



House of Commons  
Foreign Affairs Committee

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# Overseas Territories

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**Seventh Report of Session 2007–08**

***Volume II***

*Oral and written evidence*

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# Oral evidence

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## Taken before the Foreign Affairs Committee

on Monday 3 December 2007

Members present:

Mike Gapes (Chairman)

Mr. John Horam  
Mr. Eric Illsley  
Andrew Mackinlay

Mr. Malcolm Moss  
Rt hon. Sir John Stanley

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*Witnesses:* **The Hon Ralph O’Neal**, Premier, British Virgin Islands, and **The Hon Kurt Tibbetts**, Leader of Government Business, Cayman Islands, gave evidence.

**Chairman:** I ask the public to take their seats quickly and switch off their mobile phones, please. Last week, for the first time, I had to throw someone out of an evidence session, and I will not hesitate to do that again, so please turn them off or put them in silent mode—I heard one then; that is a good warning.

Good afternoon, gentlemen, and welcome. As you know, the Foreign Affairs Committee is, after many years, conducting an inquiry into the Overseas Territories, and we thought we would take the opportunity provided by the important meeting that you have in London this week to have an evidence session with those of you who were able to find the time to take part. Regrettably, not everybody has been able to, but we are very pleased that a number of you have been able to find the time to be with us today to give us your impressions and to answer questions about your Overseas Territory. I shall begin by asking you to introduce yourselves.

**Ralph O’Neal:** I am Ralph T. O’Neal, Premier of the British Virgin Islands.

**Kurt Tibbetts:** My name is Kurt Tibbetts. I am the Leader of Government Business in the Cayman Islands.

**Q1 Chairman:** How would you characterise your relationship with your Governors at the moment?

**Ralph O’Neal:** I was just elected as Premier on 20 August, so I have not really worked with the Governor long enough to find out what kind of man he is, but he has his job to do and I have mine, and so far we have been working. We have not quarrelled yet.

**Q2 Chairman:** That is a good sign. Do you anticipate quarrelling at some point?

**Ralph O’Neal:** As I tell people when they are being sworn in—I have said this many times—there is always a rift between the Governor and those who are governed. Those who represent those who are governed will one day come up against it.

**Q3 Chairman:** What about you, Mr. Tibbetts? How is the situation from your point of view in the Cayman Islands?

**Kurt Tibbetts:** If you do not mind, I would like to speak not about the personal relationships, but about the relationship between Governor and government.

**Chairman:** That is absolutely fine.

**Kurt Tibbetts:** The Cayman Islands is now in the process of constitutional modernisation. When we get to the negotiating table, there will be several areas that we will wish to discuss with regard to moving a little away from what obtains at present. The relationship that obtains now is that the Governor chairs the Cabinet and decides on Cabinet agendas. We think that time has evolved to the point where that should not be the case. We have a very vibrant democracy and the elected government should, we believe, have more of a say when it comes to deciding the agendas for Cabinet and who chairs Cabinet meetings. We respect the relationship involved in being an Overseas Territory, but we believe that in many instances the role of the Governor as is needs to be changed a little to allow more of a partnership to exist.

**Q4 Chairman:** Do you believe that you should be formally consulted on the appointment of Governors?

**Kurt Tibbetts:** First, I do believe that common courtesy should dictate that; but we have our own experiences with the word “consultation” and being consulted. If it is simply being told who that good person is, we do not consider that to be consultation. We do believe that there should be some consultation. We respect the fact that the Governor is the UK’s representative in each of the jurisdictions, and that because of the constitutional arrangements he is head of state; but we have to live with him every day while he is there. Although we certainly do not expect to be on the committee that appoints the Governor and to be involved in the interviews and so on, we believe that it is only fair that we have wind of who is being considered and see some type of biography, so that we can have a look and perhaps pass on our opinions.

**Ralph O’Neal:** I, too, believe that the word “consultation” needs a wider meaning. In the British Virgin Islands, we have a cabinet system; the Governor, the Premier and the secretary to the



Cabinet fix the agenda. However, when it comes to appointing somebody and sending him without even telling us who he is, where he is from and what is his background, how do they know that he is going to fit in with the community? The elected representatives should be the persons to judge that. We have had experience of Governors who just did not fit into the community; they were respected only because they were Her Majesty's representatives. It needs something more, so that we can say, "Well, if he turns out to be a misfit, we can take some of the blame."

**Q5 Mr. Illsley:** Mr. Tibbetts, you said that you were about to begin some form of consultation on the role of the Governor and modernising.

**Kurt Tibbetts:** The consultation would be for a new constitution.

**Q6 Mr. Illsley:** Do you expect any resistance from the Governor or the UK Government to what you have proposed? I believe that the subject was raised back in 1998, and the Government rejected it then. Do you see any change?

**Kurt Tibbetts:** We have had the benefit of seeing the results of the modernisation process in three Territories in recent times—the British Virgin Islands under my good friend Ralph O'Neal, the Turks and Caicos Islands and Gibraltar. We have seen the end result of their negotiations. I think that there may be a few other variations to what they received as their framework that we would wish to see.

I would not like to use the word "resistance" because we respect the fact that, for as long as we wish to retain the constitutional status of a British Overseas Territory, it is only fair to expect the UK Government to have some hand in our government. We know that it is always a question of liability, and that they wish to ensure that they do not find out too late if the country is doing something wrong. We understand that. However, we are going to seek a certain level of autonomy to ensure that the democratic process is truly democratic, and that the elected representatives who represent the people—in my case, the people of the Cayman Islands—are able to do so fairly freely, understanding the limitations of the constitutional arrangements. I do not expect resistance, and I think that we shall simply be very realistic about it. We are going to ask for what we think is right, and we will see what the outcome is.

**Q7 Sir John Stanley:** Mr. Tibbetts, will you give us a bit of background to how the constitutional review came about? Your constitution has been essentially unchanged, I think, since 1972.

**Kurt Tibbetts:** We have had minor amendments.

**Q8 Sir John Stanley:** Will you clarify for us whether in the Cayman Islands you had been pressing for some time against resistance from the Foreign Office here for a constitutional review; or did it work the other way round—were they pressing you to review the constitution and you were resistant to it? Can you explain the background?

**Kurt Tibbetts:** I have to say that I do not think it was either one of the two. It was a combination of many things. We have had minor amendments since 1972 and there was an attempt in the very early '90s, but elections caused the process not to be completed. We restarted those engines in 2002 and this was based more on the White Paper that was produced, "Partnership for Progress and Prosperity". We were told that the UK Government wanted the Territories to look at their constitutions with a view to modernising, but there was no real pressure, that I know of, brought to bear. We started the process; unfortunately, we had already begun negotiations with the Government and at the end of the day we had a draft constitution sent to us, but the Government of the day decided to scrap it. That is my best way to explain it in short terms.

**Q9 Sir John Stanley:** Which year was that?

**Kurt Tibbetts:** That was 2003. We had elections in 2005 and we are now back on track with a new secretariat set up. The process has started again. We intend to begin public consultation very early next year and go through a referendum, perhaps by May, with a view to beginning negotiations very shortly after that. To answer your question quickly and to give you the background, there was no pressure put on the Cayman Islands by any of Her Majesty's Government's representatives, for this to be done within a given time frame. They told us that they were quite happy to work along with us at our pace, to ensure that we would get the best that we could get, and that that would satisfy them, whenever we could complete that process.

**Q10 Chairman:** Mr. O'Neal, you already have your new constitution. Could you tell us how you feel about it? Is it satisfactory? Do you have any views about the negotiation process that led to it?

**Ralph O'Neal:** The present constitution is one that I helped to form. I was on the delegation and we had some very good sessions here in London. It provided for things that the people asked for; we got that. There are one or two little things that need mopping up, you know; but I suppose that will come after three or four years, by making minor amendments. The process really was one where people throughout the Territory were consulted. There were three sessions in the BVI with representatives of the United Kingdom Government, and the final one was here, in February. By 15 June, the constitution was brought into operation. We are now getting the various instruments of the constitution. Some have been brought in already. We have to get a reformed judicial and legal commission. It has been enlarged from three members to five. We have a new commission—the police service commission, which the new constitution provides for. It also provides for two additional elected members, but before that we need an electoral boundaries commissioner to decide whether they should be members for a district, or at large. We are seeking a commissioner to be appointed to do that. But by and large, the majority of the people, as far as I know, are satisfied with what has been achieved.

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3 December 2007 The Hon Ralph O'Neal and The Hon Kurt Tibbetts

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**Chairman:** Thank you. That is helpful.

**Q11 Mr. Horam:** Could I ask you about the Overseas Territories Consultative Council? How useful a forum do you find this to be in practice?

**Ralph O'Neal:** I think it is a most useful institution. I remember being at the very first meeting. This is my fifth meeting. I find that the Overseas Territories have gained some use from it—for example, the United Kingdom passport that we are able to get now, as a result of which people can travel much more easily, especially to America; and the reduction in the fees for students from the Territories. When the OTCC started we had about five or 10 students in the UK; now we have 65. Although the cost of living here is higher than in the United States, it is a great achievement for us to have our students coming here, especially those who are studying law. They can qualify here in the United Kingdom.

**Q12 Mr. Horam:** Do you feel satisfied with the sort of input you can have, for example, into the setting of the agenda for the OTCC? Do you have enough time with Ministers?

**Ralph O'Neal:** Yes. The heads of the Territories are written to and asked to suggest items for the agenda. I think that Mr. Tibbetts will confirm that all their suggestions are included. Our requests are treated very sympathetically and after the discussions and recommendations, action is taken to follow them up. It is not simply a talking shop; there is also some action. That is one of the excellent things about it.

**Q13 Mr. Horam:** Do you agree with that, Mr. Tibbetts?

**Kurt Tibbetts:** I agree, but I would like to add to that. My good friend Ralph speaks of the value of the OTCC meetings, and it certainly is good that we are able to have them. The OTCC is a good forum for all of the Overseas Territories to get together. Geographically, we are many miles apart in many instances. You have one group and then you have another, but this forum allows us to discuss our many common concerns and to make concerted representation through the OTCC to the Foreign and Commonwealth Office, which will spread to the various Ministries and other agencies that need to be dealt with.

