THE
AKIM ABUAKWA CRISIS

By

H. K. AKYEAMPONG

WITH A FOREWORD BY

DR. J. B. DANQUAH

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AGYE NYAME ("Except God")

FOREWORD

OF the Jackson Report on Akim Abuakwa, reams could be written, but the time is yet to come for that. Mr. H. K. Akyeampong's review of that Report is a foretaste of what might be expected from the pen of an able writer in defence, or at any rate, in the interest of the State. For the good of Akim Abuakwa, its owners—the Chiefs and the people, as well as their sympathisers, the people of Ghana—should acquire a first hand acquaintance with its affairs. This pamphlet provides one such opportunity.

According to John Mensah Sarbah, in his book *Fanti National Constitution* (page 50), the motto or complimentary title of the Akim Abuakwa State is *Amantire*, which seems to mean "Head or leader of nations", but Sarbah took it to mean "National progress". From the behaviour of the people of Akim Abuakwa in recent years, it is increasingly becoming clear that the appellation or title by which many of the people in that State wish their State to be known is "National Want of Progress".

It is strange but true that the greatest prominence many Abuakwa people have given themselves in recent years in the eyes of Ghana is their great ability to defame the name of the greatest son Abuakwa has given to Ghana—Ofori Atta. Since the death of Nana Sir Ofori Atta I, K.B.E., there has hardly been any respite from this sort of denigration, the blackening and the defaming of the Abuakwa name. As a matter of fact, some of the most intelligent leaders of that nation feel they are at their best and in great glory when they brilliantly blacken and defame the name of their State and of its greatest son.

In former times the Ga people were satisfied to call the Abuakwa people *Kosebii*, "The bush people". Today the Akim Abuakwa people are, by their own behaviour, inviting the Gas, as well as the Ashantis and Fantis, and all others in Ghana, to refer to them as *Ghana buulii*, "Ghana's greatest fools".

The philosopher cannot contemplate this great phenomenon without being staggered aghast, and to ask: "Why did God take the trouble to create such a people?" How comes it that the people of a whole State, the largest single State in Southern Ghana, take such an infinite pleasure in blackening, defaming and denigrating their own State and its history? Are the instigators of such denigrating campaigns real Abuakwas, or are they some interlopers who have come to Abuakwa to make a living, or a home, but have noticed the great weakness of the Abuakwa people—that they delight

in running down their own—and so are using some of the intelligent but vanity-bitten sons of the Abuakwa soil to soil that nation's name.

Neither the Gas, nor the Fantis, nor the Ashantis have taken any direct hand in the attempt to depose the Second Ofori Atta, on the alleged ground of "abuse of power". If anything, the most vital fact about the Jackson Report is that every one of the principal Chiefs of the State is accused by that report to be guilty of "abuse of power". Not only the Omanhene, but the Adontenhene and all the other Senior and Junior Divisional Chiefs as well as Adikrofo are accused of the abuse of power.

In fact, as is shown in the review, it was the Adontenhene who first took the Okyeman Great Oath to support the National Liberation Movement. The Okyenhene himself never took any such Oath. The Report says in paragraph 77 that it was "alleged" that the Oath was "administered" by the Okyenhene. But no proof is brought forward in the report to show whether Nana Ofori Atta II at any time asked his Chiefs to take the National Oath. In fact there was no evidence by any individual to that effect before the Sole Commissioner. The mystery is where the "allegation" came from? Who brought such an ignorant and unfounded accusation against the Omanhene? The truth is that the Okyeman Great Oath is never "administered" like a fetish oath. It is taken voluntarily.

As is amply shown in paragraph 189 of the Jackson Report, quoted by Mr. Akyeampong in his Review, the Adontenhene and all the other chiefs, to the number of 165, took the oath voluntarily. Now that the Sarkodee Adoo Commission on Ashanti has published its Report we can compare the two, and see whether Mr. Jackson really understood the customary law affecting the swearing of the Great National Oath to have accused the Adontenhene and his colleagues of "abuse of power" just because they took the Great Oath to support what Mr. Jackson himself describes as "the right and proper object" of the National Liberation Movement (paragraph 187 of the Report).

If, as Mr. Jackson says in paragraph 47, it was essential, by reason of his membership of the J.P.C., for the Okyenhene to have prior discussion with his Chiefs and Councillors, and to take a stand on political matters in Ghana, and that the dictum of Ministers of the Government and others that "Chiefs must not take part in politics" is wrong, (paragraph 52 of the Report), then a great debate is opened up in which sons of the soil can take part, to ask: At what point must a Chief who is entitled, according to Jackson, to take part in politics, stop his participation?

In the meantime, and while the debate continues, the name "Akim Abuakwa" continues to go down in the minds of the people of Ghana and to smell in their noses. The newspapers and the Radios

of Ghana try to avoid the name "Akim Abuakwa" if they can help it. It has become a name that stinks.

My own part in this sad business is to keep on reminding Akim Abuakwa people that they have the greatest contribution to make to the greatness of Ghana if only they would realise that it was not the C.P.P. who for five hundred years fostered the unity of the Akim Abuakwa State and made it the greatest in Akanland, next to Ashanti.

The greatness of Akim Abuakwa stems from the motto which Yao Boakye discovered for it: *Susu Biribi.* Among the Akan people, an abundance of wisdom is called *Nyansa Abuakwa.*

O! Ye people of Akim Abuakwa, where is your wisdom today, or has the great tragedy of State suicide become your statecraft?

State denigration is a curse and a boomerang. In my opinion, we must make it our duty to love Abuakwa and to get other people to respect our State.

The best way to do that is to uphold the unity of the State, not to break it up, nor to malign or undermine its leading men, the first of whom today is Nana Ofori Atta II, a courageous king, the first crusader for independence.

I commend Mr. Akyeampong's review to the close study of all readers. It is a guide to the essence of Ghana politics of today and tomorrow, what Mr. John Jackson, the Sole Commissioner over Akim Abuakwa Affairs, has aptly called "a conflict in a Chief's duty to his people . . . 'the performance of the reasonable in the special circumstances of the case' ".

Since that "conflict" was not created by any of the Ofori Attas—King or Minister or son—must one of them be sacrificed to it? That is the question.

J. B. DANQUAH

September 8, 1958.

PREFACE

I HAVE taken opportunity to include in this review of the Jackson Report on Akim Abuakwa a few historic documents connected with the Enquiry which have not yet seen the light of day. The closing speech by Mr. E. L. Mallalieu, Q.C., M.P., senior Counsel for the Akim Abuakwa State, is published here for the first time. Mr. G. L. Scott's address as Counsel for the Commission is also included. Mr. Justice Scott has since his address been elevated to the High Court Bench as Puisne Judge from his former position of Solicitor General. His address therefore acquires added interest for the general public. Dr. J. B. Danquah's statement to the Commission on the basis of which his evidence was given is also included in this pamphlet. The original review of the Jackson Report was published in the *Ashanti Pioneer*. The profound impression it made on the public calls for its reproduction in permanent form.

Whilst this work was in print and was almost completed, a fatal blow was struck at Kibi. Early in the morning of the 24th September, 1958, the shocking news broke out that Osagyefuo Nana Ofori Atta II., ruler of the greatest State in Southern Ghana, and one of the most powerful Chiefs in the entire country, had been ejected from his Palace. Over 500 Policemen carrying rifles and other deadly weapons enforced the Order. The Omanhene was whirled off in a Police Jeep to the Koforidua Police Station, some 37 miles away from Kibi. The Osagyefuo was later taken to Anyinam in his own State and put before Magistrate Brown, a Sierra Leonean. The Omanhene was arraigned in Court under a guard of Police armed with rifles, on a charge of having refused to hand over the State properties as requested by the Ghana Government. Bail was granted the Omanhene in the sum of £500, with one surety.

This story, told in cold print after the event, sounds like a film strip from the backwaters of countries behind the Iron Curtain. But as the news flashed through the State that early morning, thousands of men and women poured into Kibi. They gathered in front of the Palace, wept, and wondered where next the blow was to fall in Ghana's declivity towards the tragedy of a nation in danger with her freedom.

No drumming was heard. The Police would not allow it. There was no light on the scene, the darkness thickened, and people wept everywhere.

Is that the end of the Ofori dynasty at Kibi, or is it just a symptom of the shape of things to come?

How long, I ask, and many will ask, must the Abuakwa crisis last? And what is it leading to? The destruction of the State, or of one man, or of a dynasty? Or the learning of a great lesson that to destroy a State is easier than to build one?

H. K. AKYEAMPONG.

Accra,
3rd October, 1958.

NANA SIR OFORI ATTA I., K.B.E.
Late Paramount Chief of Akim Abuakwa.
1912-1943

The Akim Abuakwa Crisis

A Review of the Jackson Report

1. Mr. Jackson Condemns the Authorities.

THE JACKSON Commission's Report on Akim Abuakwa affairs is a remarkable document. Its conclusions have one great merit: They are not "inconclusive conclusions" like the traditional conclusions of the Braimah Commission on Bribery and Corruption. Mr. Jackson's conclusions are out-spoken.

Every authority and nearly everybody who came under the scalpel of the Commission, whether such person gave evidence or not, is condemned by Mr. John Jackson, the Sole Commissioner.

No official of the Ministry of Local Government gave evidence before the Commission to explain the policy or conduct of Government in respect of Local and State Councils. But, as is shown below, the Government of Ghana is condemned without quarter by the Sole Commissioner.

No one was called upon to speak on behalf of the Local Councils of Akim Abuakwa, but they too came in for a round of criticism.

The only witness who appears to have earned Mr. John Jackson's profound respect is Yaw Aboakye (Boakye) Ofori Atta. Mr. Jackson speaks of him thus: "All witnesses other than one, namely, Yaw Aboakye Ofori Atta, were evasive when answering questions relating to the duties of the Action Groupers".

Mr. Jackson prefers Yaw Boakye's evidence to that of the Gyasehene of Kibi and of Nana Ofori Atta II. Relying on Yaw Boakye's evidence, the Commissioner states that the 37 men recruited for the Action Groupers in the Akim Abuakwa State, "had been recruited under the personal surveillance of Nana Ofori Atta II and the Gyasehene . . . They were divided into three groups each under a leader to operate in different parts of the State" (163).

This picture of the Okyenhene himself setting about the youngmen in his State to organise them into Action Groupers is not a pleasant or dignified one. But Mr. Jackson believes it to be true. He states in paragraphs 163 and 262 of his Report that despite denials he accepts that evidence.

2. Errors and Omissions.

Certain obvious errors in the Report give the impression that it was written or printed in a hurry. For instance in citing *Kokro* v. *Enum* from a report of the Court of Appeal Mr. Jackson writes of a body called "the Ghana State Council" (49). But Ghana has a Parliament, not a State Council.

In another paragraph he states: "The State Council, at which the Adontenhene is present, submitted to the State Council certain proposals". (188).

Again speaking of the violent events of 1955, the Commissioner states: "In 1954 this violent party feeling supplied the force which ended in the murder at Tafo of a leader of the U.G.C.C. who was a relative of Nana Ofori Atta".

The Commissioner is obviously referring to Kwasi Ampofo, a son of the late Nana Sir Ofori Atta I, who was murdered by a member of the C.P.P. at Tafo in 1955. He was not a leader of the U.G.C.C. (defunct in 1952) but leader of the N.L.M. Action Groupers in 1955.

These and similar errors and omissions apart, the report of 52 pages in 451 paragraphs, for which nearly 300 witnesses were interviewed and made statements, deserves the attention of the general public if only to test whether the public money spent on it was justified.

3. The Ghana Constitution is Condemned.

The Ghana Constitution of 1957 which guarantees the office of Chief "as existing by customary law and usage" is condemned by Mr. John Jackson. His view is that "with the establishment of a constitution founded on parliamentary representation as established in England", to guarantee the office of chief in Ghana is not "a practical proposition". (220-221).

The practical thing, from Mr. Jackson's point of view, is probably to abolish chieftaincy or suffer it to disappear.

Mr. Jackson's mistake in this respect consists in failing to see that the Ghana Constitution is not a true copy of the Constitution of England.

The Parliament of Britain has two Chambers, and the second estate, namely, the peerage, is guaranteed a place in the government of Britain. The Parliament of Ghana is of a single chamber, and the second estate, namely, the office of Chief, except in amendments to the Constitution, has no place in the central government of the land.

In England there are three estates, the Monarchy, the Peerage and the Commons. But if Mr. Jackson's view is accepted by the people of this land and acted upon, the two estates who will govern Ghana will be only the Monarchy and the single chamber Assembly. The second estate, namely the Chiefs, will have to be suppressed.

OSAGYEFUO NANA OFORI ATTA II; Okyenhene, at a State Durbar, Esekesieho, Kyebi.

4. The Local Government Ordinance is Condemned.

The second type of authority condemned by Mr. John Jackson in his report is the Local Government Ordinance of 1952. He describes it as imperfect, incomplete and unsatisfactory in respect of its provisions for administration of Stool lands and the revenues derived from them. (422, 434).

There is a belief in certain quarters that Stool lands revenues are public monies. Mr. John Jackson quite rightly holds the view that the revenues derived from Stool lands "are monies of a private nature, and only coloured by one of a public quality by reason of the trust nature of these monies".

He quotes the Coussey Committee's Report of 1949 in support of this proposition and holds that the Native Authority (Colony) Ordinance of 1944, which was replaced by the Local Government Ordinance of 1952, was itself imperfectly drafted. He condemns it as "an encroachment upon the private rights of the Stool occupants and their Stool subjects". (414-418).

5. The Government is Condemned.

The third authority condemned by the Jackson Commission is the Government of Ghana.

It was given in evidence by some of the witnesses before the Commission, in particular by Dr. J. B. Danquah, that the failure of the State Council to pay emoluments due to Chiefs was due to lack of funds.

Dr. Danquah ascribed this situation to inefficient management or mismanagement, or refusal to collect stool land revenues by the Local Councils.

He pointed out that the lack of funds was due also to the failure of Government to implement a pledge to pay the difference between the amount actually received in respect of Stool land revenue and a sum of £45,000, half of the State's total Stool land revenue of £90,000.

