two in the Western Division, of which one serves five and the other three Districts. A Seyfu of one of the Districts concerned is President in each case, and all the other Seyfolu of the Districts concerned are members. There are in addition 11 other members, of whom eight are Alkalolu.

The Presidents and members of the Tribunals receive salaries amounting to £1 per month in the case of the President and 10s. in the case of the members, subject to the provision that the aggregate may not exceed £6 a month. The scale of salaries is therefore low, and is not such as would be attractive to persons not already holding a position as Seyfu or Alkali.

### STATISTICS OF TRIBUNAL CASES

In the four years ending 1946 the various Tribunals heard a total of 4,682 criminal and 2,185 civil cases. The following is a summary of the cases heard by the Tribunals in 1947:

Division	Criminal				Civil				Total
	Number of cases heard	Revised by			Number of cases heard	Revised by			
		Judge	Commissioner on application	Commissioner on review		Judge	Commissioner on application	Commissioner on review	
Western .. ..	216	-	23	18	290	-	8	5	506
Central .. ..	143	1	1	5	235	-	1	-	378
MacCarthy Island	172	-	1	6	130	-	1	1	302
Upper River ..	80	-	6	3	148	-	13	-	228
Total ..	611	1	31	32	803	-	23	6	1,414

The power of revision vested in the Judge of the Protectorate Court is thus very little used. The use of their revisionary powers by the Commissioners, which as already noted takes the place of appeal, is used more widely in criminal than civil cases.

It is generally agreed that the administration of native justice, of which there were at one time many complaints, is gradually improving, but it is clear

<sup>1</sup> Chapter II, page 104.

that its quality depends very largely on the extent of the supervision exercised by the Commissioners. The proceedings are kept in Arabic script, and give only the decisions, no evidence being recorded.

The Native Authorities do not have their own prisons. Each District has a lockup, but after sentence persons convicted are detained in a place authorized by the Governor as a native jail.<sup>1</sup> Four such places have been so authorized, but they are staffed by Government warders and are under the supervision of the Inspector of Prisons.

### THE POSITION OF MUSLIMS

It has been noted that the Tribunals in the Protectorate are authorized to administer Mohammedan law, and the fact is of importance, owing to the predominance of Mohammedans in the Protectorate.<sup>2</sup> Though precise figures are not available, it is probable that the proportion of Mohammedans to pagans is increasing, as the result of the growing conversion of the Fula to Islam. Adherence to Islamic tenets and rites is, however, by no means rigid, though religious interest is periodically revived by visits by itinerant preachers from Mauretania. These seem to be treated with particular respect by the Joloff.

In respect of the Koranic law, local Mohammedans follow the precepts of the Maliki school, but in matters such as inheritance or dowry this is very considerably modified by local law and custom. There is insufficient evidence to show how far the Tribunals as now constituted are able to adjust themselves in practice to the conflict arising between local custom and Koranic law, and one cannot avoid being impressed by the fact that they are without guidance in this matter. In other respects also there is reason to feel that insufficient recognition is given to the interest which the large body of Mohammedans in the Protectorate may have in Islamic languages and culture. The Arabic script, for instance, is in general use, but Arabic as a language does not form part of regular school instruction. The Gambia compares unfavourably with the neighbouring French territories in the concern shown for the study of matters of special importance to Mohammedans, in spite of the fact that some eighty per cent. of the population professes the Mohammedan religion.

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<sup>1</sup> Native Prison Rules, Section 14.

<sup>2</sup> For the Mohammedan Court in Bathurst see page 332.

## SECTION IV

# THE NATIVE LANDS.

### LANDS IN THE COLONY

In the Colony area, all land is classed as Crown Land, in virtue of the various acts of cession by Local Chiefs to which reference has been made in Section I. Considerable areas are, however, held in fee simple as the result of grants or sales made by the Crown, and there are also certain areas held in leasehold. There has been no general record of rights, but documents relating to transfers of property rights are registered in the Land Office, which was up to 1947 part of the Land and Survey Department, but has since that date been separated from it.<sup>1</sup> In the Kombo St. Mary Division occupants of lands which are not held in fee simple or leasehold are regarded as Crown tenants from year to year and pay an annual rental of 1s. to the Government.