The only comment I wish to make in relation to what Premier O'Neal has said is that, although action is taken, I have to say, after some of my own experiences, that that has not been enough. I am certain that there are the best of intentions with regard to all the information that is collated, all the requests that are made, and all the discussions that take place. But sometimes, we find that when it moves from within the FCO to whichever agency has to deal with it, many times those agencies do not treat the situation with the importance that we would like it to be treated with, and sometimes we have to be chasing things up. Sometimes, the next year that you come, the meetings are dealing with the same matter.

**Q14 Mr. Horam:** Does an example come to mind?

**Kurt Tibbetts:** You are putting me on the spot. We have had instances with the Department for Transport where we have been dealing with the same issue for two or three years. I suspect that it might not just be that they do not want to pay attention to it, but it might be that they do not want to do what we are asking. Maybe we shall just keep at it and hope for the best, but I can assure you that in many instances it seems to us—if I can put it in a nutshell—that although the FCO understands our plight, the various agencies do not take the same positions. I guess that what we need is for the political arm of Government to say, “Listen, you need to respect these people. They do exist, and they are real,” if I may put it like that.

**Q15 Mr. Horam:** And are you able to follow matters up? Where you are dissatisfied, and something has taken two or three years, you bring it back to the Consultative Council, presumably.

**Kurt Tibbetts:** Many times we try through our Governors, and if we do not get results, then when we come to the next meeting, and we go at it again.

**Q16 Mr. Horam:** May I ask you about the way the FCO consults you about ratifying treaties which apply to the Overseas Territories? Is the way that it consults you on those satisfactory?

**Kurt Tibbetts:** I am going to be very blunt, but respectful. Our experiences have not been very good in the past. However, we have had certain assurances given to us in recent times that there will be more consultation. I would just say that not enough time has passed for us to have had enough interaction and experiences to say yes, the whole culture has changed. But in a nutshell, we raised holy hell, if I may term it like that, especially about the savings tax directive, which we only knew about when it was all over, and that kind of spurred on the discussion.

**Q17 Mr. Horam:** That had a massive effect on you?

**Kurt Tibbetts:** We do not know the effect that it has had on each of the Territories yet, to be honest with you, because it is hard to quantify, but that perception alone is what gave us a problem in the international arena.

I want to say that with these assurances, I think that part of our constitutional arrangements which we will now seek to make will have to deal with matters like that. I am sure that you know now that what obtains is whatever these international treaties are, they are simply forwarded on to us, at will. London has said to us—I am sure that it has said it to all of us—that it will do their best to have discussions about these matters prior to it. I am not saying that the end results will change, but at least if we have an option to make representation, we might be able to massage the situation to allow for a better end result for us. I am hopeful that that will continue. I cannot say for sure at this point because we have not experienced many instances since the last blow-up, if I may call it that.

**Q18 Chairman:** Mr. O'Neal, do you have anything to add on the question of consultation about treaties?

**Ralph O'Neal:** Only that we were displeased about how that was done. However, it was done, so we just have to make sure that we follow the regulations, keep in step with what is happening and provide the necessary human resources to ensure that those things are carried out. However, we are also aware that next year they will come up with something else, and the year after that. It will be a continuum, but we will try our best to fight against this disease.

**Q19 Andrew Mackinlay:** Do you have belongers in your Territories?

**Kurt Tibbetts:** Yes, we do.

**Q20 Andrew Mackinlay:** How would I become a belonger?

**Kurt Tibbetts:** In the Cayman Islands, our own domestic legislation dictates the conditions under which someone can gain permanent residence. After permanent residence, there is the naturalisation process that follows automatically; and then, after a certain period of time, one becomes a Caymanian.

**Q21 Andrew Mackinlay:** Is that a controversial area, and do belongers have the vote?

**Kurt Tibbetts:** Once they become Caymanians, they certainly do.

**Q22 Andrew Mackinlay:** But not belongers?

**Kurt Tibbetts:** Well, that depends on what you mean. My belonger is a Caymanian. I am not being rude, but want to make sure that we understand one another. Permanent residence does not allow someone to vote. That may be what you call a belonger, but as far as we are concerned there is another step under our domestic legislation.

**Q23 Andrew Mackinlay:** Is citizenship awarded by your government, rather than by the United Kingdom Government?

**Kurt Tibbetts:** It is not the United Kingdom Government. The system is such that there is the legislation, and we have a board that is appointed and made up of citizens of the country from various cross-sections of society. They make the decision based on the parameters that the legislation calls for.

**Ralph O'Neal:** The situation in the British Virgin Islands is similar to that in the Cayman Islands, except that you have to live and reside continuously in the Territory for 20 years before you can apply for permanent residence. After you have permanent residence, you can apply to become a belonger. The law sets out how that should be done and what you should present. Then you will become a belonger, be eligible to vote and have all the rights of a British Virgin Islander.

**Q24 Andrew Mackinlay:** Therefore, as a belonger in your Territory, I could vote, whereas in the Cayman Islands, I could not vote.

**Kurt Tibbetts:** That is not what he is saying. He is saying that you become a permanent resident just as you would in the Cayman Islands. After that, you get belonger status and can then vote. It is the same thing.

**Ralph O'Neil:** Then you can vote and own land without a licence.

**Q25 Andrew Mackinlay:** In both jurisdictions, the Governor is, ultimately, the person with stewardship of law and order. Although there might be police commissions, he is ultimately the person who has that stewardship. Is that a problem? Does the Governor discharge his duties adequately? Again, we are talking not personally, but about the office. You are in a part of the world that has vast expanses of water and lots of boats. What would you say about tackling not so much domestic issues, but international crime, regulation and protecting the shores from illegal landings?

**Kurt Tibbetts:** You have to separate the two areas. On protecting the borders, His Excellency the Governor is responsible for internal and external affairs, but the Cabinet and the legislative assemblies vote the money. We have joint policy considerations, but the day-to-day operations are discharged by the commissioner, who reports directly to His Excellency the Governor. We deal with policy and legislation, which is the political arm of government, but we do not have any dealings with the operational side of the police.

For protecting the borders, in the Cayman Islands, for instance, we have just ordered some new boats and are building a new marine base. We recognise the need for it and are pacing ourselves as far as our budgetary allocation allows. It will probably happen over the next two to three years.

I am not sure where you are going with what you said on international crime, but I thought that it might be connected to the fact that we are an international financial centre and must have a proper regulatory regime to ensure that the system is robust. In the Cayman Islands, we have the Cayman Islands Monetary Authority. I could say a lot about that and the other regulators, but wonder if you have any specific questions about it.

**Q26 Andrew Mackinlay:** Can I be candid? It is the nature of things that you and I and my colleagues have a limited amount of time today. There is a geographical problem. You have a duty to your constituents and we have a duty to you, internationally. We both need to combat crime. If there is more information, you should feed it to us because we need to get a handle on and a feel for what our responsibilities are. We need to be reassured—I use that word deliberately—that all is well. That is part of our motive in holding this inquiry. Part of it is an issue relevant to all your jurisdictions—I say this to Premier O'Neal, as well. I touched upon belongers and the question of rights and citizenship because if a person gets citizenship of your jurisdictions, it gives some access to the United Kingdom, does it not?

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3 December 2007 The Hon Ralph O'Neal and The Hon Kurt Tibbetts

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**Kurt Tibbetts:** That is fair comment.

**Chairman:** We are short of time. We have two more groups of witnesses, so can I move on to more questions? You touched on the financial side and we have some more questions on that.

**Q27 Mr. Moss:** We have drifted on to the financial powers of your two Territories. A recent report by the National Audit Office found that the regulation of the financial industries in both your Territories—and in two others that I will not mention—were superior to others in your general region. Why do you think that you are better than some of the other centres and Territories in your region? This gives you a chance to tell us how good you are.

**Ralph O'Neal:** I will tell you what we have done in the British Virgin Islands. The Financial Services Commission is a separate and distinct entity; it is not under any political control. That Commission was set up in 2002 and, as a result, they have the regulations and agreements that they have made worldwide. They have enhanced the financial services in the Territory and gained worldwide recognition for running a very good regime. The laws and regulations are frequently updated. To prevent money laundering and other crimes associated with money and the proceeds of drug trafficking, every effort is made to stop every possible loophole—the minute anything happens, a red flag is raised and it is dealt with immediately.

The managing director of the Financial Services Commission keeps the Governor informed about how matters are going. The commission meets once a year with the Cabinet to provide, in addition to the annual report, an update and overview of what is happening and what is likely to happen. We propose now to change that, so that the commission will meet not only with the Cabinet but with the House of Assembly. It is the House of Assembly who has to pass the laws. Unless it has a good insight and understands why things are done, and why laws must be passed, there might be difficulties. For years now the Legislative Council, as it was called then, has gone on record as saying that when it comes to the financial services and legislation, there has been no division at all. It realised the importance of having adequate legislation to support the industry.

**Kurt Tibbetts:** If I may do so quickly, I should like to add some insight into the Cayman Islands. We have a very strong compliance culture, which is underpinned by modern legislation and complies with international best practice. This is built on a partnership between the government and the private sector. We have an environment which accords with international best practice. This encourages business to be done in the Islands, because nowadays business entities want to conduct their affairs in a jurisdiction that accords to such best practice. The Islands have

a strong cadre of professional service providers; we have been able to attract them—the lawyers, the accountants, the auditors, the company managers and the fund administrators. All of those factors combined are essential to ensure that we are successful and that our financial services industry is successful.

To add to that, we are very stable politically. That is further underpinned by our constitutional relationship with the United Kingdom Government. We have first-class telecommunications, which link the Cayman Islands to the rest of the world. We are very accessible to the rest of the world also because we have good international air links with the US, Canada, the UK and the entire Caribbean region. We also have a strong legal and independent judicial framework. The system is independent of the executive arm of government, which adds confidence to business entities. It also means that disputes between parties can be dealt with by a confident judiciary.