The Jackson Commission found that under that pledge, "by the end of June 1957, the shortfall stood at £54,865, of which Government has only paid £10,000 leaving a balance of £44,865 due to the State Council" (345).

Following an analysis of the evidence placed before the Commission, Mr. John Jackson states in his report that the authority to blame for this are not the Local Councils, but the Government of Ghana.

He states in paragraph 445: "I am satisfied that any failure to realize the sum of £90,000 cannot justly be attributed to this cause (negligence or failure to collect on the part of the Local Councils). "The blame", says the Sole Commissioner, with emphasis, "must lie squarely on the shoulders of Government, who have failed to legislate to achieve this objective".

Looking at the legal, moral and financial issues of the question, the Commissioner declares: "Despite the legal objections and the difficulties, it would have been not only right, but proper, for the Minister to implement this agreement by making a direct contribution from the funds available in the Treasury for the maintenance of the traditional authorities . . . "(409).

Mr. Jackson emphasizes the point that last year some of the traditional authorities in Akim Abuakwa were given "preferential treatment over other traditional authorities" when Government paid £7,904 to some of such authorities, leaving out the great majority of Chiefs, "who had not complained, and who were patiently awaiting the time when Government would honour its pledges". (409)

It is generally known that the Chiefs of Akim Abuakwa who were given that preferential treatment by the C.P.P. Government were those who are believed to be supporters of the C.P.P.

6. Positive Recommendations.

The importance attached by the Sole Commissioner to this failure of Government to honour its pledges to the Akim Abuakwa State is shown by the fact that the last paragraphs of the Report are devoted to positive recommendations by the Commission to prevent a future shortfall of revenue.

Mr. Jackson recommends the setting up of Land Management Board for Akim Abuakwa, with a qualified accountant as chairman and with membership shared between representatives of the State Council and the newly organised District Councils.

Mr. Jackson believes that the task of reorganising the Stool lands revenues could be completed in three years at a cost of £5,000 a year.

On the authority of Mr. R. S. N. Bax, Senior Auditor, the Commissioner reports that if the Stool Lands are so managed the revenue of the Akim Abuakwa State would probably reach £120,000 a year instead of the present estimate of £90,000.

7. The Okyeman's Great Oath.

As regards the other authorities connected with the enquiry, namely the Okyenhene and members of the State Council, the Commissioner's condemnation of their support of the National Liberation Movement is linked to the decision to support the movement financially and to the oath that was sworn to back up that decision.

The Okyenhene and *some* of his Councillors are found by the Commissioner to have abused their power because "the Okyeman's Great Oath was administered to some hundred and four chiefs and others to support those (N.L.M.) objectives", namely:

) The loss of any claims to inherit Stool rights of any Stool Heirs who engaged themselves in subversive activities against the Chiefs and chieftaincy, and

(*b*) assistance to the Movement in the Local Government elections" (263-264).

It was alleged, says the Report, that the oaths were "administered" to the chiefs by the Omanhene, and that Nana Ofori Atta II did that "to coerce them to support the National Liberation Movement" (77).

The report does not disclose the mode and manner or the occasion the Okyenhene himself administered any such oath.

An instance of how the oath was taken by the Chiefs is given in paragraph 189 of the Report in a quotation from the Minutes Book of the State Council of 2nd September 1955. The passage reads:

> "During discussion on the question of support of the National Liberation Movement the Adontenhene took the opportunity to deny the allegation that he was a member of the Convention People's Party. He backed the support which had already been given by the Council to the Movement by the swearing of Okyeman's Great Oath".

That is to say, the Adontenhene took the oath voluntarily. There is no suggestion either in the passage or in the circumstances related to the Adontenhene's vindication of his own cause, that the Okyenhene "administered" the oath to him, nor that the Okyenhene coerced him.

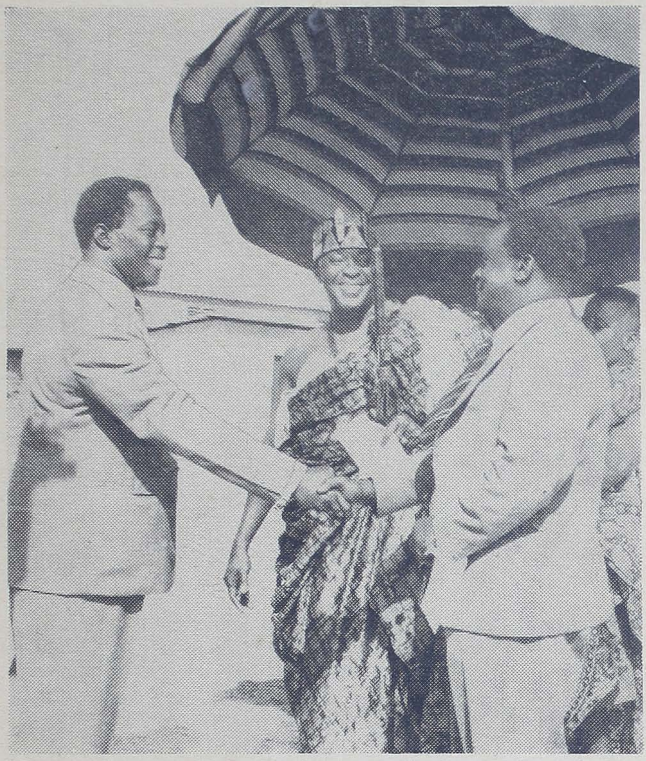
The passage from the State Council's Minutes Book is cited in paragraph 189 of the Jackson Report. In the following paragraph 190 the Sole Commissioner states that "twenty four other chiefs took that Oath and from that day to the 13th September, 1955, 140 other Chiefs took the Oath."

This important question of the Oath is referred to again in paragraphs 263-264 of the Report. The Sole Commissioner states that between the 2nd September, 1955 and the 12th September 1955 the said oath "was administered to some hundred and four Chiefs" and that it was an oath which "in effect, was sworn *against* very many, if not the majority, of the Omanhene's subjects in the State".

8. Was the Oath "Administered?"

In the Commissioner's opinion "it was an oath *administered* and taken . . . . . contrary to the dictates of the customary law".

He holds further that "in its application to the local government elections which were then to be held quite shortly, it was an oath designed to bind all who took it, not to vote for the Convention People's Party and to persuade their subjects to do the same".



NANA OFORI ATTA II introduces his son Mr. Aaron Ofori Atta on his return from England to Mr. E. O. Asafu-Adjaye, Minister of Local Government. Mr. Ofori Atta subsequently succeeded Mr. Asafu-Adjaye as Minister of Local Government.

Certain simple questions are suggested by a reading of these passages:

(1) When a person takes an oath in vindication of his own cause, *e.g.* to speak the truth in a Court case, can he be taken to have sworn it "against" his opponent?

(2) At what stage did the Omanhene "administer" the Oath to his Chiefs, and how did he do it?

(3) Is the National Oath "administered" as is a fetish oath?

(4) Upon whose evidence did the Commissioner rely to state that the oath taken by the Adontenhene and his colleagues was "contrary to the dictates of the customary law?"

(5) Is it not the very essence of party discipline that members "resolve" not to vote for the other party? If so, what real difference is there between an oath and a resolution in this respect?

9. Analysis of the Report.

The Commissioner's Report, which is conveniently divided into two parts, gives, in the first part, the history of the Commission, a resume of the evidence adduced before the Commissioner, a statement of what he takes the customary law to be, not on the basis of evidence but on the alleged authority of Sarbah, Casely Hayford, Reindorf, Ward and Griffiths.

He does not, however, quote a single passage from these authorities to support the sinister consequences he associates with the swearing of the national oath.

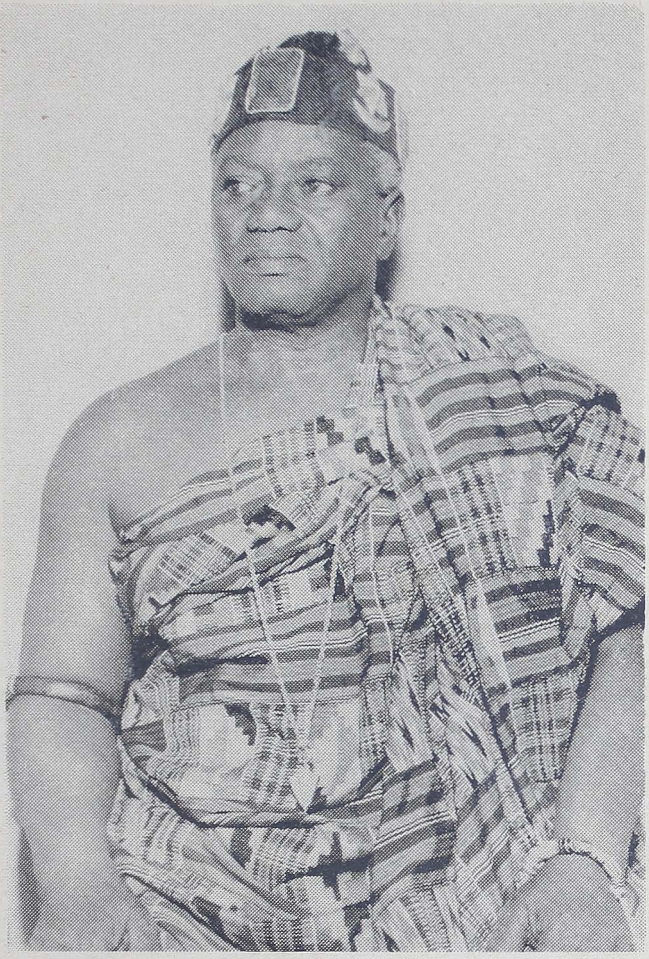
In the first part of the Report he analyses what was placed before him by Counsel in the case as to the possible meaning of the ill-defined term "abuse of power". In the second part, the Sole Commissioner states his conclusions on the eight terms of reference contained in his Commission.

(1) The first term of reference calls upon the Commissioner to enquire whether there has been any abuse of power by Nana Ofori Atta II and his Councillors.

The Commissioner's affirmative but doubtful answer is contained in paragraph 266 of the Report.

His view is that the Okyeman's Great Oath which was sworn in 1955 by the Adontenhene and 164 of his colleagues to support the National Liberation Movement was sworn "against" the C.P.P. and others who by their votes in the *previous* 1954 general elections had voted for the C.P.P.

He refers to an allegation that the oath was "administered" by the Okyenhene but does not show whether that allegation was proved. He refers the oath to the Local Elections for 1955 and then extends the scope of the Oath to affect *any* elections. (264).



BARIMA KWAME KWERETWIE BOAKYE DANQUAH
Twafohene
Akim Abuakwa State
(In his traditional dress)

"Upon this he concludes that "there has been abuse of power by Nana Ofori Atta II, Omanhene of Akim Abuakwa State and *some* of his Councillors" (266).

(2) In his second term of reference the Commissioner was asked to enquire and to report whether appointments or destoolments of any Chiefs had been made "for improper reasons".

The only case dealt with by him in this respect is the appointment of Dr. Danquah as Twafohene, Senior Divisional Chief. The Sole Commissioner reports that the Twafohene's appointment "was contrary to customary law, and for that reason was improper". (280-281).

There was no finding by the Commissioner that the appointment was made "for improper reasons". He found that it was "improper" to appoint Dr. Danquah as Twafohene because he was a "commoner" and has no Stool and because the appointment should have been made "to the status of a Councillor and not that of a Chief".

In other words the Commissioner found that the appointment was "irregular", but not that it was made "for improper reasons". His suggestion is that a "commoner" must not be appointed to the chiefship or peerage of Akim Abuakwa unless first he has served as a Councillor in the State Council!

In this respect, by going outside his terms of reference it may be said that Mr. Jackson clearly exceeded his jurisdiction. He was not asked to find whether the appointment was "irregular" but whether it was made "for improper reasons".

10. The Case of Osiem.

(3) The third term of reference was whether the decision of any Committees of Enquiry or Appeal Commissioners given under the provisions of the State Councils Ordinance had been ignored or resisted by the traditional Administration of the State.

In regard to this, too, only one case was brought to the notice of the Commission, the case of Osiem. (282).

The Commissioner reports that after a Committee of Enquiry had found against Kwame Boateng as not properly elected as Chief of Osiem, the Okyenhene declared that he could not accept the finding as it was based upon matters contrary to customary law, and that he advised the Councillors to petition the Governor General in the matter.

In the mean time Kwame Boateng was allowed to continue to sit as a member of the State Council, but when the final decision was known he was advised not to sit in the Council again.

His opponent, Yaw Antwi, who was successful before the Committee of Enquiry, had not however, taken the oath of allegiance to the Okyenhene. He could not therefore sit in the State Council. In the absence of the oath of allegiance, Yaw Antwi's chieftaincy, says the Commissioner, "was not complete".

Does the decision by the State Council to petition the Governor General against the findings of the Committee of Enquiry imply that the Okyenhene and the State Council had "ignored" the Committee's findings?

There is such a thing as stay of execution during an appeal and it is by no means free from doubt that the attitude of the Okyenhene and the State Council in allowing Kwame Boateng to attend the State Council was an "abuse of power". At any rate the Commissioner makes no such finding of "abuse of power" on this issue.

11. The Accounts and the Emoluments.

In respect of the more important question of details of revenue and expenditure (the fourth term of reference) the Sole Commissioner expressed his thanks to Mr. R. S. N. Bax, Senior Auditor, for giving the closest scrutiny to the accounts.

Mr. Jackson found that "The revenue received appeared to have been correctly accounted for in the aggregate". He complains however, that the apportionment of Stool land revenue made under its several items was not correct, and could not be correct, "owing to the lack of information made available to the State Council Treasury by the several Local Councils concerned". (305).

(5) By the fifth term of reference the Commissioner was called upon to ascertain the persons who are entitled under custom to receive emoluments from the State Council. Mr. Jackson found these to be 159 Chiefs, 156 Elders, 24 Linguists and 45 Stool Dependents.