### LANDS IN THE PROTECTORATE

In the Protectorate the land system is not complicated by any claim made by the Crown to exercise superior proprietary rights. In the earliest legislation on the subject, the Protectorate Ordinance of 1896, it was made clear that the rights of the Crown extended only to the "public lands," which were defined as lands (a) belonging to any conquered or deposed ruler, or (b) vested in a ruler as such and not as his own private property, or (c) not in the actual occupation of persons who had, at the time the Protectorate was established, an original or derivative title to such lands by the laws and customs of the territory. It is not clear how far the inclusion of lands in class (c) was intended to give to the Crown rights over what it was usual at that period to describe as "vacant" lands, but the point is immaterial since no steps were taken for the delimitation of the lands falling into either of the three classes or to assert an active claim over them. It is noteworthy also that the Chiefs and headmen were entrusted with the care and supervision of the "public lands."<sup>2</sup>

The position in regard to the Protectorate lands was clarified by The Protectorate Lands Ordinance 16 of 1945, which repealed the Ordinance of 1896. This Ordinance had a double purpose, first to "preserve the existing customary rights of the indigenous inhabitants of the Protectorate to use and enjoy the land of the Protectorate," and secondly to regulate "the interests in land which can be acquired by non-indigenous persons." It is declared in the first place that all lands were vested in the Authorities for the Districts in which they were situated, to be held for the common benefit of the communities concerned. The Authorities referred to were defined as the Native Authorities established under the Native Authority Ordinance of 1933. The Ordinance proceeded to give the Governor power to acquire any Protectorate land for a public purpose "for a term of years," on payment of compensation or consideration on terms which were, in default of agreement, to be settled by a Committee of Arbitration.

This Ordinance would therefore appear to have set aside any claims which

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<sup>1</sup> Sessional Paper 10 of 1947.

<sup>2</sup> Regulations under the Ordinance of 1896, dated 31st July, 1905.

the Crown may have had to "Public lands" as defined in the 1896 Ordinance, and to limit the use of this term to lands to be acquired in the future under the provisions of the Ordinance. For the present purpose, however, the point of chief interest lies in the fact that the terms used in the Ordinance vest the native lands not in tribal or other traditional Authorities as such, but in the Native Authorities created by the provisions of the Ordinance of 1933.

In implementing what has been described above as its second purpose, the Ordinance lays down that the occupation and use of the Protectorate lands held by "indigenes" shall be regulated by the customary laws obtaining in the localities in which such lands are situated.<sup>1</sup> "Indigenes" are defined as persons whose parents are or were members of some tribe indigenous to the Protectorate and any descendant of such persons, and includes any African who has declared his intention of making the Protectorate his permanent domicile and has obtained the consent of the indigenous communities concerned and has been granted by the Governor a certificate declaring that he is entitled to the rights of an indigenous inhabitant.

No non-indigene may occupy land without the consent of the Native Authority concerned, and unless the approval of the Commissioner of the Division is also obtained he is deemed to be a tenant at will. When both consent and approval have been obtained a memo of the terms of occupation as regards rent, area and conditions, must be entered in a Division Land Register, and the land must be demarcated. Any tenancy granted in excess of a period of three years must be by written document, and the period may not exceed 50 years, though clauses may be inserted allowing for a renewal for a second or further term of fifty years. Rent under such leases is subject to revision every seven years by the leasing Authority (that is the Native Authority) with the approval of the Divisional Commissioner. Rents are paid to the Native Authority, and no part of them goes to the "landowner." In December, 1945, there were 324 leases, and there are now said to be between 250 and 300.

In practice every village is recognized as having a definite area of land attached to it, and a section of this land is allocated to each "quarter" of the village, this again being sub-divided among the "yard owners" of the "quarter," who have the right of user over it. The actual control of the village lands as a whole is in the hands of the Satiyo-Tiyo,<sup>2</sup> the titular descendant of the founder of the village and described in local terms as the "owner" of it, but his control is subject to consultation with other "quarter heads," among whom he ranks as senior. In the proceedings of the fourth Conference of Protectorate Chiefs in 1947 some discussion took place as to the rights of villagers and others on the lands occupied by them and it was generally agreed that the Village Elders could not insist on a villager moving from his family land to other land within the village area, but that a villager could be ordered to quit communal land. Those coming from another village could be requested to move if the land they farmed was wanted by the villagers themselves. Only the "landowner" could allocate land and it was usual to do this before "brushing"; an acknowledgement in cash was unusual, and the customary form was a gift of kola. No compensation was payable when non-villagers were asked to leave.

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<sup>1</sup> There are instances of the use of the word "indigene" as equivalent to "native" in English literature of the 17th century.

<sup>2</sup> See page 334.