The Islands also have an efficient, competent and impartial civil service that is able to implement the policies of the Executive, which are developed to create a business environment in which international financial services can flourish. We have a Monetary Authority comparable to the BVI's Financial Services Commission. We, too, operate the authority as an independent body—independent of either of the other arms of government. They send us their quarterly reports, and we fund them according to their needs—the human resources or other resources that are needed to ensure that they are able to comply with all the international standards that continue to bear down on us.

**Chairman:** That is the last of the questions, I am sorry to say. I know that at least one of you gentlemen has another engagement, and we were told not to delay you. I thank you both for coming here today. We may write to you with some follow-up questions. If there is anything more that you wish to add to assist us in our inquiry, you can write to us, and we will be very pleased to hear from you. We thank you for your time, and for the information and answers that you have given us today.

**Kurt Tibbetts:** I thank you, Chairman, and I thank the Committee. Should you wish to ask us any more questions, I am sure that we would be happy to answer them.

**Ralph O'Neal:** Thank you. It was a privilege to be here, and I invite the Committee to visit the Islands one of these days and see for yourselves what nature is like.

**Kurt Tibbetts:** Come on a cruise ship and visit us all.

**Chairman:** Thank you. We shall break for two minutes in order to change our witnesses, and then continue.

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*Witnesses:* **Councillor Mike Summers, OBE**, Legislative Council, Falkland Islands, **Leslie Jaques OBE**, Commissioner for the Pitcairn Islands, and **The Hon Brian W. Isaac MLC**, Member of the Executive Council, St. Helena, gave evidence.

**Chairman:** I ask those members of the public who are leaving to go quickly, and those who are entering the room to take your seats and switch off your mobile phones. For those who have just arrived, I repeat what I said at the beginning. I threw someone out last week whose mobile phone went off. I shall not hesitate to do so again. Please switch them off, or put them on silent. Thank you.

Gentlemen, all three of you were sitting at the back listening to the previous witnesses. I thank you very much for coming to see us today. Would you begin by introducing yourselves?

**Brian W. Isaac:** I am Brian Isaac, a member of the Executive Council of St. Helena.

**Leslie Jaques:** I am Leslie Jaques, Commissioner, from the Pitcairn Islands.

**Mike Summers:** I am Mike Summers, of the Legislative Council of the Falkland Islands Government.

**Andrew Mackinlay:** That is like being the Governor, is it not?

**Chairman:** You are the UK representative, I believe.

**Leslie Jaques:** Yes.

**Q28 Chairman:** How would you characterise your relationships with your respective Governors? That is a difficult question for a man from the Pitcairn Islands, so I put it to the other two.

**Brian W. Isaac:** We work very closely. As you are aware, the island recently received a new Governor, with whom I have had two meetings. They were most welcome. Working relations with the previous Governor were close and very good.

**Mike Summers:** You will appreciate that in our circumstances it is essential that the Legislative Council works very closely with the Governor, particularly on foreign affairs issues. By and large, we tend to have good and co-operative relations with Governors. However, you will have noted, from evidence submitted from the Falkland Islands Legislative Council, that there are concerns that that relationship can vary with personalities, which cannot be right. It is essential that Governors coming to the territories have the right brief and training to ensure that they know precisely what they are meant to achieve.

**Q29 Chairman:** Perhaps we will come on to those issues in greater detail. I have a general question about the Overseas Territories Consultative Council, which you are attending this week. How useful is that organisation to you?

**Leslie Jaques:** It is very good. Pitcairn Island is small and isolated. It is probably the most remote region of what was the British Empire. We do not get to London very often. Both through the Consultative Council and other relationships, there is a huge amount of networking, support and learning, which is to our advantage. Certainly, from our point of view, it is very worth while.

**Q30 Chairman:** You are in a rather unusual position, because you are a Foreign and Commonwealth Office appointee, but you also represent an overseas territory at the Consultative Council.

**Leslie Jaques:** That is right.

**Q31 Chairman:** How widely known is the relationship between Overseas Territories and the Consultative Council among Pitcairners?

**Leslie Jaques:** Pitcairn Island has always been run almost directly through the Governor's office. One of my roles is to restructure that in order to create more of a self-governing scenario and to devolve operational responsibility to Pitcairn in the same way that other governments administer their Overseas Territories. We consult very widely with the community, as part of that process, and I spend a lot of time on Pitcairn: this year I spent six months there, and I shall spend virtually the whole of next year there as well in order to implement and manage change. The consultation process is a very important part of that. Communication between the Foreign Office, the Governor's office, our office and the Pitcairn Island Council and community has improved massively—it is probably better than it has ever been.

**Q32 Chairman:** Could you deal with the wider question, Mr. Summers?

**Mike Summers:** I have been to the majority of OTCC meetings since the organisation was set up. It has improved over the years. We are all responsible if it does not work as it should do, because we have the opportunity to add items to the agenda and to comment on how it is run. It is a good institution and we would be very much the poorer without it. However, sometimes we wonder whether there is significant resource to follow up all the issues raised at OTCC meetings, which we will probably discuss this year. However, it is an evolving institution and it is a good thing that it exists.

**Brian W. Isaac:** This will be the first time that I have attended the OTCC. I look forward to working with it. Previous colleagues of mine who have attended those forums found them very beneficial. They have strengthened links between Territories and we must retain our relationship with it. I hope that that relationship will continue.

**Q33 Sir John Stanley:** I have three questions to put to you in relation to the Falkland Islands. The Foreign Office, it must be said, had a pretty appalling track record under the previous Conservative Government—of which I was a member in different Ministries from time to time—in terms of standing up for the sovereignty and independence of the Falkland Islands people. Do you feel that the Foreign Office has learned those lessons, and is it now sufficiently robust in protecting the sovereignty of the Falkland Islands?

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**Mike Summers:** The Falkland Islands Government are happy with UK Government statements on sovereignty over the Falkland Islands going back a number of years now. The current Prime Minister and his predecessor have been very robust in saying that the UK does not doubt its sovereignty over the Falkland Islands, and that there should be no discussion of sovereignty unless the people of the Falklands so wish. That has been a strong, coherent and unwavering message, and in our circumstances the consistency of that message is crucial.

**Q34 Sir John Stanley:** Thank you. Do you feel that present arrangements for the demarcation of fishing rights between the Falkland Islands and Argentina are stable and satisfactory, and that they properly protect the Falkland Islands' fishing rights?

**Mike Summers:** I believe so. The boundaries between the Falklands and Argentina, where they exist, are well known to us. There have been some instances relatively recently where vessels that thought they were fishing legally on the high seas have been arrested by Argentina and caused to make some payment to be released. It is a matter for international debate. How the Argentine Government delimit their outer area is not entirely clear to everybody and seems to be open to some interpretation. That cannot be satisfactory, but we are entirely clear about where the boundaries lie between us and Argentina in areas where they are contiguous.

**Q35 Sir John Stanley:** Do you feel that the Foreign Office is taking sufficient steps to resolve the grey areas of dispute to which you refer?

**Mike Summers:** I am not aware that the Foreign Office is very active on that issue.

**Q36 Sir John Stanley:** Thank you. Can we turn to oil and gas rights? The British Government are taking some interesting initiatives—including in the United Nations, it appears—to claim oil and gas rights in areas around the world where the UK has particular continental shelf rights. Do you feel that the Foreign Office is doing all it reasonably can to protect oil and gas rights in the Falkland Islands and the adjacent South Georgia and the South Sandwich Islands?

**Mike Summers:** In conjunction with the Foreign Office and other UK institutions, we have undertaken study of the continental shelf extending eastwards, in particular, from the Falkland Islands to establish whether continental shelf extension can legitimately be claimed. The results of that investigation seem to suggest that it can, and we are satisfied that the British Government and their institutions are preparing that claim. It goes largely to the east, and not much to the north and west, which deals with some potential difficulties. It is our understanding that that claim, along with those for other British Territories, will be made to the United Nations convention on the law of the sea in due course. I regret that I cannot speak on behalf of

South Georgia and the South Sandwich Islands, over which we have had no jurisdiction since the 1985 constitution.

**Q37 Sir John Stanley:** You made it clear that we are concentrating on the westward extension.

**Mike Summers:** No, eastward.

**Q38 Sir John Stanley:** Okay. If the focus is on the eastward extension and the sensitive issue is westward extension, are there any areas of westward extension likely to produce a clash with Argentina?

**Mike Summers:** I do not believe so—not as far as the Falklands jurisdiction is concerned, although you will obviously be aware of proposals to claim continental shelf extension from the Antarctic, which will cause some difficulties with both the Argentines and Chile.

**Q39 Mr. Illsley:** I have a couple of questions. I was at a conference in Chile in 2003 with the United Kingdom delegation when we were subject to a bit of a diatribe by the Argentine delegation about the Falklands Islands. We are a long way away from the Falkland Islands and I just wondered whether you have picked up an increased level of claim on the part of the Argentines recently. Is the rhetoric about the ownership of the islands or their sovereignty still the same or has it decreased?

**Mike Summers:** The attitude of the current Argentine government under President Kirchner has been different from the attitude of Argentine governments in the past, in that they have been significantly more aggressive and have sought to undermine the economy of the Falklands in a number of ways. That has been going on throughout the presidency of Mr. Kirchner. We are not clear about what his successor will do, although there is every reason to believe that the policy will remain much as it is.

Other South American countries tend simply to put up their hands and say, "We support the Argentine claim", without there being very much debate or discussion. I suspect that it is convenient for them not to get into public debate with the Argentines about the Falklands.

**Q40 Andrew Mackinlay:** I have a question which I should have asked previous witnesses and which I might put to others. Even small jurisdictions have to replicate domestically a whole host of legislation because of international treaties—treaties perhaps entered into by the United Kingdom. I want to understand the logistics of that and how you keep abreast of matters. It was touched on by the other folk. Although you are not a member of the European Union, things might happen consequent on the United Kingdom's membership of the EU. When it comes to Pitcairn, how do you possibly legislate? A few years ago, even Gibraltar, with all its sophistication, was literally a factory of legislation. It has overcome such problems now and is keeping abreast of such demands. Is it a problem?

