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PREM 19/349

NOTE:

Paper CC(79)19 not
present at review.

Wayland
6 July 2010

CC(79)40
CONFERENCE PAPER

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached document is circulated to delegates at the request of Mr Mugabe, Mr Nkomo and Delegation.

Lancaster House
26 October 1979

PATRIOTIC FRONT

ESSENTIAL REQUIREMENTS FOR THE TRANSITION.

INTRODUCTION.

1. This document is in amplification of, and should be read with, the Patriotic Front document entitled "The Transitional Period.
2. As we stressed in that document, it has always been the cornerstone of the policy of the Patriotic Front that the people have the right to be governed by a democratically elected government of their choice on the basis of universal adult suffrage. It must therefore be the primary objective of the interim arrangements that the conditions be created and maintained which will enable free and fair elections to be held.
3. For the elections to be free and fair, and to be seen to be so, all parties must be able to participate on equal terms in the whole electoral process.

CONDITIONS FOR FREE AND FAIR ELECTIONS.

4. Security.
 - 4.1. The primary condition for free and fair elections is peace and security in the country, i.e. conditions in which every citizen can enjoy the fundamental freedoms of the individual, and in particular freedom of assembly and association, freedom of movement, freedom of expression, and freedom from harassment and intimidation. This can only be provided by security forces in which everyone has confidence.

4.2 Hence the Security Forces during the interim period must be an army composed of a combination of the Patriotic Front's and the Regime's armies, and a police force composed of a combination of the Patriotic Front's and the Regime's police forces, operating in both cases alongside a United Nations Peace-keeping Force and a United Nations Civilian Police Force to supervise the cease-fire and ensure peaceful intergration.

4.3 The foregoing structure is essential to ensure that the process towards genuine majority rule and independence will be irreversible.

5. Election Processes

The processes leading finally to the election cannot commence until a ceasefire has become effective, and conditions have been normalised.

5.1 Preparatory Processes

These must include:-

- (a) the return of refugees, the release of political prisoners, detainees and restrictees, and the abolition of protected villages, and the re-settlement of the persons concerned;
- (b) the promulgation of an electoral law;
- (c) the establishment of an Electoral Commission;
- (d) the registration of voters;
- (e) the delimitation of constituencies.

5.2 Campaigning

Party campaigners must be able freely and in conditions of safety to:-

- (a) travel around the country;
- (b) address meetings;
- (c) carry out house to house canvassing;
- (d) assist people to register as voters.

5.3. Polling

- 5.3.1 (1) There must be protection of voters to and from the polling stations.
- (2) There must be freedom of the voter to cast his vote for the party or candidate of his choice.
- (3) There must be freedom of the parties to be in attendance at polling stations.
- (4) There must be security of polling booths, and ballot boxes both during and after the voting, including counting.
- 5.3.2 There must be a polling station within walking distance of every voter. Mobile polling stations will not be used.
- 5.3.3 Representatives of the candidates and the UN Supervisors will be present at all times at polling booths and during counting.
- 5.3.4. Polling will be conducted on one day only.

5.4 The foregoing conditions for free and fair elections can only exist in a situation free of war, martial law, state of emergency, and where there is an impartial public service, army and police force.

The electoral machinery we have outlined is necessary in order to prevent corruption, intimidation, economic pressure and other undue influence on voters, people voting more than once, and other malpractices.

STRUCTURE OF INTERIM ADMINISTRATION

6. We entirely agree with Lord Carrington's statement that "It is essential that the parties to the election should feel confident that the overall administration of the country during the election campaign will be fair and impartial as between them".

6.1. In a situation of conflict and deep suspicion the parties cannot be expected to have confidence in an administration of which they form no part. It was for this reason that we proposed in our main paper on the Transitional Period a power-sharing Governing Council with equal representation of the Patriotic Front on the one hand and Britain and the Regime on the other.

6.2. We propose also that the Ministries be allocated equally between the parties.

LENGTH OF TRANSITIONAL PERIOD

7.1 The minimum period within which the foregoing processes can be completed is:-

(a)	for ceasefire to be effective	2 months
(b)	for return and resettlement of refugees etc, and registration of voters and delimitation of constituencies	3 months
(c)	election campaign	1 month
	Total	<u>6 months</u>

7.2. We are as anxious as anyone else that the interim period should not be unduly long. At the same time it would be indefensible to sacrifice any of the essential processes

for the sake of meeting an arbitrary deadline. To do so would be to defeat the goal of free and fair elections.

25th October, 1979.

CC(79)39

CONFERENCE PAPER

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached document is circulated to
delegates at the request of Mr Mugabe, Mr Nkomo
and Delegation.

Lancaster House
26 October 1979

PATRIOTIC FRONT
ANALYSIS OF BRITISH PROPOSALS FOR
INTERIM PERIOD

1.1. We have carefully studied the thirteen point programme of the British Government for the interim period. It is as significant for what it deliberately omits as for what it states. It confines itself almost entirely to the elections (which we all agree are essential) but ignores or minimises matters which are crucial if those elections are to be free and fair.

1.2. As we have stated in our documents on The Transitional Period, the primary purpose of that period is to ensure the cessation of hostilities and the establishment of conditions of peace and security, the holding of free and fair elections, and the irreversibility of the process towards genuine majority rule and independence. Our proposals achieve these objectives; the British proposals not only fail to do so, but positively frustrate them.

2.1. The British document asserts that "the Independence Constitution ensures that the future government will have the power to carry out the policies on the basis of which it is elected, and that the services of the State will be at its disposal in doing so." Neither of these statements is correct.

2.2. We have objected to, and reserved our position on, certain provisions which will obstruct the government in carrying out its policies, but which we have said we will not re-open if we are satisfied as to the interim arrangements.

2.3. It cannot be said that the services of the State will be at the disposal of the future government unless and until the nature of those services has been determined; this is one of the crucial issues to be discussed under the interim arrangements. The British proposals are that the existing services will be the services supporting the interim administration, and this paragraph is an attempt to carry those same services, who have been fighting a bitter war against the liberation forces, into independence.

3.1. The British statement in paragraph 3 of their document that until the elected government takes office "nothing should be done which prejudices or pre-empts the freedom of choice of the people of Zimbabwe" must, if its full implications are to be seen, be read with their paragraphs 10 and 11, which clearly exclude the Patriotic Front forces from the security forces at the disposal of the Governor. The British government is saying quite clearly that it is the Patriotic Front forces who would prejudice or pre-empt the freedom of choice of the people but that the Regime's forces would not.

3.2. In fact the British proposals in their paragraphs 10 and 11 do exactly what they say in paragraph 3 should not be done. It is impossible for the Governor and his administration to be impartial when the regime's security forces are the only forces at his disposal.

4. Paragraph 4 of the British document sets out some (but by no means all) of the conditions necessary for the holding of free and fair elections. But these conditions cannot, for all the reasons set out in this paper, be achieved under the British plan, because the administration will not in fact be impartial.

5.1. Paragraph 5 of the British document speaks of Britain's constitutional responsibility having been recognised in the Lusaka communique of the Commonwealth Heads of Government. The Commonwealth did not confer this responsibility on Britain; it merely recognised and reaffirmed a position which had already been recognised by the United Nations.

5.2. Britain is seeking to obscure the fact that she has long since abdicated her position of sole responsibility. By refusing in 1965 to quell the rebellion Britain left us with no choice but to pursue the armed struggle, to the point where we are today the essential force in the decolonising process. And by seeking the assistance of the United Nations to end the rebellion she has shared her responsibility.

5.3. Thus by both default and positive action Britain has created the situation in which she is engaged with the Patriotic Front and with the international community in the decolonising process.

5.4. The Lusaka communique recognised that it was Britain's constitutional responsibility to grant legal independence to Zimbabwe; but it went on immediately to recognise that the search for a lasting settlement must involve all parties to the conflict. Britain has throughout this conference adopted the attitude that it has the responsibility and the right to impose its own solutions on Zimbabwe; this is clearly contrary to both the spirit and the letter of the Lusaka communique.

5.5. It must be stressed also that it is the responsibility of this conference not merely to decolonise Zimbabwe but, more importantly, to achieve peace.

6.1. Britain states in her paragraph 6 that the proposed Governor will have both executive and legislative authority; he will also be in direct command of the security forces. There is no suggestion that he will act on the advice of or after consultation with any person or body. He would therefore have total and unfettered power. Such a situation is both undesirable and dangerous,, particularly since the only forces under his command would, according to the British Proposals, be the regime's forces.

6.2. In practice, in view of the volume of executive and legislative work required to be done, the Governor would govern in consultation with the existing Public Service and security forces; in these circumstances, however impartial he as an individual might wish to be, his decision could not and would not be impartial.

7.1. Britain proposes (in paragraph 7) an Election Commissioner with supporting staff. This is inadequate. If the preparations for and the conduct of the elections are to be free and fair there must be an Election Commission such as we have proposed, on which the parties to the conference are represented. The Commission should have the usual powers to prepare for and conduct elections, including power to deal with complaints.

7.2. In addition to the functions and powers of the Election Commission, the organisation and conduct of the elections must be supervised by the United Nations. This is contemplated in paragraph (g) of the Lusaka communique, which speaks of "free and fair elections properly supervised

under British Government authority"; this clearly means that the supervision will be by independent persons under Britain's legal authority.

8.1. Britain speaks in paragraph 8 of "witnessing the elections". There is a very material difference between a witness and an observer, who has a specific legal status and who participates actively in the process in question.

8.2. It is not merely the elections, but the whole electoral process, that must be independently supervised and observed. We believe that the United Nations is the body best equipped to carry out these functions.

9. Britain's proposal (paragraph 9) for an Election Council is an attempt to avoid the setting up of an Electoral Commission. Such a Commission, properly composed and with proper functions and powers, would make a separate Election Council unnecessary.

10.1 Paragraph 10 of the British document states that the Governor's instructions will require him to do all things necessary to secure compliance with the conditions for free and fair elections. In fact under the conditions outlined in the British paper the elections cannot be free and fair.

10.2. In particular, as we have shown above, the Governor, in the exercise of his unlimited powers, will rely on the security forces comprised entirely of the existing forces and from which our forces will be excluded. No elections conducted under these conditions can be free and fair.

11. In paragraph 11 the British document states that the Governor will assume authority over the civil police, who will be responsible for the maintenance of law and order. Once again, the Patriotic Front forces are specifically excluded. It is self-evident that elections conducted under conditions in which only the existing police are responsible for law and order, administering the existing repressive law, including the notorious Law and Order Maintenance Act, cannot be free and fair.

12.1 Paragraph 12 of the British document states that there will be agreement between the opposing forces regarding a ceasefire and disengagement of their respective forces. We note with deep concern that Britain is seeking to relegate the ceasefire agreement for separate arrangement outside the conference. Once again we draw attention to the Lusaka communique, in which the Heads of State said they were "deeply conscious of the urgent need to achieve such a settlement and bring peace to the people of Zimbabwe and their neighbours". The Rhodesian situation was officially recognised by the UN as a threat to international peace as long ago as 1965, and since then the war has been internationalised and has cost, and continues to cost, thousands of lives both inside Zimbabwe and in the neighbouring countries. It is unrealistic to imagine that a conflict of these dimensions can be brought to an end effectively by an un-policed agreement.

12.2 The primary responsibility of all parties to this conference, including Britain, is to achieve a lasting peace. All aspects of the problem, including a ceasefire agreement and its policing, are integral parts of a settlement and must be agreed at this conference.

12.3 The ceasefire agreement must be supervised and policed by the UN, which alone has the legal status, experience and capacity for such an operation.

13.1 Paragraph 13 of the British document states that "as soon as the election results have been declared and a Government has been formed, Zimbabwe will become independent".

13.2 This proposal appears to contemplate that Britain intends to legislate in advance for Zimbabwe acceding automatically to independence on the happening of a future event, i.e the formation of a government following elections. Since the only forces on the spot would be according to the British those of the regime, this is a recipe for a coup and a resumption of the war, and an open invitation to South Africa to intervene.

Conclusion:-

This plan is another example of the kind of disastrous policy pursued by Britain in a number of her former dependencies. Once again Britain has refused to face and solve the problems and tensions of the territories concerned, with the result, as for instance in Cyprus and Palestine, that they have moved into independence with a legacy of permanent instability, widespread suffering and bloodshed, affecting not only the countries themselves but also the international community.

The British delegation has throughout this conference, whenever they have found themselves having to support a proposal which is insupportable in logic, stressed the need for reconciliation. In their plan for the interim period they appear to have abandoned this position; they are quite clearly determined to maintain the status quo.

26th October, 1979.

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CC(79)38

COPY NO

89

SEVENTEENTH PLENARY SESSION

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Seventeenth Plenary Session of the
Conference, Friday 26 October 1979

Lancaster House
26 October 1979

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PRESENT:

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Mr R Luce

Sir J Graham

Mr D M Day

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr C D Powell

Mr P J Barlow

Mr A M Layden

Mr R M J Lyne

Mr S J Gomersall

Mrs A J Phillips

Mr M C Wood

Bishop Muzorewa and Delegation

Bishop A T Muzorewa

Dr S C Mundawarara

Mr E L Bulle

Mr F Zindoga

Mr D C Mukome

Mr G B Nyandoro

Rev N Sithole

Mr L Nyemba

Chief K Ndiweni

Mr Z M Bafanah

Mr I D Smith

Mr D C Smith

Mr R Cronje

Mr C Andersen

Dr J Kamusikiri

Mr G Pincus

Mr L G Smith

Mr D Zamchiya

Mr Mugabe, Mr Nkomo and Delegation

Mr J M Nkomo	Mr R G Mugabe
Mr T G Silundika	Mr S V Muzenda
Mr A M Chambati	Mr J M Tongogara
Mr L Baron	Mr H Ushewokunze
Mr S K Sibanda	Mr D Mutumbuka
Mr W Musururwa	Mr J Tungamirai
Mr D N Madzimbamuto	Mr E Zvobgo
Mr C G Msipa	Mr S Mubako
Miss T Siziba	Mr W Kamba

Secretariat

Mr J M Willson

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The session started at 10.04.

THE CHAIRMAN asked whether Mr Mugabe or Mr Nkomo would like to present their paper. MR MUGABE said that his and Mr Nkomo's delegation had carefully studied the British proposals (CC(79)32) and their reply was contained in two documents which they would submit to the Conference. Mr Mugabe then read a statement entitled "Analysis of British Proposals For Interim Period", which was subsequently circulated as Conference Paper CC(79)39.

When Mr Mugabe had finished his statement, MR NKOMO then read a further statement entitled "Essential Requirements for the Transition", which was subsequently circulated as Conference Paper CC(79)40. In amplification of paragraph 5.1(a) he added that he supposed that those people who were forcibly being held in Zambia and Mozambique should also return to Zimbabwe. When he had completed his statement Mr Nkomo said that he wished to stress that all the requirements outlined in the two papers were considered by his delegation to be necessary for free and fair elections; he could not see how they could be held within the period suggested by the British - i.e. two months.

MR MUGABE said that his delegation had now given the Chairman not only its detailed plan for the interim period (Conference Paper CC(79)16), but also an amplification of the original paper (CC(79)40) together with its criticisms (CC(79)39) of the British document (CC(79)32). Taken

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together, his delegation's proposals would provide a proper basis for peace.

THE CHAIRMAN said that his delegation would need to study the papers before replying. He wished, however, to put one thing on the record immediately. The British Government was not prepared to accept arrangements which went beyond what was agreed at Lusaka. It was the British Government's responsibility to bring Rhodesia to legal independence and they would carry out that responsibility. It would be for the British Government to supervise elections, which would be held under their authority. The Lusaka communiqué stated without any ambiguity that elections should be properly supervised under British Government authority, and with Commonwealth observers. There was therefore no question of the British Government agreeing to supervision by the United Nations or by any other body.

MR NKOMO said that, in view of the Chairman's statement, his delegation considered it necessary to appeal to the Commonwealth countries quoted by the Chairman to state exactly what was meant in the Lusaka Communiqué. It was important for the Commonwealth to state clearly what its position was in this matter. THE CHAIRMAN said that he himself had been in Lusaka during the discussions and the drafting of the Communiqué and that the 39 Heads of Government had agreed there that the elections should be held under British Government authority.

MR MUGABE asked why the Chairman had said that he was not prepared to go beyond the terms of the Lusaka Communiqué.

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He did not feel that the document agreed at Lusaka should be regarded as immutable. If it did not allow a sufficient basis for peace, and if his delegation's recommendations enhanced or amplified what had been agreed at Lusaka was the Chairman going to object merely on the grounds that the Lusaka communiqué had given certain terms of reference - terms which he (Mr Mugabe) did not consider were binding on the Chairman.

THE CHAIRMAN said that both before and at Lusaka there had been discussion of how to proceed. Other solutions had been put forward over the years and had failed. That was why it had been decided in Lusaka that it should be the British Government's responsibility. This was a matter of principle. If proposals were put forward outside the Lusaka Communiqué which did not constitute matters of principle, and which would improve what had been agreed at Lusaka, he would be happy to consider them. But the principle was something on which the British Government would stand absolutely and resolutely firm.

MR NKOMO suggested that the interpretation of British authority in the Lusaka Communiqué differed from that offered in the British proposals. Those who were interested in seeing peace and security in Zimbabwe would strive to enhance what was done in Lusaka. THE CHAIRMAN reiterated that there could be no question of any departure from the fundamental basis on which the Lusaka Agreement had been signed. His Government had in recent days been in touch with a great many

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Commonwealth leaders and, as far as he knew, not one had disputed this.

In reply to a question from the Chairman, BISHOP MUZOREWA said that he had nothing to say at this stage.

THE CHAIRMAN said that he would examine the proposals put forward by Mr Mugabe and Mr Nkomo, and it would then be decided through the usual channels when next to meet. Provisionally, he suggested 10.00 on Saturday 27 October.

The session ended at 10.40.

- 4 -

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CC(79)37
CONFERENCE PAPER

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached statement, delivered by the Chairman during the Sixteenth Plenary Session of the Conference, is circulated to delegates at his request.

Lancaster House
25 October 1979

LORD CARRINGTON:

Bishop Muzorewa noted that paragraph 3 of our proposals stated that all parties would be free to participate in fair elections. He asked whether that meant only those parties which have accepted the new Constitution and are prepared to work within the law would be able to participate in the elections.

The British Government's objective at this Conference is to reach agreement between all the parties on the Independence Constitution and on the arrangements for implementing it. Acceptance of the Constitution and of elections will be the basis on which the British Government grants independence to Rhodesia. All parties who participate in the elections will be expected to do so on the basis of acceptance of the Independence Constitution. If the elections are to be free and fair, then all parties must conduct themselves lawfully and be free to engage in normal political activity.

Bishop Muzorewa asked whether all parties would be required to denounce violence and those who continue fighting. The purpose of elections is to allow the parties to compete peacefully for power. It goes without saying, therefore, that all parties taking part in them must renounce violence and cooperate to prevent it. The British Government will be ready to organise discussions about a cease-fire as soon as there is agreement on the arrangements for elections and the general arrangements for the interim period.

Bishop Muzorewa asked whether it was accepted by the British Government that strong measures would have to be taken

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against any party which acted outside the law and resorted to intimidation and unlawful practices. I repeat that, in the British Government's view, all parties must conduct themselves lawfully if elections are to be genuinely free and fair, and I hope that all parties round this table accept that. The British Government have proposed the appointment of a British Governor and an Election Commissioner to ensure that the elections are genuinely free and the administration of the country is impartial. If the Governor decides that any political party is engaged in unlawful activities it will be for him to ensure that appropriate measures are taken.

Bishop Muzorewa's next question was whether parties which persisted in unlawful conduct should be banned from further participation in the elections. I do not think it would be right to pre-judge the decisions of the Governor, whose task it will be to ensure that the conditions exist for peaceful political activity. If one is speaking of unlawful conduct by individuals, then normal procedures would apply. It would be a different matter if a political party was conducting itself so as to make free and fair elections impossible. The Governor should have the powers necessary to take appropriate action.

The next question was whether the principle was accepted that citizens of Rhodesia being forcibly detained in Mozambique and Zambia would be released to take part in the elections. We will be looking to all parties to release anyone detained arbitrarily. If the elections are to be fair, and to be seen by the international community as fair, there must be full freedom of political activity within the law.

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In relation to our proposal that all parties should have free and uncensored access to the media, Bishop Muzorewa asked for clarification that this did not mean that the parties could act outside the law and make subversive or defamatory statements. Our proposal is intended to ensure that all the parties contesting the election should be free, as in any democratic society, to present their political case to the people. This is the meaning of uncensored access to the media. It does not, of course, mean that any party to the election would be at liberty to use the media for unlawful ends, for instance incitement to violence.

Perhaps at this point, I might make one general comment. It is the British Government's hope and belief that, if there is agreement at this Conference, all the parties involved in the elections will conduct themselves lawfully in putting their case to the people of Rhodesia. It will be the Governor's responsibility to ensure the conditions for them to do so. We hope that the parties will co-operate with him in this task. But the Governor will have the powers necessary to take appropriate action against any political party which seeks to use unlawful means to influence the elections or to create conditions in which free political activity is impossible.

Bishop Muzorewa moved on to ask whether it was intended that the Governor should have unlimited powers. The Governor must have the powers necessary to ensure that fair elections are held in which all parties will be able to participate. Some of the reasons for which the Governor must have adequate
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powers have already been set out in the preceding answers that I have given. These powers will not be used for any other purpose than to create the conditions in which all parties can take part in the elections with confidence that they have an equal chance of success. The Governor's powers will be exercised as necessary to maintain the administration of the country on a caretaker basis while the political leaders devote themselves to the election campaign.

Bishop Muzorewa also asked whether there would be some form of selection of Commonwealth Observers. It is the British Government's view that Commonwealth Observers should be present to witness the elections. Obviously there must be a limit on practical grounds on the over-all numbers. But the supervision of the elections will be a matter for the British Government.

Finally, Bishop Muzorewa asked when sanctions would be lifted. The British Government will lift sanctions as soon as there is a return to legality in Rhodesia. Our aim is to reach agreement in this Conference which will allow this to happen as soon as possible.

CC(79)36

COPY NO 89

SIXTEENTH PLENARY SESSION

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Sixteenth Plenary Session of the
Conference, Thursday 25 October 1979

Lancaster House
25 October 1979

PRESENT:

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Sir J Graham

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr P J Barlow

Mr R D Wilkinson

Mr S J Gomersall

Mr R M J Lyne

Mrs A J Phillips

Mr Mugabe, Mr Nkomo and Delegation

Mr R G Mugabe

Mr S V Muzenda

Mr E Z Tekere

Mr J M Tongogara

Mr H Ushewokunze

Mr D Mutumbuka

Mr J Tungamirai

Mr S Mubako

Mr J M Nkomo

Mr J M Chinamano

Mr J W Msika

Mr T G Silundika

Mr A M Chambati

Mr John Nkomo

Mr S K Sibanda

Miss T Siziba

Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr I D Smith
Mr D C Smith
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Air Vice Marshal H Hawkins
Mr S V Mutambanengwe

Secretariat

Mr J M Willson

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The session commenced at 17.04.

THE CHAIRMAN said that, during the morning session, Bishop Muzorewa had asked a number of questions (Conference Paper CC(79)35) on the British Government's proposals for implementing the Independence Constitution, and that he had undertaken to let the Conference have his answers to those questions. He then read a statement containing the answers, subsequently circulated as Conference Paper CC(79)37. At the end of the statement MR MUGABE and MR NKOMO confirmed that their response to the British proposals would be ready the following morning.

MR NKOMO asked for clarification of the Chairman's remark that "all parties who participate in the elections will be expected to do so on the basis of acceptance of the Independence Constitution".

After some discussion THE LORD PRIVY SEAL said that anybody could campaign in the Elections to bring about change, provided that his aim was to effect change by constitutional means. It would be wrong to campaign in the Elections and then use violence or illegal means afterwards to alter the Constitution. MR NKOMO said that the Chairman should correct that part of his statement. THE CHAIRMAN said that he thought that it would be better for comment to be made after his statement had been circulated.

MR NKOMO then asked whether, if a ceasefire was concluded,

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there was any need for the Chairman's statement that parties taking part in the elections should renounce violence.

This was superfluous if a ceasefire had been agreed.

THE CHAIRMAN said that the point was that during the election campaign and afterwards disputes should be settled by the ballot box, and not by the bullet.

At the Chairman's suggestion, it was agreed to adjourn until 10.00 on Friday 26 October.

The session ended at 17.20.

CC(79)35
CONFERENCE PAPER

COPY NO:

89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached statement, delivered by
Bishop Muzowera during the Fifteenth Plenary
Session of the Conference, is circulated
to delegates at his request.

Lancaster House
25 October 1979

BISHOP MUZOREWA:

Mr Chairman,

I and my delegation have given, and are still giving, very serious consideration to the paper you circulated on 22nd October setting out your Government's proposals for implementing the Independence Constitution. The principles contained in your proposals are very far-reaching and we cannot, at this stage, give our reaction to them all. I will deal separately with the paragraphs which we feel require further elucidation or explanation.

In paragraph 3 you state that all the parties would be free to participate in fair elections. Does this mean only those parties which have accepted the new constitution and are prepared to work within the law in participating in the elections? Will each participating party be required to denounce violence and those who continue fighting? Is it accepted by the British Government that strong measures will have to be taken against any party which acts outside the law and resorts to intimidation or other unlawful practices? Will any party which persists in unlawful conduct be banned from further participation in the election? Is the principle accepted that those hundreds of citizens of our country who are being forcibly detained in Mozambique and Zambia must be released so that they, too, can participate in the election?

In paragraph 4, we entirely agree that the election must be administered fairly and, in this context, the queries we have raised in the previous paragraph apply equally in relation to

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the statement made in paragraph (b), about peaceful political activity. As regards the statement in paragraph (c), that all parties will have free and uncensored access to all the public media, we seek clarification that this does not mean that parties may act outside the law and make subversive or defamatory statements with impunity. In other words, we seek an assurance that the process of the law will be invoked against those persons who attempt to undermine and subvert the election by unlawful means.

