

Report of the Commission of Enquiry, North Borneo and Sarawak, 1962
Also known as the Cobbold Commission

148 (d) *Name of the Federation*

We encountered some opposition to the name “Malaysia”, particularly from a number of non-Muslim elements of the population in Sarawak. This opposition stems from the same cause as the anxieties about Religion, Language and the Head of Federation, with which we deal elsewhere in this Section. They all reflect the fears held by the non-Malays and non-Muslims that the effect of Malaysia will be to put them in a position inferior to that of the Malays and Muslims. We cannot see, however, that any other name would be appropriate in view of the geographical-historical relevance of the name of Malaysia and its wide current usage. We believe, moreover, that in fact objections to the name would not persist for long. We recommend, however, that the word “Malaysia” should be generally incorporated into the Malay language: at present it is widely translated into Malay as “Melayu Raya”.

(e) Religion

Feeling on this point ran much stronger. There are differences of opinion among the Commission.

(i) Views of the Chairman and British members

The non-Muslim communities are most insistent that there should be complete religious freedom as to worship, education, and propagation, in the Borneo territories.

We recommend the insertion in the State Constitution of a specific provision to this effect.

There remain the provisions in the existing Federal Constitution of Malaya that Islam is the national religion and that certain public expenditure may be incurred for Islamic purposes. All Muslim communities would welcome the provision that Islam should be the national religion of the Federation. But even with guarantees of freedom of religion for the Borneo States, we have met with strong resistance from many non-Muslim communities to the idea that these Federal provisions should apply to the Borneo territories. We consider that this is a matter for the peoples of the Borneo territories (which have a non-Muslim majority) to decide for themselves at a later stage when fully elected representative bodies have been constituted. We recommend therefore that the Federal provisions should not be extended to the Borneo territories in the meantime.

(ii) Views of Malayan members

We think that all Muslim communities would become a provision that Islam should be the national religion of the Federation.

Amongst the non-Muslim who appeared before us there was a substantial number who would not object to the present practice in the Federation of Malaya, as they are satisfied with the provisions for fundamental liberties and freedom of religion in the Malayan Constitution. There were however, a number of non-Muslims who were most anxious that there should be no national religion for the Federation; a great many of them, however, would be prepared to consider that Islam might be made the national religion provided that it should not be the religion of their particular State.

Taking these points fully into consideration, we are agreed that Islam should be the national religion for the Federation. We are satisfied that the proposal in no way jeopardizes freedom of religion in the Federation, which in effect would be secular.

There remain, however, some objections to the provisions in the existing Constitution of the Federation of Malaya that certain public expenditure may be incurred for Islamic purposes. We feel unable to make any positive recommendation in this respect as this resistance, though strong, is small and any recommendation for a Constitutional provision to meet this objection will do violence to the present provisions in the Malayan Constitution which the weight of opinion does not require. We therefore limit ourselves to recording the point.

Special Position of Indigenous Races

160. As we have recorded earlier, native witnesses in both Sarawak and North Borneo asked that, in the matter of special privileges and opportunities, they should be put in a position analogous to that of the Malays in the Federation of Malaya. The Chinese, while opposing any suggestion that this privileged position should be written into the Constitution, agreed that in practice the native races should be given, at least for a period for years until they reached a more competitive level, the favoured treatment which they have in fact enjoyed under the Colonial Government.

161. We find this a difficult problem and various differing views have been expressed in our discussions of it. One of us feels that Malaysia as a whole would be better without constitutional provisions of this kind and that in so far as

the Borneo territories are concerned, they are in contradiction with the policy of equal opportunity for all races, which has been the basis of British policy since the war, and that they are not in the best interests of racial harmony or of the natives themselves, who would more easily be spurred to competitive effort without constitutional preferences. He believes that better opportunities rather than privileges are required by the indigenous people of the Borneo territories.

162. The other British member considers that in the light of the existing provisions relating to Malays in Malaya, the native races in the Borneo territories could not be given less favourable treatment, and recommends therefore that they should be given analogous treatment to the Malays in Malaya, provided it is understood that these provisions are not a permanent feature of the Federal Constitution.

163. If a decision is taken that the provisions in the existing Federation of Malaya's Constitution in this regard should apply to the natives of Borneo, we recommend that the question should be reviewed after 10 years in the light of the progress made by the native races. We further recommend that the provisions should apply to those citizens who are regarded as natives within the meaning of the Interpretation (Definition of Native) Ordinance of North Borneo (see Appendix D) and in the case of Sarawak those who are regarded as natives within the meaning of Section 3 of the Interpretation Ordinance, 1953 (see Appendix D). We recommend that the Ordinances in the two territories should be examined with the object of bringing them into line. It is to be noted that the provisions in the existing Federation of Malaya Constitution apply to Federal matters only unless State Legislatures decide to adopt similar provisions for State matters. We recommend that the same distinction should apply in respect of the Borneo territories.

164. We agree with our Malayan colleagues that an Advisory Board, as recommended by them in paragraph 190 (h), will be required to advise on the interpretation and administration of this complex and thorny subject.

190 (h) *Special Position of Indigenous Races*

As recoded in earlier Chapters, native witnesses have unanimously asked that the native races of Sarawak and North Borneo should be put in a position analogous to the Malays in the Federation of Malaya. This demand springs from their feeling that they should be able to enjoy the concomitant privileges and opportunities which the Federal Constitution affords to the Malays, and that any treatment of them different from the Malays would be anomalous.

The great majority were emphatic that this position should be written into the Constitution. The Chinese, with equal unanimity, have opposed the suggestion

that this privileged position should be written into the Constitution, though the great majority have agreed that in practice the native races should be given, at least for a period of years until they reach a more competitive level, the favoured treatment which they have in fact enjoyed under the colonial governments.

We have found this an exacting problem. We have given the matter our serious attention and we are agreed that the native races in the Borneo territories cannot be placed in a position any other than analogous to that of the Malays in the Constitution of the Federation of Malaya as both are generally regarded as the native groups in their respective countries. On this basis, it would be inconsistent and anomalous that the special position of the native races in Borneo should not likewise be written into the Constitution or once written that it should be subject to review separately from any review of the position of the Malays as a whole. This provision does not imply, of course, that the constitutional definition of a Malay in the present Malayan Constitution should apply to the native races of the Borneo territories.

We recognize that the subject would be more complicated in a new Federation than in the existing Federation of Malaya. In the new Federation it would not only be necessary to consider relations between the natives and the non-natives but also to hold a balance between the different native races in the Borneo territories, and at the same time between the native races as a whole in the Borneo territories and the Malays in Malaya.

This special position of the native races, more particularly as it relates to special treatment in the matter of permits and licenses in trade and business, would need very careful handling. We recommend that an Advisory Board, including representatives of the principal races, should be appointed in each territory, to advise on its interpretation and administration.

We recommend that the provisions should apply to those citizens who are regarded as natives within the meaning of the Interpretation (Definition of Native) Ordinance of North Borneo (see Appendix D), and in the case of Sarawak those citizens who are regarded as natives within the meaning of Section 3 of the Interpretation Ordinance, 1953 (see Appendix D). We recommend for consideration that the Ordinance in the two territories should be reviewed with the object of bringing them into line for this purpose and we suggest that it might be advantageous to widen slightly the application so as to include certain other categories.

It is noted that the provisions in the existing Federation of Malaya Constitution apply to Federal subjects only unless State Legislatures decide to adopt similar provisions for State subjects. We recommend that the same distinction should apply in respect of the Borneo territories.