The land economy of a village is therefore self-contained and the officially constituted authorities, such as the Alkali or the District Head, do not, as such, exercise any control in the matter, their functions being limited to those laid down in the Ordinance, which concern only the grant of rights of occupation or lease to non-indigenes. Thus the Alkali might, as such, disagree with proposals to give land in the village for occupation by Strange Farmers; but the District Head would, as Native Authority, exercise the powers conferred on him by the Ordinance only where it is proposed to grant a lease of land. The Native Authorities do not as such take any direct part in the negotiations between the "landlord" and the Strange Farmer as to the terms on which he is given land for temporary cultivation.

#### THE STRANGE FARMERS

The greater part of the "non-indigenes" in the Protectorate belong to the class of Strange Farmers, the majority of whom come from French or Portuguese territories. The title is that now officially recognized, but is perhaps less descriptive than the Mandinka word "Sama manila," meaning literally "rains (or summer) abroad." The annual immigration of this class is a long-sustained feature in the economy of the Protectorate. In 1852 Governor MacDonnell reported that ground nuts were being chiefly raised by natives of countries well in the interior "who come down for two or three years to the lower part of the river, where they hire land from the various Chiefs and plant the nuts and after having acquired the means of purchasing European goods return with those goods to their own countries."<sup>1</sup> The custom has prevailed ever since, the actual numbers varying with the seasonal rainfall. The highest recorded number (32,220) appeared in 1915, but the average over the last 34 years is 14,000.<sup>2</sup>

The Strange Farmers start arriving in March and continue to come till the end of June; they depart when they have sold their ground nuts, usually in December. There is a great variety in the conditions governing the private agreements between the Strange Farmers and the landlords, but the essentials are always the same: the landlord provides food, lodgings and a plot on which to cultivate ground nuts, in return for which the Strange Farmer works a certain number of days per week for the landlord. Generally speaking two days a week is the usual period in the western end of the Protectorate and three in the eastern end; in one District, however, four days a week is the custom.

Before starting to cultivate his own nuts the Strange Farmer must help his landlord with "brushing" or clearing the old stubble and weeds and planting his early grain crops. This labour is sometimes fixed at 5, 7, 10 or even 15 days, but the usual practice is for the period to continue until the crop is established, no matter how long it takes. It is in the interest of the Strange Farmer to do this, as during his stay he is fed and housed by his landlord. In the past it was usual for the landlord to collect a tithe (*lajino*) of 2s. in the pound on the monies derived from the sale of the Strange Farmer's ground nuts, but this custom has now ceased. Strange Farmers formerly paid a Government tax which varied from time to time, and was as high as 16s. from 1941 to 1943, when it was reduced to 8s. The amount imposed by Native Authorities for the year 1947-48 under Section 15 of the Protectorate Treasuries Ordinance, 1945, was 10s.<sup>3</sup>

<sup>1</sup> History of the Gambia, Sir J. M. Gray, page 383.

<sup>2</sup> Notes on Strange Farmers; J. H. Palmer, 1946.

<sup>3</sup> Government Notice, dated 1st June, 1947.

## SECTION V

### CONCLUDING NOTE

WHEN the Protectorate Government announced in 1933 that it proposed to adopt the procedure of local rule followed in Tanganyika, it stated that "the analogies between the basic conditions of native society in the Gambia and those of Tanganyika were closer than other circumstances might suggest."<sup>1</sup> But there were in fact some substantial differences in the structure of native society in the two territories. In the Gambia there was little in the nature of tribal organization of the type found in the Bantu communities of Tanganyika. The District Heads (Seyfolu) represent in some cases the former "mansa" or "kingly" families, but they are not tribal Chiefs; they are the appointed Heads of Districts which as a rule contain a considerable admixture of different tribes, grouped together for administrative convenience rather than by reference to tribal composition.

Such evidence as exists of the survival of indigenous organizations is to be found at a lower level, in the traditional authority exercised by the "yard head" (Korda Tiyo) or village head (Satiyo-Tiyo), or to some extent by the Alkalolu. This feature of the indigenous organization has survived the disintegrating effect of the migrations across the Gambia River, the fusion of tribal elements, and the shock of the Soninki-Marabout wars. Though the Seyfolu have now the prestige and authority derived from the position accorded to them by the Protectorate Government, the present organization rests largely on the measure of support given to them by these indigenous Authorities.