Mr Chairman, paragraph 6 envisages the appointment of a British Governor with legislative and executive authority. There is no indication as to the extent of the powers of the Governor. Is it intended that he should possess completely unlimited powers?

With regard to paragraph 8, it will be appreciated that some Commonwealth countries and some individuals are hostile to and biased against our Government. Is it not reasonable to expect that such observers will, inevitably, submit unfair reports? Is it intended that some form of selection of observers should be introduced?

While considering the constitutional proposals, we found it advantageous timewise to discuss matters at bilateral meetings rather than in plenary session. We believe that stage has now been reached again and request a bilateral meeting in order that progress may be made.

Finally, Mr Chairman, I would point out an omission in your paper. A serious one for that matter. It does not make any

/mention

mention of when sanctions will be lifted. This is of great importance to my Government and my delegation and I am surprised and concerned that it is not mentioned. As I have said on a number of occasions, we feel very strongly that sanctions should already have been lifted once we had agreed to the constitutional proposals. May I ask you bluntly, Mr Chairman, when are sanctions going to be lifted?

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CC(79) 34
FIFTEENTH PLENARY SESSION

COPY NO

89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Fifteenth Plenary Session of the
Conference, Thursday 25 October 1979

Lancaster House
25 October 1979

RESTRICTED

PRESENT:

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Sir M Palliser

Sir J Graham

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr R D Wilkinson

Mr S J Gomersall

Mrs A J Phillips

Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Chief K Ndiweni
Mr I D Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Air Vice Marshal H Hawkins
Mr D Zamchiya
Mr S V Mutambanengwe

Mr Mugabe, Mr Nkomo and Delegation

Mr J M Nkomo	Mr R G Mugabe
Mr J M Chinamano	Mr S V Muzenda
Mr J W Msika	Mr E Z Tekere
Mr A M Chambati	Mr J M Tongogara
Mr John Nkomo	Mr H Ushewokunze
Mr S K Sibanda	Mr D Mutumbuka
Mr C Ndlovu	Mr J Tungamirai
Mr W Musururwa	Mr E Zvobgo
Miss T Siziba	Mr S Mubako

Secretariat

Mr J M Willson

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The session started at 11.35.

THE CHAIRMAN informed the Conference that Sir Antony Duff had been taken ill and, following an emergency operation, was recovering in hospital. His absence was a great loss. He now wished to introduce Sir John Graham who was fortunately in London. At the Chairman's suggestion the Conference agreed to send a message of good wishes to Sir Antony.

The Chairman, referring to the paper tabled by the British delegation at the Fourteenth Plenary Session (Conference Paper CC(79)32), said that the comments of the visiting delegations were awaited. He asked whether either delegation had any observations.

BISHOP MUZOREWA then delivered a statement to the Conference, later circulated as Conference Paper CC(79)35.

When Bishop Muzorewa had completed his statement THE CHAIRMAN asked Mr Mugabe for any observations. MR MUGABE said that his delegation were still in the process of completing their reply to the British proposals and that they would present it as soon as it was ready, perhaps in half a day's time. His delegation were also concerned about the procedure to be followed at this stage of the Conference. They had objected to the procedure followed during the first stage of the Conference and he therefore suggested that his delegation and the Chair might discuss the question. THE CHAIRMAN said that he did not consider that it would be right for a Chairman to refuse to meet a delegation if they requested a bilateral /meeting

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meeting: however he thought that the Conference should proceed in plenary session as far as possible.

In reply to a query from the Chairman, BISHOP MUZOREWA confirmed that copies of his statement would be made available.

THE CHAIRMAN then suggested that the next session should be at 17.00, when he would provide the answers to the questions raised in Bishop Muzorewa's statement; and if Mr Mugabe were ready his delegation could put in their paper. MR MUGABE said that their paper would be ready the following morning.

THE CHAIRMAN commented that he was becoming increasingly concerned at the lack of progress. He hoped that as soon as Mr Mugabe and Mr Nkomo's paper was tabled and as soon as Bishop Muzorewa's points had been answered, the Conference would move forward with plenary meetings and take decisions. Discussion was needed and decisions had to be taken. The latter could not continue to be postponed.

BISHOP MUZOREWA then said that he and his delegation were running a country. They had been in London too long and were losing patience. To achieve progress he wanted his delegation's questions answered that day in plenary session, together with a bilateral meeting.

After further discussion it was decided that the next plenary session would be held at 17.00, followed by a bilateral meeting as requested. A further plenary meeting

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would be held in the morning of 26 October at which Mr Mugabe and Mr Nkomo's paper would be received. Discussions in Plenary meetings would then follow at which decisions would be taken. The Chairman also suggested that the Conference might continue working over the weekend.

The session closed at 11.55.

- 3 -

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CC(79)33
CONFERENCE PAPER

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached statement, delivered by the
Chairman during the Fourteenth Plenary
Session of the Conference, is circulated to
delegates at his request.

Lancaster House
22 October 1979

LORD CARRINGTON:

When we met on 19 October, both Bishop Muzorewa's delegation and that of the Patriotic Front asked me to put forward the British Government's proposals for the pre-independence period. I am therefore arranging for our proposals to be circulated today.

In introducing these proposals, I should like to remind you briefly of how much has been achieved in this Conference so far, and of what, in my view, remains to be done.

Both the other delegations to this Conference have now given their assent to the Independence Constitution, subject to agreement on satisfactory arrangements for its implementation. In doing so, we have accomplished something which so far has not been done. We have achieved a good deal in this rather long period of negotiation. We have reached agreement on a Constitution which will enable you to proceed to independence on the basis of genuine majority rule. Once that Constitution is implemented, Zimbabwe will, after years of political conflict and human suffering, be able to take its place in the international community as a free nation.

I do not believe that the eventual outcome of this Conference can conceivably be regarded as a victory for one side or for the other. It is our concern that it should be a victory for the people of Rhodesia and of the neighbouring countries. It is up to us, I think, to show that we intend to give the people of Rhodesia the opportunity to decide their future, as they surely wish to do, by peaceful means on the basis of a Constitution which gives genuine majority rule.

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The Independence Constitution gives the elected legislature, and the government which derives its authority from it, full power to implement the policies on the basis of which they will have been elected. At the same time it will, in a way which is fully compatible with democracy and the demands of justice, safeguard the rights and interests of minorities, and indeed of all the people of Rhodesia.

We now have to decide the conditions in which the people of Zimbabwe will be enabled to express their wishes freely in choosing a government to work within that Constitution. That is the essence of our task. It is not, in the British Government's view, either necessary or right to suggest that we must create a new machinery of government before independence and therefore to anticipate the wishes of the people or their elected representatives. And it is a matter of the greatest urgency that the people should be given an opportunity to decide their future for themselves and put an end to years of conflict and uncertainty. It is the British Government's responsibility to see that this is brought about.

We see no merit in prolonging the transition to independence beyond what is strictly necessary to enable the people of Rhodesia to make that decision. To do so would bring with it risks of further conflict and further uncertainty. If we can reach agreement in this Conference on a cease-fire to enable fair elections to be held, it will be in everyone's interests to move to elections as quickly as possible, against the background of agreement on the destination, which is the Independence Constitution.

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The parties must be able to explain their policies and to state their case freely to the electors. I see no reason why any of the parties to the Conference should require more than two months to explain their policies to the people of Rhodesia, provided that the conditions for the election campaign are genuinely fair and impartial.

It is the British Government's constitutional responsibility to see that these conditions are met, and we are determined to carry out that responsibility. We have a duty to ensure that every party will be enabled to participate in an election with an equal chance of success, so long as it is prepared to put its claims to the test by political means. We are prepared to supervise the electoral process to the full extent necessary to ensure that it is genuinely free and fair. Commonwealth observers will be invited to witness the elections and the manner in which we carry out that responsibility. There must be full freedom for the conduct of peaceful political activity during the election campaign and full freedom also of access to the press, radio and television. All this is normal in a democratic society, and we accept our responsibility to see that it is achieved.

It is also essential that the parties to the election should feel confidence that the overall administration of the country during the election campaign will be fair and impartial as between them. If the proposals we put before you are accepted, the administration which we are suggesting will act for that limited period; and it will be our responsibility to see that the administration does act fairly and impartially. From the beginning of the process, Rhodesia will have returned to lawful

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government as part of Her Majesty's dominions.

When the plan which we have put forward before you is brought into effect, it will enable the British Parliament to discharge its constitutional responsibilities and the people of Rhodesia to decide their future for themselves. I hope that all of you will be prepared to participate in elections on this basis, under the British Government's authority. I urge you to consider carefully what this would mean in terms of bringing an end to the suffering of the people of your country and indeed it would bring peace not just to you but to the neighbouring countries. I hope that you will be prepared to put your political standing to the test in elections of this kind. As I said at the beginning of the Conference, the crucial question before us is whether you are prepared to settle your differences by political means. As I also said then, I do not believe that any party will be readily forgiven if it is not prepared to do so.

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CC(79) 32
CONFERENCE PAPER

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached paper, which sets out the British Government's Proposals for Implementing the Independence Constitution, is circulated to delegates at the request of the Chairman.

Lancaster House
22 October 1979

ARRANGEMENTS FOR IMPLEMENTING THE INDEPENDENCE CONSTITUTION

1. The British Government puts forward the following proposals for implementing the Independence Constitution.
2. The Independence Constitution ensures that the future government will have the power to carry out the policies on the basis of which it is elected, and that the services of the State will be at its disposal in doing so.
3. The elected government will be chosen by the people in fair elections, in which all the parties will be free to participate. Until it takes office, nothing should be done which prejudices or pre-empts the freedom of choice of the people of Zimbabwe.
4. The election of the House of Assembly, which is the first step in the implementation of the Independence Constitution, will take place under the following conditions:
 - a. the administration of the election will be scrupulously fair and impartial as between all the political parties;
 - b. peaceful political activity will be freely conducted by all the parties to the election; and
 - c. all the parties will have free and uncensored access to all the public media.
5. It will be the constitutional responsibility of the British Government, as recognised in the Lusaka communiqué, to ensure that these requirements are met.
6. To fulfil this responsibility the British Government are prepared to appoint a Governor, who will be British. The Governor would have executive and legislative authority. All political leaders will commit themselves to the election campaign.

7. To supervise the elections, there will be an Election Commissioner, with supporting staff, appointed by the British Government. His task will be to supervise all aspects of the organisation and conduct of the elections.
8. Commonwealth observers will be present to witness the elections.
9. To enable the parties to satisfy themselves that the elections are fair and impartial, there will be an Election Council. The Council will be chaired by the Election Commissioner and parties taking part in the election will be represented on it. The Council and its individual members will be able to make representations to the Commissioner and to the Governor on any matter concerning the elections.
10. The Governor's instructions will require him to do all things necessary to secure compliance with the conditions for free and fair elections. The Commanders of the security forces will be responsible to him.
11. The Governor will assume authority over the civil police. They will be responsible, under his supervision, for the maintenance of law and order.
12. There will be agreement between the opposing forces regarding a ceasefire and disengagement of their respective forces.
13. As soon as the election results have been declared and a Government has been formed, Zimbabwe will become independent.

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CC(79) 31
FOURTEENTH PLENARY SESSION

COPY NO 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Fourteenth Plenary Session of the
Conference, Monday 22 October 1979

Lancaster House
22 October 1979

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PRESENT:

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Sir A Duff

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr A M Layden

Mr R M J Lyne

Mr S J Gomersall

Mrs A J Phillips

Mr M C Wood

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Mr Mugabe, Mr Nkomo and Delegation

Mr R G Mugabe

Mr S V Muzenda

Mr E Z Tekere

Mr J M Tongogara

Mr H Ushewokunze

Mr D Mutumbuka

Mr J Tungamirai

Mr E Zvobgo

Mr S Mubako

Mr J M Nkomo

Mr J M Chinamano

Mr T G Silundika

Mr A M Chambati

Mr John Nkomo

Mr L Baron

Mr S K Sibanda

Mr W Musururwa

Miss T Siziba

Bishop Muzorewa and Delegation

Bishop A T Muzorewa

Mr E L Bulle

Mr F Zindoga

Mr D C Mukome

Rev N Sithole

Mr L Nyemba

Chief K Ndiweni

Mr Z M Bafanah

Mr I D Smith

Mr R Cronje

Mr C Andersen

Dr J Kamusikiri

Mr G Pincus

Mr L G Smith

Air Vice Marshal H Hawkins

Mr D Zamchiya

Mr S V Mutambanengwe

Secretariat

Mr J M Willson

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The session commenced at 15.05.

THE CHAIRMAN began by saying that the British delegation had been asked at the previous session on 19 October to table its proposals for the interim period. Before doing so, he wished to emphasise that it had been agreed at Lusaka that there should be free and fair elections supervised by the British Government. The British proposals had been put forward on that basis, and had been accepted by Bishop Muzorewa. He was therefore surprised to read and to see on television over the weekend that Mr Mugabe had said that the Patriotic Front did not accept elections held under British authority. The Chairman then read out a transcript of an interview with Mr Mugabe in which Mr Mugabe had said that he certainly did not accept the British as an impartial authority to supervise the elections; that the British were biased and the elections would be rigged; that British conduct during the Conference had revealed that they favoured Bishop Muzorewa; and that it was impossible to accept a supervisor whose mind was already made up. The Chairman referred also to a statement attributed to a Patriotic Front spokesman, Mr Zvobgo, in which the latter had said, in effect, that it was intended to seize land and not pay a penny to anyone. This, the Chairman said, did not seem to be compatible with the Independence Constitution. He therefore asked whether Mr Mugabe would clear up these two issues.

MR MUGABE said that the Conference was in session in order to discuss Conference business, and not statements made to the press. His delegation's position was represented by what was said at the Conference. What was said outside was not the

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business of the Conference. THE CHAIRMAN said that the Conference had been convened on the basis of the agreement at Lusaka - that there should be free and fair elections supervised under the British Government's authority. Mr Mugabe had said specifically on television that he did not accept that. This obviously put the Conference in a very serious position. MR MUGABE said that if this was the position of the Patriotic Front, they would say so. His saying it on television did not mean that it constituted an official Patriotic Front position. His delegation's proposals on the interim period (Conference Paper CC (79)16) were quite clear. They put over a different point of view on the supervision of elections. His understanding was that the parties present at the Conference were free to agree on something different from what was suggested in the British proposals.

THE CHAIRMAN said that he therefore understood that Mr Mugabe was saying that the Patriotic Front did not refuse to accept the British as impartial supervisors of the election. MR MUGABE said it was not possible to draw that inference. His delegation's position would be made clear when appropriate in Conference. His delegation's position was clear in any case from their proposals. During a brief discussion of Mr Zvobgo's statement, THE CHAIRMAN remarked that it was difficult to have a conference where agreements were made, only for spokesmen outside to disagree on them. MR NKOMO said that the Chair's responsibility was Conference business, not press matters.

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His delegation did not question what was said by others outside the Conference.

THE CHAIRMAN then read out a statement (subsequently circulated as Conference Paper CC(79)33) in which he introduced the British proposals for the pre-independence arrangements (Conference Paper CC(79)32). Having done so, the Chairman then said that he hoped that the delegations, after having read the British proposals, would be prepared to discuss them at their next meeting.

MR NKOMO said that the Chairman had implied that he had a sort of mandate from the Commonwealth Conference in Lusaka to conduct the present negotiations in a certain manner. His delegation had said that it appreciated the role of the Commonwealth as a catalyst in bringing about the Conference. He did not, however, believe that the Commonwealth Conference had prescribed how this Conference should run. If it had, there would be no need for a Conference. His delegation was therefore very apprehensive at the suggestion that the Conference should be run in a certain way, and that any variation would fall outside what was prescribed by the Commonwealth. Views had been offered from certain members of the Commonwealth; but at no time had they said that other methods of running this Conference were precluded if the parties present agreed.

Mr Nkomo said that his delegation had tabled proposals for interim arrangements which would suit the conditions in Zimbabwe today. His delegation was serious and meant what it had said. They were therefore surprised that the Chairman believed that,

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under those conditions, it was possible to complete the necessary arrangements in two months. His delegation wanted to see an end to the present situation in Zimbabwe. They were much involved, and wished for an end to British colonialism there. But he did not want things to be done in a manner which would bring about more suffering. Any agreement which failed to bring peace and security to his people, both during and after elections, would fail. A war was going on. His people should be able to take part in elections freely and without fear. It was essential to take account of the realities of the situation and to give maximum security to all concerned, especially those who had suffered so much from the war. A six-month interim period might not therefore be too long if it brought about peace both during and after the elections.

THE CHAIRMAN said that he took note of what Mr Nkomo had said; his views would no doubt be the subject of discussion, along with the two papers on the interim arrangements already tabled. He asked Bishop Muzorewa if he wished to say anything.

BISHOP MUZOREWA said that at that stage he only wanted to look at the British proposals. MR SILUNDIKA asked whether the British paper was being tabled merely for reaction or for negotiation.

THE CHAIRMAN said that he had been asked by Mr Silundika's delegation to put his proposals on the table and these were now for discussion.

MR TEKERE asked whether the Chairman would circulate as a Conference paper his statement introducing the British proposals.

THE CHAIRMAN said that this would be done.

The Conference was then adjourned.

The session ended at 15.29.

CC(79) 30
CONFERENCE PAPER

COPY NO 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached document is circulated
to delegates at the request of Mr Mugabe,
Mr Nkomo and Delegation

Lancaster House
19 October 1979

PATRIOTIC FRONT

FURTHER REPLY TO CHAIRMAN'S STATEMENT OF

9th OCTOBER, 1979.

When the Conference adjourned we stated that we required clarification on the fund relating to the land question to which the Chairman had made reference. We have now obtained assurances that depending on a successful outcome of the Conference, Britain, the United States of America and other countries will participate in a multinational financial donor effort to assist in land, agricultural and economic development programmes.

These assurances go a long way in allaying the great concern we have over the whole land question arising from the great need our people have for land and our commitment to satisfy that need when in government.

In these circumstances and in clarification of our statement of the 11th of October, 1979, we are now able to say that if we are satisfied beyond doubt about the vital issues of the transitional arrangements, there will not be need to revert to discussion on the constitution including those issues on which we reserved our position.

19th October, 1979.

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CC(79) 29

COPY NO: 89

THIRTEENTH PLENARY SESSION

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Thirteenth Plenary Session of the
Conference, Friday 19 October

Lancaster House
19 October 1979

RESTRICTED

PRESENT:

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Mr R Luce

Sir A Duff

Mr D M Day

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr R D Wilkinson

Mr S J Gomersall

Mrs A J Phillips

Mr M C Wood

Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Chief K Ndiweni
Mr Z M Bafanah
Mr I D Smith
Mr D C Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr L G Smith
Air Vice Marshal H Hawkins
Mr D Zamchiya
Mr S V Mutambanengwe

Mr Mugabe, Mr Nkomo and Delegation

Mr J M Nkomo
Mr T G Silundika
Mr A M Chambati
Mr John Nkomo
Mr L Baron
Mr S K Sibanda
Mr E Mlambo
Mr W Musururwa
Miss T Siziba

Mr R G Mugabe
Mr E Z Tekere
Mr J M Tongogara
Mr H Ushewokunze
Mr D Mutumbuka
Mr J Tungamirai
Mr E Zvobgo
Mr S Mubako
Mr W Kamba

Secretariat

Mr J M Willson

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The session started at 10.35.

THE CHAIRMAN opened the meeting by asking Mr Mugabe and Mr Nkomo's delegation whether they had anything to communicate.

MR MUGABE said that, following their meeting with Lord Carrington the day before, his delegation had a statement which they would circulate after the meeting. He then read the statement, subsequently circulated as Conference Paper CC(79)30.

THE CHAIRMAN thanked Mr Mugabe and Mr Nkomo for their statement, which they had shown to him the day before. He then apologised over a misunderstanding which had taken place the previous night in connection with a press briefing given by Mr Fenn, who had been anxious not to misrepresent the position of Mr Mugabe and Mr Nkomo's delegation and had therefore quoted part of the statement.

The Chairman then suggested that the Conference turn to the transitional or interim arrangements, now that all the delegations had given their assent in their own way to the Independence Constitution, subject to satisfactory arrangements for the interim period. This was a very major step forward and he congratulated the other delegations on the readiness to compromise which they had shown. The Conference now had to decide how to bring the Constitution into operation. The Independence Constitution would provide for the legislature and the executive of Zimbabwe to derive their authority and powers from an

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expression of the popular will through an election. In other words, a legislature and an executive would be constituted in terms of the Independence Constitution as soon as elections had taken place. The Chairman then went on to refer to the war in Zimbabwe Rhodesia and to say that it would be no easy task to devise arrangements to bring it to an end, and to enable elections to be held. It was asking a great deal of both sides to accept and maintain a cease-fire, and to agree to compete instead by political means for the support of the people - and to agree to abide by the people's verdict, whatever it may be.

These difficulties, however, should not deter the Conference. As he had said when he opened the Conference on 10 September, if agreement could be reached there would be an end to the war, and Rhodesia would proceed to legal independence with a government formed by whichever parties and whichever leaders could show that they commanded the confidence of the people. The Chairman said he had no doubt at all that what the people of Rhodesia wanted was an end to the war and a chance to resolve their differences by political means, and that this was also the wish of neighbouring countries. He reminded the Conference again of the extent of international support which would be forthcoming for a solution on these lines.

In working out the Independence Constitution, delegates had been guided by the principle of genuine majority rule, with appropriate safeguards and reassurances for minorities. In discussing how to implement that Constitution, he suggested

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starting with the position which was agreed with all Commonwealth governments at Lusaka - that there had to be free and fair elections, properly supervised under the British Government's authority, with Commonwealth observers present. If agreement could be reached on that basis, the foundation would be laid for an end to the war, and for Rhodesian independence with the widest international support. This did not mean that any proposals which the delegations wished to make in connection with the pre-independence arrangements would be excluded. Progress was most likely to be made if the central issue were considered first, that is the manner in which the people of Rhodesia could be enabled to decide for themselves the government they wanted, under the terms of the Independence Constitution - ie the elections.

The Chairman hoped that the delegations would state their positions concerning what he had said and would then be prepared to address themselves first to the question whether they were prepared to accept the agreement reached at the Commonwealth Heads of Government meeting at Lusaka - that free elections should be held in which all parties should be able to participate, and which should be supervised under British Government authority.

MR NKOMO asked for clarification of the term "British Government authority". THE CHAIRMAN said that this referred to their responsibility for the conduct and supervision of the elections. MR MUGABE then referred to the proposals put forward earlier by his delegation (Conference Paper CC(79) 16) and added that the Conference would no doubt have studied these. His

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delegation would first wish to see the British views in writing in order to consider them.

THE CHAIRMAN said that he thought there should first be a preliminary discussion, and asked the Bishop for his views. BISHOP MUZOREWA said that free and fair elections had already been held in Zimbabwe Rhodesia. The Lusaka Communique had, however, called for another election, which his government had reluctantly accepted so that all the people of Zimbabwe could be included in the independence process. The new elections would be supervised by the British Government. If Mr Mugabe and Mr Nkomo's delegation were talking about their earlier paper (CC(79) 16), his delegation's view was that it was totally unacceptable as a way of achieving independence. DR MUNDAWARARA added that there had already been elections in Zimbabwe which his government would have to put aside. His delegation could not be expected to say how new elections should be held. This was up to the British Government. Zimbabwe Rhodesia had already gone through a transitional period and his delegation were now thinking of how to implement the British proposals for an Independence Constitution which they had accepted.

THE CHAIRMAN acknowledged the progress represented by the elections already held; he was grateful to Bishop Muzorewa's delegation for restating their position, and for their willingness to participate in elections under British Government authority. He then set out a number of points about the elections. The British delegation considered that the interim period should be
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long enough to organise free and fair elections, leading to independence as soon as possible. If it were too long, any cease-fire might break down and he thought a period of 2 months would therefore be appropriate. There were certain prerequisites: there had to be impartial administration of the elections, freedom of political activity during the interim period and free and uncensored access to the media for all parties. It would be for Britain to ensure that these conditions prevailed. The election arrangements would be supervised by the British Government through an Election Commissioner; he and his staff would be responsible for arranging everything in connection with the elections. It had been agreed at Lusaka that they were a British responsibility, and Commonwealth observers would provide the international element. A cease-fire was essential.

All parties had to be satisfied that the elections would be conducted impartially. To ensure this an Election Council would be set up, on which all parties would be represented and the Election Commissioner would be Chairman. The Council would consider complaints, but would not have executive authority.

The elections would be conducted according to the Independence Constitution. Full voter registration would not be possible, as this would take a year or more, but measures would be necessary to prevent voting frauds. The British delegation did not think delimitation of constituencies would be possible in the time available, and party lists would therefore be prepared on a regional basis. The choice of countries from which

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the Commonwealth observers would be drawn was a matter for political negotiation between the parties and the Commonwealth.

The Chairman then asked for comments. MR NKOMO asked for a document setting out the British proposals. THE CHAIRMAN then asked for comments from the other delegation.

DR MUNDAWARARA confirmed that his delegation would also like a document to study.

After some discussion, THE CHAIRMAN said that he had thought that both visiting delegations would have preferred a general discussion of the interim arrangements. If, however, they wanted to see the proposals on the table first, he would arrange for a document to be circulated as soon as possible.

It was agreed to adjourn until this could be done.

The session ended at 11.01.

CC(79) 28
CONFERENCE PAPER

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached statement, delivered by Mr Nkomo during the Twelfth Plenary Session, is circulated to delegates at the request of Mr Mugabe, Mr Nkomo and Delegation.

Lancaster House
11 October 1979

PATRIOTIC FRONT

REPLY TO CHAIRMAN'S STATEMENT OF

11th OCTOBER, 1979.

When this Conference opened, we made it very clear that we had come to participate in a serious effort to bring about a complete solution of all aspects of the Rhodesian problem through a single comprehensive agreement as opposed to fragmented or separate and private agreements between any parties to this Conference.

Any concessions we have made, and may make, on various aspects of the problem in the spirit of negotiation should not be interpreted as agreement on the whole or as an endorsement of any party to this Conference venturing separate or unilateral application of piecemeal arrangements. We also made it very clear, from the start, that we had come in a serious spirit to negotiate and not to be subjected to brinkmanship. This remains our position.