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**Leslie Jaques:** It is not now. Perhaps there was a lack of communication on such matters. Our current Governor is very keen on devolving responsibility and working with the Island Council. There were some treaties to which we had signed up that we were not advised of, but that was a while ago. There is now a consultation process and very good communication between the Pitcairn Islands and the FCO.

**Mike Summers:** It certainly can be a problem for us. Given that our Legislative Council is responsible for passing the legislation and that our institutions are responsible for drafting it, there can be significant problems on occasions. They tend to arise out of the application of international law to the Falklands. Often, they are things that we could not reasonably object to, and that we would wish to do, but sometimes the sheer volume of what is required is just not possible. On those occasions, we tend to respond to the Foreign Office and say, "We would like to co-operate on this issue, but the sheer volume of the existing legislation that has to be checked and the new legislation that it requires makes it impossible for us to do."

**Brian W. Isaac:** The international treaty does not affect St. Helena as much as other overseas treaties. Any treaty that needs legislation will be discussed, drafted and put in place, but the majority of the international treaties do not have a direct impact on St. Helena.

**Q41 Chairman:** Mr. Isaac, may I take you on to some difficult constitutional issues? Without going into the history, the situation in St. Helena has become rather difficult constitutionally has it not? Why do you believe that the idea of ministerial government was rejected by the voters?

**Brian W. Isaac:** I find it difficult to answer that, but from the consultative poll the wishes of the people were for constitutional reform. Currently, the people of the island feel that we need to have constitutional reform, and that is on the agenda.

**Q42 Chairman:** So do you think that we are likely to revisit the issue as a whole, or is it going to be cherry-picked?

**Brian W. Isaac:** I think the wishes are to review the whole constitution, and a lot of work has been undertaken on that process. I think that people have realised the need for it, and hopefully within the next two years it will be very high on the agenda.

**Q43 Chairman:** Can you tell us what is happening on Ascension Island, because it is even more difficult there, is it not?

**Brian W. Isaac:** Yes. As elected members of St. Helena's Legislative Council, we do not have any autonomy over Ascension Island. Ascension Island and Tristan da Cunha are the sole responsibility of the Governor.

**Q44 Chairman:** But they are dependencies of St. Helena?

**Brian W. Isaac:** Yes, they are, but we have very little working relationship with Ascension Island from the legislative side.

**Q45 Chairman:** So that is really a matter for us to address with the Governor, not with you.

**Brian W. Isaac:** Yes.

**Q46 Sir John Stanley:** We are, of course, aware that there is a significant number of St. Helenans employed on Ascension Island. Do you feel that their interests and rights have been adequately safeguarded?

**Brian W. Isaac:** As I said, I have very little involvement with Ascension Island, and the employment of St. Helenans on the island. Are you speaking of the right of abode on Ascension Island?

**Q47 Sir John Stanley:** Yes, and the terms and conditions of employment.

**Brian W. Isaac:** I have very little involvement with the rights of employment on Ascension Island.

**Q48 Chairman:** At the moment, there are offices and UK representatives for the Overseas Territories. Do you think that it would be a sensible idea if the dependencies—Ascension Island and Tristan da Cunha—had their own UK representatives?

**Brian W. Isaac:** Again, it is very difficult for me to answer that, because of the relationship with Ascension Island and Tristan da Cunha. St. Helena has its representative here in London, who has a very good working relationship with the island. But it is for the Ascension Island Government to take this matter forward.

**Q49 Chairman:** But the people living there are not actually represented in any real sense by St. Helena's representative in the UK?

**Brian W. Isaac:** No.

**Q50 Chairman:** Thank you. That is important. Mr. Summers, you have been involved in the constitutional reform process as well. When do you think that these proposals, which I understand have not been very controversial, are going to be implemented?

**Mike Summers:** We hope that they will be implemented during next year. I will be able to tell you after next week whether or not they are controversial, because we have a delegation visiting from the Foreign Office for the first round of negotiations. There has been no response so far from the Foreign Office on the report, so we do not know which parts of the report they take issue with, and which ones they do not. We will know that after next week. I certainly hope that the new constitution could be in place in 2008.

**Q51 Chairman:** Thank you.

Mr. Jaques, you come to your role at a rather difficult time historically. Can I ask you about your assessment of the impact of Operation Unique on Pitcairn? Has the community been given sufficient support since those difficult times, particularly with

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regard to child protection issues, and also in terms of local involvement? I understand that there have been consultations on human rights issues. Could you give us a sense of where that process is at the moment?

**Leslie Jaques:** I do not know how unique Operation Unique was, because this sort of thing happens all over the world, but it happened on Pitcairn in a rather dramatic way. I was not there at the time—I came in subsequent to the trial process. None of us can right the wrongs or turn back the clock. All that we can do is work to build a better tomorrow, which we are doing on the back of economic changes and changes to the structure of the Government.

With regard to help for people after Operation Unique, we have had social workers on the island and community police. Obviously, there is a significant impact on a small community when half a dozen of its members go to prison. We do a lot more in terms of working with the community on consultation and communication. Could we have done more? We could possibly have done more for people after the trial process. I do not think that people realised the significant impact there would be after the trials. It is a very small community, so it is divided and hurting on both sides. The healing process and the reconciliation process will take time. We are having to park that and work together for the common good. There are lots of small projects that are bringing the community on the island together. I am confident that, in the fullness of time, we will bring them back together again.

**Q52 Chairman:** You refer to small projects. Does that include projects that are funded by the Department for International Development?

**Leslie Jaques:** Yes, it does.

**Q53 Chairman:** How is that co-operation with the Foreign Office going?

**Leslie Jaques:** It is going very well. Again, as you have said, governance with any kind of personnel depends upon the people. We have been very fortunate with the Foreign Office people that we have had at every level, and the DFID people. They work closely together, come to the island and work with the community. DFID has been superb in terms of the infrastructure support that it has given us.

**Q54 Chairman:** Mr. Isaac, your Territories—St. Helena and the other dependencies—also receive budgetary support from the UK Government. How does that work in practice? Are you content with the amount of support? Is it enough and is it the right kind?

**Brian W. Isaac:** There is always room for more budgetary support from Britain. Currently, we are in the process of increasing tariffs, which is very difficult because we have a low tax base on the island. We have people leaving the island, which puts a further burden on those who remain. At the moment, we are at a sort of balance, but have the opportunity of more support from Britain with the approach of air access for the island, hopefully. All the work that has been carried out on the island with

regard to infrastructure development will require more support from Britain. DFID is very favourable towards that development and we look forward to the continued support in that field.

**Q55 Chairman:** You said “air access, hopefully.” Was that a deliberate choice of words or does it mean that you are rather sceptical that the timetable that has been outlined will be met?

**Brian W. Isaac:** I am very hopeful that the airport proposal will materialise, as it will benefit the island. It will also benefit Britain, with regard to aid and helping the island to move to being more self-sufficient. At the moment, I am not sure where the process lies. We are waiting on the outcome of the tendering process. From that stage on, it will be the main objective to work towards.

**Q56 Chairman:** But the National Audit Office said that even with financial support and leadership from the Department for International Development, the impact would be insufficient to stop St. Helena being dependent upon UK budgetary assistance and that you would need other investment. Are you confident that that will happen?

**Brian W. Isaac:** Yes, I feel confident that that will happen.

**Q57 Chairman:** Okay. And we are talking about 2012 or 2013 as the target date?

**Brian W. Isaac:** Yes.

**Q58 Chairman:** That has not slipped?

**Brian W. Isaac:** It still remains 2012.

**Q59 Sir John Stanley:** Councillor Summers, are the Falkland Islands government content with the current defence posture on the Falkland Islands adopted by the British Government?

**Mike Summers:** Yes. We are briefed on a reasonably regular basis by the commander of British forces for the south Atlantic islands and get a number of high-level visitors from all parts of the UK defence institutions. Our understanding of the defence posture of the UK and how it will work in an emergency leads us to believe that it is satisfactory. However, we are not defence experts and have to believe what we are told, to an extent.

**Q60 Sir John Stanley:** What is the current position of the Falkland Islands government on the applications from Argentine families that lost relatives in the war to come to the Falkland Islands?

**Mike Summers:** The Falkland Islands government have always been open to the visits of next of kin from Argentina. We have had a number in the past. There was an application for a visit this year that has not materialised because, I believe, the Argentine families commission was not able to put in place the arrangements that it needed to bring them. I believe that they are now planning to make the visit next year. Providing that all those arrangements are satisfactory, we will welcome those people in the same way that we have in the past.



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**Q61 Sir John Stanley:** What is the Falkland Islands government's current position on civil direct flights between the Falkland Islands and Argentina?

**Mike Summers:** The Falkland Islands government at the moment are not content for there to be civil direct flights to Argentina. We have a strategy to improve communication on the north-south air bridge to such an extent that it can service our expansion and development needs, and then to go back to discussing east-west flights. We must never put ourselves in the position that we were in during the late '70s and early '80s when we depended on Argentina for flights. We must have confidence that the north-south flight is available to us and capable of expansion before we go back to east-west discussions about how we can go through Argentina. If we are confident about the air bridge north-south, we will be more open to considering flights that stopped in Argentina.

**Q62 Sir John Stanley:** What is your current position on applications by Argentinian businesses to engage in trading activities and investment in the Falkland Islands and to have their own employees in the islands on a commercial basis?

**Mike Summers:** I do not recall having received, or having had to deal with, such an application. If we did, we would have to consider it on its merits.

**Q63 Chairman:** What is the current position regarding negotiations about the air bridge north-south?

**Mike Summers:** We have had meetings recently with the Ministry of Defence and the Foreign and Commonwealth Office about improvements to the air bridge and expansion possibilities for it. We are relatively content with those discussions, but they have not yet reached a conclusion and we do not yet have all the answers that we are looking for. Perhaps we could give you some further information about that in the coming weeks.

**Q64 Chairman:** Have I asked that question at a sensitive time?

**Mike Summers:** Yes.

**Andrew Mackinlay:** There are just two minutes left.

**Chairman:** There are some more questions that we can ask. Saved by the bell. Gentlemen, our time is up, in terms of the 40 minutes. We have a Division that will go on for 15 minutes, if there is just one vote. The Committee will then resume. If you wish to wait, I can give you five more minutes of questions before our next set of witnesses. If you are in a position to do so, then do so. We will be back after the Division and will then take the final set of witnesses.