(6) In the next term of reference, the sixth, the Commissioner was to enquire whether the persons entitled did receive the emoluments to which they were entitled.

The Commissioner found that none of the traditional authorities (including the Omanhene) had been paid according to the sums approved in the estimates, and that two of them, the Adontenhene and the Tafohene had not been paid at all as from February 1956 and August 1955 respectively.

The traditional authorities were not so paid largely because of lack of funds due chiefly to the Government's failure to honour its pledges, resulting in a total shortfall of £44,865 due to the State Council. (344, 407-410).

12. The Case of the N.L.M.

(7) The highly controversial subject of whether any payments had been made by the State Council for purposes other than those properly connected with the traditional matters, formed the subject of the seventh term of reference. It covers the case of the State Council's connection with the N.L.M.

Is the National Liberation Movement properly connected with traditional matters?"

The Commissioner found that by reason of the Omanhene's membership of the Joint Provincial Council it was his duty to discuss party politics with his State Council. On this ground he did not accept the "dictum often expressed in public by Ministers of the Government and others that Chiefs must not take part in politics". He admonished such Ministers to give way to the dictum of judicial decision, namely that in the special circumstances of the case it was reasonable that Chiefs should take part in politics if they were to perform their duties in the Joint Provincial Council of Chiefs satisfactorily.

Mr Jackson suggests new legislation to clear up the subject.

As regards the N.L.M., Mr. Jackson found that its object as opposed to the C.P.P., "as to whether the constitution of Ghana should be ushered in upon a form of Government, unitary or federal", was "right and proper". (185 and 187).

The Commissioner, however, relates this issue more directly to a General Election. He states that this controversy over a unitary *versus* a federal system of government was the question upon which "at this period" (March to September, 1955) "the National Liberation Movement were clamouring for a General Election to decide".

It is impossible to gather from the Report the particular evidence upon the strength of which the Sole Commissioner came to this conclusion.

In 1955 the struggle was for a new and acceptable constitution. The demand made by the N.L.M. was for a Constituent Assembly to determine this. The C.P.P. strenuously resisted this demand, holding that the Legislative Assembly was competent to determine the constitution.

It was in consequence of this controversy that the Colonial Office sent out Sir Frederick Bourne in an attempt to find an acceptable solution to the two opposing views.

13. Purpose of the N.L.M.

This demand by the N.L.M. for a Constituent Assembly was fully and clearly stated in the last paragraph of the Joint Statement issued by the Asanteman Council and the National Liberation Movement. It was signed by the Asantehene personally, as "Asantehene" and "President, Asanteman Council". and by Bafuo Osei Akoto as "National Chairman, National Liberation Movement".

The date of the Joint Statement is 3rd February, 1955 and its last paragraph reads:—

"We are firmly convinced that the best way out of our present troubles is for the Government to call for a Constituent Assembly whose term of reference shall be to draw up a federal constitution to suit the needs of the Gold Coast in general and the autonomous regions in particular. We would add that we do not consider that the present Legislative Assembly should be metamorphosed into a Constituent Assembly for the purpose we have indicated".

This being the general objective of the N.L.M., the Akim Abuakwa State Council decided in March 1955 to support the N.L.M. "because it was national in intent and it sought the aims as that of the Council". (117).

That is to say, in the view of the Council, the aims of the N.L.M. were identical with the traditional aims of the State Council.

In April the State Council decided that "one month's salary of each Chief should be deducted as a voluntary contribution for the National Liberation Movement". (142).

Five months later on September 1, 1955 the Akim Abuakwa Branch of the N.L.M. approached the State Council with a Memorandum in paragraph 3 of which they asked.

"3. That the Chiefs be advised to support the organization of the National Liberation Movement in their towns and villages in view of the national character of the Movement, which sought to protect and preserve the status and dignity of Chiefs". (188).

No one would wish to question the view that the protection and preservation of the status and dignity of Chiefs are purposes "properly connected with the traditional matters".

14. Authority and Rights of the State Council.

Mr. Jackson quite rightly quotes paragraphs 206 and 207 of the Coussey Committee's Report of 1949, which recommended the apportionment of Stool lands revenue between the people and the Chiefs, the "due share" of the people to go to them in the form of social and other services. "The remainder of the money", said the Coussey Committee, "will remain the *perquisites* of the traditional authority for the maintenance of the position of Chiefs". (92).

At paragraph 247 Mr. Jackson points out that the principles enunciated by the Coussey Committee, "became embodied in statutory form in Section 73 and 74 of the Local Government Ordinance. The people who were beneficiaries of that trust (communal lands), were to receive *their share* of the revenue received by the local council in the form of social and other services. The occupants of the Stools who are the traditional authorities, as well as

being trustees and beneficiaries under that trust, were to receive *their share* for the maintenance of their position as Chiefs". (249-250).

It was out of this "share" for the maintenance of the position of Chiefs, and *not* out of the share of the people (which was in the hands of the Local Councils), that the Sole Commissioner finds that "the sum of about £10,000 was deducted" from the salaries of chiefs, elders and linguists and stool dependents to the benefit of the N.L.M. (257-259).

What power had the State Council of 63 Chiefs and non-Chiefs to act thus for all the traditional authorities in the State?

By paragraph 10 of the Jackson Report, the Omanhene is the King of Akim Abuakwa. By paragraph 13, Akim Abuakwa is a sovereign state. By paragraphs 35 and 124 the State Council is the highest Council within the State for its administration; it is in fact, its parliament. Says Mr. Jackson:

> "The Council, when duly constituted, is the ruling voice in all matters political as well as judicial in the State. They represent the sovereignty of the people, the Omanhene being their Head and the embodiment of the sovereign idea".

As the sovereign parliament of the State, the State Council must be expected to rule. Its "ruling voice" must have binding effect on its members. It is not a Club, but a sovereign body, representative of its constituents. Whenever the 63 members are assembled, whenever the Council is "duly constituted", its voice must *rule* the State in all customary political and judicial matters.

By section 4 of the State Councils Ordinance a membership of more than half, present at any meeting, is competent to act for the whole.

The particular meeting of the State Council which decided to make deductions and voluntary contributions for the benefit of the N.L.M. was fully constituted by 45 persons present. (143).

Their decision is therefore binding not only on all members, 63 of them, but on all those whose traditional position, such as sub-chiefs, elders, linguists and stool heirs, makes them members of the body generally called "the traditional authority".

15. Cannot a Sovereign Parliament Bind its Constituents?

But the Sole Commissioner takes a contrary view. His view is that the decision to deduct from salaries of chiefs binds the 45 members who were present but it does not bind the rest who were not present.

That is to say, at this stage, the State Council is not only condemned but is deposed as the "authority", the sovereign and ruling voice or parliament of the State.

If Mr. Jackson's view in this respect is correct then the State Council as a sovereign parliament, speaks for nobody but itself. It ceases to have what Mr. Jackson himself calls a "ruling voice".

Mr. Jackson says in paragraph 158:

> "158. I come to the following conclusions in respect of the payments made to the National Liberation Movement during April, 1955. In respect of those 45 members who subscribed to the resolution on the 22nd April, 1955, the monies received by the National Liberation Movement were donations, in respect of all the others they were deductions, made for the purpose of supporting a particular political party, irrespective of the wishes of the 455 or more, many of whom were clearly adherents to other political parties, and who could by the experience of the events in the years preceding have believed that the deductions were due to the same causes as had caused such arrears to arise in the past".

In the face of this, the question whether the £10,000 given to the N.L.M. was "properly connected with traditional matters", recedes to the background.

We are now faced with academic, even speculative, questions: Whether (1) it was necessary for the "ruling voice" of the sovereign State to seek the direct consent of all the "traditional individuals" in the State before proceeding to use their money to protect and preserve and maintain the status and dignity of Chiefs? AND (2) whether if all the remaining 455 elders, linguists, and Stool dependents had been present they would have opposed or given their assent to the decision of the Parliament of their sovereign State to protect, preserve and maintain their status and dignity.

In the above quoted paragraph 158, the Sole Commissioner suggests that many of the traditional individuals, to the number of 455 "were clearly adherents to other political parties". But the truth is that none of these 455 traditional individuals gave evidence except one, Chief of Apampatia, but so worthless was his evidence that the Commissioner decided that he should not be paid his allowance by the Crown as a witness. No indication is given in the Report as to how the Commissioner came to the conclusion that many of the 455 traditional individuals "were clearly adherents to other political parties".

16. Payment of Fines by the N.L.M.

To the question "What happened?" after the £10,000 was donated or deducted, and to the further question, "What was done with the money", the Commissioner writes with considerable moral indigna-

tion at the conduct of the action groupers in roaming about the State in motor vehicles equipped with loud-speakers for propaganda effect.

He naturally disapproves of the acts of violence in respect of which some of them were punished by the Courts with fines or imprisonment. He condemns the policy under which such fines were paid out of the £10,000. The total amount paid in such fines is given as £609, a little over 6% paid out of the £10,000 (257-261).

In the Commissioner's view such facts appear to constitute a conspiracy by all who aided and abetted such acts to pervert the course of justice. He adds, however, that such an offence "does not appear to be provided for in the Criminal Code of Ghana" (176).

But to those same questions as to "What happened?" after the £10,000 was collected, and "What was done with the money?", there is available to us in the Report the Commissioner's view that the objectives of the N.L.M. were right and proper.

It has been claimed that but for the intervention of the N.L.M. in the constitutional struggle between the years 1954 and 1957, there would have been no Sir Frederick Bourne in Ghana, no Achimota Conference, and no Parliamentary Conference on the Draft Constitution in Accra. Certainly but for the strong stand taken by Professor K. A. Busia, leader of the N.L.M., Mr. Lennox Boyd, Secretary of State, would not have found it necessary to visit Ghana in relation to the Constitutional question.

As a result of the intensive political propaganda of the N.L.M. in those three years, it is claimed that the Constitution under which Ghana enjoys independence today contains provisions for entrenched clauses, Regional Assemblies, Houses of Chiefs, and a guarantee of the office of Chief in Ghana.

It cannot be doubted that, deducting that six per cent of £10,000, the pursuit of what the Commissioner calls "the right and proper object" of the N.L.M. with the balance of that sum of £10,000, has been permanently beneficial to the country.

17. What is "Abuse of Power?"

In this respect the definitions of "abuse of power" in the Report become a matter of academic interest, but they are worth looking at for the future guidance of lawyers and administrators in Ghana and elsewhere.

Mr. M.E.L. Mallalieu, Q.C., M.P., Counsel for the Akim Abuakwa State, said: "Before there can be said to have been an 'abuse of power' there must be proved a criminal intent (*mens rea*). The exercise of an excess of jurisdiction is not sufficient".

Against this, Mr. Garvin Scott, the Solicitor General, urged that "If the evidence satisfied the Commission that the Omanhene and

his Councillors had used their 'official position' to further their own ends either by improper methods or violence, these acts would amount to an 'abuse of power'."

Mr. Scott added that "In determining whether those acts were improper the Commission must be satisfied that those acts were either contrary to customary or statute law". (196-198).

In his final position, the Sole Commissioner said: "The words 'abuse of power' are used in no restricted legal sense". (In other words, the phrase could easily lend itself to political and other interpretations). "In *the context*", says Mr. Jackson at paragraph 201 of the Report, "I interpret them as meaning 'the doing of something, which is authorised to be done, in a manner which was improper."

By Mr. Jackson's "unrestricted" definition of "abuse of power", any person in authority doing, in an improper manner, what he is authorised to do, is guilty of abuse of power. Thus, if a bus conductor pulls the bell improperly he is guilty of abuse of power.

Thus bereft of any restricted meaning, the term "abuse of power" loses its terror and any disciplinary or cathartic value it ever possessed.

18. Amount of £44,865 due to the State.

(8) The last and eighth term of reference empowered the Commissioner generally "to enquire into any complaints in regard to the traditional administration of the State which may be made to the Commission in the course of the Enquiry and into any matters which, in the opinion of the Commission, are cognate thereto."

Many persons, including Dr. Danquah, took advantage of this omnibus term to launch a broadside against the Local Councils of the State and against the Government in respect of the finances of the State as handled by both authorities. That mishandling of the State's finances resulted in a total shortfall of revenue to the State Council in the sum of £44,865 in three years.

This matter arose out of an agreement between the State and the Central Government for payment of shortfalls up to £45,000 by the Government to the State each year. The consideration for the agreement was a sum of over £35,000 paid by the State to the Government (the State's accumulated reserves) for the newly formed Local Councils.

Upon examination of the evidence, based chiefly on correspondence and other documents between the State and the Minister of Local Government and the Local Councils, the Sole Commissioner found, finally, that "There is . . . merit in the view expressed by Dr. Danquah that the failure of the State Council to pay the full amount of the salaries and allowances to the traditional authorities for their maintenance was due to the failure of the Minister to implement the decision made by him to reimburse the State Council each year, by whatever amount their 50 per cent share of Stool land revenue fell short of £45,000". (450).

NANA OFORI ATTA pouring libation on the occasion of the opening of the Akwadum Road. On his left is Dr. Kwame Nkrumah Prime Minister of Ghana.

19. Shifting Sands of Ballot Box Politics.

In general, the Jackson Commission's Report on the affairs of the Akim Abuakwa State will remain a controversial document. He has blamed everybody, and every authority, but his own share of blame is writ large all over the Report. He has blamed other persons in certain places of the Report without showing the evidence for it. He has made suggestions based upon assumptions not based on custom, or on facts which are not held to have been proved in the Report.

His interpretation of the customary law and of the immediate objectives of the N.L.M. in 1955, whether for general election or for a Constituent Assembly, will be open to question.

His view of the National Oath is a sinister interpretation of a perfectly normal means of assuring one's colleagues of one's good faith.

That National Oath is taken in public, not in secret. It consists of nothing more than words generally spoken to a set formula: "I swear the Great National Oath that I stand by this policy", or in Court, when giving evidence, "that I shall speak the truth". The National Oath is not "administered" in the sinister sense of coercing another to take it. It is taken voluntarily. It has no value at all if otherwise taken, and no one expects it to be taken except at the free will of the person concerned.