The issue before us is not just the 14 year-old problem of UDI, but the 80 year colonial problem of Rhodesia. For all that time our people have had to wait in subjugation while the "spirit of decision" failed to descend on successive British Governments; and yet after a mere four weeks we are being rushed into making decisions which could prove disastrous.

We have carefully considered your statement on Tuesday. We note and welcome the fact that you accepted in principle our proposal put forward in the papers we tabled on Monday, namely that the members

elected on the white roll should not be able to form a coalition government; we note also your acknowledgement of differences between us in some areas of the constitution. Except for such major issues as land, the unalterability of the Declaration of Rights in so far as it affects land and pensions, and the provisions relating to the four principal institutions of government (the Army, the Police, the Public Service and the Judiciary), over which we cannot but reserve our position because they have a vital connection with transitional arrangements, we are now satisfied that the conference has reached a sufficiently wide measure of agreement on the independence constitution to enable it to proceed to the next item on the agenda. If we are satisfied beyond doubt as to the vital issues relating to transitional arrangements, there may not be need to revert to discussion on the issues we have raised under the constitution.

We therefore urge, once again, that the Conference proceed without delay to discuss all the issues under the transitional arrangements.

/t.c.

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CC (79) 27
TWELFTH PLENARY SESSION

COPY NO:

89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Twelfth Plenary Session of the Conference,
Thursday 11 October

Lancaster House
11 October 1979

RESTRICTED

PRESENT:

UK Delegation

Lord Carrington (in the Chair)

Lord Harlech

Mr R Luce

Sir A Duff

Mr D M Day

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr P J Barlow

Mr R D Wilkinson

Mr S J Gomersall

Mrs A J Phillips

Mr M C Wood

Mr Mugabe, Mr Nkomo and Delegation

Mr R G Mugabe
Mr S V Muzenda
Mr E Z Tekere
Mr J M Tongogara
Mr H Ushewokunze
Mr D Mutumbuka
Mr E Zvobgo
Mr S Mubako
Mr W Kamba

Mr J M Nkomo
Mr J M Chinamano
Mr J W Msika
Mr T G Silundika
Mr A M Chambati
Mr L Baron
Miss T Siziba
Mr W Musururwa

Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr D C Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Air Vice Marshal H Hawkins
Mr D Zamchiya
Mr G Mutambanengwe

Secretariat

Mr J M Willson

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The session opened at 1501.

THE CHAIRMAN apologised for the break since the session held on 9 October, when he had asked Mr Mugabe and Mr Nkomo to give their answer today on whether they were prepared to accept the British proposals for an independence constitution, provided satisfactory interim arrangements were concluded, as indeed was the case with the Bishop's acceptance.

MR NKOMO then read out a statement which was subsequently circulated as Conference Paper CC (79) 28. THE CHAIRMAN asked if Mr Mugabe had anything to add; MR MUGABE confirmed that it was a joint statement.

THE CHAIRMAN said that the British delegation could not accept that the issues raised in the paper concerning land, the army, the police, the public service and the judiciary were connected with the transitional arrangements. He had however considered the problem of land and he recognised that a future government of Zimbabwe would wish to extend land ownership. The Government could of course purchase land for agricultural settlement and the independence constitution would make it possible to acquire under-utilised land compulsorily provided that adequate compensation was paid. Any resettlement scheme would clearly have to be carefully prepared and implemented to avoid adverse effects on production. The Zimbabwe Government might well wish to draw in outside donors, such as the World Bank, in preparing and implementing a full-scale agricultural development plan. The British Government recognised the importance of

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this issue to a future Zimbabwe government and would be prepared, within the limits of their financial resources, to help. The British Government would for instance be ready to provide technical assistance for settlement schemes and capital aid for agricultural development projects and infrastructure. If an Agricultural Development Bank or some equivalent institution were set up to promote agricultural development, including land settlement schemes, the British Government would be prepared to contribute to the initial capital. In their view, the costs would be very substantial indeed, well beyond the capacity of any individual donor country, and the British Government could not commit themselves at this stage to a specific share in them. They would, however, be ready to support the efforts of the Government of independent Zimbabwe to obtain international assistance for those purposes. The Chairman hoped that this would go some way to reassure the delegation of Mr Mugabe and Mr Nkomo about land.

The Chairman then asked for confirmation that the penultimate sentence on the last page of Conference Paper CC (79) 28 meant that Mr Mugabe's and Mr Nkomo's delegation accepted the proposed independence constitution, subject to the usual proviso about agreement on interim arrangements or whether it meant that they reserved the right to reopen these questions again. MR NKOMO replied that the paper was clear. THE CHAIRMAN again sought clarification. MR NKOMO then re-read the last sentence of the penultimate paragraph of his statement. After some further /attempts

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attempts at clarification THE CHAIRMAN suggested a short adjournment to enable the British delegation to study the paper.

The session adjourned at 1515.

The session recommenced at 1624.

THE CHAIRMAN explained that he had attempted during the adjournment to obtain clarification of the statement made by Mr Nkomo. Following a conversation during the adjournment with Mr Mugabe and Mr Nkomo, it seemed that the Patriotic Front were making reservations on a number of issues which by their own admission were of major importance. This was not what he thought had been agreed to at the opening of the Conference. The Chairman said that he had tried to be of assistance on the question of land, and he hoped that Mr Mugabe and Mr Nkomo would read his statement on possible British financial assistance carefully. It was necessary to reiterate what had been said at the beginning of the Conference - that negotiations should proceed on a step-by-step basis to avoid a repetition of what had happened at Geneva. The Chairman thought that it had been agreed to cover the constitution first, and to accept it if possible, subject to the satisfactory outcome of discussion on the interim arrangements. Consequently it was not possible for the British Government to accept the reservations contained in Mr Nkomo's statement; to do so would mean that major questions would remain on the table after discussion of the interim arrangements. There was therefore now no alternative but to adjourn. When the Conference resumed, it would have to be to

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discuss the arrangements for implementing the independence Constitution. Before this, he needed to know whether the Patriotic Front could accept the independence Constitution, and he hoped to receive a response in the near future.

BISHOP MUZOREWA asked what the Chairman meant when he referred to "the near future". THE CHAIRMAN said that this depended partly on the Patriotic Front; the Conference could not go on to discuss the interim arrangements until the Patriotic Front had accepted the Constitution, subject to the agreed provisos. MR MUGABE said that his delegation had already responded. THE CHAIRMAN explained that what he was now seeking was a response to what he had just said.

The session ended at 1630.

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

The attached statement, delivered by the Chairman during the Eleventh Plenary Session of the Conference, is circulated to delegates at his request.

Lancaster House
9 October 1979

LORD CARRINGTON:

As I promised yesterday, I have studied the statement by Mr Mugabe when he presented the Patriotic Front's reservations on the Independence constitution, and the amended constitution presented by Mr Nkomo which they have subsequently circulated. I welcome the Patriotic Front's readiness to accept different arrangements on issues including the Presidency, the composition of the House of Assembly and the Senate and the delaying powers of the Senate. I welcome the spirit of compromise which these changes represent. But there are nevertheless substantial differences remaining in crucial areas. The points of difference between us on the constitution have now been discussed fully and at considerable length by this Conference. Before we go on to discuss the pre-independence arrangements we really have got to reach agreement on the constitution. I will therefore this morning make a further attempt to deal with the issues that have been raised, and to explain to your delegation why on certain points we have not been able to accept your views.

The Patriotic Front say that the provision in the constitution which would confer citizenship on all those who held it at the date of Independence would create a serious problem for the future Government. The British Government does not take that view. On the contrary, we believe that the proposals made by the Patriotic Front would create a very real problem. They would have the effect of calling into question the status of a large number of those who currently hold

/citizenship

citizenship, affecting possibly I am told as many as 40,000 people of all races, including many from the neighbouring countries. These people would be subjected to long delays and a process of political vetting before their citizenship was confirmed. There can be no question of the British Government or Parliament accepting such a provision, which would create widespread uncertainty and insecurity, and, as I have said on a good many occasions, would run contrary to our objective at this Conference and at Independence - which is reconciliation.

The Patriotic Front have also reiterated their objections to the principle of dual citizenship. In our view their fears are misplaced. Many countries permit dual citizenship but international law does not recognise a right of protection for dual nationals while they are in the country of their other nationality. It will be open to the elected government to invite the House of Assembly to place a time-limit on the exercise of the right to retain dual citizenship.

The Patriotic Front have repeated their objection to the entrenchment of the main protective provisions of the Declaration of Rights. The Declaration of Rights is designed to protect the rights of all the citizens of Zimbabwe; and we believe that such protection is particularly necessary in a country which has been torn by conflict, and in which, for the future, all those who have been involved in or affected by that conflict need to be made to feel that their rights will be respected. The British Government regards it as essential that the Declaration of Rights be specially entrenched.

The provisions of the Declaration of Rights concerning land in our constitution strike a fair balance between the

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protection of private property and the legitimate desire of the Government to spread land ownership more widely. The Government of the day will be able to acquire under-utilised agricultural land for settlement against the payment of adequate compensation. The principle of compensation for those who are deprived of their land in such circumstances is an established one and there are parallels in other independence constitutions. A future Government would be able to appeal to the international community for help in funding acquisition of land for agricultural settlement. The amended version of the constitution circulated by the Patriotic Front last night would give the Government far more sweeping powers, would make compensation discretionary, and would omit pensions benefits from the protection of the Declaration of Rights and the British Government cannot accept those changes. In the circumstances of Rhodesia, it is reasonable that those whose land is compulsorily acquired for the benefit of others should have the right to use the compensation to enable them to make a fresh start, whether at home or abroad.

The British Government has made it clear, from the beginning of this Conference, its belief that pensions should be guaranteed under the constitution. If a new start is to be made, it cannot be by exacting retribution or perpetuating the divisions of the past 14 years, but by trying to establish a solid basis for restoring Rhodesia to prosperity and normality. Moreover, this is a provision for the future as much as for the past. If the independent Zimbabwe is to attract public servants of high calibre and of all races then pension rights, which have
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traditionally been a feature of Public Service in all countries, need to be guaranteed.

The Patriotic Front claim that the Independence Constitution lays the foundation for racially segregated schools. This is not so. But the right to establish private schools, which is accorded by other constitutions, or of parents to choose between State and private schools, will be preserved.

The Patriotic Front have raised objections to the provisions for Freedom of Movement. They suggest that provision for the right to leave Zimbabwe is a right without precedent in other independence constitutions. This is not the case. There is, to take just a few examples, similar provision in the constitutions of Fiji, Guyana, Mauritius and Dominica. The detailed provisions of the constitution will permit, in exceptional circumstances, a citizen legally to be deprived of his citizenship.

In their comments on the Executive, the Patriotic Front once again put forward the arguments for an executive Head of State. Few questions have been more exhaustively discussed in this Conference and, I must say again, the British Government reached its decision only after very careful consideration of all the arguments. What the Independence Constitution provides is, in our judgement, the system which, upon Independence, offers the best prospect of stability and reconciliation. The occasions on which the President will act in his own discretion will be strictly limited. Executive power will be in the hands of a Prime Minister accountable to Parliament. If the people of Zimbabwe themselves decide in the light of experience that some other system is to be preferred, then they can express
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their will through the elected representatives, their own elected representatives, and carry through the necessary modification of the constitution. I welcome as I did earlier on, the acceptance by the Patriotic Front, in their amended version of the constitution, of a constitutional Presidency. This is an important and positive step.

The British Government holds no particular view on whether the title of "Executive Council" or that of "Cabinet" should be used. It will be for the future Government and Parliament of Zimbabwe to decide.

The Patriotic Front have criticised the provision in the Independence Constitution that two members of the Public Service Commission must have held senior rank in the Public Service. This is designed to ensure that the Commission has at its disposal the advice of persons qualified and experienced in the public administration. It is open to the Prime Minister to recommend the appointment of other members, to make up a total of five. The British Government regards it as eminently desirable and reasonable that the President should have the power to issue instructions which ensure a fair representation of all groups of the population in the Public Service. There is an obvious need to achieve a more balanced representation in the services of the State.

The Patriotic Front also objected to the concept of a Defence Forces Service Commission. The British Government, however, take the view that a Commission will have a useful part to play in this as in other arms of the Public Service and for the limited role described in the constitution. The

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Patriotic Front contend that operational command of the Defence Forces should be vested in the Prime Minister. The Independence Constitution which we have tabled provides that the Commanders will be subject to general policy directions from the Prime Minister or other responsible Minister. This will ensure that the forces will be responsive to the control of the elected government.

The Patriotic Front suggest that provision be made to ensure that members of the House of Assembly elected on the White Roll should not form a coalition government. It would be indefensible to exclude a section of the population from a share in government. But the question which the Patriotic Front have raised with us is not a point of contention between the delegations. The British Government will therefore include a temporary provision that no party representing the majority of the White community should be able to form a coalition with any single party, except that with the largest number of Common Roll seats in Parliament.

The British Government note with appreciation the provision in the Patriotic Front's amended version of the constitution that the composition of the House of Assembly and of the Senate, as well as the definition of the delaying powers of the Senate, have been accepted. The British Government regard the decision to entrench White representation for seven years as a reasonable compromise. It has not been suggested to us that Coloured and Asian voters themselves object to the present arrangement whereby they vote on the White Voters Roll.

The provisions relating to pensions payable in respect of the service of a public officer will be those in force on the

/date

date on which an officer began his service or those made by any subsequent law which is not less favourable.

Transitional provisions will certainly be needed to bring the constitution into force. But the Patriotic Front have themselves put forward far-reaching proposals for the pre-independence arrangements which are bound to have implications for such provisions. I do not think that they can usefully be discussed further at this stage.

The points made by Mr Mugabe in the conclusion of his remarks yesterday again concern the pre-independence arrangements which will be discussed when there is agreement on the Independence Constitution, and I do not propose to comment upon them in detail at this stage. I repeat, however, the British Government's view that the provisions in the Independence Constitution for the Defence Forces, the Police and the Public Service in independent Zimbabwe will ensure both their effectiveness and their ultimate control by the democratically elected Government.

In conclusion, Mr Mugabe and Mr Nkomo proposed that, having taken note of their delegation's reservations, the Conference should now move on to discuss the second item on the agenda, that is the pre-independence arrangements. As I said at the beginning of my statement, and indeed as I said last night, I welcome the fact that the Patriotic Front have felt able to travel a considerable distance towards accepting the proposed Independence Constitution. But this really must not conceal the fact that some of the differences which remain are of fundamental importance and cannot simply be left on one

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side. As I have pointed out on earlier occasions, the constitution which the British Government has tabled already represents a compromise between the positions of the parties. There has been ample time and occasion for the discussion of all issues. The British Government have a full understanding of the position of the other delegations on these issues and, in their judgement, what they have put forward as an Independence Constitution is the only basis on which it is now possible to reach full agreement at this Conference. I understand that that point of view has been confirmed by Bishop Muzorewa this morning. We cannot now re-open these matters to meet the views of the Patriotic Front any further than we have gone to meet them already. Nor can we proceed with discussion of the pre-independence arrangements while either side reserves the right to re-open substantive issues on the constitution itself. This would mean that we had wasted four weeks in inconclusive discussion and would place the whole future of this Conference in doubt.

When the Conference cannot agree, when the parties cannot agree, we have an obligation to make clear what in our view is fair and reasonable and we have done so. It would be a tragedy for the people of Rhodesia if this Conference were unable to make further progress. To enable us to move on to the next stage, I must therefore ask the Patriotic Front to reconsider their position in the light of my statement today and let me know at our next meeting whether they can accept the Independence Constitution, subject to agreement on the pre-independence arrangements. I am well aware that there

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are areas in which they would have preferred different arrangements - and they have been set out very clearly; that is no less true of the Salisbury delegation who have, nevertheless, accepted these proposals. If the Patriotic Front can assure me at our next meeting that they will accept the constitution, it will be the British Government's intention to move on to discussion of the interim period and to establish, as the first step in that discussion whether delegations accept that there should be free and fair elections supervised under the British Government's authority. I shall look forward therefore to hearing your definitive reply on Thursday when I shall have returned from Blackpool and I hope that we shall then be able to move on to the next phase of our discussions, as we must, on the basis of acceptance of the Independence Constitution by all of us.

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CC (79) 25
ELEVENTH PLENARY SESSION

COPY NO 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the Eleventh
Plenary Session of the Conference,
Tuesday 9 October.

Lancaster House
9 October 1979

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PRESENT

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Mr R Luce

Sir A Duff

Mr D M Day

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr R D Wilkinson

Mr S J Gomersall

Mrs A J Phillips

Mr M C Wood

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Bishop Muzorewa and Delegation

Bishop A T Muzorewa

Dr S C Mundawarara

Mr E L Bulle

Mr F Zindoga

Mr G B Nyandoro

Rev N Sithole

Mr L Nyemba

Chief K Ndiweni

Mr Z M Bafanah

Mr D C Smith

Mr C Andersen

Dr J Kamusikiri

Mr G Pincus

Mr L G Smith

Air Vice Marshal H Hawkins

Mr D Zamchiya

Mr G Mutambanengwe

Mr M A Adam

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Mr Mugabe, Mr Nkomo and Delegation

Mr J M Nkomo	Mr R G Mugabe
Mr J M Chinamano	Mr S V Muzenda
Mr J W Msika	Mr J M Tongogara
Mr T G Silundika	Mr H Ushewokunze
Mr A M Chambati	Mr J Tungamirai
Mr L Baron	Mr E Zvobgo
Mr S K Sibanda	Mr S Mubako
Mr W Musururwa	Mr W Kamba

Secretariat

Mr J M Willson

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The session opened at 10.03.

THE CHAIRMAN said that Mr Nkomo's and Mr Mugabe's delegation had presented their revised proposals for an independence constitution the previous day (Conference Paper CC (79) 24). The British delegation had looked at these overnight and would now comment on them. He first asked whether Bishop Muzorewa wished to make any comment.

BISHOP MUZOREWA said that nothing had happened since the day before to cause his delegation to change their position (of having already accepted the British proposals). His statement of the day before therefore still held good.

THE CHAIRMAN read to the Conference a statement setting out the British Government's reactions to the revised proposals of Mr Mugabe's and Mr Nkomo's delegation.

MR NKOMO asked whether copies of the statement could be provided and the CHAIRMAN confirmed that it would be circulated (Conference Paper CC (79) 26).

It was agreed that the next plenary meeting would be held on Thursday 11 October at 10.30.

The meeting closed at 10.24.

no
CC(79) 24

COPY NO

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CONFERENCE PAPER

CONSTITUTIONAL CONFERENCE

LANCASTER HOUSE

LONDON

The attached document is circulated to delegates at the request of Mr Mugabe, Mr Nkomo and Delegation.

Lancaster House

8 October 1979

THE PATRIOTIC FRONT PROPOSALS

FOR THE
INDEPENDENCE CONSTITUTION
OF
ZIMBABWE

INTRODUCTORY

After careful study of the latest British Proposals, and in the light of all the discussions that have taken place, the Patriotic Front now presents its revised proposals for an independence constitution.

The constitution of Zimbabwe will ensure the genuine transfer of effective power to the people, and will provide for all citizens of the country to have security and not privilege under the Rule of Law, equal rights without discrimination, and the right to be governed by a democratically elected government of their choice on the basis of universal adult suffrage.

THE REPUBLIC

1. Zimbabwe will be a sovereign Republic and will have a National Seal and a National Emblem.
2. The constitution will be the supreme law of the Republic and will prevail over any other law to the extent that such other law is inconsistent with it.

THE DECLARATION OF RIGHTS

1. The declaration of rights will set out provisions on the following lines dealing with the substantive rights concerned.

A. The rights to life.

(1) It will be forbidden to deprive any person of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law in force in Zimbabwe of which he has been convicted.

(2) There will be exceptions for death caused as a result of reasonably justifiable force in defence of the person; or in order to effect a lawful arrest or to prevent the escape of a person in lawful custody; or to suppress a riot, insurrection or mutiny; or to prevent the commission of a criminal offence; or if the death is a result of a lawful act of war.

B. The right to personal liberty.

(1) It will be forbidden to deprive any person of his personal liberty save as maybe authorised by law in any of the following cases;

- (a) on conviction on a criminal charge or unfitness to plead to such a charge;
- (b) by order of a court or parliament for contempt;

- c. by order of a court to secure the fulfilment of any legal obligations;
- d. to bring the person concerned before a court or Parliament in execution of the order of a court or Parliament;
- e. on reasonable suspicion of that person's commission or threatened commission of a criminal offence;
- f. for the purpose of the education or welfare of a minor;
- g. to prevent the spread of disease;
- h. for the management of persons of unsound mind, drug addicts, alcoholics or vagrants in the interests of their own welfare or the protection of the community;
- i. in connection with immigration control, extradition and deportation.
- j. in the execution of a lawful order for the restriction of movement of a person and purposes ancillary thereto;
- k. for the purpose of ensuring the safety of aircraft.

(2) Any arrested or detained person will be entitled to be informed of the grounds upon which he is being held and to obtain and instruct a lawyer of his own choice. When the arrest or detention is for the purpose of bringing him before a court or is connected with his being suspected of a

criminal offence, he will be entitled to be brought before a court without undue delay and, if not tried within a reasonable time, to be released on bail, subject only to reasonable conditions. Any person wrongfully arrested or detained will be entitled to compensation.

C. Freedom from slavery and forced labour.

(1) It will be forbidden to hold any person in slavery or servitude or to require him to perform forced labour.

(2) The term forced labour will not include labour required in consequence of a sentence or order of a court; labour which a person in lawful custody may perform in the interests of hygiene, etc; labour required of a member of a military or similar force or in lieu of military service; or labour required during a public emergency where the requirement is reasonably justified for dealing with the emergency.

D. Freedom from torture and inhuman treatment.

It will be forbidden to subject any person to torture or punishment or other treatment of an inhuman or degrading description.

E. Freedom from deprivation of property.

(1). Every person will be protected from having his property compulsorily acquired, subject to the right of the government to acquire any property in the public interest. Compensation for property so acquired will be in the discretion of the government.

(2). Exception will be made for the taking of possession of property during a period of public emergency.

(3). The constitution will on the same basis as in other Declarations of Rights make clear that a number of transactions which might be considered to involve an element of compulsory acquisition will not be so regarded for the purposes of the Declaration of Rights.

F. Protection of privacy of home and other property.

(1). It will be forbidden to subject anybody to the search of his person or property or to entry on his premises without his consent.

(2). There will be an exception for any law, and for things done under such law, which makes reasonable provision in the interests of defence, public safety public order, public morality, public

health, town and country planning or the development and utilisation of mineral resources, or which makes reasonable provision to protect the rights and freedoms of others; or which authorises entry on a person's premises by a local government authority or of a public corporation in connection with any tax, etc, or in order to carry out work connected with any property, situated on those premises, that belongs to that local government authority or body corporate; or which authorises entry or search in pursuance of a court order for the purpose of enforcing the judgement or order of a court in any proceedings. Any such law (and the measures taken under it) will be tested against the criterion of what would be reasonably justifiable in a democratic society.

G. The Right to Protection of the Law

(1) Any person charged with a criminal offence will be entitled to a fair hearing within a reasonable time by an independent and impartial court. In connection with that hearing he will have the following specific rights:

- a. to be presumed innocent until proved guilty;
- b. to be properly informed of what he is accused of;
- c. to be given adequate time and facilities to prepare his defence;

- d. to be permitted to defend himself either in person or, at his own expense, by a legal representative whom he has chosen;
- e. to be able both to examine the witnesses for the prosecution and to call and examine his own witnesses on an equal footing with the prosecution witnesses;
- f. to refuse to give evidence himself (but without prejudice to the court's ability to draw inference from that refusal);
- g. to have an interpreter if he cannot understand the language used at the trial;
- h. to be present throughout the trial unless his own conduct renders this impracticable and the court has therefore ordered his removal; and
- i. to obtain a copy of any official record of the proceedings.

(2) It will be forbidden to create criminal offences with retrospective effect or to provide for increased penalties with retrospective effect.

(3) Except on the order of a superior court as a result of appeal or review proceedings, it will be forbidden to put a person on trial for a criminal

offence for which he has already been tried or for which he has stood in jeopardy of conviction at an earlier trial or for which he has been pardoned.

(4) Any court or other tribunal which is legally empowered to determine whether a person has a legal right or obligation will have to be established or recognised by law and to be independent and impartial; and any suit brought before any court or tribunal to obtain such a determination will have to be given a fair hearing within a reasonable time.

(5) All proceedings in any court or tribunal, including the announcement of the decision, will, unless the parties agree otherwise; have to be held in public, subject to the right of the court or tribunal to exclude anybody other than the parties and their legal representatives-

- (a) when publicity would prejudice the interests of justice;
- (b) in interlocutory proceedings or proceedings preliminary to trial;
- (c) in the interests of defence, public safety, public order, public morality, the welfare of minors or the protection of the private lives of persons concerned in the proceedings; or
- (d) when a Minister certifies that the disclosure of certain information will not be in the public interest.

H. Freedom of Conscience.

- (1) It will be forbidden, except with the consent of the person concerned, to interfere with anybody's freedom of conscience. This freedom will be defined as including freedom of thought and of religion, freedom to change one's religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate one's religion or belief in worship, teaching, practice and observance.
- (2) It will be forbidden to prevent any religious community from providing religious instruction for members of that community in the course of any education which it provides.
- (3) It will also be forbidden, except with the consent of the person concerned or his guardian, to require any person attending a place of education to receive religious instruction, or to take part in a religious observance, except when it relates to his own religion.
- (4) It will be forbidden to require anybody to take an oath which is contrary to his religion or belief or to take an oath in a manner which is contrary to his religion or belief.
- (5) There will be an exception to the foregoing for any law (or for any measure taken under it) which makes reasonable provision in the interests of defence, public order, public morality or public health- or which makes reasonable provision for the purpose of protecting the rights and freedoms of others, including their freedom from unsolicited interference by persons of other religions or beliefs. Any such law will be tested against the criterion of what would be reasonably justifiable in a democratic society.