**Mike Summers:** I am happy to wait.

*Sitting suspended for a Division in the House.*

*On resuming—*

**Q65 Chairman:** Gentlemen, I am sorry to keep you waiting. Whips Offices sometimes tell Members that there are further votes coming and then we discover that there are not, so people hang around by the Chamber expecting further votes and they do not happen.

We have almost concluded our session. I understand that Mr. Isaac had to go because he had another engagement. Can I just finish off by asking a general question about relations with the UK Parliament? Are you satisfied with the present relations that you have with the UK Parliament, or do you think that there is anything that can be done to improve them?

**Mike Summers:** The Falkland Islands has a very active all-party group in the UK Parliament and it has done an excellent job for us over a number of years. It is not easy to see how you would improve on that arrangement. We are currently satisfied with that link as an important part of our contact with the UK Government.

**Q66 Chairman:** Mr. Jaques, would you like to say anything on this subject?

**Leslie Jaques:** Only that we do not have a direct relationship really with Members of Parliament. We work through the United Kingdom Overseas Territories Association, which has quite a lot of lobbying relationships. Also, from time to time we get MPs sending e-mails asking various questions, but we do not have a direct relationship with them.

**Q67 Chairman:** In the final few seconds of this session, is there anything that you would like to add to what you have said before?

**Mike Summers:** No, I do not think so. I am satisfied that we have had the opportunity to present evidence to the Committee. We very much look forward to welcoming your delegation to the Falkland Islands early next year and we hope that you will enjoy your lengthy visit.

**Chairman:** Thank you very much. Some of us are looking forward to it; summer in the southern hemisphere will be quite a bit warmer than February in the UK.

**Leslie Jaques:** We have an excellent relationship with all aspects of Her Majesty's Government. We are working together as a team to build Pitcairn's future. There are challenges, as you have identified, especially rebuilding from the devastation of the trial process, but we are all committed to meeting those challenges. We have nothing but gratitude really for Her Majesty's Government and I think that, in due course, once we have a sustainable economy and the island is thriving, everybody will see the benefits of what we are doing right now.

**Chairman:** Thank you, gentlemen, for coming and answering all our questions. We will now break for one minute while we get our next witnesses in and then begin straight away.

*Witnesses:* **The Hon Osbourne Fleming**, Chief Minister, Anguilla, **Dr The Hon Lowell Lewis**, Chief Minister, Montserrat, and **Dr The Hon Michael E. Misick LLB, MLC**, Premier, Turks and Caicos Islands, gave evidence.

**Chairman:** Welcome and thank you for being patient with us while we had that delay. Can each of you introduce yourselves?

**Osbourne Fleming:** I am Osbourne Fleming, the Chief Minister of Anguilla.

**Lowell Lewis:** I am Lowell Lewis, the Chief Minister of Montserrat.

**Michael E. Misick:** I am Michael Misick, the Premier of the Turks and Caicos Islands.

**Q68 Chairman:** Thank you very much. May I remind the public to switch off their mobile phones?

I will begin by asking each of you what your relationship is with your Governor.

**Osbourne Fleming:** First, I want to say how thankful and grateful I am to be here. I know that this is the first evidence session in the Committee's inquiry, and I am very pleased to be a part of it. Secondly, I know that my colleagues have come prepared with their scripts, but I do not have any because we were not advised on how comprehensive this discussion would be. However, we move forward.

Our relationship with the Foreign and Commonwealth Office has been remarkable. We have no serious problem with Her Majesty's Government and the FCO—and I am sure that my colleagues will agree with that. We have been candid and clear about what we want from them. However, one thing that has caused us some pain and headache with the FCO is an issue related to appointments, which we have brought to this table before. As elected Members, we feel that the time has come when senior appointments should not be made with the consultation of the Governor, but with the advice of the elected Members. We think that that is something that should happen. I hope that after this meeting our concerns will be raised with the appropriate authorities.

I have one serious concern that I would like the Ministers of the Government to hear. In 1984, the Government of Anguilla had four Ministers. We had a budget at that time of less than \$3 million. Today, we have four Ministers and a budget of over \$270 million. Since then, we have initiated the following Departments: probation, youth and culture, environment, community college, prison and disaster preparedness. Four Ministers cannot do justice to the people of Anguilla. To that end, I am asking you to help us put in place a fifth Minister now, even if it is a designate Minister. The four of us cannot carry the burden of a country that is progressing as rapidly as Anguilla.

**Q69 Chairman:** Chief Minister, you have a Deputy Governor who was appointed in 2006, who is an Anguillan. Does that mark a significant improvement in the relationship?

**Osbourne Fleming:** Yes, we are very pleased about that. We were a part of that and, as a Government, we endorsed that and the person as well.

**Q70 Chairman:** Thank you. Dr. Lewis, what is the position in Montserrat?

**Lowell Lewis:** First, let me express my gratitude at being here to speak to the Committee. I am impressed by this part of the building. However, I thought that by now you would be voting with a button, instead of having to get up and go to the House.

In Montserrat, we have good personal relationships with the Governors, but we at times feel that the system is undemocratic, and sometimes the relationship is humiliating. You have a situation where the Governor, being responsible for the appointment of staff, can in fact ignore the advice of the political directorate, and that has happened on occasion, with disastrous consequences. It is important for us to move towards a situation where we have an Executive public service commission and the authority for the selection of appointments does not rest solely with the Governor. The Governor should be obliged to act on the advice of the public service commission and the Governor's influence should be no more and no less than the influence of the political directorate. If anything, local representatives have more, let us say, detailed knowledge and should be in a position to guide the Governor.

On the subject of Ministers, the issue, again, is resources. We were once ahead of Anguilla and the British Virgin Islands, but because of the volcano way back, we are now 5,000 people and a struggling economy. However, we still think we need about five Ministers so that we can have the capacity to deal with the range of different activities that need to be covered.

**Q71 Chairman:** You said “disastrous consequences.” Could you be a little more specific? Are you referring to a specific episode or a series of episodes?

**Lowell Lewis:** There are several things. To give a single example, if you appoint somebody at permanent secretary level and they prove three months later to be totally inadequate, you have lost three months' work. I can think of an instance where delays in the completion of Executive Council memorandums and project memorandums have cost us \$3 million or \$4 million in lost aid because we did not make the deadline for an EU-funded project. Those are examples of where it is important for Governors to take the advice of the local political directorate if they feel that a particular person is not suitable, competent or capable to do a particular job.

On the other side, we have had many instances in Montserrat where our local knowledge of the situation relating to the volcano has put us at an advantage in terms of making decisions. We have the situation of the dome collapsing, with no real threat, but six or eight weeks later, we have to wait for the Governor to do something that could have safely been done six weeks before. You have a

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constitution in which, to some extent, the discretion of the political directorate is not given as much weight as the discretion of the Governor.

**Michael E. Misick:** Thanks for the opportunity to give evidence to the Committee. In relation to your question about my relationship with the present Governor, there is to some extent a question of personality, and the relationship with HMG is also of great importance. The present Governor is a pleasant gentleman and we get along well personally, as one would with most persons.

We do not have some of the same issues as Montserrat and Anguilla in relation to appointments because we have an independent public service commission, but we believe that it is time for all the Territories to embrace real Cabinet government, as in Gibraltar and Bermuda, where the Chief Minister or Premier is president or chairman of the Cabinet. Throughout the Territories you see that there are different standards, or that the constitution is not uniform, so different Territories are treated differently. We feel that, if, in our various constitutions, domestic concerns are a matter for the local government, then the Premier or Chief Minister should be chairman of his Council of Ministers and should make decisions based on domestic areas, and, as a matter of course, the government should be informed. To answer your question directly, I have no personal qualms with the present Governor. He is a nice man with a very nice family.

**Q72 Mr. Horam:** We come to the matter of the Overseas Territories Consultative Council, which you are attending. How useful do you find it, and is it developing in the way you would want? Perhaps we could start by Mr. Fleming answering that point.

**Osbourne Fleming:** I have been around here for the past seven years and I have been to London for the consultative conference six times. I find it very useful. As a matter of fact, there is nothing like seeing someone in front of you and telling them how you feel about a matter. The Overseas Territories, on the whole, have been blessed to be able to sit around the table at least once a year in the common interest that we all share. I think that we get that right and I hope that it continues. I hope that one of these days the conference will be held somewhere in the Caribbean, so that they can come to us. But, all in all, the conferences have been very useful to me as a representative of Anguilla.

**Q73 Mr. Horam:** Dr. Lewis, how do you feel?

**Lowell Lewis:** I think that they are very important meetings. As long as our constitutional status remains in a state of change, we need to continue meeting and discussing the issues with the United Kingdom. As long as we interact with the rest of the world through the United Kingdom, it is important for us to come face to face from time to time, so that we are properly represented.

It is also important for the opportunity it gives United Kingdom Ministers to meet Ministers from the Territories and to come to an understanding that it is actually okay to delegate responsibilities to political colleagues in another country, or territory, as opposed to having to delegate them to a Governor. Surely we aspire to the same level of integrity in governance and, if we practise the same type of democracy, there is no reason why a political colleague cannot delegate responsibility to the political leader of a country. That is at the basis of the existing differences over the resistance to reducing the powers of the Governor. If the local political leader can achieve the same objectives as the Governor, why does he have to be President of the Executive Council and why does he have to be responsible for security and issues of safety? It is by our having this dialogue that we believe that we can break the ice and become greater partners.

**Q74 Mr. Horam:** Would you like to add to that, Mr. Misick?

**Michael E. Misick:** Yes. Certainly, every time that I have attended it has been constructive. However, we believe and I believe that the presence of Governors is not necessary. Governors have annual meetings with the Foreign and Commonwealth Office.