Mr. Jackson's paragraphs on the state of politics in Ghana are likely to become the text of many a misguided political speech up and down the country.

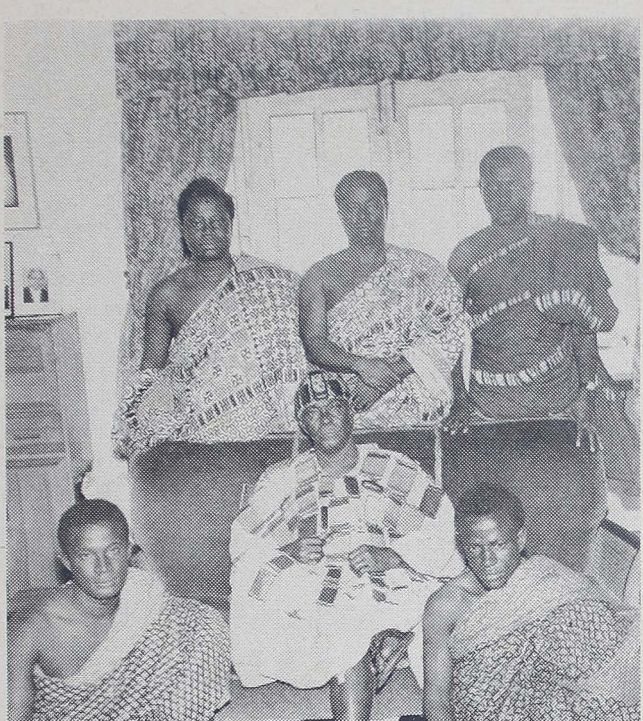
His view that there is a conflict of ballot box politics with tradition, that the ballot box today expresses the will of the people, even in the purely traditional and customary spheres, but that political opinion expressed through the ballot box "may change in the night" (212-219) does not show a deep awareness on his part of the political nuances in this Ghana with its ancient background and a sensitive tradition to recover its sense when deeply hurt.

Mr. Jackson propounds an important view when he states "The will of the people is now expressed through a medium foreign to ancient usage, namely by that of the ballot box, and those who represent the people are now, *not* the traditional authorities, but persons of any standing in life who may be nominated and elected to Parliament through the medium of the Ballot Box at General Elections". (21).

That, on the whole, appears to be the case. But it is not really so. The underlying and misleading assumption is the view that the Ballot Box is the be-all and end-all of parliamentary democracy. Were that the case the Junior Carton Club at 30 Pall Mall, S.W.1 would long ago have ceased to be the grave-yard of many a Conservative Prime Minister!

The basic organon of Ghana's constituents of value is not the ballot box. There are other values known to the people. There are such values as right, freedom and justice. The forum for these three values is not the ballot box. The word for that forum in the Psalms is righteousness.

To hold otherwise, namely, to hold that the ballot box is the only value and price of parliamentary democracy is to make democracy the harlot of all human inventions, from the sputnik to the art of writing.



The Osagyefuo and five of the sons of the Paramount Stool.
Standing: H. K. Akyeampong, Yao Boakye, Kwasi Bankyi,
Sitting on Settee: Osagyefuo Nana Ofori Atta II, Okyenhene.
Sitiing in front: Kofi Boakye, Kwabena Twum Ampofo.
Group photograph taken at Accra on the 15th Anniversary of the Omanhene's reign—25th September, 1958.

COMMISSION OF ENQUIRY—AKIM ABUAKWA STATE AFFAIRS

LEGION HALL — ACCRA
MONDAY — 17TH MARCH, 1958

Commissioner: John Jackson, Esq., C.B.E.
Secretary to the Commission: Mr. J. W. Osei
Counsel: Mr. G. L. Scott, for the Commission, Mr. E. L. Mallalieu, Q.C., M.P. and Dr. E. E. K. Taylor for the State Council, Mr. K. Boateng for the Adontenhene of Akim Abuakwa.

OPENING 9.00 A.M.

On opening Mr. Kwaku Boateng, Counsel for the Adontenhene, Nana Kena II, and others, addressed the Commission first, followed by Mr. Mallalieu, Q.C., Counsel for the Okyenhene and the State Council. Dr. E. K. K. Taylor with him.

MR. MALLALIEU, Q.C., ADDRESSES THE COMMISSION

May it please you, Sir, I have given myself two directives in deciding in what form to make these submissions to you. The first is, I am to remember that I am not addressing a jury: and the second is that I am making certain references to the transcripts in the course of what I shall say, and will, if you wish, Sir, submit to you a list of the references to the transcript, a very short list Sir. You would not expect me to go in detail through the points of the speech to which we have just listened. I may be permitted to remark that it is curious, if this picture which we have had drawn in front of us of a Kibi ridden with steel helmets, with action troopers so terrifying that my learned friend would not dare to show himself—it is curious that the Local Council was in fact meeting all the time in the Ahinfie without molestation, and that many of the members of the Local Council were C.P.P. members. They were not, apparently, afraid to show themselves there.

With regard to the comments which my learned friend thought fit to make about Dr. Danquah, Sir, I think I will only say this, that Dr. Danquah is a man respected by friend and foe alike in the politics of the whole country. It is a very estimable position to be in. And as a witness, I submit that he was helpful and honest, and I feel quite certain that you are affected by none of the remarks made by my learned friend. It is unbecoming, to say the least of it, to speak thus of an elder colleague like Dr. Danquah. If I may say so, Sir, in

the public life of this country—whether viewed from on the spot, or from the the world outside—Dr. Danquah has come to be regarded as the "G.O.M." of Ghana. It is therefore much to be regretted that a younger colleague, Mr. Boateng, should so far forget the dignity of his profession as thus to lower himself in his treatment of one so esteemed.

So I pass to the more serious matters of the enquiry, and to the opening which was made by my learned friend the Solicitor General on the 15th January. He appeared to be putting forward the proposition that the State Councils Ordinance of 1952 circumscribed the powers of the State Councils and provided exclusive authority for their actions. In other words, if authority for a particular act of the State Council cannot be found within the four walls so to speak of the State Council Ordinance, then there is no authority for it. That appears to be the proposition which my learned friend was putting forward, and I notice particularly this passage on page 8 of the 15th January transcript:—

> "It will appear, having regard to the financial provisions of the State Councils Ordinance, that the powers of the State Council are circumscribed by that ordinance, and that the Akim Abuakwa State Council, acting as it seems to have done, outside those limits in the circumstances, acted without legal authority."

But he truly says on page 9 of the same transcript: if the powers have not to be found exclusively in the State Councils Ordinance, then it may well be perfectly proper for the State Council to spend money on the furtherance of a political object.

Well, Sir, that is precisely the proposition which I am going to tender before you.

Now, as it seems to me Sir, the only part of the State Councils Ordinance which can properly be said to uphold the proposition put forward by the learned Solicitor General is the heading or preamble "An Ordinance to make provision for State Councils in the Colony and Southern Togoland, and to prescribe the powers and duties of such councils." It describes the attempt under the Ordinance to make provision for State Councils in the Colony and Southern Togoland and to prescribe the powers and duties of such State Councils. Well now, if one had never seen the body of that ordinance and yet remembered reading that preamble, one might be pardoned if one came to the conclusion that this really was the first creation of a State Council and that there was a legislative attempt being made here to write a constitution under which the State Councils must act and beyond which they must not go. That appears to be the Solicitor General's view, but in my respectful submission, on reading the body of the ordinance, this view is dispelled: a very different picture emerges. First of all, Sir, may I refer you to the definition in Clause 2:

> "The State Council is the body in which the administration of the State is vested according to customary law."

So here you see at one sweep we are made alive to the position that the State Councils have already existed for a very long time, and are, up to this time, regulated by customary law, in the absence, of course, of any specific provision in the State Councils Ordinance which counters that customary law.

Now part 3 of this same ordinance deals at some length with constitutional matters: and here, in my submission, it could far more reasonably be argued that these powers are exclusive, at least in this constitutional field. If not, it might be said, why trouble to set out provisions in such detail? But, even here, the powers set out in part 3 are instinct with customary law. For instance Section 5 (1), where there is are ference to persons who are subjects or members of State Councils "by customary law": and again Sub-section 3 of that same section, where the proceedings in these constitutional matters are to be conducted in accordance with customary law. Under Section 9 even customary sanctions are stated to be the ones which shall rule. Part 7 which deals with finance and upon which the learned Solicitor General apparently lays much stress—because he mentions it specifically—gives no power at all to spend any money, and yet this is the portion on finance. All it says is that there should be accounts and audit: so that if this is the exclusive reserve of the powers of the State Council, the State Council has no power to spend any money on anything: And that is that! But of course this cannot be. If there is to be an account of Income and Expenditure, there must be expenditure. What a contrast between this State Councils Ordinance and the Local Government Ordinance which sets out in great detail a list of the powers of Local Authorities. These were new bodies which had no powers exccept those given by the statute which created them. But in the case of the State Councils that was not so: they were bodies which had been in existence for a long, long, time: they have used powers, in addition to those in the ordinance, which were customary powers. For instance to spend money on roads, day nurseries and trade schools. But however, I feel I need not labour this point in view of the fact that you have drawn my attention to the case of Enum v. Bokro: 1953 W.A.C.A.

Commissioner: That occurred some twelve days after the event.

Mallalieu: And there, of course, the State Council was declared to be the proper authority, in a matter not covered by the State Councils Ordinance, by the West African Court of Appeal sitting with President Foster-Sutton and Appeal Judge Coussey and Mr. Justice Windsor Aubrey. Mr. Justice Windsor Aubrey said: "I agree that Shama State Council is the proper authority to investigate that matter" (it was the appointment of a headman) "not as a matter of a constitutional nature but as the highest authority in the State in matters affecting the welfare of the State." I submit the whole ordinance is spattered with references to customary law. This law must have been intended to run parallel with the ordinance never

overlaid by the ordinance unless there were specific words to this effect. But in the absence of specific mention I submit that the customary law goes on as before. The Ordinance does not exclude customary law in general, however much it may, on specific points. I would draw your attention to Sections 32 and 36.

Section 32 says in effect that anyone who is the subject of a chief or State Council must assist in carrying out this ordinance in accordance with *customary law;* and Section 36 finally says that no action can lie against any member of the State Council for actions done in the execution of any powers of this ordinance or customary law. So I emphatically submit, Sir, that the State Councils Ordinance is not in any way an exclusive reservoir of powers of State Councils.

Commissioner: I think it is very a unfortunate preamble.

Mallalieu: I submit it is a most unfortunate preamble, but it is not the first of its kind. But in spite of all this, I am saying, Sir, that the State Councils are, of course subject to the laws of the country without any doubt at all.

Well now, whether they are sovereign or not depends upon what you mean by sovereign. One view is that if a State has given up any of its powers it is no longer sovereign. Another view is that a State can give up some of its powers and yet remain sovereign. Which view applies to the States in Ghana in my respectful submission does not matter. The fact is that they have given up a very large portion of the power of former sovereign States, including what is the largest power, the power to legislate for them, to the Parliament of Ghana in accordance with the Constitution of Ghana; but until that Parliament of Ghana legislates for them on any particular matter, then in my respectful submission, they have the residual sovereign powers with regard to it. So I suggest the State Council can quite properly spend money on any objects not repugnant to the laws of Ghana or to customary law. I urge Sir, that no object is against customary law which is not repugnant to the laws of Ghana and on which the State Council agrees—for customary law is not static. This, of course, is not suggesting in the very least that there are no checks upon what the State Council does in this matter, apart, of course, from the question of repugnancy to the laws of Ghana. Because the individual members are subject to destoolments if they act contrary to the customary law. So if the Akim Abuakwa State Council had decided to spend its money directly in furtherance of a political object or, to put it bluntly, to subscribe to the N.L.M., it could properly have done so. But as a matter of fact they did not wish to do that, and I hope the evidence has shown that in fact they did not. If I pay my grocer his bills for goods properly delivered, and he spends that money in a brothel, I have not spent that money in the brothel. I agree there appear in the evidence a very few instances where at first sight it looks as if the State Council had spent its money for the N. L.M.; there were shown exhibits to the

Treasurer asking him to produce money for N.L.M. purposes. But this was an infinitesimal number, compared with the number of chits properly addressed. The State Treasurer himself was treasurer, I imagine, for every body in Kibi who needed the services of a treasurer. He was pre-eminently the State Treasurer. Indeed there was one chit which was addressed to the State Treasurer asking him to pay "out of N.L.M. funds." This man was a financial "Poobah" in Kibi! People had found him an honest and a public spirited man, and there were not lacking people to place on him burdens—as so often happens with such men. The wonder is there was so little confusion. He might even be the envy of a skilled Boundary Commissioner, so successfully did he, in general, make proper distinctions!

I hope Sir, that you are satisfied with what I must describe as the most striking case, where it appeared that vehicles were bought by the State Council for N.L.M. You will remember Sir, that, during my re-examination of the Okyenhene, this idea of trying to show that those vans were not bought by the State Council but by the N.L.M. was shown to be not a new idea just thought up for these proceedings. A discovery had been made that Kese Adu had described himself as representative of the State Council. At once, as soon as this was known, he was writing to the supplying company and the State Council Secretary himself was writing to have the insurance policy made out for the N.L.M. and not the State Council. In my submission the State Council would have been perfectly within their rights in buying the vans and giving them to the N.L.M.: but they did not do so: and those letters which are contemporary, show they did not do it. Well Sir, in fact these matters were not put to Mr. Kese Adu; so, presumably, are not disputed by my learned friend.

I want to go through the terms of reference published in the Ghana Gazette of 5th November, dealing with No. 2 and coming back to No. 1—Abuse of Power. With regard to appointments, Sir, I hesitate to spend any length of time at all on the question of the appointment of Dr. Danquah as Twafohene. It was all so trivial. This all happened before the N.L.M. was founded and during the absence from Kibi of the Adontenhene. It is true he protested in a letter; but he was the spokesman of the Committee which eventually fixed the salary of £600 for Dr. Danquah as Twafohene. If the Adontenhene felt so very strongly then, why didn't he, for the expense of a mere £5, take the case to the State Council? It might have gone against him in the State Council but he could perfectly well have appealed to the Governor. He cannot now complain if you pay as little attention to the matter as he appears to have paid, himself, at the time.