I. Freedom of Expression

(1) It will be forbidden except with his own consent to interfere with any person's freedom of expression. This freedom will be defined as including freedom to hold opinions without interference, freedom to communicate ideas and information without interference, and freedom from interference with one's correspondence.

(2) There will be exceptions for any law or anything done under the authority of any such law which makes provision reasonably required in the interests of defence, public safety, public order, public morality or public health or reasonably required to protect the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, to prevent disclosure of information received in confidence, to maintain the authority and independence of the courts, to regulate administration of educational institutions in the interests of the persons receiving instruction therein, or to regulate the technical administration or operation of telephones, telegraphs, posts, wireless broadcasting or television or to prevent unlawful despatch with correspondence of other matter, or which imposes restriction on public officers. Such law or the things done under the authority thereof must be such as is reasonably justifiable in a democratic society.

J. Freedom of Assembly and Association

(1) It will be forbidden, except with the consent of the person concerned, to interference with anybody's freedom of assembly and association. This freedom will be defined as the right of every person to assemble freely and associate with others and in particular to form or belong to political parties or to trade

unions or other associations for the protection of his interests.

(2) There will, however, be an exception for any law (and for any measures taken under it) which makes reasonable provision in the interests of defence, public safety, public order, public morality or public health; or which makes reasonable provision to protect the rights and freedoms of others; or which imposes restrictions on public officers. Any such law (and the measures taken under it) will be tested against the criterion of what would be reasonably justifiable in a democratic society.

K. Freedom of Movement

(1) It will be forbidden to interfere with anybody's freedom of movement. This freedom will be defined as the right to move freely throughout Zimbabwe, the right to reside in any part of Zimbabwe, the right to enter Zimbabwe, and immunity from expulsion from Zimbabwe.

(2) There will, however, be an exception for any law (and for any measures taken under it)-

- a. which imposes reasonable restrictions on the movement within Zimbabwe of persons generally or any class of persons, or on their right to leave Zimbabwe, in the interests of defence, public safety, public order, public morality or public health;
- b. which imposes reasonable restrictions on the acquisition or use of land;
- c. which authorises a court to impose restrictions on any person's movement or residence within Zimbabwe or on his right to leave Zimbabwe, in consequence of his criminal

conviction or to ensure his appearance before a court to stand trial for a criminal offence or to give evidence in criminal proceedings or to answer extradition or deportation proceedings;

- d. which imposes restrictions on the freedom of movement of anybody who is not a citizen of Zimbabwe;
- e. which authorises the extradition of a person from Zimbabwe in respect of a criminal offence or his removal to some other country to serve his sentence for such an offence;
- f. which imposes restrictions, in order to secure the fulfilment of any person's legal obligations, on his right to leave Zimbabwe.

In all these cases, any such law (and any measures taken under it) will be tested against the criterion of what would be reasonably justifiable in a democratic society.

L. Protection from Discrimination

(1) It will be forbidden for any law to contain a provision which is discriminatory either of itself or in its effect or for any person who is exercising statutory powers or acting in the performance of the functions of any public office or public authority to treat anybody in a discriminatory manner. A law or an executive action of this kind will be regarded as discriminatory if it affords special advantages or imposes special disabilities upon persons by reason wholly or mainly of their race, tribe, place of origin, political opinions, colour or creed.

(2) There will be an exception to the foregoing for any law (or for any measures taken under it which are authorised by it expressly or by necessary implication) -

- a. which places certain restrictions on persons who are not citizens of Zimbabwe;
- b. which makes provision with respect to matters of personal law such as adoption, marriage, divorce, burial and testamentary succession;
- c. which makes provision for the application of their customary law in the case of members of particular race or tribe;
- d. which makes provision with respect to the standards or qualifications to be required of persons who are appointed to offices in the public service or in the service of a local government authority or of a public corporation. provided that these standards or qualifications do not themselves specifically relate to race, tribe, place of origin, political opinions, colour or creed.

M. Derogation during periods of Emergency.

The constitution will permit certain of the rights described above to be derogated from within specified limits during periods of emergency.

N. Provisions relating to Restriction and Detention.

There will be provision to ensure that any person whose freedom of movement is restricted or who is detained under the authority of any such law as is referred to in the preceding sections of the Declaration will have the right within specified periods to be furnished with a statement in writing in a language that he understands specifying the grounds upon which he is

restricted or detained, the right to have his case reviewed at specified intervals by an independent and impartial tribunal, the right to be accorded reasonable facilities to consult a legal representative of his own choice and to make representations to the authority by which he was restricted or detained. There will be provision that the details of the restriction or detention be published in the gazette.

O. Enforcement Provisions

The Declaration of Rights will contain provisions to ensure that the rights which it guarantees are fully justiciable. These provisions will declare that anybody who alleges that any of his rights under the Declaration has been, is being or is likely to be infringed - and in the case of a detained person, any other person on his behalf - will without prejudice to any other remedy which he may have, have the right to apply to the court for redress and the court will have jurisdiction to hear and determine that application. The court will be empowered to issue such orders as it may consider appropriate to enforce, or to secure the enforcement of, any of the provisions of the Declaration of Rights.

CITIZENSHIP

1. The critical date for automatic citizenship will be the 11th November 1965, the date of UDI.
2. (1) All persons who were citizens of Southern Rhodesia prior to the 11th November 1965, or were resident in Southern Rhodesia on that date and who acquired citizenship after the 11th November 1965 under the law in force at the 11th November 1965,

will automatically become citizens of Zimbabwe at independence, provided that at that date they were still citizens of Southern Rhodesia.

(2) Any person who was resident in Southern Rhodesia prior to UDI and who was purportedly granted citizenship under the 1970 Act will, provided he qualified under the 1963 Act, automatically become a citizen at independence (subject to a similar proviso as in (1)).

3. There will be the widest possible provisions regarding the rights to citizenship of children of Southern Rhodesians and Zimbabweans born outside the country.

4. A person with dual citizenship will cease to be a citizen of Zimbabwe unless he renounces his other citizenship within one year after independence or after attaining the age of eighteen years, whichever is the later.

5. Parliament will be empowered to make provision-
- a. for conferring citizenship of Zimbabwe by registration on persons in cases other than those described above;
 - b. for taking away the citizenship of a person who has acquired it otherwise than by birth or descent, provided that the loss of his citizenship will not render him stateless;
 - c. for the renunciation by any person of his citizenship of Zimbabwe; and
 - d. for regulating the procedure relating to the acquisition and loss of citizenship of Zimbabwe.

6. Provision will be made on Independence for the resumption of citizenship by persons who have forfeited it or been deprived of it since 11 November 1965.

THE EXECUTIVE

1. The President

(1) The President will be Head of State and Commander-in-Chief of the Defence Forces.

(2) The President will be elected by the members of Parliament. The qualifications for election as President will be the same as those required for election to the Senate.

(3) The President will hold office until he resigns or until a period of six years has elapsed. Thereafter he will be eligible for re-election for one further period of office.

(4) The President may be removed from office on the grounds of misconduct or inability to discharge efficiently the functions of his office. A motion for removal requires to be supported by not less than two-thirds of all the members of Parliament.

(5) Provision will be made for the discharge of the functions of the office of President during the President's absence or temporary incapacity.

- (6) The executive power of Zimbabwe will be vested in the President and unless otherwise provided will be exercised on the advice of the Cabinet or, if authorised by the Cabinet, the Prime Minister or other Minister. The limited circumstances in which the President will act on his own discretion in accordance with the Constitution, e.g. appointment of the Prime Minister and dissolution of Parliament following a vote of confidence, will be specified in the Constitution. (References to the exercise of the power of the President in this summary are references to the President acting on advice unless otherwise stated).
- (7) Provision will be made to keep the President informed of the general conduct of the Government.
- (8) The exercise of the Prerogative of Mercy will be vested in the President acting on the advice of the Prime Minister.
- (9) There will be vested in the President, acting on the advice of the Prime Minister, the power to declare a state of public emergency, or the existence of a situation which, if allowed to continue, may lead to a state of public emergency. Such a declaration will lapse unless it is approved within 14 days by the affirmative votes of more than one-half of the total membership of the National Assembly. The declaration may not continue in effect for longer than six months unless it is renewed by a similar resolution.

2. The Cabinet and Ministers

(1) The Cabinet will consist of the Prime Minister and other Ministers, appointed by the President on the advice of the Prime Minister.

(2) The President will appoint as Prime Minister the person who, in his opinion, is best able to command the support of a majority of the members of the National Assembly elected on the common roll. He will appoint and dismiss Ministers and Deputy Ministers on the advice of the Prime Minister. In the absence of the Prime Minister, the President may authorise another Minister to perform the functions of the Prime Minister. Provision will be made to ensure that the members elected on the reserved white roll cannot form a coalition government.

(3) A Minister or Deputy Minister will be a member of the Senate or the National Assembly.

(4) The Prime Minister may assign Ministers responsibility for the administration of a Government department. Where a Minister is charged with responsibility for a department of Government, it will be his duty to exercise general direction and control over that department. Secretaries will have the supervision of departments subject to that general direction and control.

(5) There will be an Attorney-General of the Republic who will be appointed by the President on the advice of the Prime Minister and who will be the principal legal advisor to the government. A person will not be qualified to be appointed to the office of a judge of the High Court.

(6) There will be a Director of Public Prosecutions whose office will be a public office. In the exercise of his powers he will not generally be subject to the direction or control of any other person or authority.

3. The Public Service

(1) There will be the following commissions:-

(a) A Public Service Commission;

(b) A Police and Prison Service Commission;

(2) Parliament will have power to create additional commissions.

(3) A commission will comprise a chairman and not less than three nor more than six other members who will be appointed by the President acting on the advice of the Prime Minister and who will be citizens of Zimbabwe. They will be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment as members.

(4) Subject to the other provisions of the constitution a commission will have vested in it the power to appoint persons to hold or act in public offices, to exercise disciplinary control over such persons, to remove them from office or to retire them in the public interest. A commission will also have power

to make regulations for administration and conditions of service of the service in question. Its decision will be reached by majority vote.

(5) Secretaries of ministries and the secretary to the Cabinet will be appointed by the President on the advice of the Prime Minister. Before tendering his advice the Prime Minister will consider any recommendations by the Public Service Commission. If he departs from such recommendation parliament will be informed.

(6) Heads of diplomatic missions will be appointed by the President on the advice of the Prime Minister after consultation with the appropriate commission.

(7) The following offices will not be under the jurisdiction of either of the above commissions;

- (a) offices on the President's personal staff; these will be within the President's personal control, although he may arrange with the Public Service Commission for regular public officers to be seconded to his staff;
- (b) offices within the jurisdiction of the Judicial Service Commission;
- (c) offices on the staff of the Senate and the National Assembly;
- (d) the office of Commissioner of Police;
- (e) the office of the Secretary to the Cabinet; Permanent Secretaries and Deputy Permanent Secretaries of Departments, and Zimbabwe Ambassadors abroad. The relevant powers will be vested in the President, acting after consultation with the Public Service Commission;
- (f) The Director of Public Prosecutions and the Auditor-General will be appointed by the Public Service Commission and will then be outside its jurisdiction, enjoying constitutional protection.

The incumbents of the foregoing excluded offices will vacate their offices prior to independence.

4. The Police Force.

(1) The Police Force will be under the command of the Commissioner of Police who will be appointed by the President on the advice of the Prime Minister. Before tendering his advice the Prime Minister will consider any recommendations made by a specially constituted Board. If he departs from such recommendations Parliament will be informed.

(2). The power to relieve the Commissioner of his appointment will vest in the President acting on the advice of the Prime Minister. Before tendering such advice the Prime Minister will consult the Cabinet. Parliament will be informed.

(3) Subject to such general directions of policy as may be given to him by the Prime Minister (or other responsible Minister), the Commissioner of Police will be responsible for the administration and operations of the Police Force. Appointments to the Police Force will be made on the advice of or by the Commissioner of Police.

(4). There will be a Police Service Commission which will consist of a chairman and not less than two and not more than four other members appointed by the President on the advice of the Prime Minister. The persons to be appointed as members of the Commission will be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment as members. At least one member will have held senior rank in the Police Service. The chairman of the Public Service Commission will be a member of the Police Service Commission ex officio.

(5). The functions of the Police Service Commission will be to consider grievances by members of the Police Force, to consider and, if it deems fit, to confirm any proposal to dismiss a member who has had more than two years' service, and to make regulations for the general well-being, good administration and conditions of service of the Police Force.

THE LEGISLATURE

1. The legislature of Zimbabwe will consist of the President and Parliament, which will comprise a Senate and a National Assembly.
2. An electoral law will make provision for the election of Senators and of members of the National Assembly.
3. The registration of voters in elections to the National Assembly and the conduct of these elections will be under the direction and supervision of an Electoral Commission.
4. There will be provision for the establishment of a Delimitation Commission to delimit the Common Roll and White Roll constituencies for general elections.
5. All citizens who are 18 years of age or over will be eligible to be enrolled as voters. There will be a Common Voters Roll on which will be enrolled all voters (including Coloured and Asian) except White voters who, for so long as there is provision for separate minority representation in Parliament, will be enrolled on a White Voters Roll.

Senate

6. There will be a Senate of 40 members chosen as follows:
 - a. ten will be elected by an electoral college consisting of members of the National Assembly elected on the White Voters Roll;
 - b. fourteen will be elected by an electoral college consisting of members of the National Assembly elected on the Common Voters Roll;
 - c. ten will be elected by the Council of Chief;
 - d. six will be nominated by the President on the advice of the Prime Minister.
7. To be qualified for election^{or}/appointment as a Senator a person must be enrolled as a voter, have attained the age of 40 and have been ordinarily resident in Zimbabwe for not less than 10 years during the last 20 years. The residence qualification will not apply during an initial period.
8. The Senate will elect a President and a Deputy President of the Senate. A Minister or Deputy Minister will not be eligible for these posts. The President of the Senate will vacate his office on the dissolution of Parliament and may be removed from office by a resolution of the Senate supported by not less than two-thirds of all the members.
9. There will be a Senate Legal Committee with powers of scrutiny over legislation.

National Assembly.

10. The National Assembly will consist of 100 members elected

as follows:

- a. 80 members will be elected by voters on the Common Voters Roll;
 - b. 20 members will be elected by voters on the White Voters Roll.
11. To be qualified for election to the National Assembly a person must be enrolled as a voter, have attained the age of 21 and have been ordinarily resident in Zimbabwe for not less than five years during the last 20 years. The residence qualification will not apply during an initial period.
12. The National Assembly will elect a Speaker and a Deputy Speaker. A Minister or Deputy Minister will not be eligible for these posts. The Speaker will vacate his office on the dissolution of Parliament and may be removed at any time by a resolution of the National Assembly supported by not less than two-thirds of all the members.
13. A general election for members of the National Assembly must be held within not more than four months of the dissolution of Parliament. Election of members of the Senate will follow within 28 days.

Procedure in Parliament

14. The President or Deputy President of the Senate will usually preside over the deliberations of the Senate. The Speaker or Deputy Speaker will usually preside at sittings of the National Assembly.

15. The quorum of the Senate will be one-third of all its members. The quorum of the National Assembly will be one-fourth of all the members.

16. There will be a Secretary to Parliament. He and the members of his staff will be public officers.

17. There will be provision for the privileges and immunities of members of Parliament.

18. The President will have the right to address either House of Parliament or a joint meeting of both Houses.

19. A Minister or Deputy Minister will have the right to sit and speak both in the Senate and in the National Assembly but will only have the right to vote in the House of which he is a member.

20. Subject to the provisions of the Constitution, the Senate and the National Assembly will be empowered to regulate their own procedure.

Legislative Powers of Parliament

21. Subject to the provisions of the Constitution, Parliament will have full legislative powers for Zimbabwe.

22. The legislative powers of Parliament will be exercised through Bills passed by the National Assembly and (subject to the National Assembly's power to over-ride it after a

period of delay) the Senate, and assented to by the President.

23. Parliament will not be entitled, except upon the recommendation of the Prime Minister signified by him or by another Minister, to proceed upon a Bill which imposes or increases taxation or imposes a charge on public funds or authorises expenditure from public funds or compounds or remits a debt to the Government.

24. All legislation will be introduced in the National Assembly. It must be debated and disposed of in the Senate within the prescribed period. If a bill is amended or rejected by the Senate it will be returned to the National Assembly. If the National Assembly reaffirms the bill or rejects the amendment proposed by the Senate without adding any fresh matter the bill will be presented directly to the President for his assent. The prescribed period will be eight sitting days in the case of a Money Bill, 90 days in the case of an Ordinary Bill (that is, a bill not amending the Constitution and not a Money Bill), and 180 days in the case of a bill to amend the constitution.

25. Save as is otherwise specifically provided in the Constitution the National Assembly will decide all questions by a simple majority of the votes of the members present and voting. The Speaker or other member presiding will have neither an original vote nor a casting vote; if the votes are equally divided on any question, the motion will be lost.

26. Parliament will be able to amend any of the provisions of the Constitution. Any Bill to that effect must be published in the Gazette at least 30 days before first reading in the Senate or Assembly.

27. Except as provided in paragraph 28, a Bill to amend the provisions of the Constitution will require the votes of not less than two-thirds of the members of the National Assembly and, subject to paragraph 24, the votes of not less than two-thirds of the members of the Senate.

28. The provisions of the Constitution relating to the separate representation of the White minority in Parliament will be unamendable for a period of five years. At the end of five years these provisions will be capable of amendment as in paragraph 27 above.

Summoning, Prorogation and Dissolution of Parliament

29. Each session of Parliament will be held at such place and will begin at such time as the President may determine but not more than six months will be permitted to elapse between the end of one session and the beginning of the next.

30. The President will be able to prorogue or dissolve Parliament at any time on the advice of the Prime Minister.

31. If the House of Assembly at any time passes a motion of no confidence in the Government and the Prime Minister does not within three days resign or ask for a dissolution,

the President will be required to dissolve Parliament.

32. Unless it is already dissolved, Parliament will stand dissolved automatically at the end of five years from the date of the first sitting of the House of Assembly after the previous dissolution. There will be provision for limited extension of Parliament's life if Zimbabwe is at war or in periods of emergency.

THE JUDICATURE

1. There will be a High Court of Zimbabwe, consisting of an Appellate Division and a General Division. It will have unlimited original jurisdiction in both civil and criminal matters and such other jurisdiction as may be conferred on it by the Constitution or any other law. Appeals will lie from decisions of the General Division to the Appellate Division.

2. There shall be a Chief Justice and other judges of the High Court.

3. The Chief Justice and the other judges of the High Court will be appointed by the President, acting on the advice of the Prime Minister. Before tendering his advice the Prime Minister will consider any recommendations from the Judicial Service Commission. If he departs from any such recommendations Parliament will be informed before the appointment is made.

4. A person will not be qualified to be appointed as a judge of the High Court unless-

- (a) he is or has been a judge of a superior court in a country in which the common law is Roman-Dutch or English and English is an official language; or
- (b) he is, and has been for not less than seven years, qualified to practise as a advocate in Zimbabwe or in a country in which the common law is Roman-Dutch or English and in any such case English is an official language. Experience in a country where the common law is English will count only in the case of citizens of Zimbabwe.

5. If the office of Chief Justice is vacant or the Chief Justice is temporarily unable to perform the functions of his office, the President will be able to designate one of the other judges of the High Court to act in his place.

6. A judge of the High Court will not be removable from office before reaching retiring age except for physical or mental incapacity or for misconduct. If the President considers that the question of removing a judge on one of these grounds ought to be investigated, he will appoint a tribunal consisting of a Chairman and two other legally qualified members. When that tribunal has enquired into the matter, it will report to the President and advise him whether to refer the question of the judge's removal to the Judicial Service Commission. If the Commission recommends that the President should remove the judge from office, the President will do so. When the case of the judge is being investigated by the tribunal, the President may suspend him from performing the functions of his office.

7. There will be a Judicial Service Commission, consisting of the Chief Justice as the chairman, the Chairman of the Public Service Commission,

a legally qualified person appointed by the President and a member appointed by the President, in each case acting on the advice of the Prime Minister. The Prime Minister after consultation with the Judicial Service Commission will advise the President on the appointment of judges of the High Court and of judicial officers presiding over certain courts exercising specified functions.

8. In carrying out its functions the Judicial Service Commission will not^{be} subject to direction or control by any other person or authority.

9. The power to appoint, exercise disciplinary control over and remove from office magistrates and certain other officers e.g. registrars, connected with the High Court will rest with the Public Service Commission.

THE DEFENCE FORCES

1. All armed forces will be regulated by law. The defence forces will consist of the Army, the Air Force and any other branch established by law.

2. There will be a Commander of each branch. Each Commander will be appointed by the President, acting on the advice of the Prime Minister. Before tendering his advice the Prime Minister will consider any recommendations made by a specially appointed Board. If he departs from such recommendations Parliament will be informed.

3. The power to relieve a Commander of his appointment will vest in the President acting on the advice of the Prime Minister. Before tendering his advice the Prime Minister will consult the Executive Council. Parliament will be informed.

4. The operational command of the Defence Forces will vest in the Prime Minister or other Minister responsible for Defence. He also will be responsible for the administration and discipline of the Defence Forces.

FINANCE

1. There will be a Consolidated Revenue Fund into which all Government revenues will be paid unless they are payable by law into some other fund established for a specific purpose or are revenues that may, by law, be retained by the authority that received them for the purpose of defraying its own expenses.
2. No monies will be withdrawn from the Consolidated Revenue Fund except to meet expenditure charged on that Fund by the Constitution or another law; or where the withdrawal has been authorised by an Appropriation Act or a supplementary or additional estimate approved by or under an Act of Parliament.
3. No monies will be withdrawn from any public funds of Zimbabwe other than the Consolidated Revenue Fund unless authorised by or under a law.
4. The Minister for Finance will be required to lay before the National Assembly estimates of the revenues and expenditure of Zimbabwe for the next financial year. The expenditure included in those estimates (other than expenditure charged on the Consolidated Revenue Fund) will then have to be authorised by an Appropriation Act.
5. Provision will be made for supplementary or additional estimates to be laid before the National Assembly for expenditure not covered by the Appropriation Act or if unauthorised expenditure has taken place.
6. There will be provision under which, if the Appropriation Act for any financial year has not come into operation by the beginning of that year, the President will be permitted to authorise the withdrawal of monies from the Consolidated Revenue Fund for the purpose of meeting necessary expenditure until the Appropriation Act comes into operation, whichever is the earlier.
7. The public debt of Zimbabwe, i.e. all debt charges for which Government of Zimbabwe is liable, will be charged on the Consolidated Revenue Fund.

8. There will be a Comptroller and Auditor-General who will be appointed by the President on the advice of the Prime Minister after consultation with Public Service Commission. It will be his duty:-

- a. to satisfy himself that any proposed withdrawal from the Consolidated Revenue Fund is legally authorised and, if so satisfied, to approve it;
- b. to satisfy himself that all disbursements and expenditure from public funds are covered by proper authority; and
- c. at least once a year to audit all Government accounts, including the accounts of all courts which are paid for out of Government funds and the accounts of any Commission established by the Constitution, and to report on that audit to the National Assembly through the Minister of Finance.

For this purpose he will be entitled to have access to all relevant books and documents. In the exercise of his constitutional functions, he will not be subject to the direction or control of any other person or authority.

9. The Comptroller and Auditor-General will be removed from office only by the affirmative vote of an absolute majority of the National Assembly.

Pension Rights of Public Officers

1. The Constitution will contain provisions relating to pensions payable in respect of service of a public officer. Parliament will have power to legislate as to the classes of officers entitled to pensions.

2. The pension benefits to be paid to a public officer will be those applicable at the time he began his service or those provided under any subsequent law not less favourable to him.

3. All pensions benefits payable by the State will be a charge on the Consolidated Revenue Fund.

4. Any person who is entitled to receive pension benefits may, if he is ordinarily resident outside Zimbabwe, have them remitted to him outside Zimbabwe free of any deduction, charge or tax in respect of its remission.

OMBUDSMAN.

1. There will be an Ombudsman, who will be appointed by the President on the advice of the Judicial Service Commission.

2. The duty of the Ombudsman will be to investigate complaints against action taken by any employee of the Government, other than a member of the Defence Forces or Police Force, or by any employee of a local authority, where no legal redress or right of appeal to a court exists.

ORDER IN COUNCIL

1. Existing Laws.

There will be a general validation of existing laws, which for this purpose are pre-UDI laws and post-UDI purported laws, subject to the specific repeal or amendment of offending legislation as detailed in a schedule. There will in addition be a blanket or "long-stop" invalidation of any legislation inconsistent with the constitution.

2. Existing Officers.

Existing officers in the public service may be required to take fresh oaths of allegiance. Notwithstanding, an officer's appointment may be terminated within one year of independence by three month's notice.

3. Existing Judges and Magistrates.

All judges and magistrates will cease to hold office on independence, but will be at liberty to apply for re-appointment within one month, There will be a saving to enable a judicial officer to complete civil proceedings the hearing of which commenced before independence.

4. Obligations of Government of Zimbabwe.

Obligations arising out of contracts and agreements entered into in furtherance or support of the rebellion will not be accepted by the government of independent Zimbabwe.

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CONFERENCE PAPER

CONSTITUTIONAL CONFERENCE

LANCASTER HOUSE

LONDON

The attached statement, delivered by Mr Mugabe during the Tenth Plenary Session of the Conference, is circulated to delegates at the request of Mr Mugabe, Mr Nkomo and Delegation.

Lancaster House

8 October 1979

PATRIOTIC FRONT
RESPONSE TO
BRITISH CONSTITUTIONAL PROPOSALS
FOR ZIMBABWE

1. INTRODUCTION

1.1 We find the British proposals defective in many respects. We do not however propose to embark on a comprehensive detailed analysis; our main comments will be directed to the issues we regard as major.

1.2 The major issues fall into two categories:
(a) those which are objectionable on their face;
(b) those which cannot be judged except in relation to the interim arrangements.

