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'Mesopotamian constitution. Bonham-Carter Committee: Summary of Proposals'

Holding Institution	British Library: India Office Records and Private Papers
Reference	IOR/L/PS/18/B343
Date(s)	Jul 1920 (CE, Gregorian)
Written in	English in Latin
Extent and Format	1 file (3 folios)
Copyright for document	Open Government Licence



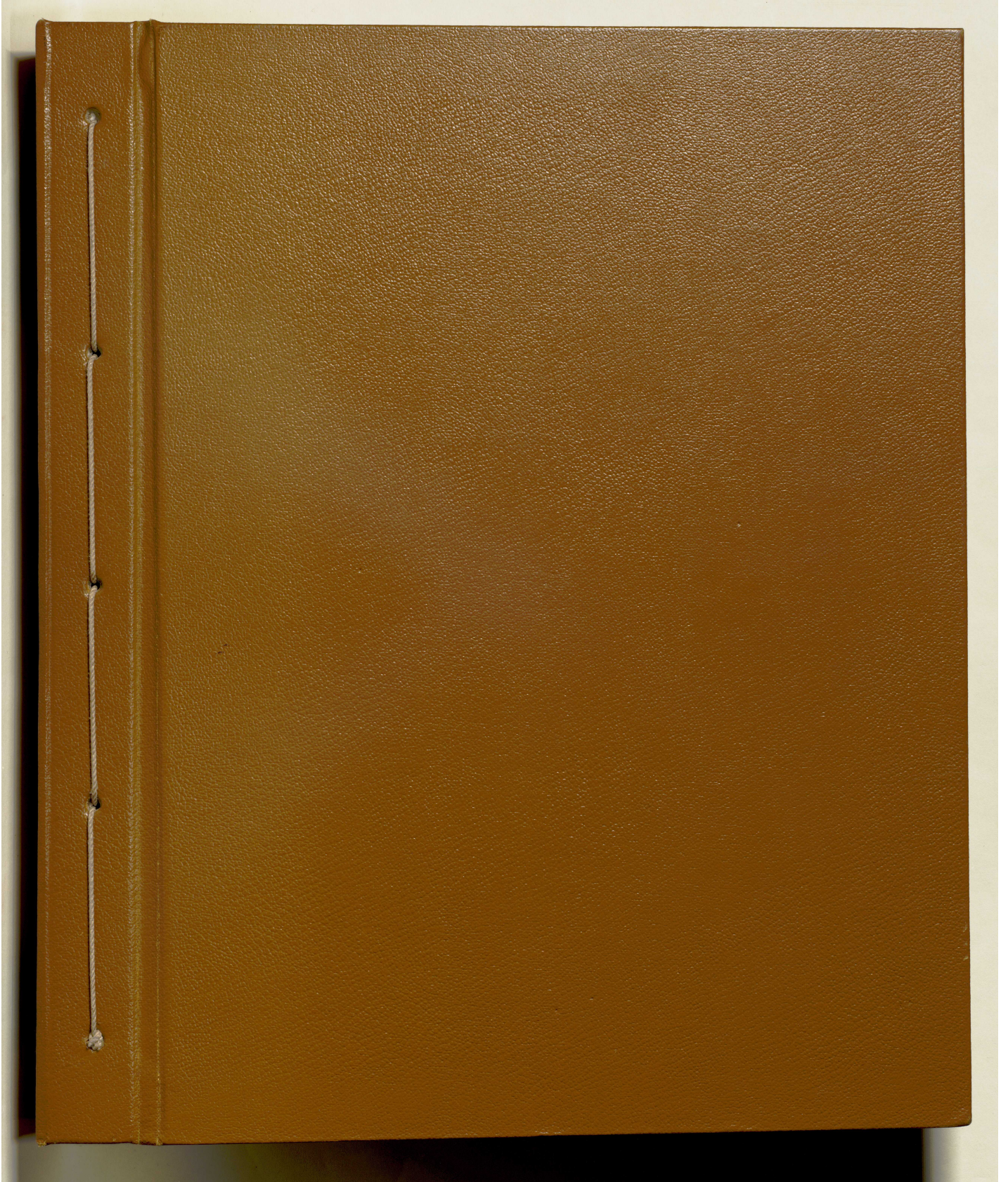
About this record

This printed memorandum, dated July 1920, is a report outlining the summary of proposals by the Bonham-Carter Committee for the constitution of Mesopotamia [Iraq]. The report gives a list of the members of the committee, who include: Sir Edgar Bonham-Carter, Judicial Secretary; Lieutenant-Colonel E B Howell, Revenue Secretary; Major H F M Tyler, Political Officer, Hillah [al-Ḥillah]; Lieutenant-Colonel Francis Cecil Campbell Balfour, Political Officer, Baghdad; and Major Reader William Bullard, Deputy Revenue Secretary.

The report is divided into the following sections: 'Article 22 of the Covenant of the League of Nations'; 'The Anglo-French Declaration of 8th November 1918'; 'Conditions to be fulfilled before the wishes of the people can be ascertained'; 'Wishes of the people to be expressed by an elected Legislative Assembly'; 'Framing of a suitable form of Government'; 'Conditions laid down for the Constitution'; 'Mandate should be granted soon'; 'Recital of the Mandate and its purposes'; 'Reservations in favour of the Mandatory Power'; 'Reservations in favour of certain foreign subjects'; 'Religious liberty to be a constitutional right'; 'Council of State (or of Ministries)'; 'Legislative Assembly, Constitution'; 'Functions of the Legislative Assembly'; 'The Capitulations'; and 'Enquiry into working of systems of Government after a period of years'.

The report contains an appendix with the following sections: 'Method of Election to Legislative Assembly' and 'Qualification for Candidates of Legislative Assembly'.

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MESOPOTAMIAN CONSTITUTION.

Bonham-Carter Committee : Summary of Proposals.

The Committee consisted of the following persons :—

SIR E. BONHAM-CARTER, K.C.M.G., C.I.E., Judicial Secretary (*Chairman of the Committee*).

LIEUT.-COL. E. B. HOWELL, C.S.I., C.I.E., I.C.S., Revenue Secretary.

MAJOR H. F. M. TYLER, C.I.E., I.C.S., Political Officer, Hillah.

LIEUT.-COL. F. C. C. BALFOUR, C.I.E., M.C., M.G. and P.O., Baghdad.

MAJOR R. W. BULLARD, C.I.E., Deputy Revenue Secretary (*Secretary to the Committee*).