With regard to the Osiemhene's abdication he, as you know, Sir, says that this was induced by the Okyenhene; but it is a curious fact which you are entitled to take note that he did nothing at all about

it for fourteen months. That is a matter, the Osiem Stool matter, which is of importance under heading 3 where you are instructed to enquire whether there has been any ignoring of Committees of Enquiries' findings. There was a speech which could be interpreted as being just that, a speech of the Okyenhene when he said, in effect, "we cannot be expected to be bound by this finding where it is contrary to custom." The plain fact is that the gentleman who was said by the Committee of Enquiry to be Osiemhene had not taken the Oath to the Okyenhene: and the Okyenhene said what he meant was that he could not recognise him until he had taken the oath: and in answer to my specific question the Okyenhene said "Of course, I will recognise him if he takes the Oath—any moment." But until that oath is taken, the Okyenhene cannot, by estomary law, recognise him.

You were, in term 4, to obtain details of Revenue and Expenditure. This is largely a matter of records—w h are before you.

Commissioner: For these I should like to rely upon the Estimates.

Mallalieu: It is mostly a matter of documents and you have the documents before you. It may be thought that the State Council is not particularly efficient in the way in which it kept its accounts; it may be said, Sir, it is not like a Government Department. It certainly is not, in the sense that it has not the great resources of a Government Department: and I don't think anybody in the State Council would have pretended that they were paragons of efficiency. But I would refer to the evidence of Mr. Bax on the 14th February, page 15 of the transcript. He said the Akim Abuakwa State Council is one of the best. This is the testimony from a man of authority. This, I think, will have effect on your mind. The other question is the amount of money, £45,000, which should be paid to the State Council by the Government.

Commissioner: Due from the Local Authority.

Mallalieu: Yes, but guaranteed by the Government. Anyhow, it counted upon it and the estimate was based upon it. The estimate of the Revenue Mr. Bax, after much pains-taking enquiry, says was about right. Payments made by the State Council were irregular, which of course was because of the irregularity of the income, Sir. Mr. Bax makes comment about the faulty collection of the Local Councils, which appears on page 31 of the proceedings of 14th February. He thought it could have been more zealous. And there was some refusal to collect farm tributes which makes a difference of some £2,000 per annum. And then there was Exhibit 22; the Local Council was actually preventing representatives of the State Council from going on the land to see what was going on. In those circumstances one may wonder whether the system of diarchy which exists at present, has not broken down. But I think I can claim that nothing has transpired from all this financial welter which can in any way be described as sinister, from the point of view the State Council, to

account for the admittedly unsatisfactory financial position of the State Council.

And in term 5 you are asked to ascertain whether persons who are entitled to receive emoluments received such emoluments.

Commissioner: The Salaries Registers will show these.

Mallalieu: On the 16th April 1955 there was a resolution by the State Council, the Adontenhene was present, that salaries should not be paid to those who were absenting themselves from Kibi.

Commissioner: Primarily the cause was we have no money to pay and what little we have should be paid only to those who attend.

Mallalieu: And that there was no discrimination whatever between individuals and the amounts paid: there was no discrimination to scale down against individuals, for political or any other improper motives. Could it be described as an abuse of power? Abuse of power against whom? It is difficult to see this abuse of power whatever you may say about the propriety or reason why salary was not paid. Apart from the fact that money was not there, there was no discrimination of a political nature.

I now come to No. 1 which is perhaps the most important term of reference. Was there any abuse of power? I submit that the gravamen of the charge against the Okyenhene and the State Council is that they supported the wrong political party—the N.L.M. All the accusation of abuse is really based on that. That is the point I want to deal with. There may be different views as to what they were entitled to do. But "abuse of power," that expression, "abuse", goes very, very much further than mere difference of opinion.

Commissioner: Something beyond, an excess of jurisdiction.

Mallalieu: The term abuse is something beyond mere excess of jurisdiction. There must be a *mens rea*. I need merely claim that a mistaken view as to what may be one's right and power, if genuinely held—and certainly if reasonably held—could certainly not be described as an abuse of power. Great questions were being mooted in this country a year or two ago; questions involving the whole future of chieftaincy, as to whether there should be a second chamber or not, whether a federal or unitary form of government. These should be a matter of concern to everybody in this country—perhaps most of all, to those whose role it is to try to lead their fellow countrymen. Sir Frederick Bourne, the Constitutional Adviser, actually came to Kibi to discuss these very matters with the State Council. The individual chiefs apparently are reluctant to sit, themselves, as members of Parliament. They have to use what instruments lie to their hands, political parties. One of the parties said the stools are to be burnt, the other said stools are to be maintained. Surely it cannot be suggested that if the chiefs are right to discuss these matters they are wrong to take action about them. How can it be said that they have no such right? Otherwise how did it come about

that Sir Frederick Bourne went to discuss it with them? Or that Sir Charles Arden Clarke, former Governor of the Gold Coast, went to discuss the Coussey Report with them. Or why should an eminent man like the Prime Minister himself, whether one agrees with him or not he is certainly eminent, that the Prime Minister himself should go to the State Councils to ask them to support his candidates, about these very same questions? They must have thought it right that the chiefs have no such right. Perhaps the suggestion really being made is that the only right which ought now to be left to them is to run away and leave their sandals behind!

Paying of fines in cases where people have been convicted by the courts might be said to be abuse of power as indicated by your question, Sir: "Is not this an encouragement of violence?" First of all I might remind you that violence did not start with the formation of the N.L.M.

Commissioner: It takes two to make a quarrel.

Mallalieu: And that it is done by both sides. For instance, here one has always been responsible for the misdeeds of one's dependants. Formerly, if a man committed adultery with a Chief's wife, his father as well as himself was put to death. So that there is a very respectable ancestry for this custom. But one thing I want to stress particularly on this point; it is this. So far as the N.L.M. at Kibi is concerned, these fines were not paid indiscriminately. Each case was gone into: and one of the main considerations in the matter was that very often these disturbances took place in places which, I hope I shall not be offending by describing as, "enemy" territory, where the difficulty of obtaining witnesses was acute. If this sort of thing had been done in Surrey or Yorkshire, or across the trim hedges and lawns of the Home Counties, it would have been different.

Commissioner: We remember the cases in which the British Union of Fascists used to be charged with assaults at meetings.

Mallalieu: I have appeared in many of those cases myself one time or another. I have no doubt at all in my mind that this sort of thing is unjustified, normally. Those who study the "troubled times" in Ireland know what the difficulty is when things are not normal. There, too, there was the impossibility of persuading witnesses to come forward. There was of course a complete breakdown of the administration of justice. I submit it is not realistic, here, to link the practice of paying fines with the intention to spread violence.

Commissioner: No, but what if the State Council participated?

Mallalieu: But of course in this case there was no participation by the State Council or the Okyenhene, as the State Council's President; he himself has said he did not know the details; he merely knew that the general practice of both parties was to pay fines. To blame one side more than the other would be to lay claim to the

wisdom of Solomon. When the kettle calls the pot black, it is as well to remain somewhat aloof!

This Commission, Sir, was set up by the Government at the instigation, apparently, of the Adontenhene. Now, this man's insensate ambition has led on many occasions previously to what the Okyenhene described as rebellion; and on that point Sir, I merely wish to say that the Oath of the Adontenhene to the Okyenhene was one to answer his call by day or night; and especially when he not only does not come but says "I will not come," that is rebellion. In my respectful submission the word is not too strong to use. Because this man, the Adontenhene, had an ulterior motive—which he dare not himself openly express, though it is none the less obvious to become the Omanhene—he was unpacifiable. His first absence from Kibi, if you will remember, Sir, was again long before the formation of the N.L.M.: and after that he had—if I may be permitted to use the not very dignified expression—he had this "footling" dispute with the Okyenhene. He sanctimoniously left the N.L.M. "because of violence"—promptly joining the C.P.P. which commits as much violence as the N.L.M. Then he said he was affected by the beating of his own grandson; but he took over a year to be affected. And now this ambitious, unpacifiable man has of course to prove his usefulness to his new lords and matters: no doubt, too, he will "jostle" for office, if not in the Government, then for the job of Paramount Chief. I feel I am justified in saying this, that his friends and masters, having contributed in no small degree to the new present financial straits of the State Council of the Akim Abuakwa State, by not implementing their undertakng that a yearly minimum of £45,000 would be paid to the State, are presumably now hoping to complete the financial ruin of the State by prolonged proceedings such as this enquiry. One can only philosophize about the nauseating hypocrisy of the charges and suggestions of violence, improper practice and corruption brought by members of a party which has indulged in as much violence as any one else and which used the Cocoa Purchasing Corporation in the manner described in the Report of Mr. Justice Jibowu—concealing that Report until the very eve of a General Election in which, to say the least, it was extremely relevant. In the face of this, my submission is that the Okyenhene and the State Council have behaved themselves with great dignity. The only crime it seems they have committed is that they have supported the opponents of the Government. It takes time, apparently, before it is realised that democracy cannot possibly make headway unless there is an opposition—a real opposition, not just a persecuted rump of an opposition, but a virile opposition which is capable of jumping to its feet when it sees the liberty of the subject imperilled.

One is permitted to wonder what would have happened if the Akim Abuakwa State Council and the Okyenhene had chosen their

political party with more worldly wisdom! Other State Councils have spent their money on the "right" political party; but no Commission of Enquiry has been placed on them. They have escaped the attentions of the enquirers! May I refer for a moment to the notice to give evidence which was sent around to the Okyenhene and others at the beginning of these proceedings. My learned friend Mr. Solicitor General rather humourously referred to the 'wonderful box' of the Treasurer. I think I should be justified in referring to this wonderful document' of my learned friend. Fifty-six charges have been made, most of which have been abandoned. I am submitting that it is an abuse of power and public money which ought not to have been undertaken.

Commissioner: Mr. Mallalieu, I think you have the same erroneous conception of that document as Dr. Taylor had. In opening this enquiry at Dodowah I asked that anybody who had any statement to make in regard to these matters should make a statement to the Counsel for the Commission, and if any person was adversely affected by any of these statements that person would be given an opportunity to answer the allegations made against him. Those matters having been done I, in duty bound, sent notices and had to call those witnesses whom I considered were persons who should give relevant evidence. I don't think any criticism should be made of the Solicitor General.

Mallalieu: The point I am making Mr. Commissioner, is that a commission of this sort is necessarily a burden upon those who have to appear before you, however capable of explaining the charges they may be.

Commissioner: There is a corresponding burden upon the Commissioner.

Mallalieu: Sir, may I just deal for a moment with a question that reveals the state of mind of the Okyenhene, and that is the question of whether or not the National Liberation Movement was a political party. Great store was set upon this by the Okyenhene and the State Council. They said the N.L.M. was composed of various small parties and bodies each retaining its own identity; and because there was no strong central organisation it was not a political party. I will not quarrel about whether they are right or not. They may be right. However that may be, in my submission, the Okyenhene's speech in the House here remains the classic advice to chiefs as to how to comport themselves in this matter. I hope, Sir, that chiefs will follow this example rather than that of the Adontenhene.

I am here, Sir, so far as my modest capacity allows, to try to help this Commission to come to a decision which will not only be respected by one party in Southern Ghana but by all parties in all Ghana—and indeed far beyond the boundaries of Ghana, where not a few eyes are turned in this direction, and where people are by no means as indifferent, as a casual reading of the newspapers might

lead one to suppose, to what is happening in the realm of Civil Liberties. That only the opponents of C.P.P. should be subjected to the crippling burden of these Commissions, to the necessarily unpleasant probing of the learned Solicitor General—as well as to the less dignified tirades of other counsel far less experienced in the ways of the world and in the behaviour of one professional man to another, is but one aspect of the wider and most sad movement against the liberty of the subject. "Freedom" is a word not just to be shouted at political rallies; it is a tender plant to secure the growth of which its true devotees, however exalted, must be prepared even to efface themselves from time to time. The Palace of Westminster—the Houses of Parliament as many call it—crouches like a lion on the banks of the Thames, ready to spring into action whenever our hard-won Civil Liberties are called into question. Let us hope that Parliament House in Accra, making bold face to the unceasing poundings of the Gulf of Guinea, may one day, too, become a symbol of those real freedoms which are at the core of social democracy—man's most civilised system of government.

May it please the Commission—

The whole of the available evidence which the Commission considered relevant and material to this Enquiry has now been presented and the Commission has heard addresses from Counsel for interested parties. It now remains for the public proceedings to be wound up before the Commission adjourns to consider its report.

In view of my position as Counsel appearing on behalf of the Commission itself, I do not propose to address the Commission in detail on the evidence that has been adduced in the course of this Enquiry or to attempt an exhaustive analysis of the facts, as, if I may say so, it has been manifestly clear throughout this Enquiry that the facts, Mr. Commissioner, have been ever present in your mind.

However, I shall call your attention to such of the facts as may appear to be especially significant and I shall seek to do so objectively. I believe I am right when I say that at the opening of this Commission of Enquiry I laid stress on the fact that I and my colleagues, who were appearing as Counsel for the Commission, were not appearing in the role of prosecutors, that we were not here to make a case against anyone or defend anyone except, indeed, insofar as the facts which I should seek and which I have now sought to elicit in themselves involved either some criticism of the conduct of particular individuals or some explanation in defence of that conduct.

I shall attempt to approach the concluding part of my task as objectively as I see it, without any regard to conclusions to which any observations may lead, or to the consequences, personal or otherweise, which may follow them.

I consider it desirable here and now to re-iterate and re-emphasise that we are not here to ask the Commission to come to any conclusion about any matters. We are here solely to assist the Commission to ascertain what the truth is about the several allegations which have been made.

The Commission, it will be recalled, was appointed with the following terms of reference—(Read 1–8).