2. CITIZENSHIP

2.1 In paragraph 1 of Section B the British Government has maintained its insistence on according automatic citizenship to all persons who were purportedly granted citizenship between UDI and independence. This is an attempt to force us to accept as citizens people who came to Southern Rhodesia after UDI in order to support the rebellion by serving in the army, the police force, the prison service and the civil service or as actual mercenaries. This will create a serious security problem for the future government.

2.2 In paragraph 7 Britian has insisted on adhering to the principle of dual citizenship, in spite of our very reasonable suggestion that dual citizens should, within one year, elect which citizenship to retain. We cannot accept that a person can at one and the same time be loyal to Zimbabwe and South Africa or any other hostile state.

It must be emphasised also that the protection of one's citizens is being used in Africa as a pretext for military intervention by foreign powers. Only last year France and Belgium invaded the Shaba Province of Zaire ostensibly in order to rescue their nationals. And South Africa, which has many citizens in Rhodesia and is already heavily involved militarily with the Smith/Muzorewa regime, has openly stated that it reserves the right to intervene in an independent Zimbabwe.

3. DECLARATION OF RIGHTS

3.1. The British proposal (Section E, paragraph 30) to make the principal provisions in the Declaration of Rights unamendable for ten years except by a unanimous vote of the National Assembly is without precedent in Commonwealth independence constitutions. It places intolerable restrictions on the sovereignty of the parliament of Zimbabwe; the government will be unable to respond to legitimate popular demands. It effectively grants a veto to the minority, and undermines the very spirit of reconciliation which Britain has repeatedly stressed.

A Declaration of Rights which cannot respond to legitimate popular pressure will inevitably break under that pressure.

3.2. Freedom from Deprivation of Property.

3.2.1 The basic objective of the struggle in Zimbabwe is the recovery of the land of which the people were dispossessed. This dispossession, always without compensation, is not a thing of the distant past; it is something which in most cases is within the memory of people now living. And even more immediately, there has been during the present war the most widespread use of punitive communal confiscation and destruction of property.

3.2.2 This is the problem with which the Government of the new Republic of Zimbabwe will have ^{to} deal. That Government must have the right to acquire any land in the public interest, compensation being ^{at} the discretion of the Government.

3.2.3. The British provisions convert the freedom from deprivation of property into a right to retain privilege and perpetuate injustice. They are unreasonably restrictive as to the purposes for which land can be acquired and the stringent provisions as to compensation are designed to maintain the status quo.

3.2.4. The British propose in paragraph V (3) to permit the the remittance to any country outside Zimbabwe of compensation paid for land acquired from a citizen or permanent resident. To encourage citizens and permanent residents to expatriate their capital is quite iniquitous; far from encouraging a spirit of reconciliation it accords to the wealthy a privilege which is normally accorded only to foreigners. It could also have disastrous consequences for the economy.

3.2.5. We object strongly to the British proposals (in paragraph (5)) to include pension rights in the unalterable provisions of the Declaration of Rights. This was never raised during discussions and its inclusion now is an improper attempt to convert a provision which was discussed under section H into an unalterable provision.

3.3. Freedom of Expression.

The proposal in paragraph IX.2. to permit "any person or group" to establish a school lays the foundation for racially segregated schools; it is without precedent in Commonwealth independence constitutions.

3.4. Freedom of Movement.

3.4.1. The proposal in paragraph XI.1. to include in the definition of freedom of movement the right to leave Zimbabwe involves the right to be granted a passport; again it is without precedent.

3.4.2. The proposal in paragraph XI.1. to extend the immunity from expulsion to permanent residents practically nullifies the effect of paragraph 6.b. of section B. Under that paragraph parliament is empowered to make provision for taking away the citizenship of a person who has acquired it by registration or naturalisation; but under paragraph XI.1. that person, however serious a threat to security he might be, is granted immunity from expulsion.

4. THE EXECUTIVE

4.1 The Presidency

4.1.1 We maintain that our proposals for an executive Head of State produce a more democratic and stable situation than the British proposals for a constitutional Head of State. Under our proposals the executive President is elected directly by the people and is also fully accountable to Parliament.

4.1.2 It is a myth that a constitutional Head of State is above politics; in fact, in times of political crisis he exercises very real and crucial powers, but without being accountable to either the people or Parliament.

4.2 The proposal (section D.ii) to use, in an independence constitution, the colonial name "Executive Council" instead of "Cabinet" is inappropriate.

4.3 The Public Service

4.3.1 The proposal (paragraph D. iii. 2) that the Chairman and one other member of the Public Service Commission must have held senior ranks in the Public Service has never been put to us, either on paper or in discussion. It is designed to ensure that two members of the Commission, consisting of a minimum of three and a maximum of five members, will be drawn from the existing Public Service, which has supported the rebellion throughout, and will be white for many years to come.

4.3.2 The foregoing proposal is particularly objectionable in the light of further proposals that the chairman of the Public Service Commission will be the chairman of both the Police Service Commission (D.iv.4) and the Defence Forces Service Commission, (G.5.) and a member of the Judicial Service Commission (F.8).

4.3.3 The inclusion of mandatory directions (D.iii.4) to a Public Service Commission concerning appointments renders their decisions justiciable and is highly undesirable.

4.4 The Police Force
The comments relating to the Public Service apply here also.

4.3.3 The inclusion of mandatory directions (D.iii.4) to a Public Service Commission concerning appointments renders their decisions justiciable and is highly undesirable.

4.4 The Police Force
The comments relating to the Public Service apply here also.

5. THE DEFENCE FORCES

5.1 The concept of a Defence Forces Service Commission (G.5) is without precedent in Commonwealth independence constitutions and is objectionable.

5.2 The proposal (G.4) to take the operational command of the various branches of the Defence Forces out of the hands of the Prime Minister or other Minister responsible for Defence and to place it in the hands of the ^{an} ~~Comm~~[^]nders is again without precedent and highly dangerous; it is a recipe for a coup. The operational command of the Defence Forces must be directly in the hands of the elected government.

6. PARLIAMENT

6.1 We have conceded under protest, because it is a perpetuation of racism, the principle of separate representation. It is now essential that provision be made to ensure that the members elected in the reserved white roll cannot form a coalition government; to permit them do so would be to place this minority in the position of king-makers. This necessary limitation on the incidents^{ce} of what is no more than a constitutional privilege is significantly lacking from the British proposals.

6.2 The proposal to make reserved white representation unamendable for seven years is excessive.

6.3 The proposal to exclude from the common roll the Coloured and Asian citizens is made without their consent. The whites have chosen to separate themselves from the people, but the Coloured and Asian citizens have not.

7. FINANCE

7.1 Pension Rights of Public Officers.

We cannot comment on the provision "relating to pensions payable in respect of service of a public officer" without details of what is proposed.

8. ORDER IN COUNCIL

We note that once again the British proposals have carefully omitted any reference to the Order in Council, which contains the transitional provisions and which both as a matter of law and as a matter of political realities forms an integral part of the independence constitution.

9. CONCLUSION

We have detailed our major reservations concerning the areas in which the proposals are defective on their face. In relation to the public debt and the four essential institutions of government, namely the Defence Forces, the Police, the Public Service and the Judiciary, the effect of the proposals can only be assessed if we know the details of the transitional provisions. The British proposals have already revealed several indications that their intention is that the future government of Zimbabwe should inherit the existing personnel in these essential institutions; these people were the main pillars of support for the rebellion and resistance to the change to genuine majority rule. Their loyalty to the government of an independent Zimbabwe cannot be taken for granted. And a public service which is suspect in the eyes of the public and does not command its respect and confidence makes it impossible to govern. This is why we have maintained from the outset that the

provision in these areas can only be judged together with the corresponding interim and transitional provisions.

We have detailed our major reservations. We propose that we now proceed to discuss the second item on the agenda, the interim arrangements.

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CC(79)22
TENTH PLENARY SESSION

COPY NO:

89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE

LONDON

Summary of the proceedings of
the Tenth Plenary Session of
the Conference, Monday
8 October

Lancaster House
8 October 1979

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PRESENT

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Mr R Luce

Sir A Duff

Mr D M Day

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr P J Barlow

Mr A M Layden

Mrs A J Phillips

Mr S J Gomersall

Mr M C Wood

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Mr Mugabe, Mr Nkomo and Delegation

Mr R G Mugabe

Mr S V Muzenda

Mr E Z Tekere

Mr J M Tongogara

Mr H Ushewokunze

Mr E Zvobgo

Mr S Mubako

Mr W Kamba

Mr J M Nkomo

Mr J M Chinamano

Mr J W Msika

Mr T G Silundika

Mr A M Chambati

Mr L Baron

Mr C Ndlovu

Mr W Musururwa

Miss T Siziba

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Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Mr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Mr Z M Bafanah
Mr D C Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Air Vice Marshal H Hawkins
Mr D Zamchiya
Mr G Mutambanengwe

Secretariat

Mr J M Willson

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The session opened at 1734.

THE CHAIRMAN said that the delegation of Mr Mugabe and Mr Nkomo had asked for a postponement, and this was the earliest time at which he had been able to arrange a meeting. He then recalled the British proposals which had been tabled on 3 October, and said that on 5 October Bishop Muzorewa's delegation had announced its acceptance of these proposals. He then asked for the reaction of the delegation of Mr Mugabe and Mr Nkomo.

MR MUGABE said that his delegation had studied the refined proposals (Conference Paper CC(79) 19) which he understood did not purport to be a final document. He then read a statement setting out his delegation's reaction to the proposals, which he asked to be tabled (Conference Paper CC (79) 23).

In reading the statement, Mr Mugabe added the following sentences at the end of paragraph 4.3.2:

"Mr Chairman, your proposals state in categorical terms that the Chairman has got to be drawn from senior ranks and, as we know, at the present moment there are hardly any Africans in what one might call the senior ranks of the Civil Service. And so the intention here is that we must be saddled with the present members of the Civil Service who hold senior rank. That to us is an attempt to perpetuate the present system in the Civil Service".

Mr Mugabe went on to state his delegation's regret at the way in which the British proposals had been presented. They were in the main a restatement of the original outline proposals (Conference Paper CC (79) 2). He added that his statement did not constitute a complete reply.

/MR NKOMO

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MR NKOMO said that his colleague had covered the major points of the Patriotic Front reservations. They had studied the British proposals carefully and with interest. They now wished to table an amended version of their previous draft (Conference Paper CC (79)11), to take account of the subsequent discussions (Conference Paper CC (79) 24).

Mr Nkomo said that he and his delegation had come to the Conference in order to produce a document genuinely capable of redressing the problems of the people of Zimbabwe. Their aim was not just to end sanctions or the war, but to negotiate a document which would confer real independence. This would in turn promote peace and stability in Zimbabwe, in the region, in Africa and globally. Britain had given independence to South Africa in 1910, but the problems of that country had since increased every day. Independence had been given to Israel, but the Palestinian people still lived in misery. In Cyprus, independence had not meant much. His delegation did not want to find their country in the same position and they therefore wished the discussions to produce a document which would prevent conflict. For this reason his delegation was tabling an amended version of their draft constitution. A number of points in the latter reflected areas of movement towards the British position and vice versa. There were still areas where his delegation maintained their reservations, but these should not hold the Conference back from proceeding with the second part of the agenda.

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THE CHAIRMAN asked whether Bishop Muzorewa would like to amplify his acceptance of the British constitutional proposals.

BISHOP MUZOREWA said that he wished to confirm his public announcement of Friday 5 October, namely that he and his delegation accepted the British Government's constitutional proposals. He emphasised that this acceptance was conditional upon agreement on suitable and satisfactory arrangements for bringing the independence constitution into effect and on the lifting of sanctions. He agreed with the Chairman that the British proposals were fair and reasonable and constituted the best possible attempt to provide a basis for a settlement; the question of sanctions, however, was of vital importance. There was no longer any justification for their continuation: more than enough had been done to meet the requirements of successive British Governments. The people of his country could no longer be deprived of the right to return to economic normality. A clear and categorical undertaking that sanctions would immediately be lifted was therefore required.

His delegation wished to proceed with the arrangements for the implementation of the new constitution. He therefore called upon the Chairman to move on to the next stage, discussion of how to implement the constitution. The Conference was already in its fifth week and he wanted to complete deliberations with the least possible delay.

THE CHAIRMAN noted that the Patriotic Front had tabled two documents: expanded proposals for a new constitution for Zimbabwe and a response to the British proposals. He said that he would

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look at these with care, but felt that he should make three points. First, there was, in his view, no possibility of obtaining agreement on a document different from that which he had put forward; he felt that this was reasonable in the light of the time already spent in discussion. Secondly, Bishop Muzorewa had accepted the British proposals, albeit with qualifications similar to those of Mr Nkomo and Mr Mugabe concerning agreement on satisfactory transitional arrangements. It would now be difficult to turn the constitution upside down. The points now raised by Mr Mugabe and Mr Nkomo seemed in any case to be largely a reiteration of those made during bilateral meetings. Any amendment to the British proposals would therefore entail Bishop Muzorewa's agreement. Thirdly, the British delegation had made it perfectly clear from the beginning of the Conference that they would not be prepared to open discussion on the pre-independence arrangements until agreement had been reached on the constitution.

Subject to these caveats, the Chairman said that he would give a considered reply the next day to the papers tabled by Mr Mugabe's and Mr Nkomo's delegation.

It was agreed to resume at 1000 on Tuesday 9 October.

The session ended at 1812.

CC(79) 21

COPY NO

89

CONFERENCE PAPER

CONSTITUTIONAL CONFERENCE

LANCASTER HOUSE

LONDON

The attached statement by the Chairman, delivered during the Ninth Plenary Session of the Conference, is circulated to delegates at his request.

Lancaster House

3 October 1979

LORD CARRINGTON:

It is now seven weeks since the British Government set out the principles on which we believe the future constitution should be based. Three weeks ago in this Conference, in response to requests for clarification of our proposals, we circulated a full summary of a proposed independence constitution. We have discussed our proposals exhaustively with the other delegations in plenary and in bilateral meetings. We have considered carefully the alternative proposals and suggestions which have been put to us.

Many of the arguments advanced in these discussions had a good deal to commend them. Had it been our task to devise a constitution for a state with no history, no background of discord and civil war, it would no doubt have been very easy to start afresh and to proceed on some other basis.

But a constitution for Rhodesia must take account of the circumstances which exist in that country. Our objective must be to agree a framework within which, against that background of conflict, a truly multi-racial society based on reconciliation and mutual confidence can exist. This means, first, that the constitution must provide for genuine majority rule. The British Government have made clear that we will not be prepared to enact an independence constitution on any other basis. But, second, the need for reconciliation and to bring an end to the present conflict means also that there must be adequate reassurance to the members of the minority community

/that

that, during a period of adjustment, their interests will continue to be represented and expressed.

It is our strong conviction that it is wrong for the members of that community, acting alone, to be able to block constitutional amendment, or to exercise effective control over large areas of legislation. But we believe that the members of that community have a vital part to play in the future development and prosperity of the independent state. In striking a balance, we have made clear our view that the representatives of the white community should no longer have a blocking power and that the proportion of seats reserved for them should be set at 20%. The figure for constitutional amendment should be 70%. In addition the government must be in a position to exercise appropriate control over the armed forces and the public services.

Bishop Muzorewa's delegation have said that they accept these proposals, and I am grateful for the positive attitude which has been shown by them in these negotiations. The delegation led by Mr Nkomo and Mr Mugabe have, with reluctance, but in a spirit of compromise, accepted that for some years after independence, 20% of the seats should be reserved for members of the white community. I recognise that this was a difficult decision for them; I am glad that they have accepted that provision, and this too represents a major step forward.

In the light of the discussions which have taken place, the British Government is now putting forward a full

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description of the independence constitution which we intend to recommend to Parliament and we shall circulate it as soon as I have stopped speaking. We invite both delegations to consider this fuller document and, I trust, to accept it. I must emphasise again that what we are putting forward cannot in the nature of things be expected fully to meet the differing requirements of the other delegations attending these talks. But after all the discussions of the last few weeks, during which we have exhaustively explored the views of the parties to this Rhodesian conflict, I am sure that this represents the solution most likely to secure agreement. It has been designed to that end. It is for us to take the responsibility of making clear what we the British believe is fair and reasonable and the best attempt we can make to provide the basis for a constitutional settlement and finally to give the people of Rhodesia hope that there will be agreement also on the end to the war. It is with the British Parliament that the constitutional responsibility for granting independence rests.

I will now if I may go briefly through our constitution to explain it.

THE STATE

All three sets of proposals tabled at this Conference provided for a republican form of government. We therefore describe the future state of Zimbabwe as a Sovereign Republic, which will of course have its own Public Seal. It must be clear that the constitution granted by the British Parliament

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is the supreme law of the country and will prevail over any other law.

CITIZENSHIP

We provide that all those who hold citizenship of Rhodesia immediately before the date of independence shall be confirmed in that citizenship. Those who have forfeited or been deprived of citizenship since 1965 must be enabled to have their citizenship restored. Our guide here has been the need to which I drew attention earlier, to make provisions which will promote conciliation and offer hope of an end to conflict. In the same spirit, we have provided that dual citizenship be permitted. It will be for the elected Parliament to decide for how long this right should be exercised. We have been unable to agree to the proposal that persons who have taken up residence and citizenship in Rhodesia since 1965 should be required to re-apply for citizenship.

THE DECLARATION OF RIGHTS

Our intention is that there should be a full and justiciable Declaration of Rights. The main provisions of the declaration which protect fundamental rights and which are of interest to all the people of Rhodesia should be amendable only by an unanimous vote in the House of Assembly for ten years.

THE EXECUTIVE

We come here to an area in which different arguments have been put forward and on which it is possible to consider that a good case could be made either for a constitutional or for

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an executive President. On the one hand it is said that an executive President is the practice today in most African countries and that is true. There is also the view that a constitutional President, above party controversy, would be more likely to provide a basis for reconciliation in the wake of conflict. Here too, the British Government has given greater weight to the latter argument, and we therefore provide for a "constitutional" President and an "executive" Prime Minister, but this will, however, be subject to the normal procedure for constitutional amendment so that, if the Rhodesian people come to take a different view, the necessary changes can be made.

We do not envisage any provision in the constitution for a Government of National Unity involving all the parties. We believe that a coalition government has much to commend it, because it too provides a basis for reconciliation of conflicting interests. But this must be a matter of political agreement. It will be for the President to choose as Prime Minister the person who he believes has the best chance of commanding a majority in the House of Assembly, and for the Prime Minister to decide the composition of his government.

We have also considered under this heading the powers of appointment of the Prime Minister and the functions and powers of the Public Service Commission. We regard it as essential that the Prime Minister should be enabled to select Ambassadors, Secretaries of Departments, the Secretary to the Cabinet, the Commanders of the Defence Forces, and the Commissioner of Police

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in consultation with the relevant Commissions or Boards. The appropriate bodies will have the right to recommend who is best qualified for the post; and it is reasonable to expect such recommendations normally to be accepted and it is right that Parliament should be informed in cases where the Prime Minister decides to depart from the Commission's recommendations. But the power of decision will rest with the Prime Minister. Other appointments in the Public Service will be made by the Public Service Commission on normal criteria. It will be open to the President, on the advice of the Prime Minister, to give general policy directions to ensure that progress is made towards adequate representation of those sections of the population which at present are under-represented in the services of the State. As regards the composition of the Public Service Commission and other Commissions, we provide that a limited number of their members, but not necessarily a majority, must have had relevant experience.

The Patriotic Front delegation have represented to us that they cannot form a judgment on our proposals in relation to the Police and the Defence Forces until they know the composition of these forces on independence. It remains the British Government's firm view that the task of the constitution is to provide the mechanism by which the Police Force and Defence Forces are directed and administered; matters relating to the composition of the forces will be for the elected government to decide.

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THE LEGISLATURE

We come here to what has, inevitably, been the most difficult problem: the related questions of minority representation in Parliament and the majority required for constitutional amendment. In the course of discussions last week, the British Government proposed that 20% of the seats in Parliament be reserved for the minority community and that, to ensure that the minority acting on its own would not be in a position to block constitutional change, the votes of 70% of the members of all the House of Assembly would be required for amendment of the principal provisions of the constitution.

These proposals caused difficulties for members of both delegations. On the one hand there was some reluctance to see the removal of the blocking power and the reduction in the percentage of white seats. On the other hand there was reluctance to accept that any seats elected on a separate roll should be reserved for whites at all and here again I would like to pay tribute to the attitude which has been displayed by the leaders of both delegations on this point. There is I believe a realisation that compromise in this area is the key to a constitution which, indisputably, provides for genuine majority rule but also affords the minority community appropriate reassurance that their interests will be adequately represented and expressed.

The British Government consider that any such arrangement must by its nature be transitional. Moreover, it must in

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any case avoid producing a result in Parliament whereby the White Members can impede, on their own, the wishes of those representing the great majority of the electorate. At the same time, the British Government feel that, while it is important for the protection of all citizens that certain key provisions of the constitution should be "entrenched", no minority group, and especially one to which special representation is to be given, should be in a position, by itself, to block amendment to the constitution.

We have therefore decided to confirm our original proposals and to make them more explicit as follows:

there shall be 100 members in the House of Assembly;
80 members will be elected by voters enrolled on a Common Voters Roll;

20 members will be elected on a White Voters Roll;
any Bill to amend the principal provisions of the constitution will require the votes of 70 members of the House of Assembly;

any Bill to amend the provisions relating to the seats reserved for the white community in both Houses of Parliament will require a unanimous vote in the House of Assembly for the first seven years after independence. Thereafter it would be subject to the normal procedure for constitutional amendment.

We have made a number of further clarifications to our proposals. The Senate will consist of 40 members, to be elected or nominated on terms which will enable a wide range
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of interests to be represented in what is essentially a deliberative and reflective Second Chamber. But its powers will be limited. The Senate will have the power to delay amendments to the constitution for 180 days. The Senate's power to delay normal legislation will be restricted to 90 days and its power to delay money bills will be restricted to 8 days.

THE JUDICATURE

The Prime Minister will advise on the appointment of the Chief Justice having sought the advice of the Judicial Service Commission. Because of the special position of the Chief Justice we have provided that, where the Prime Minister does not accept the recommendation of the Judicial Service Commission, Parliament should be informed before the appointment is made. This will give an opportunity for debate if members so desire. The independence of the judicature will be protected.

In conclusion, I repeat what I have already said - the British Government considers that particularly in areas where the parties cannot themselves agree, it has the constitutional responsibility to make clear the kind of constitution which the British Government is prepared to commend to the British Parliament as a proper basis for independence.

Full provision for such a constitution is made in the document which I am tabling now. I am not asking for the reactions of either delegation to this document today. But

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in order to carry forward our work at this Conference it will be necessary to know whether you accept such a constitution as the basis for independence. I repeat that the constitution we would propose to enact indisputably makes provision for genuine majority rule. It also provides adequate safeguards for the minority community for a period of years. Acceptance of it involves necessarily an important shift from their initial positions by both sides. I have been encouraged in this Conference by the willingness both delegations have displayed to consider the need to compromise in the interests of reaching an agreement which will afford us all hope of achieving what is of most importance to the people of Rhodesia and of the neighbouring countries - namely genuine majority rule, international acceptance and an end to the war.

Members of the British delegation will be available over the next few days to give you whatever further explanation or clarification you require of the document now before you and I should add that, in view of the wide international interest as well as the very great public interest and concern in the question of the future constitution, I intend to publish the proposals I am putting forward today. In order to carry forward our work in this Conference, we now need to know whether both delegations can accept such a constitution. Agreement to do so will be subject to subsequent discussion of the arrangements for bringing that constitution into effect. The key element in that regard is acceptance by both delegations that new elections should be held in which

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all parties would have a chance to participate freely; and that those elections should be supervised under the British Government's authority. I propose therefore that our next plenary session should take place on the morning of Monday, 8 October, that is next Monday, and I hope that on that occasion, if not before, both delegations will be able to indicate that they can accept the document which is now before you as the basis for the independence constitution.

Finally, Gentlemen, I repeat now the appeal which I addressed to you in opening this Conference nearly a month ago on 10 September. I said then that I believed the people assembled in this room had it in their power to end the war and to enable the people of Rhodesia to decide their future by peaceful means. We bear a heavy responsibility and I do not believe that the people of Rhodesia, or of neighbouring countries, will readily forgive any party which deprives them of this opportunity to agree on a constitution and to settle their future by peaceful means. I appeal to you both to give the people this opportunity now.

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CC(79) 20
NINTH PLENARY SESSION

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the Ninth
Plenary Session of the Conference, Wednesday
3 October

Lancaster House
3 October 1979

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PRESENT:

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Mr R Luce

Sir A Duff

Mr D M Day

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr P J Barlow

Mr R D Wilkinson

Mrs A J Phillips

Mr S J Gomersall

Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr D C Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Air Vice Marshal H Hawkins
Mr D Zamchiya

Mr Mugabe, Mr Nkomo and Delegation

Mr J M Nkomo
Mr J M Chinamano
Mr J W Msika
Mr T G Silundika
Mr A M Chambati
Mr John Nkomo
Mr L Baron
Mr S K Sibanda
Miss T Siziba

Mr R G Mugabe
Mr S V Muzenda
Mr E Z Tekere
Mr J M Tongogara
Mr E R Kadungure
Mr H Ushewokunze
Mr E Zvogbo
Mr S Mubako
Mr W Kamba

Secretariat

Mr J M Willson

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The session opened at 1538.

THE CHAIRMAN first of all said how shocked everyone had been over the tragic death of Mr Gyles. He wished to extend to the Bishop and his delegation the deepest sympathy of all present, and asked him to convey these sentiments to Mr Gyles' family.

The Chairman then made a statement about the British Government's proposals for the independence constitution. He asked for the proposals to be circulated as a Conference document (Conference Paper CC(79) 19).

At MR NKOMO's request, the session adjourned from 1600 to 1622.

On reconvening, THE CHAIRMAN asked whether either side had any comments at this stage.

BISHOP MUZOREWA said that his delegation wished to study the paper. MR MUGABE said that his delegation would look at the document and give a full reply when the Conference resumed.