1. *Article 22 of the Covenant of the League of Nations reads thus :—*

Article 22. To those colonies and territories which, as a consequence of the late war, have ceased to be under the sovereignty of the States which formerly governed them, and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation, and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities, formerly belonging to the Turkish Empire, have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

(A portion of Article 22, relating only to such territories as Central Africa and the Pacific Islands, has been omitted.)

2. *The Anglo-French Declaration of 8th November 1918 says :—*

The end which France and Great Britain have in view in their prosecution in the East of the war let loose by German ambition is the complete and definite liberation of the peoples so long oppressed by the Turks and the establishment of National Governments and Administrations drawing their authority from the initiative and free choice of indigenous populations.

In order to give effect to these intentions France and Great Britain are agreed to encourage and assist the establishment of indigenous Governments in Syria and Mesopotamia, which have already in fact been liberated by the Allies, and in countries

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whose liberation they are endeavouring to effect and to recognise the latter as soon as they shall be effectively established. Far from wishing to impose any particular institutions on these lands, they have no other care but to assure by their support and effective aid the normal working of the Governments and Administrations which they shall have adopted of their own free will. To ensure impartial and equal justice, to facilitate economic development by encouraging indigenous initiative, to foster the spread of education and to put an end to the divisions too long exploited by Turkish policy: such is the rôle which the two Allied Governments assume in the liberated territories.

3. *Conditions to be fulfilled before the wishes of the people can be ascertained.*

We think it necessary that an attempt should be made to ascertain what the wishes of the people are, but we consider that before this can be done with hope of success:—

- (a) The mandate must be granted.
- (b) The government of the country must be carried on for a short time under a provisional constitution to allow the country to settle down after the disturbances caused by the war.