As was stated at the commencement of the Enquiry, the Commission was itself responsible for the collection of evidence, the taking of statements from witnesses, the presentation of evidence and the testing of its accuracy. It was also arranged, with the concurrence of the Attorney-General, that I, and my colleagues, should appear during the hearing to examine, on behalf of the Commission, such witnesses as the Commission should call to give evidence at the Enquiry.

Before dealing with the evidence, I desire to make some observations of a general nature.

As I said to you, Sir, in opening this Enquiry, this is not an Enquiry into politics nor is it an Enquiry into the use of violence by any political party. The use of violence by any political party only becomes relevant if it can be shown that the Okyenhene and his Councillors were, in fact, supporting that party in a manner inconsistent with their official position as Chiefs and members of the State Council.

I emphasise, once again, that though much evidence has been led as to the illegal and, indeed, criminal activities, if the witnesses are accepted, of the N.L.M., this evidence is only relevant in so far as the Okyenhene and his State Council were parties to it in their official capacity.

As a general test, I would suggest that in examining the allegation against the Okyenhene and his Councillors, one applies these general rules. First, did the Okyenhene or his Councillors do the acts alleged in their capacity as Chiefs or Councillors? Secondly, were they entitled as Chiefs or Councillors, to do these acts? Thirdly, were these acts contrary to tradition, and fourthly, were they contrary to law?

I am in entire agreement with my learned friend when he advanced the argument that the State Council is entitled to act under customary law. He supported his argument with several references to the State Councils Ordinance which quite clearly indicate the correctness of his view. I, in fact, did in opening, among other things, specifically mention customary arbitration, and am not entirely able to appreciate the seemingly narrow construction placed on what was expressed.

My learned frined, however, concedes that the State Council cannot act in any manner repugnant to the law of Ghana, or repugnant to customary law.

It will be for you, Mr. Commissioner, to decide whether in fact the Okyenhene and his Councillors have acted contrary to law, be it Statutory or Customary.

If I may suggest, a convenient method of regrouping would be to deal lastly with the first head of the Commission's terms of reference. This deals with abuse of power which you may think seems largely to deal with more detailed allegations which have been made, and I therefore, with your permission, Sir, propose to deal with this head last, taking the other heads in sequence.

With respect to the second term of reference—"Appointments or destoolments of Chiefs for Improper Reasons."

(*a*) You may consider that the elevation of the Odikro of Anum to

the status of a Palaquin Chief was not, in fact, done without the consent of the people of Asamankese. It may well be that the Okyenhene is entitled to elevate any Chief provided custom is followed. In any event, the evidence in this regard, in my respectful view, does not support the charge.

(*b*) Adjei Boateng—Osiemhene. Here, apart from the evidence of Yaa Wawa, the ex-Queen mother of Osiem, that Yaw Antwi has been elected, but the Okyenhene did not accept him there is no conclusive evidence that the Okyenhene had anything to do with the election.

(*c*) Yaw Antwi—Osiemhene. There is evidence that the Okyenhene declared him destooled once, but this, Yaw Antwi says, occurred some eight years ago when the C.P.P. was inaugurated.

(*d*) The case of Dr. J. B. Danquah is of an entirely different nature. It is impossible to ignore the fact that Dr. Danquah is an extremely well-known and an extremely active politician. It may be right, or it may be wrong, for such a person to be installed as a Chief without the possession of any Stool, but you will, Sir, realise the implication which might arise, if this practice were to be allowed. These funds are intended for the maintenance of traditional dignatories, and are not meant to be used for paying a salary to an active politician engaged in the hurly-burly of day to day political activities. Once the principal is admitted, there arises the likelihood, if under traditional law, a State Council becoming largely, or even entirely, composed of politicians belonging to one party or the other. In Dr. Danquah's case you may think of personal reasons why he should be so honoured, but looked at as a matter of principle, this would affect the question as to whether a Paramount Chief has the right as a Paramount Chief to elevate a politician for what are clearly political services. You may thing that the introduction of such a principle would not be good for the continuity of Chieftaincy as a whole, and it is for that reason that I suggest that the circumstances in relation to Dr. Danquah's appointment as Twafohene be looked at in some detail.

His appointment was questioned on the ground that it was not customary, he had no Stool, no subjects and, according to the Adontenhene, had been appointed without any consultation of the traditional Head. Dr. Danquah himself contended that whenever a new Chief was made he had no Stool and that only at his death was a Stool created by his family in his memory. He further stated that consultation with the Adontenhene, as Divisional Head, had been impossible, as the Adontenhene had, at that time, absented himself from the

Council, and on his return had ratified the appointment. His evidence is, to a large extent, supported by the Okyenhene.

I would, however, respectfully submit that it will be for you, Mr. Commissioner, to consider whether if the Okyenhene did, in fact, have the power to make the appointment of a new Chief, he did not act improperly by creating Dr. Danquah a Senior Divisional Chief, resulting in his receiving the salary which he did from the State Council. It will also be recalled that the State Council had fixed his salary at £300, and on his refusal because, he stated, he was a Senior Divisional Chief, raised his salary, with concurrence of the Okyenhene to £600.

The third term of reference—"Decisions of Committees of Enquiry which have been ignored or resisted by the traditional administration of the State."

Under this head I would refer to the Osiem Stool Dispute, it would appear that the Okyenhene regarded Adjei Boateng as the Osiemhene. After the Committee had decided that Yaw Antwi was the Osiemhene, Adjei Boateng continued to attend the State Council meetings as the Osiemhene. Both Dr. Danquah and the Okyenhene contended that Boateng was permitted to attend these meetings as the decision of the Committee of Enquiry was then being questioned in Court; but that when his application to have the Committee's decision set aside failed, he was instructed not to attend meetings.

Yaw Antwi was not invited to attend meetings of the State Council because he had not taken the oath of allegiance to the Okyenhene. It will be for you, Mr. Commissioner, to consider whether this was, in fact, necessary having regard to the evidence of the Okyenhene himself that the Rev. Antwi, a member of the State Council has never taken any oath. It might also be of some significance to recall, at this juncture, that no oath was taken by Dr. Danquah in respect of allegiance to the Adontenhene.

The fourth term of reference—"To obtain details of the revenue and expenditure of the State Council during the period of 1st April, 1954 to 31st December, 1957."

Evidence under this head has been given by the Senior Government Auditor, Mr. Bax, who has taken great pains and has spent considerable time in the preparation of an analysis and report which I am sure will prove of inestimable value to the Commission.

I here quote the final paragraph of his analysis. There is, however, one comment which I desire to make. The books were seemingly well kept, but having regard to the evidence of the Treasurer, Mr. Ofori Ware, little or no reliance can be placed on these books and, if anything at all, they appear to have been kept in a manner which might be construed as intended to deceive.

The fifth term of reference—"To ascertain the persons who are entitled by custom to receive emoluments, and if so, why they have not received such emoluments."

From the evidence it would appear that all Chiefs and their Elders are entitled to emoluments. Formerly, the Chiefs kept whatever revenues they derived from their lands, provided one third of such revenue was paid to the Paramount Stool. Now all revenue is paid into the Treasury and the Chiefs are paid salaries. These salaries are determined and are related to the status of a particular Chief and not his lands.

According to the books of the State Council, several Chiefs have not been receiving salaries, the reason advanced being that the State Council has no funds (and await monies dues to them by Government. It is a moot point whether the State Council is, in fact, entitled to any monies from Government, as this appears to be a matter between the State Council and the Local Authorities. It is worthy of notice that non-payment of salaries due, as was said, to lack of money affected some Chiefs more than others. In the State Council's minutes of 1955, it is declared that Chiefs who did not come to Kibi would not be paid. Non-payment of attendance allowance might be more easily understood. This, despite the fact that it was well known that at that particular time, several Chiefs who supported the C.P.P. would not go to Kibi. The reason advanced being the fear of being beaten, and there is the further consideration that pressure might have been brought on them to change their support for the C.P.P. to the N.L.M.

The seventh term of Reference—"To enquire if any payments have been made by the State Council for purposes other than those properly connected with traditional matters."

I propose, with your leave, to deal with this in conjunction with the first term of reference "Abuse of power" as, in my respectful view, it will be convenient so to do.

The eighth term of reference—"To enquire into any complaints in regard to the traditional administration of the State made to the Commission in the course of the Enquiry."

In condensing the observations under this head, the important complaint emerging is that the Local Authorities have been failing in their duty in so far as it relates to the collection of revenue.

I now return to the first term of reference which, briefly, may be stated to be the question of abuse of power on the part of the Okyenhene and his Councillors.

Before dealing with the evidence on this score, I wish here to make mention of the statement made by Nana Ofori-Atta as far back as 1951 relating to the position of a Chief and politics, namely "that as Chiefs it is constitutionally impossible for any of us to be politicians. Statesmen, yes, but never politicians. It has been our duty to preserve peace and order in our States and we shall not hesitate to discharge this duty whatever the political creed or colour involved."

In my submission this statement is a correct view of what are the duties of a Chief, but it will be for you, Mr. Commissioner, to con-

sider whether the Okyenhene by his words and actions has adhered to that statement.

A Chief, it cannot be denied, does occupy an invidious position. He is supposed to represent his people, and, when he does make any public utterance, such utterance is presumed to be the opinion and expression of his people.

It will be for you, Mr. Commissioner, to consider whether Nana Ofori Atta, acting as he did as revealed by the Minutes of the State Council on 1st and 4th April, 1955, was not acting contrary to the spirit of his professed declaration as to what is expected of a Chief, and was not, in fact, actively engaging in politics.

Again, the Minutes of the Kibi Council of June, 1955, and December, 1955, in my view appear to present the inescapable conclusion that persons in the Akim Abuakwa State were led by the Okyenhene into the belief that by associating with the C.P.P. they were indulging in subversive activities and, indeed, evoked from them protestations of disassociation from the C.P.P. and promises of support for the N.L.M. You, Mr. Commissioner, may well consider this an abuse of power on the part of the Okyenhene.

There is further evidence in this regard, namely, the State Council Minutes of the 20th April, 1955, headed "Maase Affairs," where it would appear that the Okyenhene and his Councillors considered association with the C.P.P. to be subversive activity and ordered two Elders to slaughter a live sheep for their past irresponsible conduct.

The minutes of the 1st September, 1955, show that there was a proposal by the Akim Abuakwa National Liberation Movement to the State Council, "That all Stool heirs in the State should have their name registered in a Common Record Book at the offices of the State Council, so that those who engaged themselves in subversive activities against the Chiefs and Chieftaincy itself may have their names removed. They may thus lose their rights as Stool heirs and consequently forfeit any claims to future consideration for enstoolment."

On the 5th September, 1955, these proposals were approved by the State Council. This, again, Mr. Commissioner you may well consider an abuse of power, as forcing, compelling and co-ercing persons to support a particular party. Moreover, this type of conduct, having regard to Reg. 59 of the Assembly Election Regulations 1954, would appear to be a criminal offence.

Again the taking of the Great Oath which both Dr. Danquah and the Okyenhene described as not contrary to Customary Law, would appear to be, in the terms of Reg. 59A of the Assembly Election Regulation 1955, an offence whether the oath is in accordance with Customary Law or not, and consequently it would seem that the Okyenhene was, with his Councillors, committing an offence when they swore the Great Oath.

I would, at this juncture, at the risk of being repetitious, state that the fact that politics enter into this at all, is purely incidental. The question to which the Commission will have to direct its mind is whether or not the Okyenhene and the State Council used their position to further their ends by violence or improper methods.

There has been evidence adduced before you, Mr. Commissioner, that because of political affiliation, there was victimisation in respect of diamond digging licences. On this point you have heard Sarpong and others and, if you accept the evidence, as you are entitled to do, it would point to the conclusion that, not only was Sarpong victimised because he was a member of the C.P.P., but also that the Okyenhene has been abusing his power and committing acts of extortion in that he unlawfully obtained the sum of £30 in respect of each licence.

There has been a long history of assaults and even of arson by members of the N.L.M. on their political opponents in the State. The concern of the Commission, however, is not as to whether the supporters of one Party assaulted the other, but whether the Okyenhene and his Councillors were behind the violence used.

It is of interest to note that Kwadwo Birikorang, the self-styled Court Clerk, was himself a Councillor, the Vice-Chairman of the N.L.M. was Bafuor Amoako, the Gyasehene of Kibi and a State Councillor. The holder of that wonderful box (you may well think that the box never, in fact, existed) Mr. Ofori Ware, Treasurer of the N.L.M. and Treasurer of the State Council, Court Treasurer, Okyeame Bugyei, the Okyenhene's linguist.

It was admitted on all sides, eventually even by the Okyenhene himself, that fines were paid for members of the N.L.M. "action-groupers", as they were called, who were convicted for offences committed on their political opponents.

There is evidence which, accepted, tends to show that some of the action-groupers actually lived in the Ahenfie and perpetrated these assaults on the instructions of the Okyenhene.

It will be for you, Mr. Commissioner, to consider whether the evidence does not reveal—

(*a*) that the N.L.M. action-groupers existed and acted like thugs and were, in fact, maintained with State Council funds with the knowledge and approval of the Okyenhene and his Councillors;

(*b*) that they received what was termed as "prison allowances" which again came from State Council funds; and

(*c*) that their families were maintained when they were in prison —again with State Council funds.

If you form the view that the evidence substantiates these allegations, it would, in my respectful view, tend to make a mockery of the Okyenhene's statement of his duty to preserve peace and order in his State.

Again, if you accept the evidence that a particular action grouper was awarded extra pay due to the gravity of his offence, all this, I respectfully submit, tends to bring law and order into disrepute and amounts to a criminal conspiracy to suborn and make a travesty of justice. I call to mind the case of the action-grouper, I believe the brother-in-law of the Okyenhene, for whom Birikorang stated he paid fines on no less than seven occasions. If ever there was incitement to commit offences, to encourage unrest and violence, this would appear to be it. Moreover, you have the Okyenhene stating categorically here to you that he considered the payment of such fines proper.

I shall now deal with payments made for purposes other than those properly connected with traditional matters.