THE CHAIRMAN confirmed that the British delegation would be available in the interim to answer any queries and, in reply to a question from MR TEKERE, said that his introduction of the British paper would be circulated as soon as possible (Conference Paper CC(79) 21). He then adjourned the Conference until 1030 on Monday 8 October.

The session ended at 1625.

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CC(79) 18
EIGHTH PLENARY SESSION

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON

Summary of the proceedings of the
Eighth Plenary Session of the
Conference, Tuesday 2 October.

Lancaster House
2 October 1979

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PRESENT:

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Mr R Luce

Mr D M Day

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr P J Barlow

Mr R M J Lyne

Mr A M Layden

Mrs A Phillips

Mr S J Gomersall

Mr Mugabe, Mr Nkomo and Delegation

Mr R G Mugabe

Mr S V Muzenda

Mr J M Tongogara

Mr H Ushewokunze

Mr E Zvobgo

Mr S Mubako

Mr W Kamba

Mr J M Nkomo

Mr J M Chinamano

Mr J W Msika

Mr T G Silundika

Mr A M Chambah

Mr L Baron

Mr S K Sibanda

Mr W Musururwa

Miss T Siziba

Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr I D Smith
Mr D C Smith
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Air Vice Marshal H Hawkins

Secretariat

Mr J M Willson

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The session began at 1505.

THE CHAIRMAN said that this was the first plenary meeting for some time. Since the last meeting the British delegation had been engaged in bilateral discussions with the other delegations, first in a general discussion of principles, and then in discussion by experts on the detail of the constitution. This process had ended this morning. Mr Mugabe and Mr Nkomo, and also perhaps Bishop Muzorewa, were anxious to discuss in plenary the position that had been reached, and to point out existing areas of disagreement so that the Conference as a whole could assess the progress made.

MR MUGABE suggested that the British delegation were in the best position to report on the bilateral discussions of the past two weeks, and to give its views on where the main points of agreement and disagreement lay. THE CHAIRMAN said that it might therefore be useful to run through the various points on which differences remained, as he had done bilaterally with Mr Mugabe's and Mr Nkomo's delegation that morning.

MR NKOMO said that the Conference had been called in order to decolonise Southern Rhodesia; this was a British responsibility. The Patriotic Front had been forced to express its feelings through war, because all else had failed. It was a common aim of all those who had come to London to get the British to decolonise, although differences of approach

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might exist between his delegation and that of Bishop Muzorewa. It was therefore essential that the Patriotic Front should, in plenary, express the points it had made during bilateral meetings with the British side. Mr Nkomo believed that his delegation's case was the case of the people of Zimbabwe. He invited the Salisbury delegation to join with his in demanding independence. He had heard reports that the Salisbury delegation had come to an agreement on principles with the British side. It was essential to discuss in plenary what progress had been made in bilateral talks. Mr Nkomo wanted a mutual consideration of the points made to the British during the rounds of private meetings. With such an open presentation, he did not believe that the other side would oppose his delegation's views. His delegation's demands were made not on behalf of individuals, but for the people of Zimbabwe.

THE CHAIRMAN asked whether Mr Mugabe would go through the areas still unresolved, beginning with citizenship. MR MUGABE said that this issue had been discussed bilaterally with the British, who had adhered to the principle of dual citizenship. His delegation's viewpoint remained that dual citizenship did not represent the feelings of the Zimbabwean people, and that loyalty could not be divided. His delegation had proposed that people should be given a year after independence to decide where their loyalty lay. This was a key issue: the desired national solidarity and allegiance should be expressed by constitutional provision. Mr Mugabe said that

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his delegation had also given its view regarding those who had entered the country after UDI. Those who had gone there as mercenaries or fortune-seekers could not be given automatic citizenship; it was necessary to recognise a critical date, which his delegation suggested should be 11 November 1965. Those who had acquired citizenship after that date should re-apply and their cases would be considered by the Government. It was impossible to regard such people as citizens automatically, since many had enlisted in the army or had otherwise supported UDI. Conversely, those people who had been deprived of their citizenship by the illegal regime should not be considered to have forfeited it. Any person deported by the illegal regime should be entitled to return. Mr Mugabe invited the Conference's reaction to these points.

BISHOP MUZOREWA said that he was puzzled by the procedure being followed. He thought it had been agreed that bilateral discussions were to be used in order to allow for points to be aired with the British delegation. His understanding was that Mr Mugabe's and Mr Nkomo's delegation had accepted in principle the proposals put by the UK. If that agreement did not cover citizenship, they should be discussing that issue bilaterally with the British. It was not of concern to his delegation.

Bishop Muzorewa said that his delegation had accepted the British proposals in principle. What they now wanted were full and detailed proposals on the basis of which his delegation could make up its mind one way or the other. No useful
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purpose could be served by a point-by-point discussion of areas of disagreement which had emerged in bilaterals between the other two delegations. He would, however, be happy to sit and look on.

MR NKOMO regarded this position as very unfortunate. Everyone had come to negotiate with the British. The only way forward was for each to hear the other's position. If the other side was not prepared to discuss its position in plenary session, they should say so. His delegation had nothing to hide.

REV SITHOLE said that after the bilateral meetings the Chairman was now aware of the differences between the delegations, and he thought it logical that the Conference should now receive a comprehensive picture from the Chairman from which all sides would be able to see their differences.

THE CHAIRMAN said that after the bilateral meetings he was well aware of the differences between the delegations, and it was his intention to table a paper containing fuller constitutional proposals. However Mr Mugabe's and Mr Nkomo's delegation had wanted to put their views to Bishop Muzorewa's delegation in a plenary session, a suggestion which he had accepted.

MR MUGABE wished to correct the view, put forward by Bishop Muzorewa, that his delegation had accepted the British proposals in principle: they had not. There were certain areas of agreement, but several areas of disagreement were still outstanding. He thought it preferable to discuss

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those matters in plenary, so that Bishop Muzorewa's delegation could hear his delegation's viewpoint, and perhaps say something about their bilaterals with the British.

THE CHAIRMAN confirmed that in his view Mr Mugabe's and Mr Nkomo's delegation had not accepted the British proposals in principle. He did not want to deny Mr Mugabe and Mr Nkomo the opportunity to put forward their views on the British proposals, and he suggested that the Conference should listen to that delegation's views.

MR MUGABE said that from the beginning his delegation had thought bilateral discussions were dangerous as they amounted to secret negotiations - they had not been initiated by his delegation. In submitting papers to the Conference in the first week his delegation had put forward their views for examination by all sides. He did not think that the right procedure was through bilateral discussion only.

MR NKOMO explained that he wanted to discover what the other two delegations had agreed, and also to explain to the Conference his delegation's views. REV SITHOLE explained that he did not consider bilateral sessions to be the only means of proceeding, but he felt that the Conference should now have the benefit of a summary from the Chairman of what had been achieved in the bilateral sessions. MR NKOMO said that a paper should be produced which reflected the views of the two visiting delegations.

THE CHAIRMAN referred to those proposals on citizenship which Bishop Muzorewa's delegation had accepted but about which

/Mr Mugabe

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Mr Mugabe and Mr Nkomo's delegation had reservations. Dual citizenship was the practice in many countries and the British Government believed it was the best way to form a stable society. The Chairman thought that Mr Mugabe and Mr Nkomo's delegation's proposals on citizenship acquired after 11 November 1965 could create doubts for many people who thought of themselves as citizens of the country. The British Government did not wish to include a measure in the constitution which could increase bitterness and insecurity in the country.

DR MUNDAVARARA reiterated his delegation's acceptance of the broad principles of the British proposals; they were now waiting for the Patriotic Front to state their reactions to the British proposals and for the British to table a document giving details of the constitution.

BISHOP MUZOREWA stressed that his delegation was not part of the British delegation.

THE CHAIRMAN, referring to the British proposals on the Executive, explained that Mr Mugabe and Mr Nkomo's delegation wanted a Presidential and not a Prime Ministerial system of government.

MR MUGABE wondered whether further discussion was in fact worthwhile. The Salisbury delegation had made it known they considered it to be worthless. Both sides had concluded their bilateral meetings with the British but, as far as his delegation was concerned, points of difference had emerged which he thought the Salisbury delegation might listen and react to. It was important for the Conference as a whole to understand

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where the areas of agreement and disagreement were. His delegation had not heard on what areas the British side had agreed with Salisbury, or where disagreements remained. He sympathised with Bishop Muzorewa's delegation; they had reached an agreement with the British, but his delegation still had a number of points of difference. Perhaps the best way out of the impasse would be for the Chairman to give a brief summary of where things stood.

THE CHAIRMAN said that he had thought that the Patriotic Front wanted this plenary in order to put their point of view to the Salisbury delegation. MR MUGABE said that the Conference was entitled to a complete picture of the state of the negotiations. THE CHAIRMAN said that, as far as the bilateral meetings between the British side and the Patriotic Front were concerned, he thought that Bishop Muzorewa's delegation were aware of the points still at issue. These included citizenship; the Bill of Rights; the merits of a prime ministerial versus a presidential system; the position of the Attorney General; the Commissions (how they should be appointed and their powers, especially in the case of the Defence Services Commission); white representation (which had to a large extent been resolved); judges' qualifications; pensions and, finally, transitional arrangements, not in the wide sense but in the legalistic sense. In broad terms the position was that Bishop Muzorewa's delegation had accepted in principle the British proposals, but that Mr Mugabe's and Mr Nkomo's delegation had not. Did they now wish to explain
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their position to Bishop Muzorewa's delegation?

BISHOP MUZOREWA said that his delegation had not reached complete agreement with the British as they had not yet seen the full details of the British proposals. If Mr Mugabe and Mr Nkomo wanted to say something to his delegation, they should do so. THE CHAIRMAN suggested that this could be done without the presence of the UK delegation.

MR MUGABE said that these difficulties had been caused by the incorrect procedure adopted by the Chairman in the first instance. Bilateral sessions had been emphasised at the expense of the plenaries. The Conference had now reached the stage where the British had apparently concluded an agreement with one party, whereas his delegation had not even agreed on broad principles.

THE CHAIRMAN recalled that at the start of the Conference Mr Mugabe, Mr Nkomo and delegation had expressed the desire to negotiate only with the British side. It had also been agreed that the only way to proceed was by means of bilateral meetings after which the full Conference would reassemble in plenary. An opportunity had been given to Mr Mugabe and Mr Nkomo, at their own request, to put forward their views at a plenary session but they now seemed to regard this as a waste of time.

BISHOP MUZOREWA said that his delegation wanted to move swiftly to the second stage of the negotiations, i.e. to see the detailed British proposals.

THE CHAIRMAN said that he would now adjourn the session.

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The British Government would consider the points put by both sides, and would then table a detailed document setting out the constitution which the British Government would be prepared to present to Parliament. This document would be tabled as soon as possible.

The session ended at 1611.

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CC(79) 17
SEVENTH PLENARY SESSION

COPY NO:

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CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON
SEPTEMBER 1979

Summary of the proceedings of the Seventh
Plenary Session of the Conference, Tuesday
18 September

Lancaster House
18 September 1979

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PRESENT:
UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Mr R Luce

Sir A Duff

Mr D M Day

Mr R A C Byatt

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr P J Barlow

Mr R D Wilkinson

Mr A M Layden

Mr R M J Lyne

Mr M J Richardson

Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr D C Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr L G Smith
Air Vice Marshal H Hawkins
Mr D Zamchiya
Mr G Mutambanengwe

Mr Mugabe, Mr Nkomo and Delegation

Mr J M Nkomo
Mr J W Msika
Mr A M Chambati
Mr L Baron
Mr S K Sibanda
Mr E Mlambo
Mr E Ndlovu
Miss T Siziba
Mr W Musururwa

Secretariat

Mr J M Willson

Mr R G Mugabe
Mr E Z Tekere
Mr J M Tongogara
Mr E R Kadungure
Mr J Tungamirai
Mr E Zvobgo
Mr S Mubako
Mr W Kamba

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The session opened at 1503.

THE CHAIRMAN said that the session had been called at the request of the Patriotic Front, who wished to table their paper on the pre-independence arrangements. He asked them to introduce the paper.

MR MUGABE read through the text of his delegation's paper (Conference Paper CC(79)16). At the end of his presentation he asked delegates to note a typographical error on the last line of page 3: "paragraph 7(5) below" should be substituted for "paragraph 7(4) below". Mr Mugabe explained that this document, together with their earlier paper (CC(79)11), gave a complete picture of his delegation's thinking and provided a basis for genuine independence for Zimbabwe.

In submitting this document, his delegation had made several concessions on points which had previously been strongly held. It was a compromise which took into account the realities of their own situation, and recognised the role of Britain and others in the independence process. He stressed that the interim arrangements and the independence constitution should be seen as part of a single process.

The paper attempted to provide for an administration during the transitional period, to be formed by the parties currently engaged in conflict. Britain should be the superintending authority, but should play no greater role than those engaged in the conflict. There were fundamental issues at stake. For instance, in discussing the place of the

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defence forces in an independence constitution, the Conference had to take current realities into account. A mere theoretical exercise on the future composition of the defence forces, which did not reflect the current situation, would be fruitless. The same applied to the police force. It was necessary to start as soon as possible to determine what force should constitute his country's army and police in the interim period. Those forces which had fought for liberation naturally wished to be established as the army of the country. The other side, Mr Mugabe said, would also have their point of view. The police force must not be an instrument in the hands of those who in the past had resisted the process of liberation. He proposed that there should be a completely new police force comprising Patriotic Front forces and elements from the other side.

Mr Mugabe reiterated his delegation's view that meaningful discussions on an independence constitution could not take place without taking into account the fundamental issues in the period of transition to independence. His delegation accepted the Chairman's ruling that the independence constitution should be discussed first. But any agreement on it would be contingent on satisfactory arrangements for the transitional period. He asked the Chairman to study his delegation's paper carefully, and expressed the hope that the Conference would react to it in due course.

THE CHAIRMAN said that the Conference would take note of

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what Mr Mugabe had said. The agreement was to discuss an independence constitution first, after which they could move on to consider the proposals in the paper.

BISHOP MUZOREWA said that he wanted his delegation's very strong reservations on the paper to be noted.

THE CHAIRMAN recalled that the Conference had agreed that bilateral discussions should be held. Timings for these now had to be discussed, together with the timing for the next plenary meeting.

The session ended at 1530.

MR. TAYLOR

PRESS OFFICE

FRONT DOOR

DUTY CLERK

MR. ALEXANDER ✓

MR. RYLANDS

There has been a change in the Nyerere delegation for the dinner tonight at No. 10.

Mr. Mloka has dropped out and his place will be taken by Mr. C. D. Nsuya, the Minister of Industries. Mr. Nsuya will sit in Mr. Mloka's place at the table.

Vanessa Burgess

14 September 1979

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON
SEPTEMBER 1979

The attached document is circulated to
delegates at the request of Mr Mugabe,
Mr Nkomo and Delegation

Lancaster House
18 September 1979

THE TRANSITIONAL PERIOD

1. INTRODUCTION

(1) The Patriotic Front regards the transitional period as an inseparable part of the process of transferring genuine and effective authority from the colonial power to the people of Zimbabwe. As we have stressed in the early sessions of the conference, many of the important parts of the independence constitution cannot be discussed meaningfully unless we discuss them together with the corresponding parts of the transitional constitution. As the Chairman stated, agreement on the independence constitution is contingent on agreement on the important parts of the transitional arrangements.

(2) The structure of the Transitional Administration must be such as will ensure:

(a) unimpeded and irreversible progress towards real independence by vesting effective control of the instruments of government in the Transitional Administration; and

(b) the holding and supervision of free and impartial elections.

(3) The transitional period must not exceed six months from the time agreement is reached at the Conference.

2. GOVERNING COUNCIL

A. Composition

(1) A Governing Council, in whom full executive power will be vested, will be established consisting of:

(a) Four members representing, and appointed by, the Patriotic Front.

(b) Four members representing Britain and the regime, one of the British representatives being the Chairman. The Chairman will be agreed at the Conference.

(2) Each member including the Chairman will have one vote and decisions of the Council will be by simple majority.

(3) The Governing Council will have power to appoint such number of Ministers, not exceeding twenty, as it may deem necessary, each of whom will be in charge of one or more

government departments during the transitional period.

(4) The legislative power will be exercised by the Governing Council and the Ministers sitting together.

B. Functions of the Chairman

(1) The formal executive authority of Southern Rhodesia will be vested in the Chairman.

(2) The Chairman will act in the exercise of his functions on the advice of a simple majority of the Governing Council.

(3) The Chairman must act on the advice of the Governing Council.

(4) The Chairman will have no power to reserve bills.

(5) The power of disallowance will, so far as it affects Southern Rhodesia, be abolished.

3. LEGISLATION AND VOTING

(1) Subject to (2), legislation will require the affirmative votes of more than half of the total membership of the Governing Council and the Ministers sitting together.

(2) Amendment of the transitional constitution will require the affirmative votes of two-thirds of the total membership of the Governing Council and the Ministers sitting together.

(NOTE: The power of amendment will be severely restricted; the following chapters will be unalterable:

Governing Council

Judiciary

Public Service

Electoral and Delimitation Commission

Amendment Procedure).

(3) All delegated legislation must be laid before the Governing Council within three days of its publication and will remain of full force and effect unless annulled by the Governing Council within fourteen days thereafter.

4. THE ARMY

(1) There will be a Transitional Defence Committee, composed of representatives of the Patriotic Front and of the regime, appointed by the Governing Council.

(2) The principal functions of the Transitional Defence Committee will be:

- (a) to commence the process of building the new Zimbabwe army.
- (b) to supervise the ceasefire
- (c) to provide liaison between the Governing Council and the United Nations Peace-Keeping force.

5. THE POLICE

(1) There will be a Transitional Police Committee, composed of representatives of the Patriotic Front and of the regime, appointed by the Governing Council.

(2) The principal functions of the Transitional Police Committee will be:

- (a) to supervise the maintenance of public order;
- (b) to provide liaison between the Governing Council and the United Nations Civilian Police Force;
- (c) to commence the process of building the new Zimbabwe Police Force.

6. THE PUBLIC SERVICE

Generally the existing officers will continue in office, subject to the right of a Transitional Public Service Commission, to be appointed by the Governing Council, to retire any officer in the public interest.

7. THE JUDICATURE

(1) The existing structure of the High Court and Subordinate Courts will be retained during the transitional period but all the Special Criminal Courts, and the Tribal Court of Appeal, will be abolished. The Chief's Courts will cease to exercise criminal jurisdiction.

(2) The Chief Justice and all judges of the High Court will vacate their offices on the formal installation of the Transitional Administration. The Governing Council will appoint an acting Chief Justice, acting in its discretion, and acting judges on the advice of the Transitional Judicial Service Commission (see paragraph 7 (4) below).

(3) The Chief Magistrate and Regional Magistrates will vacate their offices on the formal installation of the Transitional Administration. The Governing Council will appoint, on the advice of the Transitional Judicial Service Commission, persons to act as holders of these offices during the transitional period.

(4) Provision will be made to enable judicial officers whose offices have been vacated under (2) or (3) above to complete any civil or criminal proceedings, other than political prosecutions, the hearing of which commenced prior to the installation of the Transitional Administration.

(5) A Transitional Judicial Service Commission will be established consisting of:

- (a) the Acting Chief Justice, who will be the Chairman.
- (b) an Acting Judge appointed by the Governing Council on the advice of the Acting Chief Justice.
- (c) the Chairman of the Transitional Public Service Commission.
- (d) two other members appointed by the Governing Council.

8. ELECTIONS

(1) The Governing Council will enact an Electoral Ordinance for the transitional period, including the pre-independence elections.

(2) There will be an Electoral Commission consisting of a Chairman and four members appointed by the Governing Council. The functions of the Commission will be to carry out the registration of voters and the delimitation of constituencies, to appoint registering officers, and to conduct the pre-independence elections.

(3) The United Nations will provide sufficient International Civil Servants to supervise all the foregoing matters so as to ensure that the elections are free and fair.

(4) The franchise qualifications for the pre-independence election will be the same as in the independence constitution, namely citizenship and the attainment of eighteen years of age.

(5) Provision will be made to ensure that the government-controlled news media will not be used to the disadvantage of any party contesting the elections, or to further the cause of a particular party.

9. MARTIAL LAW AND STATE OF EMERGENCY

On a specified date, to be agreed at the Conference, martial law and the state of emergency will be lifted and no further executions will be carried out; all political prisoners, detainees and restrictees will forthwith be released, and protected villages will be abolished.

10. GENERAL

The Transitional Order in Council and Constitution will include provisions relating to Existing Laws, Obligations of the Transitional Government, the Bill of Rights, Finance and Miscellaneous Matters similar to those proposed for the Independence Constitution.

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CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON
SEPTEMBER 1979

Summary of the proceedings of the Sixth
Plenary Session of the Conference,
Monday 17 September

Lancaster House
17 September 1979

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PRESENT:

UK Delegation

Lord Carrington (in the Chair)
Sir I Gilmour Bt
Sir M Havers
Mr R Luce
Sir A Duff
Mr D M Day
Mr R A C Byatt
Mr R W Renwick
Mr P R N Fifoot
Mr N M Fenn
Mr G G H Walden
Mr C D Powell
Mr P J Barlow
Mr R D Wilkinson
Mr R M J Lyne
Mr M J Richardson

Mr Mugabe, Mr Nkomo and Delegation

Mr R G Mugabe

Mr J M Tongogara

Mr E R Kadungure

Mr H Ushewokunze

Mr J Tungamirai

Mr E Zvobgo

Mr S Mubako

Mr W Kamba

Mr J M Nkomo

Mr J W Msika

Mr T G Silundika

Mr A M Chambati

Mr L Baron

Mr S K Sibanda

Mr E Mlambo

Mr C Ndlovu

Miss T Siziba

Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr I D Smith
Mr D C Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Mr D Zamchiya

Secretariat

Mr J M Willson

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The session began at 1605 hours.

THE CHAIRMAN asked the Lord Privy Seal to respond to some more of the questions posed by Dr Mundawarara on Friday 14 September (Conference Paper CC(79)12). SIR I GILMOUR said that Dr Mundawarara had asked for clarification on how the Public Service could take account of the need to receive advice of properly qualified and experienced persons. There were various ways to achieve this. First, qualifications or minimum experience for members or officers of the Commissions could be prescribed; secondly, it would be possible to state how the Commissions should set about their work. No doubt other delegations would have views on this. Dr Mundawarara had also asked how the President, acting on the advice of the Prime Minister, would be able to give the Public Service and other Commissions certain directions. He had wanted to know how the Civil Service would remain non-political. The Lord Privy Seal said that it was right and proper that the composition of the Public Service should reflect the national character and aspirations of the people. There had been frequent criticisms of artificial imbalance in the existing Public Service. It was for a freely elected government to have the power to redress this imbalance. Dr Mundawarara's final point had concerned the careers of existing members of the Civil Service and Armed Forces. The Lord Privy Seal said that such public servants should
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not feel their careers threatened by the proposed provisions: well-qualified public servants would be much in demand.

MR NKOMO said that he was perturbed by an apparently misleading statement by the Conference Spokesman about that morning's session. MR FENN said that there was no intention to mislead the press, and that during and after his briefing the representative of Mr Mugabe's and Mr Nkomo's delegation had not raised any objection to his remarks. THE CHAIRMAN said that the proceedings of the Conference had to be recorded in an objective and factual way by the representatives of the delegations.

MR BARON, referring to Section D ii paragraph 4 of the British proposals, said that his delegation considered it undesirable for the Attorney-General also to exercise the function of Director of Public Prosecutions. This was contrary to general Commonwealth practice. His delegation would prefer the offices to be separated, thus ensuring that the possibility of political influence on the Director of Public Prosecutions was kept to a minimum. His delegation envisaged that the Attorney General would be a political appointee, while the Director of Public Prosecutions would be a Civil Servant and would enjoy constitutional protection. MR FIFOOT said that there would be no scope for political influence if, as the British proposals provided, the Attorney General was a member of the Public Service. MR BARON replied that if the Attorney-General were the principal legal adviser to the Government, he

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would be open to political influence. THE CHAIRMAN took note of Mr Baron's point and said that further discussion would be necessary.

MR KAMBA said that the character of the Public Service at the time of independence depended to a large extent on the character of the Public Service during the transitional period. His delegation had prepared, and would shortly circulate, a paper concerning the transitional arrangements which tied together proposals for the Public Service before and at independence. His delegation was anxious to learn the British Government's views on this linkage. SIR A DUFF said that he looked forward to receiving the Patriotic Front's paper. In his view, however, discussion of such a paper strayed beyond point 1 of the agreed agenda. The Conference was presently discussing long-term administrative arrangements, under the proposed constitution, which were not affected by the character of either the current or pre-independence administrations. MR NKOMO said it was vital for his delegation to know the character of the interim arrangements. There was a necessary link-up in one or two areas of the Public Service which affected discussion of this aspect of the independence constitution. He accepted that interim matters figured later on the Conference agenda, but his delegation's paper would be offered for information, not necessarily for discussion. It would enable delegates better to understand why his delegation argued for various positions at the time
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of independence. THE CHAIRMAN said that the Conference was attempting to arrive at generally accepted principles for the Public Service for use by the Government elected after free and fair elections. He therefore proposed to await the paper before taking the point any further. The Chairman then invited the Lord Privy Seal to answer Dr Mundawarara's questions concerning Parliament.

THE LORD PRIVY SEAL said that the reason the British proposals had not contained provisions for exact numbers in the Senate was that they did not want to dictate to the Conference. The British Government had suggested that one-third of the Senate should reflect regional considerations. This one-third would not be elected by popular vote. The main interest, however, in this section of the British document was the temporary provision for minority representation in Parliament for a specific period after independence. The British Government believed that it was reasonable to make such provisions in respect of the European community, though that minority should not be in a position to block constitutional amendments or other legislation. He invited the views of the Conference on this question. Finally, Dr Mundawarara had asked about the length of time during which the provisions of the constitution relating to minority representation in Parliament and to certain provisions of the Bill of Rights would not be amendable. This period was for discussion by the Conference.