4. *Wishes of the people to be expressed by an elected Legislative Assembly.*

It appears to us that there would be very great difficulty in ascertaining the wishes of the people immediately the mandate has been granted; and it is considered that the body which is to give its opinion on a matter of such moment as the constitution should have an opportunity to see constitutional government at work for a short time and to realise the consequences of any decision they may give.

It is therefore proposed that the opinion of the Legislative Assembly (as described below) on the constitution should be ascertained, but not necessarily immediately. It should be stated, as soon as the proposals for the elections to the Assembly are published the Assembly will be invited, not later than the third session, to discuss the constitution (within the limits imposed by the terms of the mandate), and that until then the government of the country will be carried on under the provisional constitution outlined below. It would be advisable to retain for the High Commissioner the power to dissolve the first Assembly and to put the constitutional issue before its successor.

5. *Framing of a suitable form of Government.*

There is no difficulty in framing a constitution on paper. In Turkish times there was a complete constitution on paper, but many of its provisions were disregarded. The difficulty lies in framing a form of government which, while giving real power to the native element, will yet hold out reasonable prospects of maintaining peace, law and liberty, and this can only be done if safeguards are introduced.

We are of opinion that where a native of the country can be found capable of filling an administrative post, he should be employed in preference to any other person. We are also of opinion that on this canon it will soon be possible to employ more natives of the country than hitherto, and in higher posts.

6. *Conditions laid down for the Constitution.*

The conditions which the Constitution must fulfil may be summarised as follows:—

- (a) Subject to the tutelage of a Mandatory Power the Government must be an indigenous Government.
- (b) The form of government must be adopted by the free will of the people, subject to such powers as are necessary to enable the Mandatory Power to perform its mandate.
- (c) The constitution must contain the necessary securities to enable the Mandatory Power to perform the trust confided to it, of ensuring the well-being and development of the people. This implies the maintenance of peace and order.

7. *Mandate should be granted soon.*

We recommend that a mandate should be granted at the earliest possible date. Following the wording of the Covenant of the League of Nations, the effect of the mandate will presumably be to entrust to the Mandatory Power the tutelage of Mesopotamia to be exercised by them on behalf of the League. We consider it desirable that the mandate should state that the Mandatory Power is vested with the necessary powers to carry out the mandate, to secure (in the words of the Covenant) "the well-being and development of the people."

8. *Recital of the Mandate and its purposes.*

We think that the document establishing the provisional constitution should recite the mandate, the appointment of the Mandatory Power, and the objects of the mandate as defined by the Covenant of the League and by the mandate itself.

9. *Reservations in favour of the Mandatory Power.*

We consider that the document establishing the constitution should make it clear that the Mandatory Power possesses the necessary powers to fulfil the mandate.

As regards external affairs, foreign relations, including treaties and war, should be reserved to the Mandatory Power.

As regards internal affairs it should be made clear that the Mandatory Power has the right to insist that its advice on matters which it considers essential for the "well-being and development of the people" (to quote the Covenant of the League) be followed.

If these powers are laid down in the constitution much future misunderstanding will be avoided.

10. *Reservations in favour of certain foreign subjects.*

Having regard to the rights formerly possessed by the Powers in Turkey and to the relations between Mesopotamia and the League of Nations, it will, we believe, be advisable that the constitution should contain safeguards of the rights of foreign subjects.

11. *Religious liberty to be a constitutional right.*

We recommend that the constitution should contain a proviso guaranteeing religious liberty to the inhabitants of Mesopotamia.

12. *Council of State (or of Ministers).*

(1) We recommend the establishment of a Council of State to act as the principal executive authority of the State, and, as explained later, as a Second Chamber of the Legislature.

(2) The Council of State to consist of a President and, say, 11 members, each appointed by the High Commissioner.