There have been strenuous denials that in truth and in fact the N.L.M. and the State Council were one and the same, particularly on the question of the monies allegedly securely kept in Mr. Ofori Ware's wonderful box, which more than likely existed only in his imagination, as it has never been produced for our benefit.

It is worthy of notice that the first resolution of the State Council to contribute to the N.L.M. was dated the 22nd April, 1955, one week after the propaganda vans had been bought for the N.L.M., and two days after the State Secretary had informed the State Council that propaganda vans have been secured for the N.L.M. In Mr. Ofori Ware's beautifully kept book there are listed contributions made by members of the State Council, the noticeable omission or omissions being the date or dates of the month of April on which the contributions were made. Presumably he would describe that as yet another mistake.

It is perhaps more than co-incidental that on the 15th April, 1955, when the two vans were purchased for the N.L.M., that the Akim Abuakwa State Council withdrew on that date £3,000 through Mr. Okyere, Assistant State Treasurer, who again on the same date paid the sum of £1,400 to S.C.O.A. for the vans.

Apart from the resolution on the 22nd April, 1955, to pay one month's salary of Chiefs to the N.L.M., there was only one other such resolution on the 19th September, 1955, calling for a contribution of one month's salary by the Chiefs to the N.L.M.

The books of Mr. Ofori Ware, however, show that members of the State Council did provide funds for the N.L.M. both in 1956 and 1957.

It was admitted that Kesse Adu, the Secretary of the N.L.M. was at no time an officer for the State Council. It is passing strange that he should sign a hire purchase agreement on behalf of the State Council with S.C.O.A. in respect of 4 vehicles. It is true both he and the State Secretary subsequently wrote S.C.O.A. indicating it was a mistake. What is particularly significant, and this was denied by the Okyenhene till his own letter was shown to him, is that he, the Okyenhene, should write to S.C.O.A. informing them that his son would be

responsible for the payment of instalments on one of those vehicles, when he at first wrote blindly that he knew nothing whatever about the vehicles. He, however, subsequently admitted they were N.L.M. vehicles and it had been a mistake on the part of Kesse Adu to sign on behalf of the State Council.

The Commission will recall the evidence of Mr. Ofori Ware which was punctuated with extreme frequency by what, for want of a better means of escape, he described as "mistakes." The word "mistake" appears to flow easily from the highest to the lowest in the N.L.M. and State Council hierarchy. No doubt, Mr. Commissioner, while you may not consider this an abuse of power, you may well consider it an abuse of the use of the word mistake.

The clearest possible admission came from Ofori Ware when documents were produced which established that the State Council's name was being used to obtain loans for the N.L.M. On this score the Okyenhene feigned ignorance, but showed his hand when he said there was nothing improper in loans being secured by that method as the State Council's avowed policy was to support the N.L.M.

In the course of this Enquiry the Adontenhene who, it was alleged, has been responsible for the initiation of this Enquiry, comes in for some severe criticism and adverse comments. While it may well be that this was not entirely undeserved, the Enquiry has brought to the forefront facts which, in the general interest of the public ought to be known.

It cannot be denied that the testimony of several witnesses has not borne the imprint of truth and has been of a somewhat unsatisfactory nature. Nonetheless, taking the evidence in its entirety, together with admissions by Ofori Ware and the Okyenhene himself, you may consider it, Mr. Commissioner, extremely difficult to avoid the conclusion that the Okyenhene and his Councillors have been flagrantly abusing their powers, misusing funds allocated for traditional purposes and, by means of victimisation and coercion, forcing political views on persons who have on two previous occasions indicated, in no uncertain manner, their support of an opposing political party.

In conclusion, Mr. Commissioner, by a minute examination of the evidence which so ordinarily forms the legal criteria for deciding where the truth lies, you will determine those issues which have been long familiar and in which your wealth of experience will undoubtedly be of invaluable assistance.

ALLEGED ABUSE OF POWER BY THE PARLIAMENT AND GOVERNMENT OF THE AKIM ABUAKWA STATE

Statement by Dr. J. B. Danquah before the Commission

THE Akim Abuakwa State was up to March 1850 a Danish protectorate. After the Danes sold Christiansborg Castle to the British in that year, the British Governor did not hand a British flag to the Akim Abuakwa State, nor did the British Government enter into any kind of Treaty with the sovereign power of that State, as was done with other States within the former Danish protectorate.

Referring to the Bond of 1844, Dr. Kwame Nkrumah, in his Prime Minister's speech to the Legislative Assembly on November 12, 1956, pointed out that the Bond of 1844 was important in the fact that "by attempting to define and legalise British jurisdiction, by agreement with the Chiefs, it was the symbol of the independence of the Chiefs who signed it and their States."

Stemming from the same reasoning, it is legitimate to conclude that the Gold Coast States and their Chiefs were in the nineteenth century independent of any other power. That independence was modified by certain States which sought and received British friendship and protection by treaty or otherwise and became protected States.

The Akim Abuakwa State has never sacrificed any aspect of its independence by any such treaty. It was taken to be part of the British dominions by vicinage and not by conquest or treaty. Like other States in the former Gold Coast it was never colonised by any British people; the lands have remained the sovereign property of the sovereign authority of Akim Abuakwa. No part of the Akim Abuakwa State was ever a "colony" in any accepted constitutional sense. The several instruments which brought about the independence of Ghana did not alter the picture, and the Akim Abuakwa State became a part of the independent State of Ghana by its own consent.

It will perhaps be unprofitable to pursue this question at length. No special study of the status of the Gold Coast States *vis-a-vis* the Imperial Power has ever been made except that the Coussey Committee raised the question in an acute form in its Report, in 1949. His Majesty's Government, however, fought shy of the question. In their comment on the Coussey Committee's Report they thought it wise not to attempt an answer to the strong case made by the Committee.

The Akim Abuakwa State Council is the parliament of the government of the Akim Abuakwa State. In paragraph 1 of the Commission's Notice served on members of the Akim Abuakwa State Council it is suggested that by words and actions they abused *their* "power" by adhering to the National Liberation Movement "to the prejudice of subjects of the State having different political views."

The adherence of a government, or the counselling of the parliament of a State, or of its people, by words and actions, to adhere to the policy of a particular political party, is the essence of modern democracy, parliamentary or otherwise.

By no law known to any established constitution, except, of course anarchy, is the adherence of a government to a particular political party, condemned as "an abuse of power" by that government or by members of its Parliament.

Where the parliament of a State pursues an agreed policy to support a particular political party, it is inconceivable, in the nature of things, for every subject or citizen of the State to share the political view taken by the parliament or government of the State. Both those groups who hold opposing political views are entitled to do so in the exercise of their political freedom. That is to say, neither they who oppose the political policy of the government, nor the members of the parliament who support the political policy of the government, are liable to be called to account for holding views *different* from or in *agreement* with the political policy of the parliament of the State.

To hold otherwise is to stultify parliamentary government or any government controlled by human opinions expressible as decisions.

It is possible that under certain forms of dictatorship, or under a regime which favours totalitarian policies, it becomes an abuse of power, or of "freedom", to take any line other than to support the party in power. But there was no law in the Gold Coast between 1st April, 1954 and 31st December, 1957, and there is not now in force any law, laying down that the policy of a specific party *only* is or was to be supported.

In the pursuit of freedom, each person, or each aggregation of persons in a political institution, is entitled to support a party whose policy appeals to him or it. The exercise of that freedom is not an "abuse of power" either by the individual or by the political institution, or by any number of individuals associating together, such as the State or the State Council.

If it should be laid down that whenever it is shewn that the people in a State hold different political views in respect of any or all political issues in that State, the parliament or government of that State will be acting in "abuse of power" to support or adhere to any particular political party's views, then there is the maximum negation of government, and anarchy, in its most tyrannous form, assumes the reins of the body politic.

The Government of Ghana is, by its declared policy, anti-Communist. In 1954 or thereabouts, the Passports of certain citizens in the Sekondi-Takoradi area were taken away from them on the ground that it was believed they possessed Communist affiliations and might wish to leave the country to attend Conferences sponsored by the

Communist labour front. It was declared as a policy of the government that no person professing the Communist doctrine, or believed to be a communist, was to be employed or retained in the employment of the Government of the Gold Coast, now Ghana.

This notwithstanding, the Government of Ghana has recently sent a delegation of five persons, members of the C.P.P., one of them a Ministerial Secretary, to attend the Communist front organisation of Afro-Asian Solidarity Conference meeting in Cairo in December, 1957.

This act or deed is an exercise of power by the Government of Ghana. Parliament was not even consulted in the matter. No official information has been issued on the matter to the general public by the Government. The policy of the Afro-Asian conference, with its communist front, may be disliked by large numbers of persons in Ghana who do not favour hobnobbing of the Government with communist front organisations. But the fact that the Government's action may have been taken "to the prejudice of subjects of the State having different political views" on Communism, will not justify the accusation of the Government of Ghana before a Commission of Enquiry on the ground that they had, by taking part in that Conference, "abused their power."

Whose "power"? Their right and power to govern? In a democracy the only legitimate way for rejecting the policy of a government is to refuse to return the government into power. Under the traditional democracy of the Akim Abuakwa State the only legitimate way to reject a policy of that nature is to refuse to endorse it. The people of Akim Abuakwa, in common with the people of Ghana, have rejected the National Liberation Movement's policy for a federal and not a unitary system of Government in Ghana. That is the end of the matter. To seek to re-open it is to stultify the democracy which governs the parliament, or the State Council, of Akim Abuakwa.

The freedom to express an opinion, and to act in terms of that opinion, is not an abuse of power in a democracy. It may be liable to be described as a wrong or unwise opinion, but not abuse of power. In matters of 'opinion', and the decision upon that 'opinion', power cannot abuse itself. Power is only said to be "abused", when exercised in excess, or without jurisdiction, or unlawfully, *i.e.*, exercised against a specific law laying down what should be done in a particular circumstance. *Exceeding estimates without seeking authority, is such an abuse of power.* Withdrawing recognition from a Paramount Chief, where there is no law authorising the withdrawal of such recognition, is an abuse of power. Free exercise of opinion on a political issue is the maximum expression of liberty and is never an abuse of power.

The application of this principle to the members of the Akim Abuakwa State Council is made on the assumption that the State is *possessed* of *power* to express its opinion on political issues and is expected to exercise it. It will, in such a case, have been a neglect of its duty in the particular circumstance of the case in 1954–1956 not to have exercised its power, either to support the policy for a UNITARY form of government for Ghana, supported and advanced by the C.P.P., or to support the policy for a FEDERAL form of Government for Ghana, supported and advanced by the N.L.M., or, in the alternative, to advance its own policy. Most State Councils in the country took the line of supporting one or other of the two policies. The suggestion that those who supported the N.L.M. policy thereby abused their power is a maximum negation of democratic freedom.

It should be pointed out in passing that the National Liberation Movement was not a "party" in the strict acceptation of the word. It was a "movement". The difference between a party and a movement is that the members of a movement may belong to any party, but give their support to the specific objects of the movement. The members of a party have to support the party line at all times or be liable to expulsion.

The movement for the abolition of the slave trade formed an organisation for the purpose in the United Kingdom the Anti-Slavery and Aborignes Protection Society. That movement indulged in a high parliamentary campaign, but it was not called a party for that reason. The Suffragette movement was also not a party. In every such case, the movement tends to disappear with the attainment or failure of attainment of its particular objective.

As soon as the National Liberation Movement realised that it had failed to achieve fully its objective and it formed itself into a "party", the Okyenhene, on the advice of the State Council, withdrew himself from its support, or the support of any party, leaving himself and the State Council free to sponsor or support political issues if and when they arose, according to the opinions of the members of the State Council.

The Okyenhene's statement on the subject was made on October 11, 1957. Since that date the State Council has shown no support for the N.L.M. The accusation against members of the State Council is that up to December, 1957, they were supporting the N.L.M. The accusers have it as a duty on them to produce evidence in support of their accusation, or be for ever condemned as deceiving persons in authority, namely the Jackson Commission and its Counsel.

Paragraph 1 of the Notice.

There is no truth in the allegation that members of the State Council did counsel and procure other members of the State to subscribe to the Okyeman Great Oath for a purpose unknown to customary law, to wit "to ensure *perpetual* allegiance to a political party, namely the National Liberation Movement."

(*i*) No oath of allegiance, or of perpetual allegiance to the National Liberation Movement has been taken by members of the State Council.

(*ii*) The Okyeman Great Oath, (more correctly described as the Okyenhene's Great Oath) was taken not to ensure perpetual allegiance to the National Liberation Movement, but to ensure that the constitution of the New Ghana was built upon the traditional foundation supported by the State.

(*iii*) It is an exaggeration to say that the support of a political party or movement, by oath or otherwise, is "unkown to customary law."

(*iv*) It is also not correct to suggest that "temporary" allegiance to a political party or movement is known to the customary law but that "perpetual" allegiance is not.

From the earliest days of the political struggle in the Gold Coast, the Okyeman Council has, in pursuit of its allegiance to the Okyenhene, supported several political movements, in accord with its own unfettered or free opinions and decisions.

The Okyeman Council supported Nana Dokua by the Great Oath in her policy to adhere to the Coast States in a war against Ashanti, the Akantamasu or Dodowa war of 1826. A good many of the people, the Nifahene of Asiakwa in particular, were in favour of the Okyeman supporting the Ashantehene against the Coast States. The Amantoommiensa and the State Council supported the other policy. This tradition is over a hundred years old, and it can be shown by many other instances, that when opinions arise in the State Council, and the people are divided on it, the State can resort to the oath to ensure that a particular line is supported. This is, in every respect, in accord with custom.

(*ii*) The Okyeman Council became a member of the Gold Coast Aborigines Rights Protection Society of 1897 without having to ask for the opinion of every citizen or subject of the State. The Council did so in pursuit of the oath of allegiance.