**Q75 Mr. Horam:** So do you think that they should be excluded?

**Michael E. Misick:** Well, if there needs to be another meeting for Governors and leaders, there should be one. It is unfortunate that during the opportunity that leaders have to consult with the Foreign and Commonwealth Office on issues of mutual concern in our relationship, in the last two years a lot of the time has been taken up by discussing whether Governors should be there, which should be a moot point in my view. It is a relationship between Her Majesty's Government, through the Foreign and Commonwealth Office, and the various governments headed by the various elected leaders of those countries. I think that the concept is a good one. Certainly, I would like to see more conclusions coming out of it and more follow-through—more action—but it is good to come and have discussions.

**Q76 Mr. Horam:** Some of your colleagues from other Territories have said that there is sometimes excessive delay in putting things through. Nice words were said at the meetings, but none the less after two or three years nothing much had happened; transportation was given as one example. Is that your experience?

**Michael E. Misick:** Unfortunately, I was not here to hear exactly what they said, but I think that our fear is: is it becoming another talking shop, with no conclusion, no follow-through, no action? I believe that among the remaining Territories—the Territories that opt to remain having relations with the United Kingdom—most of our Territories are progressive, most of their leaders are modern in

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their thinking and most of us seek a modern relationship with the UK Government, whereby we are seen and respected as leaders of our various countries. We represent a constituency, so we want to be heard and taken seriously. As I said, in some cases there has been more talking than action.

*In the absence of the Chairman, Sir John Stanley took the Chair.*

**Q77 Mr. Horam:** On the constitution, you have a new constitution in Turks and Caicos. How is that working? Are you satisfied with it?

**Michael E. Misick:** The present constitution that we have is certainly working; we expect to get more. We accept what we have but as I said in my opening statement, I believe that more autonomy could have been given within the framework of our relationship with the United Kingdom. One of the things that I mentioned is the question of the head of government heading his own cabinet, as is the case in Gibraltar and in Bermuda, even if you have to define what domestic issues are. If, on one hand, you say, "Okay, you have internal self-governance" but still the representative of Her Majesty's Government chairs that internal self-governance, that is a contradiction in terms. I believe that that is an area that should be rectified.

Also, with some of my other colleagues, I believe that on issues such as security, some foreign relations elements and so on, there can be a degree of delegation. We deal from time to time with the Caribbean Community and Common Market and all of our neighbours in the Caribbean. There can be a degree of delegation on foreign relations. We have a unique situation in Turks and Caicos, where one of the greatest threats to our survival, our economy, is illegal immigrants coming from Haiti. On average 400 or 500 people a week come on boats to Turks and Caicos. We spend millions and millions of dollars repatriating them back to Haiti, with no financial assistance from the UK. In this case it is considered an immigration problem, and we feel that it is a foreign affairs problem, as well. The point that I am making is that if we can deal with the Haitian problem, we can deal with other elements of foreign relations. I believe that the future constitutional relationship between the Territories and the UK can be defined in a way that gives the Territories maximum autonomy, while still for the countries that want to remain British, preserving that historic connection.

**Q78 Mr. Horam:** You mentioned the expenditure you incur on repatriating illegal immigrants from Haiti. Do you repatriate all of them who come, or do you accept some immigrants and not others? How do you operate that policy on immigration?

**Michael E. Misick:** Obviously, they are processed. I do not know the percentage that is shipped back, but most of them are economic rather than political refugees.

**Q79 Mr. Horam:** I wondered whether you return most of them to Haiti.

**Michael E. Misick:** Yes.

**Q80 Mr. Horam:** You do? Return most of them?

**Michael E. Misick:** Yes.

**Q81 Mr. Horam:** Most of them you send back?

**Michael E. Misick:** Yes.

**Q82 Mr. Horam:** That was all I wanted to know. Mr. Lewis, you acknowledged in your memorandum to the Committee that you have some serious disagreements with the UK Government about the new constitution.<sup>1</sup> Would you like to enlarge on that?

**Lowell Lewis:** There are a few outstanding issues—one or two of which we resolved today, in fact—on the powers of the Governor and the desire to introduce a national advisory council that would assist the Governor with their powers. There was a suggestion that the Governor should be allowed to access the budget. These matters are under discussion. We have completed four rounds of talks, and we have scheduled the next round.

**Q83 Mr. Horam:** So they are negotiable, you think?

**Lowell Lewis:** Yes. In fact, I believe that, following today's meeting, the next time we meet, in March, we will make some progress on some issues, but we are not rushing it this time.

**Q84 Mr. Horam:** When do you expect the process to be concluded?

**Lowell Lewis:** It is possible that by next summer, we will be at a stage where we are able to meet the Ministers to resolve the issues and the differences that can be resolved only by Ministers. After that, we may come to a conclusion.

**Q85 Mr. Horam:** Mr. Fleming, your constitutional talks are stalled. When do you expect them to restart?

**Osbourne Fleming:** Early next year. Come January, we hope that they will start again. As you know, we were supposed to have our first visit in September, but it was stalled because the people of Anguilla decided to revisit the commission's recommendations, and the feeling that emerged was that there should be full internal self-government. That is where we are now. We must go to the people as a whole, sell this message and see how it is received. That is the way we are going to go forward, so we hope that early next year we will start the process.

**Mr. Horam:** Thank you.

**Q86 Sir John Stanley:** May we turn to some governance issues? Dr. Misick, the inquiry has aroused enormous interest in the Turks and Caicos Islands. At my last count, about one third of the total written submissions so far to the Committee, covering all the Overseas Territories, had come

<sup>1</sup> Not printed. Provided to the Committee in confidence.

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from the Turks and Caicos. I am sure you know also that a group of Opposition political figures flew especially to London to have an informal meeting with members of the Committee.

It is clear from the representations we have received that some believe substantial financial impropriety is taking place in the Turks and Caicos. Allegations have been made about corruption, including at government level. I make it wholly clear on the record that the Committee has reached no view and no conclusion on that; it is for the Committee at the end of its inquiry to produce its report to the House and for submission to the Foreign and Commonwealth Office. Having said that, I should like to hear your response to the allegations that some have made about significant corruption—including within the Government—in the Turks and Caicos.

**Michael E. Misick:** I have not seen any submissions, but on the general allegation of corruption, from a government standpoint, we categorically deny that there is any corruption at government level in the Turks and Caicos. As a matter of fact, an anti-corruption Bill is on first reading in Parliament, and we intend it to go through during the first quarter next year. Unfortunately, in small countries such as ours there are always allegations of corruption, particularly from our opposition activists coming out of an election. Much of what is alleged cannot be substantiated. It is unfortunate that potential leaders would try to put the good name of a country through the mud by making such allegations.

We have a transparent system when it comes to tendering. We have a tenders board that deals with that. In relation to allocation of Crown land, there is a process in place by which, at a ministry level, land is allocated to different citizens. In relation to other areas, our Parliament has a register of interests.

My position is that the Turks and Caicos government are a transparent government. We uphold all modern legislation to support that transparency and to ensure that corruption does not rear its ugly head in our territory.

**Q87 Sir John Stanley:** Do you consider that responsibility for dealing with any corruption that might arise lies solely with the government of the Turks and Caicos, or do you look to the UK for support or assistance? Do you believe that a measure of responsibility to help you deal with this lies with the UK as well as with your own government?

**Michael E. Misick:** I would say that we both have responsibility for good government. Obviously, the UK has ultimate responsibility for good governance of the territories. For example, over the years, when there has been a question about the police, the matter is within the ambit of the Governor. We have an independent, non-politically appointed Attorney-General who is responsible for prosecutions. All the institutions are in place to

deal with corruption and to bring to justice anyone who has perhaps been participating in that. It is easy, particularly for opposition activists who are still sore about losing the election, to claim that there is corruption.

**Q88 Sir John Stanley:** On this specific issue, do you feel that whether an individual is granted *belonger* status or not is free from any corrupt practices?

**Michael E. Misick:** It is free from corrupt practices, because *belonger* status is granted by the Cabinet; no one individual grants *belonger* status. With the exception of marriage, *belonger* status is granted on the basis of the length of time that a person has stayed in the country, the contribution that they have made to the country, and how they are assimilated into the community. There are a number of factors that are laid out by law in the granting of *belonger* status.

**Q89 Andrew Mackinlay:** Just to clarify—*belonger* status is granted by the Cabinet?

**Michael E. Misick:** It is.

**Q90 Andrew Mackinlay:** Does the Governor sit at Cabinet?

**Michael E. Misick:** He chairs the Cabinet.

**Q91 Andrew Mackinlay:** So, if there were allegations of corruption with regards to the Cabinet granting *belonger* status, that would apply to the Governor as well as the members?

**Michael E. Misick:** He is the President of the Cabinet.

**Q92 Andrew Mackinlay:** Yes, I wanted to establish that.

**Michael E. Misick:** There is a process to the granting of *belonger* status.

**Q93 Andrew Mackinlay:** Yes of course. I did not mean to cut you short. I understand that point. It might be useful to have a note on how, and who and what the process is.

**Michael E. Misick:** The process is that the Governor is President of the Cabinet. He acts on the advice of Cabinet, and where he does not take Cabinet's advice, he can consult with the Secretary of State. For example, if he thought that the Cabinet was granting a *belonger* status that had a corrupt undertone, he would not have to accept Cabinet's advice.

*Mike Gapes took the Chair.*

**Q94 Andrew Mackinlay:** Particularly in relation to your jurisdiction but also in relation to that of your colleagues, I am told that you do not see anything much of the Royal Navy. A good-will boat might occasionally look in, but they are not patrolling around your jurisdiction or others, preventing illegal immigration, are they?

**Michael E. Misick:** No, they are not. From time to time they make visits, perhaps because they happen to be in the area, but they do not patrol.

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**Q95 Andrew Mackinlay:** Also, in reply to my colleague, you said that you return Haitian illegal immigrants, but presumably you should have added that you do so to the best of your ability. This very day, there are in your jurisdiction Haitians and—I am not sure whether they are in secure areas—kiddies.

**Michael E. Misick:** What is that?

**Andrew Mackinlay:** Children.

**Michael E. Misick:** Yes.

**Q96 Andrew Mackinlay:** And there is a big debate about what the human rights obligations are to the children as regards schooling and so on, is there not?