(3) The President to be an Arab, the first President to hold office until the constitutional question has been submitted to the Assembly. He should not necessarily be connected with any departmental work. As he would be in a sense the Arab head of the State, he ought to be a person of good social status and prestige, and have leisure for social functions. It might not be possible to find such a man who would be willing to do departmental work.

(4) The Members of Council to be either Members for a particular Department of State or Secretaries of a Department of State. A member who is unable to attend to be represented by a deputy.

(5) The Council might be composed as follows :—

	Arab.	English.
President - - - -	1	—
Department of Interior - -	1	1
Department of Justice - -	1	1
Revenue (including lands) - -	1	1
Education - - - -	1	1
Finance - - - -	—	1
Public Works or Health - -	—	1
Auqaf - - - -	1	—
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Departments which were not directly represented on the Council would be represented by one or other of the Members of the Council : thus, if the Secretary of Commerce is not a member, he might be represented by the Secretary for the Interior.

(6) The President of the Council to have a vote only in case of equality of votes.

(7) The High Commissioner to have the power of overruling the decision of the majority of the Council, and thereupon the decision of the High Commissioner to be deemed for all purposes the decision of the Council.

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(8) The Council of State to be the chief executive authority of the State. State executive decisions, and executive decisions of the various departments issued to the public, should be issued in the name of the Council of State.

(9) The British Secretary of a Department, to begin with, to be the chief executive official of the Department. Arab Members of Council to be attached to various departments, to be consulted by the Secretary on all matters of importance and to have access to all departmental papers, and to have the right to refer to the Council of State any difference of opinion between themselves and the Secretaries. Other departments (except perhaps some of the technical departments, *e.g.*, Public Works), in which there were no Arab Members of Council, would yet ordinarily have Arab advisers or assistants.

(10) Arab Members of Council not to be necessarily selected from the Legislative Assembly, but to be *ex-officio* members of the Assembly with the right to vote.

British Secretaries of Departments and other heads of Departments to have the power to attend the Legislative Assembly and to speak, but not to vote.

13. *Legislative Assembly. Constitution.*

(1) We think it necessary that the legislative body either be elected, or, which seems to us preferable, appointed by local bodies who will themselves be elected. This would, however, not apply to the Arab members of the Council of State, who, we have advised, should be *ex-officio* members of the Legislative Assembly. The present Divisional Councils are in fact probably more representative of the people than they would be under a system of election, but as they are nominated bodies a Legislative Council elected by them would be open to the objection that they were the nominees of the British authorities. The method of election requires further study and consultation with local authorities, and we are not in a position to submit final recommendations; but we submit in the Appendix methods of election which, subject to modifications to suit local requirements, we believe to be practicable.

(2) The exact composition of the Legislative Assembly also requires further study. We suggest provisionally it should include:—

- (a) Elected members for the towns and country districts approximately proportionate to their population on the basis of one to 50,000 inhabitants;
- (b) Elected members representing the Jewish and Christian communities;
- (c) Arab members of the Council of State, who, as we have already advised, should be *ex-officio* members.

(3) On the above lines we calculate that the total number of members of the Legislative Assembly, including the *ex-officio* members of the Council of State, would work out at about 50.

(4) The President of the Legislative Council should be an Arab nominated by the Council of State. He should not necessarily be an elected member, as it may perhaps be found that among the elected members there is no suitable candidate for the post.

(5) British Secretaries of Departments should have the right to attend the Assembly and to speak and introduce measures but not to vote.

(6) There should be a British Joint Secretary to the Assembly to assist in matters of procedure.

(7) Members of the Legislative Assembly would receive a fixed allowance per session.

14. *Functions of legislative Assembly.*

(1) Laws to be issued and taxes imposed by the Council of State:—

- (a) normally with the concurrence of the Legislative Council;
- (b) but if the Assembly refuse to pass the law in the way desired by the Council of State, the Council of State, after conferences and again submitting the law, to have power to issue without their consent.

We consider it essential that the Council of State should in case of necessity have power to pass laws without the concurrence of the Legislative Assembly.

- (c) There might be a provision that Bills submitted to the Assembly, if not rejected before prorogation, may be deemed to have been passed.