(*iii*) The Okeyman Council in 1917 did not support the National Congress of West Africa. It chose to support the Aborigines Society instead. A Conference of Paramount Chiefs was formed to oppose the National Congress. Nana Sir Ofori Atta I was their leader. The Akim Abuakwa Scholars Union who favoured the National Congress eventually gave in to the sovereign decision of the State Council, just in the same way as the State Council has given in to the decision of the peoples of the several Gold Coast States, by majority, to have a Unitary and not a Federal System of Government in Ghana.

(*iv*) The Okyeman Council in 1934 gave its support to the Central National Committee of Ashanti and the Colony in sending a delega-

tion to the United Kingdom Government against Sir Shenton Thomas's Government's "Sedition Bill" and the Water works Bill. The Okyeman Council supported the reconciliation of the C.N.C. with the Aborigines Rights Protection Society at Saltpond, but when the Society eventually decided to send a separate delegation to the Colonial Office, the Okyeman Council supported the Okyenhene and actually sent him to London as leader of the C.N.C. delegation. That was done in pursuance of the opinions of the Okyeman Council that that policy was the best in the circumstances.

(*v*) The Okyeman Council supported the cocoa farmers movement in their Cocoa Hold-up and the Boycott of European goods in 1937–38. It did so by its oath of allegiance, and that was done according to custom.

(*vi*) In 1947 the Okyeman Council supported the Boycott of European goods organised by Nii Kwabena Bonne III and which was also supported by the Gold Coast Government as against the merchants. That was in accord with the custom of the State for the State Council's opinion to become the decision and policy of the State.

(*vii*) In 1949 the Okyeman Council took the side of the United Gold Coast Convention in their demand in the Coussey Committee for full self-government for the Gold Coast. The Okyenhene sent a telegram to the Coussey Committee in pursuit of that policy. The majority of the Coussey Committee signed a report asking for an experimental form of self-government. The Okyenhene signed the minority report for full self-government. The Okyenhene was not thereby charged with an abuse of his power for supporting the minority.

(*viii*) In 1951 the State supported the candidates of the U.G.C.C. as against the candidates of the C.P.P. who won the two seats in the General Election for the Legislative Assembly. The Okyeman Council was not accused of abuse of power for doing so.

(*ix*) In 1953–54 the State presented a memorandum on the Constitutional Proposals by Post and it was not accused of abuse of power.

(*x*) In pursuance of its declared policy to support a federal system of government for Ghana the State made its views known to Sir Frederick Bourne the Constitutional Commissioner.

In general, renewal of allegiance is customarily required whenever certain issues are raised in an acute form and the Okyenhene requires to be assured that his Chiefs are wholly and fully behind him in the pursuit of a particular policy. That practice is quite in accord with custom.

The Paragraph numbered 1 at Page 1 of the Notice

The allegation that "salaries due to several members of the State

Council were forfeited with the object or alleged object of paying them into the funds of the National Liberation Movement to the prejudice of those members who were not supporters of that movement rests on the false assumption that the State Council is a sort of a club and not a sovereign body, the government of a sovereign or semi-sovereign State, with power to make laws for the government of the affairs of its members.

In the first place it is not correct that salaries were "forfeited" for the purpose suggested. In the second place, the State Council has never returned a decision showing hostility of any members thereof against the State's policy to support the N.L.M. for a federal system of government for Ghana. In the third place, by the free decision of the State Council, members agreed to give a part of their annual emoluments in support of the N.L.M. Each was to pay a month's salary, or to give over a month's salary if and when required. That was not a forfeiture. The practice is followed by the C.P.P. Government of Ghana who have instructed the Accountant-General to deduct a certain part of the salaries of M.P.s every month for payment to the funds of the C.P.P. This has been done by the decision of the C.P.P. Executive. It is conceived that the State Council, with greater reason, is entitled to take a similar action. The question of forfeiture does not arise.

Paragraph numbered 2 at Page 1 of the Notice.

The allegation that "public money was divested from its proper use for matters of a constitutional nature, and were (sic) paid or were (sic) said to have been paid into the funds of the National Liberation Movement" is false. The allegation, further, rests on certain misleading assumptions which tend to give a prejudicial colour to the question. In other words, the question is begged, as to whether the traditional revenue is "public money."

Q. (1) What is public money?

Q. (2) What is, and what is not a proper use of public money?

Q. (3) What are and what are not matters of a constitutional nature?

Q. (4) What law governs the use of State Council's money? Does that law say that it must be used only for matters of a constitutional nature?

Q. (5) Are not matters affecting the constitution of the Gold Coast or Ghana in which the State Council or the State is interested "matters of a constitutional nature"?

Q. (6) Since the Government of the Gold Coast took special notice of the movement for a federal system of government, set up a Parliamentary Committee to enquire into it,

and obtained a Constitutional Adviser from U.K. for the purpose in what sense can it be said that the objects of the N.L.M. were not of a constitutional nature, but that they were subversive?

Answer to Q. 1. The only money at the disposal of the State Council during the period in question was money realised from the State's own Stools lands. The Stool lands of the State are not 'public' lands; they are not the property of the public or 'republic' of Ghana, nor of the Government of Ghana. Moneys derived from such lands are not therefore public moneys. The Stool lands are the Stool property of the Stools for the use of the Chiefs and their subjects. They are the "private property" of the Akim Abuakwa people to the total and complete exclusion of any other people. Neither the Ashantis, nor the Gas, nor the Fantis have any share or interest in Akim Abuakwa lands. Even the residents of Akim Abuakwa who are not Abuakwas have no proprietory interest in the Stool lands.

This is so for traditional reasons. The stool lands are traditional lands belonging to the Akim Abuakwa State, as a sovereign State, and the State has exclusive power over them as well as over the revenues derived from the lands.

Section 21 of the State Councils Ordinance of 1952 which sought to regulate the administration of State Council revenues does not stipulate what are or what are not to be included in the Estimates of expenditure of the State Council. The State Council's duty is to pay moneys to particular persons in accord with the Estimates approved by the Council. The Governor or Governor General is given power to see to it that the expenditure is in accord with the Estimates. That's all.

While it is the case that public money was made available by Government to certain State Councils for payment of the salaries of Paramount Chiefs *etc.*, the Government memorandum affecting such payments to the traditional authorities specifically excluded the Akim Abuakwa State from its operation.

The State Council's money can be referred to as 'public money' only in the sense that the 'public' in question is the State and not the 'public' of Ghana. If the State Council therefore considered that the National Liberation Movement deserve support from its funds the decision that a grant to the N.L.M. is a grant for public purpose rests with the State Council and with it alone. The decision by the Gold Coast Government that the Food and Agricultural Organisation, or that UNESCO or the Human Rights Commission should be supported from Government funds, is the Government's own decision, and no one could question the Government except Parliament. Some members of the United Nations do not support some of the Specialised Agencies of United Nations; some do. The reasons in such cases are political or financial, and no authority outside the parliament of the government in question can question the decision to make such a grant.

Answer to Q. 2. The proper use of the State or Traditional money of the State Council is to expend the money in accord with the Estimates. In so far as I am aware no estimates have ever been made for money to be expended on the N.L.M. and no such moneys were expended on or granted in fact to the N.L.M. The expenditure was annually checked by the Auditor General, on the authority of the Governor, and no such question was ever raised that the State's money was being improperly expended on the N.L.M.

Answer to Q. 3. "Matters of a Constitutional nature" is defined in the State Councils Ordinance and in the Ghana Constitution Order in Council (the Ghana Constitution) of 1957. The term is said to mean "a cause, matter, question or dispute relating to (a) the nomination, election or installation of any person as a Chief or the claim of any person to be elected and installed as a Chief or (b) the tenure of office, deposition or abdication of any Chief, or (c) the right of any person to take part in the election or installation of any person as a Chief or in the deposition of any Chief, or (d) the recovery of Stool property or Skin property in connection with any such election, installation, deposition or abdication, or (e) the political or constitutional relations under customary law between Chiefs."

Nowhere in the legislation of the country is it stated that the State Council's money, or 'public money' should be used only in connection with the matters listed above from (a) to (e), and it is inconceivable that any one who has any knowledge of the work of a State Council should hold that the State Council's is exclusively engaged on destoolment, abdication and enstoolment questions. Under the State Councils Ordinance one other matter within the State Councils jurisdiction is customary maters. In addition, the State Council has the question of the development and security of the lands within its jurisdiction and litigation over these takes some of the money of the State Council away in protection of the Stool lands.

The policy of the Convention People's Party is subversive of chieftaincy. Put in the language of the Party's leader, that policy is to make the chiefs run away and leave their sandals behind. This policy threatens the tenure of Chiefs, paramount or otherwise. In paragraph (b) of subsection (5) of section 68 of the Ghana Constitution, "the tenure of any Chief" is defined as a matter of a constitutional nature. Among the objects of the National Liberation Movement was the support of the traditional position of chieftaincy. Money voted for the advancement of such objects is therefore properly expended in respect of a matter of a constitutional nature within the understanding or definition of Paragraph 2 in page 1. It is the natural and paramount duty of the State Council to maintain and preserve chieftaincy, and it would be a gross neglect of the duty of the State Council, well aware of the policy of the C.P.P., not to take steps, even by the expenditure of money from State funds, to

fight the monstrous proposition that the chiefs should be made to run away and leave their sandals behind, namely chieftaincy should be abolished, and the State's sovereignty left without a protector or guardian but exposed to the depredations of any, or the first comer. The State Council did not in fact vote any money direct to support the N.L.M.

I personally think it is a pity the State Council did not do so, although it is wise under the circumstances that they avoided the risk. The stage at which the States of the country had reached *vis-a-vis* a party which had declared its policy to be the abolition of chieftaincy was a matter of life and death to the States. It was a situation similar to the one between the Western democracies and the Eastern Communist countries. To support the N.L.M. with funds is like supporting N.A.T.O. or the Colombo Plan with funds in preference to the Communist block.

The situation further arises, namely, whether by reason of the practice of the C.P.P. Government in using certain of the Chiefs of the State against the Paramount Chief and the State Council, for instance the forcible "temporary" removal of the Akim Abuakwa District Council's headquarters from Kibi, the capital, to the extreme eastern side of the State, to New Tafo, the town of a Junior Divisional Chief, the State Council was not, or could not be justified, in using State money to resist such a movement, in that, the instigation of certain Chiefs against the Paramount Chief, or the encouragement of acts of discrimination between the Chiefs themselves, is a matter of constitutional nature.

That also is clearly set forth in paragraph (e) of subsection (5) of section 68 of the Ghana Constitution, namely, "the political or constitutional relations under customary law between Chiefs." Again, it seems to me a pity that the State Council did not use its funds to support the N.L.M. to fight this battle for the State. By removing the District Council's Headquarters from Kibi to Tafo it led to the position of the Paramount Chief being undermined and it exposed him and his other chiefs to hatred, ridicle and contempt, in the eyes both of his people and Chiefs and of all the world.

Answer to Q. 4. No particular laws govern the use of State Councils money other than the customary law. The customary law does not say that State money must be used only for matters of a constitutional nature in the strict interpretation of that term, namely within the State Council's Ordinance or the Ghana Constitution.

(1) The State Council had in the past used its money to advance the cause of its British Allies or friends in an international war, the Great War of 1914–18. It gave a spitfire from State Funds and gave other donations.

(2) The State Council used its energies to construct portions of the Accra Kumasi Railway line falling within the confines of the State, free of charge to Government.

(3) The State Council uses its funds to make roads for the State.

(4) The State Council has used its funds to establish the Government Primary School at Kibi, The Trade School at Kibi, and the Abuakwa State College as well as other educational institutions, in other parts of the State. There is at present a State primary School at Kibi, recently established and flourishing side by side by the Government School.

(5) The State Council has used its funds to grant scholarships to the United Kingdom to sons and daughters of the State to the benefit of the State.

(6) The State Council uses its funds to protect the Stool lands and to foster the State's security.

Answer to Q. 5. Matters affecting the constitution of the Gold Coast State, from the Aborigines Society struggle against Crown lands to the National Liberation Movement's struggle for a sound constitution and from the Poll Tax Agreement of 1852 to the Ghana Constitution Order in Council of 1957, are all within the competence of the State Council for the expenditure of State Money.
Answer to Q. 6. The objects of the N.L.M. were not subversive but constitutional and the State Council was entitled to spend State money on that movement if it had chosen to do so.

Paragraph numbered 3 at Page 1 of the Notice.

By reason of facts adduced above as to what is the customary law in regard to the proper use of the money belonging to the State, and by reason of the definition of the purpose of the N.L.M. as constitutional and not subversive, there is no need to belabour the questions raised under this paragraph. Suffice it to say, that so far as I am aware, the State Council did not vote any funds for the payment of propaganda motor vans for the use of the National Liberation Movement.

GENERAL—THE N.L.M. APPEAL.

The State Council's Minute No. 171/55 of the 1st September, 1955, contents of the proposals submitted by the N.L.M. (Akim Abuakwa) to the State Council. Paragraph 1 to 4 deal with matters on which there has been no question raised in the Notice under consideration, Paragraph 5 deals with a proposal that "the Chiefs be advised to support the organisation of the National Liberation Movement in their towns and villages in view of the national charater of the Movement, which sought to protect the status and dignity of Chiefs." This object, it is eminently satisfying to record, was achieved in section 66 of the Ghana Constitution.

It was also achieved in section 68 (5)(b) of the Constitution which removed the tenure of chieftaincy from the political control of the

Government and placed it under the House of Chiefs. These achievements were not in the Government's own original proposals and there is no doubt that but for the stand taken by the N.L.M. and its supporters on these questions, these guarantees might never have reached the Magna Carta of Ghana.

"The office of Chiefs in Ghana, as existing by customary law and usage, is hereby guaranteed."

The last paragraph of the proposal contained an invitation for the Chiefs to attend a rally of the N.L.M. at Kwabeng. The Adontenhene, Barima Kwabena Kena II of Kukurantumi is one of those who attended the rally. Mr. R. R. Amponsah, General Secretary of the N.L.M. and a former Central Committee Member of the C.P.P. expressed surprise to see the Adontenhene at the rally because he knew him to be a close associate of the leaders of the C.P.P. and was often found even in their bedrooms.

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THE
AKIM ABUAKWA CRISIS

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