**Michael E. Misick:** There was a debate prior to my party coming into office. We have taken the position that all children, whether or not they are legal, have a right to education. We have therefore allowed all children to attend our schools once they reach a certain age. As a matter of fact, there are a number of kids whose parents have left them in the islands and maybe gone on to Miami; that is the way that the trade is in trafficking humans. We have regularised the situation for most of them in the Turks and Caicos; prior to that, they were stateless. We could not send them back to Haiti as they did not come with any documents and they grew up in the islands.

**Q97 Andrew Mackinlay:** So you are saying to me that this afternoon there are a number of children who, to all intents and purposes, have been abandoned in the Turks and Caicos. There may or may not be some remuneration coming from Florida or wherever, but there are children who have come on boats and you are having to pick up the tab for their education, which I endorse—

**Michael E. Misick:** And health care.

**Andrew Mackinlay:** And health care. What do Her Majesty's Government in London say about that? Surely they should not only be assisting you but sending a gunboat, presumably. I am just bewildered.

**Michael E. Misick:** If we could get assistance, I would be really appreciative.

**Q98 Andrew Mackinlay:** Has London done anything? What has it done?

**Michael E. Misick:** We get no financial assistance in relation to that from the United Kingdom. As I said, Navy ships come into the waters periodically, but the burden of policing lies with the Turks and Caicos government.

**Q99 Andrew Mackinlay:** How many people—a broad-brush figure, if needs be—are illegal immigrants in your jurisdiction today, and what percentage of the total population?

**Michael E. Misick:** We have an approximate population of 40,000. I think that probably anything up to a quarter—maybe 10 or 20%—are illegal, primarily Haitian people.

**Q100 Andrew Mackinlay:** And you are losing that battle, are you not? If you came back in five years' time it would be a higher figure, would it?

**Michael E. Misick:** Absolutely. We are outnumbered already. We send 500 home and another 1,000 come. It is a revolving door.

**Q101 Chairman:** May I ask you, Mr. Fleming, about problems that you face? The Foreign Office website mentions that the main focus of Overseas Territories expenditure in Anguilla is devoted to enhancing the capabilities of law enforcement agencies. Do you have a particular problem with crime?

**Osbourne Fleming:** Yes. I have made a note here and I want the Committee to know that we are into tourism. The only industries that really propel Anguilla's development are tourism and construction. We have seen an unusual level of crime coming through the country, and most of it can be attributed to the fact that we have a number of foreign workers in Anguilla as well as Anguillians who may be involved in crime. We need some help to combat the criminal activity that is going on. We feel that if something is not done about it, and quickly, we could lose the industry by which we survive. We have come to London to make this plea and I hope that this Committee can help us. We need some help to combat the criminals; otherwise, we may be back on the grant in aid again. We never want to subject ourselves to that again. Tourism is a fragile industry—I know that I am speaking to the choir, here. It can be wiped away by criminal activities. Although we are doing fairly well, we need some help in that direction. Of course that presence is costing us, but we are better off sacrificing ourselves to keep some help from London in Anguilla than to lose the whole country.

**Q102 Chairman:** What kind of crime are you talking about?

**Osbourne Fleming:** We have had some murders this year, which were unprecedented. There is some stealing and some larceny. Luckily for us, this has not been against tourists over the last year and a half. It has been localised up to now, but the criminals will not stay in one spot. They will go where they think there is prey. It is not out of control, but we must begin to close the gap quickly.

**Q103 Chairman:** May I ask all of you about your financial regulation systems? In a previous session we had evidence from the Cayman Islands and from the British Virgin Islands. What is the position in your Territories? Are you satisfied with the current situation?

**Osbourne Fleming:** Unfortunately, I am not the Finance Minister in Anguilla.

**Q104 Chairman:** You are only the Chief Minister?

**Osbourne Fleming:** I am only that and I delegate and I leave the guys to themselves. However, we are doing well financially. When you consider our geographical position, we are edging up. Our

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offshore services are slowly coming up. I am glad that the Minister of Finance is here: sometimes I get tired of him over there. He has brought many measures to the House of Assembly that ensure that we run a clean operation. Anguilla's name cannot be tainted. So we try our best to put all the regulations and Acts in place. As you might know, Mr. Chairman, we sell high-end tourism. We want everything that we sell to be high end, even the financial services. To that end we go forward. We are going forward and ensuring that we deliver the best.

**Lowell Lewis:** In Montserrat we have almost completed putting into place and enacting the legislation that brings us up to date with the rest of the international community. We have had expert advice and we have shared resources using legislation from the CARICOM and other countries. We are putting in place the legislation needed to allow us to participate in international financial services. In addition, our new draft constitution has a section on financial regulation, which will more or less provide all the necessary safeguards.

On the issue of governance, there has to be some discussion about what is appropriate for small countries, as opposed to Britain. Your system of governance includes providing political parties with state funding, expenses for Ministers and so on. In the small Territories there is nothing like that. I am a doctor and people complain when I tell a patient that they do not have to pay today because they cannot afford it. The whole issue of how you deal with the financing of political activity and how you resolve conflicts of interests needs to be examined. The Foreign Office needs to recommend that the Territories adopt some sort of state support for political activity, to prevent the differences that occur between those who have and those who do not. I think that that answers your questions.

**Q105 Chairman:** You have hit on a very topical subject, but we will not go there.

**Michael E. Misick:** We have an independent financial services commission that regulates our financial services in the Turks and Caicos Islands. Instead of a boutique financial services industry, with luxury registry for yachts, aeroplanes and so on, we have brought our legislation in line with all the international requirements, including those of the International Monetary Fund, and we have a stringent know-your-customer policy for trust companies, banks and other practitioners.

We recently introduced a series of laws, including proceeds of crime and anti-money laundering legislation, as we believe in running a clean and high-quality financial services industry. A lot of it is tied to the construction boom of condominiums and second homes, and the persons and trusts that use the jurisdiction for estate planning. We are pleased with how that has panned out in the last few years.

**Q106 Andrew Mackinlay:** I want to ask one thing—it might sound small—about international bodies such as the Olympics committee. If you have an

athlete, or a sportsman or sportswoman, your only conduit for them to get advancement is through the United Kingdom. There may or may not be anyone in that category—I do not know—but it is a matter of right or justice. Are you in the loop, as it were?

**Michael E. Misick:** I am happy that you should raise that question. That is a point that I believe changed in the last couple of years. For example, the Cayman Islands has an Olympic committee, an Olympic team. I am not sure about others, but I know that Turks and Caicos Islands was interested in the past couple of years in having an Olympic team. However, because of the current position—I am not sure whether it is down to HMG or the Olympic committee itself—we are not able to have our own Olympic team. That is something that certainly needs to be addressed. Despite the fact that we have a constitutional relationship with the United Kingdom, all of our various Territories have their own distinct identities. The people have their own aspirations and national pride. Nothing in the world can instil national and identity more than sport. I believe that it is an injustice.

**Q107 Andrew Mackinlay:** I fully understand that, but the Commonwealth games gives you an opportunity.

**Michael E. Misick:** It is not the Olympics.

**Q108 Andrew Mackinlay:** No, but when it comes to the Olympics—I am not sure of the sports—you might have handgun people, for instance, who might not be known in the UK by those making decisions about the United Kingdom team, of which you are entitled to be a part. That is correct, is it not? I note that the Montserrat representative is nodding his head. I do not know what athletes or sportsmen you have, but I am concerned that you are out of sight and out of mind.

**Lowell Lewis:** Our athletes have tried out for the British Olympic team. However, I am glad that you mentioned sport, because that is something that I have to mention. In our recovery, we have had little or no financial support for any sporting facilities in our Islands, among many other things. If you are rebuilding a nation and a country that has been destroyed, resources have to be put into social services.

**Q109 Chairman:** You have had significant support from the Department for International Development over recent years, since the disastrous consequences of the volcano nearly 12 years ago. In your opinion, how good are the arrangements now being made by the Foreign and Commonwealth Office and DFID to assist Montserrat?

**Lowell Lewis:** I think that they have finally agreed that we need a lot more. The extent of the destruction was never really understood. The bottom line is that we lost 80% of our assets. We are rebuilding because the northern 17 square miles is safe. Many essential things are needed. We do not have a port. There is no courthouse. Many basic items are still not in place. Although we have had a

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lot of help, a lot more is needed. It is as simple as that. At the moment, 70% of our revenues are budgetary aid; we were once self-sufficient, with a surplus. All we need is to replace what we have lost—the hospital, the library and so on; essential infrastructure—and then we will be able to start again.

**Q110 Chairman:** Finally, may I ask you all a question that we asked the previous panel? Are you satisfied with the relationship that you have with the UK Parliament?

**Osbourne Fleming:** I have already reported this to the Committee and I want you to take the message forward because we need help on it: four of us cannot run the government of Anguilla. You are well aware of the problems taking place in that country. The situation is very hard for us. I want to push that point.

**Chairman:** You made that point at the beginning and you are making it at the end.

**Osbourne Fleming:** Other than that, we enjoy a good relationship.

**Lowell Lewis:** I have just received a note from my colleague saying that I should make a plug for a Parliament building in Montserrat. The bottom line is that we have a relationship that can improve. We invite you to come to Montserrat, because only when you come there do you realise that we have a future and realise the devastation that we sustained and the additional help that we need.

**Chairman:** Thank you.

**Michael E. Misick:** There needs to be better relations between Parliament and Members of Parliament in the various Overseas Territories, so that people are better able to understand the dynamics of the different Territories. I think that most of us seek a modern relationship in which there is representation, just as Scotland and Wales have representation, whether it is in the House of

Commons or elsewhere. I believe there was a Bill several months ago about possible representation from the Overseas Territories in the House of Lords. If we are to have a long-term marriage, the time has come for consideration of the Overseas Territories having direct representation in the House of Commons. Perhaps there could be a couple of elected Members as well as persons in the House of Lords. That is one area that has not been looked at properly and that can be improved if there is to be a long-term modern relationship. We can look at the United States and Puerto Rico, the Virgin Islands—

**Andrew Mackinlay:** Samoa.

**Michael E. Misick:** Samoa. There is also Guam. Hawaii is a state, but has representation in Congress—even Washington DC has it.

**Q111 Chairman:** Even the French Senate has representatives for the Overseas Territories, so the point you are raising is well made.