(2) As under the Turkish Constitution, the Council of State to have power to issue temporary laws, which, however, must be submitted to the next session of the Legislative Assembly.

(3) Private members to have power to initiate legislation, except as regards constitutional matters and taxation.

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(4) The Assembly to have power to pass resolutions as to matters concerning internal government of Mesopotamia. If Government does not accept them it must explain reasons.

(5) Annual Budget to be issued by decree of Council of State, to be previously submitted to Legislative Assembly for advice and observation. If advice offered not accepted, reasons must be given.

No existing rate of taxation to be increased or new tax imposed except by a law.

(6) Annual accounts to be submitted for remarks.

(7) Members may ask questions in writing.

15. *The Capitulations.*

Except for the limited suggestions put forward as regards reservations in favour of foreigners, the foregoing proposals take no account of the exceptional position which the capitulations gave to foreign Powers. This Committee has no information as to the policy of His Majesty's Government with regard to the capitulations.

Safeguards which should not be difficult to devise would also be necessary as regards the jurisdiction of the Courts over foreigners, at least in the case of penal jurisdiction.

16. *Enquiry into working of system of Government after a period of years.*

In conclusion, we advise that besides the examination of the constitution provided for in para. 9 there should be at the end of a fixed period of years (say seven) an enquiry into the working of the system of government, the growth of education and matters connected therewith, with a view to making recommendations whether and to what extent it is desirable to modify the system of government and to extend or restrict the power of self-government.

Presumably the enquiry would be undertaken by His Majesty's Government. If so, the arrangement should be set out in a recital rather than placed in the body of the document establishing the constitution.

APPENDIX.

1. *Method of Election to Legislative Assembly.*

Method A.—(1) Members for towns large enough to be represented by one or more members to be elected by the Municipal Councils. Such Municipal Councils to be themselves elected by tax-paying male householders approximately in accordance with the Turkish Municipal Law of 5th October 1887.

(2) Members for the Divisions to be elected by Divisional Councils, excluding the members of the Divisional Council for towns which elect their own member to the Legislative Assembly, or (if it is thought advisable) by separate panels formed out of the Divisional Council representing respectively tribesmen and non-tribesmen. The Divisional Councils to be themselves elected.

The method of the election to Divisional Councils requires further study.

It is thought that in districts where the tribal system is still in force (and this includes much the greater part of the country) the representative of such districts should be elected by the headmen of the tribal sub-sections. These tribal headmen are the chief men of the smallest tribal territorial unit. They are themselves elected by the tribesmen under them, and they elect the Shaikh of the tribe subject to confirmation by the authorities.

In areas where the tribal system is not in force the problem is more difficult. Such areas may include small towns, villages and in a few places a scattered resident population. In the small towns there would be no difficulty in forming municipalities in accordance with the Turkish law.

In villages and areas with a scattered population, councils of elders for the village or area (*nahiyah*), which were supposed to exist under Turkish law, but which in practice rarely did exist in Mesopotamia, might be formed. The municipalities of the small towns and the village and "*nahiyah*" councils might appoint delegates in numbers proportionate to their inhabitants, and such delegates could meet together and elect the member of the Divisional Council.

We think a system of selection on the above lines is best suited to the requirements of the tribal areas. It could not, however, be brought into force immediately,

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for some of the present Divisional Councils, which are nominated bodies have only been recently formed, and to dismiss them at once would rouse the resentment of members, many of whom have done useful work and deserve well of us. It is necessary therefore to have an alternative method.

Method B.—(1) Members for towns large enough to be represented by one or more members to be elected by the municipal electors.

(2) Members for districts where the tribal system is in force to be elected by the tribal headmen or by delegates appointed by such headmen.

(3) Small towns and villages, and areas where the tribal system is not in force, to be grouped together. The municipalities of such small towns and the village or district councils to choose delegates proportional to their number, who would meet and elect their member.

2. *Qualifications for Candidates of Legislative Assembly.*

(1) Age, say 30.

(2) Must pay a fixed sum in direct taxation in the constituency, or must own immovable property of a fixed value therein.