/MR NKOMO

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MR NKOMO said that there were two important aspects in the British document which required attention. The first was the question of the necessity for representation of the minority. The British proposals variously called this minority "European" and "white". The Patriotic Front delegation certainly wanted to see everyone in Zimbabwe represented in the legislature, but he was puzzled that the British Government should want the new republic to start off with a constitution which divided the people. All people who lived in Zimbabwe should consider themselves as citizens of that country. Was it possible to call a section of the community European? Surely there could be no such thing as a European in Africa? Similarly the term "white" could cause problems. Was the Conference being asked to work out a chart of shades of colour and then agree the percentage by which each shade should be represented? This was a racial approach and repugnant to the Patriotic Front delegation. The delegation did not suggest that certain groups should be without representation, simply that there should be no special provision for a minority. They did not wish Zimbabwe to be saddled with a concept which made people consider themselves not part of the whole. Similarly, special provision for regional representation in the Senate was tribalism. The principle of devolution had not worked in Britain. If the racial or tribal connotations in the British proposals could be removed, the Conference could discuss the proportions at a later stage.

THE CHAIRMAN

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THE CHAIRMAN said that the British Government had always recognised that this was a central issue for the Conference. The British Government had taken as a starting point in drafting their proposals the fact that they could not commend to Parliament or to international opinion a constitution which did not give majority rule. The constitution had to be fully democratic and based on the principle of universal suffrage. But this did not imply the elimination of provisions to protect the minority community. Parliamentary institutions everywhere reflected the history and conflicts of the past, and there were few states which were so homogeneous in these respects that special provisions were unnecessary. On previous occasions where Britain had granted independence, there had been temporary provision for such protection in almost every case where conflicts existed, either by clauses protecting the minority or by regional representation in Parliament. This had been the case in countries as far apart as Fiji and Mauritius. Rhodesia was not without such conflict. It was a country at war and the root of the conflict was who should exercise political power. It was accepted that the ideal solution was that the people should think of themselves as citizens of Zimbabwe rather than black or white, Shona or Matabele. The crux of the issue was how this was to be achieved. The political realities of the past could not be ignored. Nor could the hopes and fears of the people. It was necessary and desirable that there should be an intermediate phase during which people could gain experience of /majority

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majority rule and adapt themselves to the new circumstances. The majority must have the decisive vote in Parliament. But there should be temporarily non-amendable provisions for the representation of that minority written into the constitution. In return they would be expected to give up their blocking power. It was unrealistic to expect them to do so without such provisions. This was the judgement of the British Government. The British proposals tried to be fair to everybody. He hoped that they would be acceptable to all.

MR MUGABE said that he wished to underline the fact that the war of liberation had been waged to destroy the racial basis on which society in his country had been constructed. The minority had acquired certain rights and privileges to the exclusion of the majority. The war had been waged against this exploitation. The British wanted them now to retain vestiges of that system.

He also wondered what norms would be used to distinguish citizens. The Patriotic Front had always believed in the equality of citizens irrespective of colour and race. The qualification "white" had been mentioned. The British delegation had also used the term "black majority rule". He wondered who would be described as black. Even if designation by colour were to be avoided and a phrase such as "people of European extraction" used, the Patriotic Front would question it. Their position was best and would best protect the white community. If distinction on the grounds of race or colour
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were used at independence, this basis would continue to be used. Such distinctions were not made in Britain. The Patriotic Front wished to construct a society to make for one nation irrespective of colour. Furthermore a Bill of Rights was proposed. That in itself safeguarded the rights of individuals. It covered the rights of everyone and applied to all sections of the population regardless of colour, creed or tribe.

In reply to Mr Nkomo, SIR I GILMOUR said that the proposed regional criteria to be taken into consideration in the composition of the Senate could not be equated with tribalism. Consideration for regional representation was a feature, and indeed part of the raison d'etre, of most second chambers. The United States, Australia, Canada and Germany were good examples of this. Taking up a point made by Mr Mugabe, he said that it was the objective of everyone that there should in time be a common roll for Rhodesia - only a temporary provision was being suggested. There was nothing racialist in the British proposals. It was generally recognised that it was in the interests of the country that the white community should remain. As the Lusaka Conference had recognised, it was reasonable that they be given assurances so that they stayed for the good of the whole country. Mr Mugabe's question on the difficulties of tests of origin was a good one, but this provision was not envisaged as a permanent one and it should not be beyond the abilities

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of the Conference to find an acceptable formula to solve that problem. There was no need for similar arrangements in the UK because there had been no civil war there. If there had been no war in Zimbabwe, there might not have been a need for special provisions. But the war had been and remained a reality and there was a need to keep the white community in Rhodesia. The British proposals were fair for all and temporary.

MR SILUNDIKA understood the concern of the British Government but suggested that it was better to prevent disease than cure it. Once special provisions on racial grounds were incorporated in the constitution, whatever the intentions for doing so, the disease would be established in the minds of the people. He referred to Cyprus and Kashmir and suggested that these were examples of British constitutional constructions which had led to the continuation of conflict. He wanted to ensure that these examples were not repeated in respect of Zimbabwe. Mr Silundika concluded by saying that his delegation was attempting to create a basis of citizenship which did not inherit the diseases of the past.

MR BARON commented on the Lord Privy Seal's previous remarks on the structure of the second chamber. The examples quoted had all related to federations with state or regional legislatures. In such a structure a second chamber was almost axiomatic, but it was not appropriate to Zimbabwe. The Lord Privy Seal had made a second point - that regionalism did not mean tribalism. Mr Baron asked how it was intended to
/give

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give weight to regional considerations in a country where there were no state or regional legislatures. Mr Baron's final query concerned the provisions for the white minority. He agreed that under the terms of the British document the minority would not be able to block constitutional amendments, but with one extra vote they would be able to delay constitutional amendments for 180 days. As far as regional considerations were concerned, any meaningful use of this criterion would give undue weight to one section of the community and would have the effect of achieving a delaying, if not a blocking power.

MR MUBAKO asked the British delegation to specify numbers in their proposals for racial representation in the Senate. For argument's sake, in a National Assembly of 100 members the white minority on a proportional basis would receive perhaps five seats. These five would in turn have the power to elect 33% of the seats in the Senate. Such a procedure would bestow undue power on those five members. Secondly, he considered the British proposals concerning regional representation to be too vague as they stood. This vagueness arose because neither the regions nor the electors were specified. MR ZVOBGO asked for clarification of the British argument generally. His delegation welcomed the principle that a minority should not have a blocking power, but he asked what purpose would be served by that minority's mere presence in Parliament. He wondered whether such a provision would
/genuinely

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genuinely encourage them to stay in Zimbabwe. In his view, presence alone was a privilege with no real value.

THE CHAIRMAN said that answers to these questions would be given at a later stage. On the last point, the British object was to give the minority the right to express their views and argue their case in Parliament. This was a reassurance, not a privilege. Since this whole question was probably the most difficult facing the Conference, the Chairman proposed that it should be pursued bilaterally. Concerning the Judicature, (Section F) the Chairman said that there was some common ground in the various proposals, such as the provision that judges would be appointed by a Judicial Service Commission. Dr Mundawarara had asked what was meant by the British requirement for "appropriate judicial experience." The Chairman said that experience as a judge at an appropriate level in an equivalent legal system would be an appropriate qualification.

MR KAMBA asked what the British meant by referring, in paragraph 5 of section F, to "the judges of the subordinate courts". MR FIFOOT said that "judges" had been used generically to describe whoever was the presiding judicial officer. This section referred for example to the Water Court. MR BARON thought that the Water Court was a different proposition, to be covered elsewhere in the constitution. He had assumed that paragraph 5 of Section F referred to magistrates. THE CHAIRMAN took note of this point, which required further examination by legal experts.

/MR NKOMO

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MR NKOMO said that proposals for the Judicature depended on the situation proposed for the transitional arrangements. This would be covered in his delegation's paper.

MR MUGABE referred to paragraph 3.b. of Section F. where English was specified as "the official language". He wondered whether "an official language" would not be preferable.

THE CHAIRMAN took note, and then asked for comments on the section of the British paper concerning the Defence Forces (Section G.). MR MUGABE said that this was an area which it was not possible to debate usefully until transitional arrangements had been agreed. His delegation's ideas concerning the Defence Forces in the interim period would be contained in the paper to be circulated. THE CHAIRMAN said that the Conference was seeking to provide a constitution into which mechanisms for controlling the Armed Forces in an independent Zimbabwe would be built. A freely elected Government could decide what forces the country needed. He awaited the tabling of Mr Mugabe's and Mr Nkomo's paper.

MR MSIKA asked what was meant by paragraph 3. of Section G of the British paper. SIR A DUFF said that, in his delegation's view, the Government must be able to give directions to the Defence Forces, and should appoint at least the Commander of the Defence Forces. But it would be more convenient and efficient if the Commander, under certain constraints, was responsible for the discipline of the Defence Forces and for further appointments. One such constraint

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would be a Defence Forces Commission. It would be important to achieve a balance between the need for Government control and the ability of the Commander of a disciplined force to take decisions. MR ZVOGBO, referring to the same paragraph, asked for clarification of the phrase "general directions". He asked whether this was a common feature of proposals for an independence constitution, and whether the word "general" was essential. SIR A DUFF said that the word "general" had been used in the knowledge that a more precise definition might be necessary when the time came for drafting the constitution. He reaffirmed the need for a balance between Government control and effective action. In response to a further question on the same point from Mr Nkomo, the ATTORNEY GENERAL said that the normal arrangement was for the senior officer to be given general directions and it was then for him to draw up detailed arrangements to implement those directions. MR NKOMO asked what provisions on this subject existed in the constitutions of other countries granted independence by Britain. THE CHAIRMAN said that he would provide the answer to this question as soon as possible.

The Chairman then suggested that the Conference should begin discussion of Section H., Finance. MR NKOMO asked for an explanation of the word "former" in paragraph 3. MR FIFOOT said that this was a common provision in independence constitutions granted by Britain. MR NKOMO replied that in Rhodesia special circumstances obtained. There had been a /situation

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situation of illegality for many years. MR MUGABE pointed out that Britain had at one stage required civil servants not to serve the illegal regime. Most of them had refused to do so in defiance of this instruction. Did the British Government now want them to be pensioned? THE CHAIRMAN replied that it was the object of the Conference to seek to heal the wounds of these last years, and to encourage people to stay on in Zimbabwe. Any decision on pensions should take account of this.

MR ZVOBGO said that, in discussing this issue, it had to be noted that some might be regarded as public officers by some people but by others as mercenaries. THE CHAIRMAN replied that there would need to be detailed discussions on this point. MR MUGABE said that if there was to be a retrospective blessing by the British Government for treasonable conduct, this should be clearly stated.

MR MUBAKO asked if the Chairman could explain the significance of the date 1 October 1978 in paragraph 3. THE CHAIRMAN agreed to do so as soon as possible.

He then invited comments on Section I., The Ombudsman. MR MUGABE said that the Patriotic Front had no objection to this provision. MR BARON asked whether it was this official who would assist in the enforcement of the Bill of Rights as suggested in the British outline proposals (CC(79)2).

THE CHAIRMAN agreed. MR BARON also asked if the Chairman

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could provide further details on how this would work. THE CHAIRMAN agreed to do so in due course.

MR BARON then pointed out that the Patriotic Front document (CC(79)11) contained five proposals for inclusion in the Order in Council. He considered that the omission of this aspect from the British document was serious, since it did not allow the delegation of Mr Mugabe and Mr Nkomo to link the proposed constitution with pre-independence arrangements. There was then a discussion on the desirability of discussing the transitional provisions in advance of reaching detailed conclusions on the constitution, and it was finally agreed that Mr Baron might outline the five provisions in the Patriotic Front proposals in order that their thinking on the subject might be fully understood. On paragraph 1 (page 9 of CC(79)11) he said that it would be the intention, between the conclusion of the Conference and the installation of a transitional administration, to prepare a schedule effecting the repeal of offending legislation. Paragraphs 2, 3 and 4, he thought were self-explanatory; the substance of paragraph 4 had already been discussed in consideration of the British proposals on citizenship. On paragraph 5, he said that while it was normal practice to accept obligations arising out of pre-independence contracts and agreements, account had to be taken of the special circumstances of Rhodesia. THE ATTORNEY GENERAL asked for clarification of the last sentence of paragraph 1. He thought that the inclusion of provision for "long stop" invalidation could lead to a considerable measure of uncertainty. THE CHAIRMAN commented that this was a matter which would need to be taken up later in detailed /discussions

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discussions.

None of the delegations having further points to raise, THE CHAIRMAN suggested that they should adjourn, and that officials from each of the delegations should discuss and agree procedure, including bilaterals, the following day.

The session adjourned at 1755.

- 16 -

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CC(79) 14
FIFTH PLENARY SESSION

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CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON
SEPTEMBER 1979

Summary of the proceedings of the Fifth Plenary
Session of the Conference, Monday 17 September

Lancaster House
17 September 1979

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Bishop Muzorewa and Delegation

Bishop A T Muzorewa
Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr I D Smith
Mr D C Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr G Pincus
Mr L G Smith
Mr D Zamchiya

PRESENT:

UK Delegation

Lord Carrington (in the Chair)

Sir I Gilmour Bt

Sir M Havers

Lord Harlech

Mr R Luce

Sir M Palliser

Sir A Duff

Mr D M Day

Mr R A C Byatt

Mr R W Renwick

Mr P R N Fifoot

Mr N M Fenn

Mr G G H Walden

Mr C D Powell

Mr P J Barlow

Mr R D Wilkinson

Mr R M J Lyne

Mr Mugabe, Mr Nkomo and Delegation

Mr J M Nkomo	Mr R G Mugabe
Mr J W Msika	Mr E Z Tekere
Mr T G Silundika	Mr J M Tongogara
Mr A M Chambati	Mr E R Kadungure
Mr L Baron	Mr H Ushewokunze
Mr S K Sibanda	Mr J Tungamirai
Mr E Mlambo	Mr E Zvobgo
Mr C Ndlovu	Mr S Mubako
Miss T Siziba	Mr W Kamba

Secretariat

Mr J M Willson

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The session began at 1040.

The CHAIRMAN began by expressing the hope that the second week of the Conference would bring further progress. Before tabling proposals on how the Conference might proceed, he answered briefly some of the questions posed at the previous session by Bishop Muzorewa's delegation and also commented on the proposals introduced at the same session by Mr Mugabe. In replying to the question raised by Dr Mundawarara as to why some of the provisions in the constitution tabled by his delegation were unacceptable, he said that some features of the present constitutional arrangements differed markedly from those of other countries granted independence by Britain. This was particularly true as regards the blocking power given to the minority over a wide range of legislation and in the character of the Public Service and other Commissions. He said that the British proposals stood by themselves and related only to the main constitutional provisions and not to all the subsidiary and consequential points. On the question as to why, within the British proposals, white voters did not appear on both the White Voters roll and the Common Voters roll, the British Government thought that no individual should be given two votes. The British Government had also thought it better not to specify at this stage certain numbers and periods relating to the House of Assembly, Senate and amendments to the constitution. They preferred to put

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forward specific proposals after appropriate further discussion. The British proposals provided for only black members to be elected by voters on the Common Roll because separate representation for the white community had been proposed. But, if acceptable, he would have no objection to there being no restrictions on who might be elected by the Common Roll. On the question of the protection of minority communities, he said that in no other country brought to independence by Britain had the minority community been given a blocking power. However, both Britain and Commonwealth Heads of Government at Lusaka had recognised that this was a particular problem and had agreed that there should be the reassurance of adequate safeguards for the minority. A provision for separate white representation had therefore been written into the British proposals and it was proposed that this, together with those relating to human rights, be unamendable for a specific period. The British delegation would comment on other points raised in Dr Mundawarara's speech as they came up during discussion.

Turning to the proposals made by the Patriotic Front, the Chairman said that there were certain similarities with the documents tabled by the other delegations e.g. there was provision for an Upper and Lower House, for Public Service, Police and Defence Forces' Commissions and for a Bill of Rights. The Patriotic Front's proposals differed, however,
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in certain constitutional forms e.g. an Executive President was proposed rather than a constitutional Head of State. A more fundamental difference was that there was no provision for separate representation, for a transitional period, for the minority community. In his view, this failed to take account of the special history and circumstances of Rhodesia.

He then invited discussion on how the Conference might best proceed. There were three sets of proposals on the table and, while there were common elements, or at least chapter headings, he recognised that it was difficult for any two delegations to use the third delegation's draft as a basis for discussion. He therefore suggested that the British proposals should be used. This would, of course, not exclude discussion of the other proposals. But he suggested the Conference follow the order of the chapter headings of the British document and discuss all the proposals which had been tabled under these headings. Any other proposals which did not fall under the headings of the British document could be discussed separately. A discussion on each of the main headings would serve to isolate the major points of difference which could then be tackled in more detail.

BISHOP MUZOREWA said that the Chairman's summary had clearly identified the points of difference in the documents that had been tabled. He thought that the most logical way to proceed would be to have bilateral meetings, so that each side could talk with the British delegation about the

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differences between their proposals, and then come back into plenary. To hold discussions in plenary would mean that each side had to sit there while the other side discussed their proposals with the British delegation.

MR MUGABE took note of the Chairman's comments and said that the Patriotic Front would talk to the document (CC(79)11) tabled by them in due course. He wanted the Chairman to take note, however, that the Patriotic Front only recognised two sets of proposals as having been tabled, those of the British Government and of the Patriotic Front. The third document was really an Act purportedly granting a constitution to an unknown country. He wanted clarification from Bishop Muzorewa's delegation as to whether this document was still considered as an Act or was now being put forward as new proposals for a new constitution.

The CHAIRMAN replied that he thought the Conference had agreed that any delegation could table proposals. As he understood it, Bishop Muzorewa's delegation had tabled a document, which was in the form of the Constitution enacted by the internal agreement, but as far as the Conference was concerned it was a set of proposals for discussion and agreement at the Conference.

MR MUGABE said that he did not wish to exclude discussion of the document tabled by Bishop Muzorewa, but he asked whether the Chairman had implied that the purpose of tabling Bishop Muzorewa's delegation's document was to give it legal /status

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status. The CHAIRMAN confirmed that no delegation was debarred from putting forward proposals. As far as he was concerned, the way in which Bishop Muzorewa viewed his proposals was immaterial. BISHOP MUZOREWA indicated that he was content with the Chairman's explanation and did not need to elaborate his delegation's position.

MR NKOMO asked if Bishop Muzorewa's delegation were prepared to regard their document as a set of proposals. The CHAIRMAN reiterated that the purpose of the Conference was to agree a constitution and then to agree on free and fair elections. Each delegation had put forward proposals which merited consideration. In putting forward these proposals delegations hoped that their documents would provide a basis on which the British Government could submit them to Parliament. All documents tabled were to be regarded as proposals amendable after discussion. The Chairman then proposed that the Conference should take the chapter headings of the British proposals as the order of discussion.

MR MUGABE thought that his delegation's proposals constituted a better basis for discussion, since they were more realistic and conformed to the interests of his people. MR I D SMITH said that his delegation equally wished their proposals to be considered the basis for discussion. The CHAIRMAN said that, provided no issues contained in the various delegations' proposals were omitted, the best way to proceed would be on the basis of the British proposals. This would be /the

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the least contentious way forward. MR MUGABE said that his delegation's proposals had been drawn up in accordance with the precedents established by previous independence constitutions granted by Britain to former colonies, especially in Africa. However, he would be prepared to abide by the Chairman's preference for taking the British Government's document as the basis for discussion, provided that all aspects were taken into account. MR NKOMO added that both the British and the Patriotic Front's proposals followed a similar order and that discussion might proceed on the basis of cross-reference. But he wanted to avoid the impression that the Conference was simply amending a British text, rather than considering all the documents tabled before it.

THE CHAIRMAN restated his view that the least objectionable way to proceed would be to discuss the document tabled by the British Government, on which other delegations had made counter-proposals. MR NKOMO stated that his delegation's document was not a reply to the British proposals, but stood by itself for discussion by the Conference.

It was agreed that all documents tabled would be discussed and that discussion would follow the subject order in the British document.

THE CHAIRMAN asked whether it would be best to begin with a brief discussion of chapter headings in order to isolate points of major difficulty, referring non-contentious points to experts; or to proceed immediately to isolate points of difference bilaterally. BISHOP MUZOREWA said that many points

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of disagreement had already been revealed, and that it was logical to iron these out bilaterally before moving into discussion in plenary. THE CHAIRMAN observed that it would be necessary sooner or later to have bilateral discussions. It was a question of how soon these should be employed.

MR MUGABE said that he had expected that morning to have a discussion of the proposals in the course of which areas of agreement and difference would have emerged. He did not object seriously to bilateral discussions at this stage however. MR NKOMO added that it would be useful to know first the points of agreement and difference and the thinking behind the various proposals. Bilateral meetings would only be useful thereafter.

BISHOP MUZOREWA said that areas of disagreement had already been revealed during the Chairman's statement that morning. It seemed that those matters not mentioned were generally agreed and that those which the Chairman had identified necessitated bilateral discussion. His delegation preferred to go directly into bilateral discussion on the questions they had raised. MR NKOMO said that his and Mr Mugabe's delegation would prefer to go through the British document as the Chairman had suggested. THE CHAIRMAN said he was prepared to do this but that if Bishop Muzorewa and his delegation wanted to reserve their position until bilateral discussions, this was acceptable. BISHOP MUZOREWA said that his delegation would remain at the Conference table, to listen.

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The session was adjourned for coffee between 11.35 and 11.50.

On resumption, the CHAIRMAN began by reading Section A of the British proposals (CC(79)6). MR MUGABE said his delegation proposed a republic. It was not clear from the British document what type of state the British Government envisaged. He wanted to know what the British Government had in mind. There was no precedent for a monarchy except for the preservation of the monarchies in Swaziland and Lesotho at the wishes of those two countries. SIR A DUFF replied that the British Government had no wish to force a monarchy on anyone, though he noted in passing that certain other states, even in Africa, had been monarchies for short periods before becoming Republics. The question of the type of state had been left open deliberately in order to elicit views. THE CHAIRMAN said that point 2. in Section A of the British document was not covered in the document tabled by Mr Mugabe, Mr Nkomo and delegation. MR MUGABE said that it was implicit in their whole document that the constitution should be the supreme law of the state.

THE CHAIRMAN then turned to Section B of the British proposals (Citizenship). He commented that there were certain differences of opinion between the British proposals and those tabled by Mr Mugabe, Mr Nkomo and delegation (CC(79)11, page 8). MR MUGABE explained his delegation's position, quoting paragraphs 2(1) and 2(2) of page 8 of his delegation's /document

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document. The critical date for citizenship was 11 November, 1965. His delegation did not view the illegal acts of the regime in Salisbury as having the power to grant or take away citizenship. There was no moral or legal basis on which this argument could be faulted. Turning to paragraph 3, he explained that this was an attempt to broaden the area of qualification for citizenship.

After reading paragraph 4 of his delegation's draft MR MUGABE explained that it contained no provision for dual citizenship, whereas in the British proposals it seemed to be a permanent feature of the constitution. It would be wrong in principle to try and bind the hands of a future Parliament and Government on this issue. SIR A DUFF asked for clarification. Did he mean that it would be wrong to cover citizenship in the constitution? MR MUGABE said that he did not. Principles in accordance with the usual norms could be laid down. A state was entitled through its own machinery to insist on citizens owing allegiance to it and to no other state. The right of a future Zimbabwe Parliament to legislate on citizenship should not be obstructed. He had no objection to including something on citizenship in the manner his delegation had themselves described, but to try to create dual citizenship was going too far.

MR FIFOOT pointed out that this kind of point could come up in discussion of any paragraph of the constitution. He also said that many states had dual nationality provisions,

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although many other did not. Unlike the British proposals (paragraphs 2 to 5 of Section B of CC(79)6) the proposals of Mr Mugabe, Mr Nkomo and delegation contained no provision for citizenship after Independence. Nor did they deal with the position of those born in the country between 11 November 1965 and Independence. MR KAMBA explained that the intention of the proposals in CC(79)11 was to set out the major principles which might be controversial. Making provision for citizenship after Independence was simple: his delegation accepted it as part of the elements in the constitution and this was unlikely to cause controversy. In response to Mr Fifoot's last point, he said that, if agreement on his delegation's document was reached, the question of birth would be easily determinable. Children born in that period would not be affected: such questions would be dealt with in the normal way.

THE CHAIRMAN said that, having isolated the difficult points in Section B they should now turn to Section C: the Declaration of Rights. At that point, DR MUNDAWARARA intervened to restate the position of Bishop Muzorewa's delegation as he had outlined it during the Fourth Plenary Session. He was concerned that discussion was centred mainly on the document tabled by Mr Mugabe, Mr Nkomo and delegation. He said that the Chairman's summary at the beginning of the present session had answered some of his delegation's questions, but not all. What they were now witnessing was bilateral discussions between the British delegation and the /other

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other delegation. He proposed that the Conference should formally adjourn into bilateral discussion. THE CHAIRMAN replied that it had been agreed that, before bilateral discussions began, there should be a general discussion, using the headings of the British proposals. It was in discussion of the latter that Mr Mugabe had referred to the contents of his own delegations' proposals. The Chairman said he would be happy for Bishop Muzorewa and his delegation to participate in this general discussion; but if they still wished to reserve their position for the bilateral sessions he would of course respect their wishes.

The Chairman continued by saying that he thought there was general agreement on the desirability of a justiciable Bill of Rights. MR MUGABE agreed that the principles contained in the British list were not very different from those in the minds of the Patriotic Front. It was the intention of their delegation to have a document which would set out in much more detail the rights involved. SIR A DUFF said that the British proposals did not contain even a summary, but merely a list of the main headings to be included in a Bill of Rights. He agreed that much more detail would be needed in the constitution. THE CHAIRMAN confirmed this. MR MUGABE agreed to the contents of the British draft subject to the elaboration of suitable detailed proposals.

MR BARON then asked which provisions in the Bill of Rights would, according to the British proposals, be unamendable
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for a specified period. MR FIFOOT replied that the entrenched provision would normally be the general statement at the beginning of each provision, and that any subsequent qualifications would be amendable.