The present system was introduced by gradual stages covering a period of some years, and it was not indeed until 1945 that the process was completed by the introduction of the system of Native Treasuries, to be followed by the measure taken in 1947 by which the former Government Yard Tax became a Local Rate, the whole proceeds of which were credited to the Treasuries. This essential feature of the Native Authority system is therefore a recent development, and it would not be reasonable to base any conclusions on the experience gained of its operation. Nevertheless, there is a very general agreement that the system as now developed has already produced promising results, if only because of the stimulus it has given to a general interest in matters of local welfare. It remains to be seen how far this can now be furthered by a more systematic development of the Native Authority Councils. It is noteworthy that in the Conference of Chiefs held in 1945, previously referred to,<sup>2</sup> there were some who, though agreeing that they were accustomed to consult their Alkalolu when necessary, did not welcome the proposal that the Seyfu should be gazetted as the President of a Native Authority Council, and claimed that he should continue to be gazetted as sole Native Authority.

The revenues available in the Native Treasuries for expenditure on local services are of course small,<sup>3</sup> and the part which the Native Authorities can take as organs of local government is therefore very restricted. The Gambia,

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<sup>1</sup> Introduction to Political Memoranda, 1933. See page 337.

<sup>2</sup> Page 338.

<sup>3</sup> Page 341.

in fact, represents peculiarly an example of an area in which the form taken by the system of local rule is for the moment of less importance than the steps to be taken for the improvement of the standards of life of the population. The most urgent need is the promotion of a type of production which will increase the subsistence economy of the population and thereby build up its physical and intellectual health. Whether it be in the field of local government or the field of politics, this is the pre-condition of advance, and must determine the form it takes.

### THE CONFERENCES OF CHIEFS

Since 1944 the Protectorate Government has held an Annual Conference of all District Heads in the Protectorate, it being usual to convene the Conference on each occasion in a different part of the territory. The Governor presided over the first two Conferences, but his place as President has now been taken by the Senior Commissioner. The Conferences have been attended by the Heads of Districts and their advisers, though only the names of the Chiefs appear in the printed records of the proceedings, and they alone are shown as taking part in the discussions. The procedure of the Conferences seems to be less formal than in some of the Native Representative Assemblies noticed elsewhere; there is, for example, no formal provision for asking questions of the Administration, and discussion is for the most part limited to matters placed before the Conference by the Senior Commissioner.

The Conferences have however proved to be of value as a means of eliciting the views of the District Heads on a variety of matters of local concern. They have for example discussed the scheme for the introduction of Native Treasuries and the important change by which the Yard Tax became the Local Rate (District Tax), and also schemes for the adjustment of the boundaries of the Divisions. They have again been consulted on proposals made by the Administration for the procedure to be followed in acquiring land for use by commercial firms or similar purposes. The fact that the Conferences are not attended by others than Chiefs and their advisers has meant that there has been very little criticism of official policy, and it is noticeable that there has been little, if any, reference to issues of a political character.

### THE HIGHER POLITICAL INSTITUTIONS

#### THE LEGISLATIVE COUNCIL

The present composition of the Legislative Council is the result of changes introduced in 1947.<sup>1</sup> The Council now consists of the Governor as President, three ex-officio members, defined by title; three nominated official members (who include the Senior Commissioner of the Protectorate); one elected member (representing Bathurst and the Division of Kombo St. Mary, and usually an African);<sup>2</sup> and six nominated unofficial members. One of the latter is normally a European representing the commercial community, and one is appointed to represent the community (Moslem or non-Moslem) in the capital of which the elected member is not a representative. Four are appointed as representatives of the Protectorate.

When the revision of the constitution was under consideration in 1947, it was hoped that the four unofficial members representing the Protectorate

<sup>1</sup> Gambia Legislative Council Order in Council, 1947.

<sup>2</sup> For the electoral procedure see page 332.

would be elected by the District Heads in the four Divisions of the Protectorate at their annual Conference, but this procedure was found to be too advanced to be practicable. Three of these are now District Heads whose names have been put to the Conference by the Senior Commissioner and accepted by it; all three are English-speaking and come from one Division, namely, the Central Division. The fourth is an African missionary of long standing in the Protectorate.

#### THE EXECUTIVE COUNCIL

The Executive Council also came under revision in 1947. It now consists of the Governor as President; one *ex-officio* member (the Colonial Secretary); three nominated official members (who normally include the Senior Commissioner of the Protectorate), and three nominated unofficial members. These latter are chosen from the unofficial members of the Legislative Council, and normally include the elected member of the Legislative Council, who as shown above is an African, and one other representative of the Protectorate, at present an African.

The introduction of a non-official element in the Executive Council dates from 1947. Up to the present, the Gambia has not adopted the procedure under which members of the Executive Council hold charge of Departments or groups of Departments of Government, and the Executive Council remains therefore simply as an Advisory Council to the Governor.