THE CHAIRMAN suggested that this was a legal point which was best left for discussion by experts and that they now proceed to discussion of Section D: The Executive, on which there were differences between the three sets of proposals tabled. MR MUGABE said that the Patriotic Front draft envisaged an Executive Presidency supported by a Vice-President - who would be leader of Government business in the House of Assembly. They were against a constitutional Head of State. THE CHAIRMAN replied that the British Government thought that a constitutional Head of State had certain advantages, particularly in his ability to play an impartial role. This was not inconsistent with a republic, as witness the cases of Germany and Italy. He thought that this was a subject for more detailed discussion. In reply to a question from Mr Mugabe as to why the British Government proposed a constitutional Head of State which was a departure from precedent, he replied that there were precedents for both alternatives. The British Government preferred a constitutional Head of State because that was the Westminster model and one which the British Government thought worked well. MR FIFOOT added that it had been usual for Britain to begin constitutional conferences with a proposal for a constitutional Head of State, but, where the other side

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of the table had preferred an Executive President, that had been acceptable. The same was true in this case.

MR BARON stated that, since 1964, Zambia, Botswana, Seychelles and Kiribati had moved directly to the status of Republics with executive Heads of State. He was not aware of any former dependency having been granted independence as a republic under a constitutional Head of State. His delegation's proposals had taken into account the British Government's stated intention to bring the country to legal independence on a basis comparable with the arrangements made for the independence of former dependencies, especially in Africa. MR NKOMO added that the concept of a constitutional Head of State was not African. They did not have chiefs who could not take decisions; figureheads were alien to the African. Certain countries which had originally opted for a constitutional Head of State had subsequently changed to an executive Head of State.

SIR A DUFF said that the British proposals were not based on precedent, but constituted a basis for discussion along with the different points of view put forward by other delegations. Two, if not more, ways of establishing the apparatus of government had been identified. The purpose of discussion was to reach agreement. MR MUGABE asked the Chairman to take note of the definite functions and power structure provided for the presidency in his delegation's document. MR FIFOOT wondered whether the proposals tabled on executive functions were in fact far apart. Both proposals /envisaged

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envisaged an executive vested with similar powers of direction and appointment. MR KAMBA said that, under his delegation's proposals, the President would be the effective Head of State with powers to make appointments, but he would of course have the advice of such commissions as had been set up.

It was agreed to adjourn until 1600 hours.

The session closed at 1240 hours.

- 14 -

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CC(79) 13
FOURTH PLENARY SESSION

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON
SEPTEMBER 1979

Summary of the proceedings of the Fourth Plenary
Session of the Conference, Friday 14 September

Lancaster House
14 September 1979

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PRESENT:
UK Delegation

Lord Carrington (in the Chair)
Sir I Gilmour Bt
Lord Harlech
Mr R Luce
Sir M Palliser
Sir A Duff
Mr D M Day
Mr R A C Byatt
Mr R W Renwick
Mr P R N Fifoot
Mr N M Fenn
Mr G G H Walden
Mr C D Powell
Mr R D Wilkinson
Mr M J Richardson

Mr Mugabe, Mr Nkomo and Delegation

Mr R G Mugabe
Mr S V Muzenda
Mr E Z Tekere
Mr J M Tongogara
Mr H Ushewokunze
Mr J Tungamirai
Mr E Zvobgo
Mr W Kamba

Mr J M Nkomo
Mr J M Chinamano
Mr J W Msika
Mr T G Silundika
Mr John Nkomo
Mr L Baron
Mr E Mlambo
Mr C Ndlovu
Miss T Siziba

Bishop Muzorewa and Delegation

Dr S C Mundawarara
Mr E L Bulle
Mr F Zindoga
Mr D C Mukome
Mr G B Nyandoro
Rev N Sithole
Mr L Nyemba
Chief K Ndiweni
Mr Z M Bafanah
Mr I D Smith
Mr D C Smith
Mr R Cronje
Mr C Andersen
Dr J Kamusikiri
Mr L G Smith
Air Vice Marshal H Hawkins
Mr D Zamchiya
Mr G Mutambanengwe

Secretariat

Mr J M Willson

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The Session began at 1505.

THE CHAIRMAN recalled that he had adjourned the previous day's session to enable the other delegations to study the Summary of an Independence Constitution (Conference Paper CC(79)6) which he had previously circulated. He now invited comments from the other delegations.

DR MUNDAWARARA said that Bishop Muzorewa's delegation had studied the proposals circulated by the British Government. As had already been said, the delegation felt that they had a constitution which substantially complied with the principles in the British proposals. He wished formally to table the existing constitution (subsequently circulated as Conference Paper CC(79)10). He wanted to adopt a helpful and constructive attitude to the British proposals, but was inhibited from doing so for two reasons: first, he wondered why the British Government were reluctant to accept some of the principles of the present constitution. He would like an explanation from the Chairman as to why they were thought unacceptable although they seemed to comply with the principles already laid down in the British proposals. He also assumed that, if no reference had been made or amendments suggested to existing constitutional provisions, the British Government had no alternative proposals to put forward.

Secondly, his delegation was uncertain as to the meaning of some of the terms used in the British proposals, and would need further clarification before they could comment /meaningfully

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meaningfully. He then went on to list specific provisions contained in Conference Paper CC(79)6 which caused difficulty as follows:-

Parliament(page 9)

In paragraph 2 it seemed that white citizens could either enrol on the Common Voters Role or on a White Voters Roll, but not on both. What was the reason for this?

In respect of paragraph 3 c, he noted that in the election of one third of the members of the Senate due weight would be given to regional considerations. He wished to know precisely what the British Government meant by this and also what was the number of Senators proposed.

How many members did the British Government think there should be in the House of Assembly (para. 5) and what proportion of them should be white? This was vital to proper consideration of this point.

He also queried why only black members could be elected by voters on the Common Voters Roll.

Turning to proposals for amendment of the constitution (paragraph 12(1)), he wanted to know for what period the provisions of the constitution relating to minority representation in Parliament would not be amendable and which provisions would not be so amendable. He wondered how this provision could be reconciled with

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the sovereignty of Parliament and with the statement "Zimbabwe will be an independent sovereign State" in the British outline proposals.

Paragraph 12 (2) stipulated that the specially entrenched provisions of the constitution could only be amended by at least 70% of the votes of the House of Assembly. He noted that this percentage was in parenthesis and assumed that this was only a tentative suggestion. What was the final figure going to be and, if 70%, how had it been arrived at? He also wondered how real protection for the minority could be provided without a blocking mechanism.

The Judicature (page 12)

Paragraph 3 a. stipulated that a person had to have "appropriate judicial experience" to be appointed as a judge of the High Court. What was meant by this phrase?

The Executive: The Public Service and Police Force (page 7)

Paragraph 1 stipulated that the Public Service Commission needed to receive the advice of properly qualified and experienced persons. How was this to be done? The same query was also relevant in the case of the Police Force (Section D iii 6) and the Defence Forces (Section G 4).

He wondered how, in view of the fact that the President
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could give certain directions to the Public Service Commission (Section D iii 3), the non-political character of the Civil Service could be maintained. The same query was also relevant in the case of the Police Force, (Section D iii 6) and the Defence Forces (Section G.4).

He also wondered how it would be possible to reassure members of the Civil Service, the Police and the Defence Forces, the majority of whom were black, that their careers would not be prejudiced by these proposals.

DR MUNDAWARARA added that the Delegation would wish to raise other queries in due course, but if the information he had requested could be provided, Bishop Muzorewa's delegation would then be able to respond further to the British proposals.

THE CHAIRMAN thanked Dr Mundawarara for his presentation. The British Government delegation had not wished to be too precise as to figures, in order to avoid any suspicion of laying down the law. The British proposals were offered for discussion. He suggested that Bishop Muzorewa's delegation might circulate the questions they had raised as a Conference document, and that the British delegation could then make their response in writing to those questions which could at that stage be answered. The Chairman then invited the Patriotic Front's views on the British proposals.

MR NKOMO said that his delegation had studied the British proposals very carefully. They had their own proposals, however, and now wished to present them formally to the Conference (circulated as Conference Paper CC(79)11).

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He recognised that the other delegations would need time to consider them, but said that Mr Mugabe would make some initial comments on the British proposals, while also outlining the Patriotic Front's proposals. He added that there were a number of issues in the British proposals on which their delegation would only be able to comment when the state of affairs during the pre-independence situation was known. The delegation was therefore in the process of preparing a further paper, which they hoped to circulate early the following week, in which they would give a picture of the pre-independence situation as they envisaged it. It was essential that everyone had a clear idea of that situation so that suitable structures could be considered.

MR MUGABE said that the document they were submitting contained the Patriotic Front's views on the independence constitution; his delegation relied on the Chairman's assurance that the independence constitution would not be agreed before the Conference agreed on the transitional arrangements. He then summarised and commented on the delegation's proposals (Conference Paper CC(79)11).

The introduction embodied the guiding principle of the proposals, namely that there should be a total transfer of sovereignty to the people. The draft provided for a sovereign republic and not simply a "state", as in the British proposals. He said that the proposals broadly followed the same order as the British document, but the substance of their proposals was different in some cases. Mr Mugabe commented that, in the view of his delegation, a

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maximum of one month for consideration of a Bill by the Senate provided sufficient latitude, rather than the 180 days in the British proposals, and that such a provision would expedite the conduct of legislative business. His delegation also preferred a briefer period of delay in dealing with amendments to the constitution. In this regard, he emphasised the provision for the two Houses to sit separately.

Mr Mugabe then detailed proposals for the Judicature, pointing out that the British proposals had provided for a minimum of 10 years legal practice to qualify for appointment to judicial office. His delegation, however, considered that 5 years was sufficient.

In presenting his delegation's proposals on citizenship, Mr Mugabe said that, after UDI, a number of people had emigrated to his country in the knowledge that an illegal state of affairs had arisen. His delegation had therefore taken 11 November, 1965 as the critical date for automatic citizenship. They also took a different view of dual citizenship; they rejected it completely. All Zimbabweans should owe total allegiance to Zimbabwe only.

Mr Mugabe said that the words "and post-UDI" should be inserted between "pre-UDI" and "purported" on the third line of page nine of his delegation's proposals.

He said that he had given a broad outline of the proposals, but wished to draw attention to the fact that

/certain

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certain matters relating to the provisions of an Independence Constitution could not be determined until agreement had been reached on the transitional period. He then invited one of his legal advisers, Mr Baron, to amplify this point. MR BARON said that his delegation wished to stress the relationship between the Independence Constitution and all that passed before it, including a transitional Order-in-Council, a transitional constitution and an Independence Order-in-Council. It was impossible to assess the effect of the provisions of an Independence Constitution without the knowledge of what would be taken over at the time of independence. An Independence Constitution was meaningless where it dealt with the four essential institutions of government without an understanding of what had gone before.

MR MUGABE explained that his delegation would have preferred discussion of transitional arrangements to have preceded that of the Independence Constitution. Otherwise, the Conference might end up with a hollow document, incapable of making effective provisions. He therefore wished to reaffirm his delegation's reliance on the Chairman's statement that agreement on an Independence Constitution would be contingent on agreement regarding transitional arrangements.

Mr Mugabe asked the Chairman to analyse the Patriotic Front's proposals. He believed that their draft was more open and more realistic. DR MUNDAWARARA said that his delegation had been invited to the Conference in order to

/consider

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consider British constitutional proposals. It was on this basis that his delegation would comment.

THE CHAIRMAN said that the British delegation would circulate in writing such answers as it could provide at this stage to Dr Mundawarara's earlier questions. When the Conference reassembled on the following Monday morning it could discuss the different proposals put forward, perhaps by considering variations in parallel, for example the advantages of an Executive President as against a Constitutional President. The Conference agreed to adjourn until 1030 on Monday 17 September.

The session closed at 1600.

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CC(79) 12
CONFERENCE PAPER

COPY NO: 89

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON
SEPTEMBER 1979

In accordance with a request from the Chairman during the Fourth Plenary Session on 14 September, the enclosed paper from Bishop Muzorewa's delegation is circulated as a Conference Document

Lancaster House
14 September 1979

RESTRICTED

Mr Chairman,

We in the Zimbabwe Rhodesia delegation have been studying the Proposals for a Consitution contained in the Conference Paper already distributed to delegates by your Government. As I have already said, we have a Constitution which substantially complies with the principles outlined in your proposals. I now take the opportunity of tabling a copy of that Constitution.

2. /...

2.

We wish to adopt a helpful and constructive attitude in our reaction to your proposals but we are at this stage somewhat inhibited from doing so for 2 reasons.

In the first place it is apparent that the British Government is reluctant to accept certain provisions of our present Constitution which relate to some of your proposals. In the case of these provisions, we wish to ask the reasons why they are unacceptable, although they seem to comply with the principles already laid down in an earlier Conference Paper

issued /...

3.

issued by the British Government.

In this connection we would like to point out that where no reference is made or no alternative proposal is suggested to existing provisions of our Constitution, for example, in connection with the Senate Legal Committee, the entrenchment of other laws and the Government of National Unity, we must assume that you have no proposals at variance with those provisions.

The second /...

4.

The second reason which inhibits us from indicating our reaction to your proposals stems from the general terms used in describing certain of them. In order properly to evaluate and understand the proposals we require further details to be furnished.

I think it is only fair, Mr Chairman, that I should refer to some of the difficulties which we have encountered.

Parliament

There are a number of aspects on which we desire more information. As we understand the proposals it seems that a white citizen would be eligible for enrolment either on the common voters roll or on the white voters roll but not on both rolls. If our interpretation is correct we would ask for the reasoning behind this proposal.

In dealing with the composition of the Senate the proposals do not specify the total number of Senators

and they /...

and they provide that in the case of one-third of them they should be elected according to regional considerations. We would like to know what number of Senators is proposed and we ask what precisely is intended by the requirement of election according to regional considerations.

It is noted that the number of members of the House of Assembly and the proportion of black seats to white seats is not specified. Since these matters are vital to our considerations we believe that the British Government should include this information

in its /...

7.

in its proposals.

It is also noted that only black members can be elected by voters on the common voters roll. Why is this proposal being made?

Amendment of Constitution

Turning now to the proposals relating to the amendment of the Constitution, we have queries about the suggestion that certain limited provisions should

not be /...

8.

not be amendable for a specified period. We would enquire what period the British Government has in mind and what precisely are the provisions of the Declaration of Rights which could not be amended. Also, we are interested to learn how the British Government can reconcile the proposal that certain provisions should be unamendable for a specified period with the principle of sovereignty of Parliament and indeed with the statement in the British outline to the proposals that, and I quote :

"Zimbabwe /...

9.

"Zimbabwe will be an independent sovereign State".

The proposals also envisage that entrenched provisions of the Constitution may only be amended by at least 70% of the total number of votes in the House of Assembly. As the percentage number of votes appears in parenthesis it is assumed that this figure is tentative in nature. We would enquire what the figure is in fact going to be and if it is to be 70% how that figure is arrived at.

Mr Chairman /...

10.

Mr Chairman, in your opening address to this Conference you talked of a democratic Constitution including appropriate safeguards for minorities. I am, therefore, bound to ask you how the protection of minorities can be obtained unless a blocking mechanism is built into the Constitution.

I have outlined some of the difficulties which have occurred to us but there are others which I will raise with you in due course. If information on the lines

that I have /...

11.

that I have outlined can be provided to us at this stage, it will enable us more easily to understand these proposals and will allow us to respond fully to them.

The Judicature /...

12.

The Judicature

Under the heading "The Judicature" in your proposals, it is stated that one of the qualifications for appointment as a judge is appropriate judicial experience. What is meant by the phrase "appropriate judicial experience"?

The Public Service /...

13.

The Public Service, Police Force and Defence Forces

Under the heading of "Public Service" it is stated that the composition of the Public Service Commission must take account of the need for it to receive the advice of properly qualified and experienced persons. We would request clarification from you as to how the British Government propose to accomplish this. An identical query arises in respect of the composition of the Police and the Defence Forces Service Commissions.

Also under /...

14.

Also under the same heading there is a provision which would enable the President, acting on the advice of the Prime Minister, to give the Public Service Commission certain directions which, and I quote: "may include directions designed to achieve a suitable representation of the various component groups of the population in the services of the State". We would like to know what is meant by this and how it is proposed to ensure that the civil service remains non-political in character. Again similar queries arise in connection with the Police and the Defence Forces.

15.

Moreover, I feel bound to ask what the British Government has in mind to reassure members of the civil service and the security forces (the great majority ^{of} whom are black) to ensure that their careers will not be prejudiced by these proposals.

LONDON
14 September 1979
/CGR:

CC(79) 11
CONFERENCE PAPER

COPY NO

CONSTITUTIONAL CONFERENCE
LANCASTER HOUSE
LONDON
SEPTEMBER 1979

The attached document is circulated to
delegates at the request of Mr Mugabe,
Mr Nkomo and Delegation

Lancaster House
14 September 1979

BRIEF SUMMARY OF PROPOSALS
FOR AN INDEPENDENCE CONSTITUTION

FOR

ZIMBABWE

INTRODUCTION

The constitution of Zimbabwe will ensure the genuine transfer of effective power to the people, and will provide for all citizens of the country to have security and not privilege under the Rule of Law, equal rights without discrimination, and the right to be governed by a democratically elected government of their choice on the basis of universal adult suffrage.

THE REPUBLIC

Zimbabwe will be a sovereign republic and will have a national seal and a national emblem.

THE EXECUTIVE

The President and Vice-President

1. There will be an executive President, who will also be Head of State.
2. The President and the Vice-President will be elected as a team. The election will be by popular vote; it will proceed concurrently with the election of the members of the National Assembly and will be automatically linked with it,

so that whenever Parliament is dissolved there will be simultaneous elections for the National Assembly and the Presidential team. The successful team will be the one that has received the majority of the valid votes cast.

3. The tenure of office of the Presidential team will normally be linked with the life of Parliament. Provision will be made in the constitution for the removal from office of the President or the Vice-President for physical or mental incapacity or because of violation of the constitution or gross misconduct.

4. (1) If the office of President becomes vacant the Vice-President, provided he was elected with the President as a team, will assume the office of President and a new Vice-President will be elected by a simple majority of the members of the Senate and the National Assembly sitting together.

(2) If the office of President, having been assumed as in (1) above, becomes vacant within the first four years of the life of Parliament there will be a special "Presidential team" election within ninety days.

(3) If the office of President becomes vacant as in (2) above within the last year of the life of Parliament, Parliament will stand dissolved and there will be an ordinary Presidential and Parliamentary election.

(4) If the office of Vice-President becomes vacant a new Vice-President will be elected by a simple majority of the members of the Senate and the National Assembly sitting together; but a Vice-President so elected will not be qualified to assume the office of President if that should become vacant.

(5) If the office of President becomes vacant in circumstances where the Vice-President has been elected

as in (4) above, and the vacancy occurs in the first four years of the life of Parliament, there will be a special "Presidential team" election within ninety days.

(6) (6) If the office of President becomes vacant as in (5) above within the last year of the life of Parliament, Parliament will stand dissolved and there will be an ordinary Presidential and Parliamentary election.

(7) If the office of President becomes vacant as in (2), (3) or (5) above the Vice-President will act as President until a new President takes office, and an acting Vice-President will be elected by simple majority of the members of the Senate and the National Assembly sitting together.

5. There will be a Cabinet which will consist of the Vice-President and the Ministers.

Executive Functions

6. The executive power of the Republic will be vested in the President and, subject to the constitution, will be discharged by him either directly or through officers subordinate to him.

7. (1) The supreme command of the armed forces will vest in the President and he will hold the office of Commander in Chief.

(2) The powers of the President will include-

(a) the power to determine the operational use of the armed forces;

(b) the power to appoint members of the armed forces, to make appointments or promotion to any office in the armed forces and to dismiss any member of the armed forces.

(3) The President will have power to delegate any of the foregoing powers.

(4) Parliament will have power to regulate the exercise of any of the powers.

8. The Vice-President will be the principal Minister who will assist the President in the discharge of his executive functions, and leader of government business in the National Assembly.

9. The President will appoint a Cabinet from among the members of the Senate and the National Assembly comprising the Vice-President and a number of Ministers drawn from the Party which enjoys the confidence of the Assembly. The President, or in his absence the Vice-President, will preside over the Cabinet.

(10) The President may appoint junior Ministers from among the members of the Senate or the National Assembly.

THE LEGISLATURE

Composition

1. The Parliament of Zimbabwe will consist of the President, a Senate and a National Assembly.

2. The Senate will consist of forty (40) members who will be elected immediately after a general election by the members of the National Assembly sitting as an electoral college.

3. The National Assembly will consist of one hundred and twenty (120) members elected on a single member constituency basis.

4. The franchise for the election of President and the members of the National Assembly will be based

on universal adult suffrage i.e. all Zimbabwe citizens of the age of eighteen and upwards who have been registered as voters and are not specifically disqualified by law.

Legislation and Procedure

5. The legislative power will be exercised by bills passed by both Houses of Parliament and assented to by the President.
6. All legislation will be introduced in the National Assembly. After a bill has been passed in the National Assembly it must be debated and disposed of in the Senate within one month. If a bill is amended or rejected by the Senate it will be returned to the National Assembly. If the National Assembly re-affirms the bill or rejects the amendments proposed by the Senate without adding any fresh matter the bill will be presented directly to the President for his assent.
7. The foregoing provision will apply equally to money bills.
8. Voting on bills other than constitutional amendments will be by simple majority in each House.
9. Any bill to amend any provision of the constitution will require the affirmative votes of two-thirds of the total membership of the National Assembly and the Senate sitting separately; the Senate must debate and dispose of the bill within three months of receiving it from the National Assembly. If the bill fails to secure such majority in the Senate, it will be presented to the President for his assent despite the lack of the approval of the Senate.

THE JUDICATURE

1. There will be a Court of Appeal and a High Court.
2. The Chief Justice will be appointed by the President; the other judges of the Court of Appeal

and the High Court will be appointed by the President acting on the advice of the Judicial Service Commission. All judges will have security of tenure of office.

3. A person will be qualified for appointment as a judge if he has been a judge of a superior court in a country in which the common law is Roman-Dutch or English and an official language is English, or if he has practised or has been qualified to practise in such a country for not less than five years.

4. The terms of service of the judges may not be altered to their disadvantage during their tenure of office.

Judicial Service Commission

5. The Judicial Service Commission will comprise the Chief Justice, the Chairman of the Public Service Commission, a judge of the Court of Appeal or the High Court nominated by the Chief Justice, and two other members appointed by the President.

SERVICE COMMISSIONS

1. There will be the following commissions:

- (a) a Public Service Commission; and
- (b) a Police and Prison Service Commission.

2. Parliament will have power to create additional commissions.

3. A commission will comprise a chairman and not less than three nor more than six other members, who will be appointed by the President.

4. A commission will have power to retire any public officer in the public interest.

5. The following offices will not be under the

jurisdiction of any of the above commissions:

- (a) offices on the President's personal staff; these will be within the President's personal control, although he may arrange with the Public Service Commission for regular public officers to be seconded to his staff;
- (b) offices within the jurisdiction of the Judicial Service Commission;
- (c) offices on the staff of the Senate and the National Assembly;
- (d) the office of Commissioner of Police;
- (e) the office of the Secretary to the Cabinet, Permanent Secretaries and Deputy Permanent Secretaries of Departments, and Zimbabwe Ambassadors abroad. The relevant powers will be vested in the President, acting after consultation with the Public Service Commission.
- (f) The Director of Public Prosecutions and the Auditor - General will be appointed by the Public Service Commission and will then be outside its jurisdiction, enjoying constitutional protection;

The incumbents of the foregoing excluded offices will vacate their offices on the day preceding the date set for independence.

BILL OF RIGHTS

The constitution will contain a justiciable Bill of Rights.

FINANCE

There will be non-contentious provisions relating to the Consolidated Fund, withdrawals therefrom, the

Auditor-General, and so on.

CITIZENSHIP

1. The critical date for automatic citizenship will be the 11th November 1965, the date of UDI.

2. (1) All persons who were citizens of Southern Rhodesia prior to the 11th November 1965, or were resident in Southern Rhodesia on that date and who acquired citizenship after the 11th November 1965 under the law in force at the 11th November 1965, will automatically become citizens of Zimbabwe at independence, provided that at that date they were still citizens of Southern Rhodesia.

(2) Any person who was resident in Southern Rhodesia prior to UDI and who was purportedly granted citizenship under the 1970 Act will, provided he qualified under the 1963 Act, automatically become a citizen at independence (subject to a similar proviso as in (1)).

3. There will be the widest possible provisions regarding the rights to citizenship of children of Southern Rhodesians and Zimbabweans born outside the country.

4. A person with dual citizenship will cease to be a citizen of Zimbabwe unless he renounces his other citizenship within one year after independence or after attaining the age of eighteen years, whichever is the later.

MISCELLANEOUS

This Chapter will contain the definition section and other non-contentious provisions.

ZIMBABWE INDEPENDENCE ORDER 1979

1. Existing Laws.

We propose a general validation of existing laws, which for this purpose are pre-UDI purported laws, subject to the specific repeal or amendment of offending legislation as detailed in a schedule. There will in addition be a blanket or "long-stop" invalidation of any legislation inconsistent with the constitution.

2. Existing Officers.

Existing officers in the public service may be required to take fresh oaths of allegiance. Notwithstanding, an officer's appointment may be terminated within one year of independence by three month's notice.

3. Existing Judges and Magistrates.

All judges and magistrates will cease to hold office on independence, but will be at liberty to apply for re-appointment within one month. There will be a saving to enable a judicial officer to complete civil proceedings the hearing of which commenced before independence.

4. Citizenship.

All deprivations of citizenship since UDI will be invalidated, and any grant of citizenship under the Citizenship of Rhodesia Act Cap. 23 (1970), except those which could have been made under the Citizenship of Southern Rhodesia and British Nationality Act 1963, will also be invalidated.

5. Obligations of Government of Zimbabwe.

Obligations arising out of contracts and agreements entered into in furtherance or support of the rebellion will not be accepted by the government of independent Zimbabwe.