**Michael E. Misick:** Exactly. St. Martin and Guadeloupe and all those places have representation in the French Parliament. The situation is the same with the Dutch. The colonial days are over. We are talking about the remaining Territories and their citizens. There are probably fewer than 160,000 people and most of us are from the Caribbean region. The time has come for the United Kingdom to consider a modern approach whereby if most of the Territories want to remain British, there has to be a modern relationship. Otherwise, once Territories develop a certain degree of economic independence, they will probably sail off into the sunset. Today, when we are all interdependent, there can be a modern relationship with the remaining Territories.

**Chairman:** Gentlemen, thank you for coming. Thank you for your time and your comprehensive answers. We hope you enjoy your Overseas Territories meetings in the next two days and we wish you all the best for the future.

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## Wednesday 23 January 2008

Members present:

Mike Gapes (Chairman)

Rt hon. Sir Menzies Campbell  
Mr. Eric Illsley  
Mr. Paul Keetch

Andrew Mackinlay  
Sandra Osborne  
Rt hon. Sir John Stanley

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*Witnesses:* **Mr. Louis Olivier Bancoult**, Leader, Chagos Refugee Group, and **Mr. Richard Gifford**, Clifford Chance LLP, gave evidence.

**Chairman:** Good afternoon. We are conducting a general inquiry on the Overseas Territories. In that context, it was thought useful to have an input relating to the situation from your perspective in the Chagos Islands, even though they are not at the moment occupied by people who were born there. I invite you to introduce yourselves before we begin questions.

**Mr. Bancoult:** I am Louis Olivier Bancoult, leader of the Chagos Refugee Group, and elected representative of the Chagossian community in Mauritius.

**Mr. Gifford:** I am Richard Gifford. I am the solicitor for the Chagossian community in Mauritius, and have been conducting the law cases over the past 10 years.

**Q112 Chairman:** Mr. Bancoult, would you explain how the community was removed from the archipelago, and why?

**Mr. Bancoult:** It is a pleasure to be here. Thank you for this opportunity to speak on behalf of my people about our struggle. There are 3,700 Chagossians in Mauritius, about 1,000 in the UK, and 500 in the Seychelles. The removal of my people started in the 1960s, mainly in Diego Garcia, followed by Peros Banhos and the Salomon Islands. We were all removed and forced to leave everything behind. Arriving in Mauritius was a nightmare for us. No planning had been made. No house, no job: cast aside without any provision.

We suffered terrible hardship and dreadful living conditions. Dumped into the slums of Port Louis, the capital of Mauritius, we face many problems, such as drugs, prostitution, joblessness, illness and early death. Over the years, we have not been able to integrate into Mauritius: we have the worst jobs, the worst housing and have barely managed to survive. Our community is held together by our memory of our beautiful islands, which we believe are our birthright. We have suffered enough and we want to go back home. We ask for your help to make this possible. We hope that this Committee will recommend that all Government Departments respect the human rights of the Chagossians, who have been denied them; that the Government consult the Chagossians on how best to meet their wish to return to Chagos; and that, finally, the FCO and the Department for International Development jointly develop a proposal for the European Union or another fund to support a resettlement programme for our people.

**Q113 Chairman:** We will come in a moment to questions about the way forward and the future, but for now I would like to focus on what actually happened. You referred to the 1960s. Was the removal all at one point or was it phased?

**Mr. Bancoult:** It was phased. It started in Diego Garcia, where people were asked to leave to make way for the US military base.

**Q114 Chairman:** Which year was that?

**Mr. Bancoult:** It was in 1971. At that time, those people were asked to choose either to go to Peros Banhos or Salomon, or to return to Mauritius, but they were all forced to leave Diego Garcia. What was said at the time was that there would be no programme in Peros Banhos. One year after Diego Garcia, those on Peros Banhos or Salomon were asked the same thing—even though they are about 130 km from Diego Garcia, everyone had to leave because it would become dangerous for a civilian population to live there.

**Q115 Chairman:** Mr. Gifford, do you wish to add anything?

**Mr. Gifford:** The effective removal started immediately Mauritius became independent in 1968, because the shipping link from Mauritius to Chagos was suspended. Olivier's family, who returned to Mauritius just before then for medical treatment for his sister, were prevented from returning to Chagos, because there was no shipping any more. There was a gradual depopulation. They were not warned when they went to Mauritius that they would not be able to get back. The islands dwindled somewhat in population. What then happened was that the Americans got their funds authorised in December 1970. In January 1971, the British Indian Ocean Territory administrator addressed the islanders and said that they had to go. By September they had all left Diego Garcia.

**Q116 Chairman:** You referred to the impact on your family and what conditions were like when people were moved to Mauritius. Have those conditions improved in the more than 30 years in which people have been living in Mauritius or elsewhere?

**Mr. Bancoult:** I do not think that the situation has improved. The reason is that when we were forced to leave Chagos to come to Mauritius there was no planning. Compare that with the situation on Chagos: all the Chagossians had their own house and job—all the people worked on the coconut

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plantations—whereas arriving in Mauritius was a nightmare. It is a very different life from Chagos. In Mauritius, we have textile industries and sugar cane plantations. No training was given to Chagossians to integrate them into Mauritian society.

**Q117 Mr. Keetch:** May I confirm, gentlemen, that you are talking about 3,000 to 4,000 people? Is that your approximation of the numbers?

**Mr. Bancoult:** A little more than that.

**Q118 Mr. Keetch:** Are you saying 4,000 people?

**Mr. Bancoult:** Yes, 4,000 or 5,000.

**Q119 Mr. Keetch:** Do your people tend to live together in one main community in Mauritius?

**Mr. Bancoult:** We have been living in the slums in various places in the poorest regions of Port Louis. In those places, we faced many problems, just like the lowest category of people in Mauritius which, as you know, has an ethnic problem, and we were forced to leave the region.

**Q120 Mr. Illsley:** Before I come to the question of legal proceedings, may I ask if the people of Mauritius resent the Chagossians for coming on to their island or are you living quite happily with the Mauritian population?

**Mr. Bancoult:** Even the Mauritian people were not aware of what happened, because an exchange had been made for Mauritian independence. When we arrived, many people said that we had just come: it was very difficult because there was a lack of jobs for Mauritians. There were many problems then, and many people chose to leave Mauritius and go abroad. It has become more difficult for Chagossians, because most of our people do not have a level of education, as education came very late to Chagos. It has become more and more difficult to do the work that we expect to do because it does not exist in Mauritius.

**Q121 Mr. Illsley:** My next question is on the legal proceedings. As you are aware, the Government have decided to petition the House of Lords for a further appeal, using the grounds that the implications of this case apply to other Overseas Territories, particularly in the use of the royal prerogative. What is your opinion? Do you feel that that is a legitimate reason for petitioning the House of Lords, or is it simply a delaying tactic to try to prolong things even further?

**Mr. Gifford:** Perhaps I can answer that question. There is a limit to what I can say, bearing in mind that the issues in the appeal are, of course, for their lordships. However, in so far as they are basing the appeal on the constitutional right of the Crown to legislate for the Overseas Territories without review by the judges or by Parliament either, that is a constitutional matter that barely concerns the Chagossians. They have now had three courts in 10 years; seven senior judges have said unanimously, “You simply can’t do this. You cannot remove a population from their homeland.” The pity is that all seven judges have adopted different judicial

reasoning to get to the same conclusion and, of course, seven judgments like that bristle with issues, as the Court of Appeal, in refusing leave to appeal, expressly acknowledged.

These poor people, who have been sorely treated for 40 years, have been caught up in the wheels of constitutional nicety. We are not even sure that the Government actively resist the right to return; we cannot get any sense out of them, because they will not say what their policy is.

**Q122 Mr. Illsley:** The fact that the Court of Appeal refused leave to appeal tends to imply that it decided that this was an end to it, and suggested to the Government that by refusing leave to appeal that they should accept the decision.

**Mr. Gifford:** Yes, that is absolutely so. One reason why they might have come to that conclusion was that after the first judgment, Robin Cook, as Foreign Secretary, expressly endorsed the judgment and said, “We accept the judgment. We will not appeal.” He said that the feasibility studies then took on a new importance, and he was held to that promise by the Court of Appeal.

**Q123 Mr. Illsley:** Given that the House of Lords must, by definition, be the final leg of any legal proceedings, if it grants an appeal, what sort of time scale are you looking at before getting to the end of the legal stages?

**Mr. Gifford:** You mean if the House of Lords dismisses the Government’s appeal?

**Q124 Mr. Illsley:** As I understand it, the Government are petitioning to appeal to the Lords. Is that right?

**Mr. Gifford:** They have been granted permission to appeal, but on an unusual condition. In granting leave, their Lordships’ House directed that the Government must bear the legal costs of both parties, whatever the outcome of the case.

**Q125 Mr. Illsley:** What is the time scale now?

**Mr. Gifford:** That case has been set for 30 June.

**Q126 Sir Menzies Campbell:** I have a number of legal points to make, although they are not necessarily related. What is the legal status of the Chagossians in Mauritius? Do they enjoy the same rights and privileges as citizens? Do they have access to health and education? Are they disqualified from voting in elections and things of that kind? Have you ever had sight of the lease due to expire in 2016 to determine whether the possibility of an extension would require the agreement of both parties, or whether the United States could unilaterally ask for it?

**Mr. Gifford:** May I answer the second question first? It is a popular misconception that there is a lease. There is not, Sir Menzies. There is simply an exchange of notes, dated 1966, which declare jointly that the islands shall be made available for the joint defence purposes of the UK and US for an indefinite period. It is then said that there will be a review of that in 2016. It is unclear whether one party can

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optionally extend, or whether it needs the consent of both parties. I think that it is the former, because it provides for an indefinite use of the base—and no rent is paid, by the way.

**Q127 Sir Menzies Campbell:** It may not be a formal lease, but the exchange of those letters, and actions in reliance of them, might well be thought to have created a legal relationship equivalent to a lease. Is it your view that the way in which those letters are framed would allow the United States to say, “We want to go on indefinitely,” and that the United Kingdom would not be in a position to resist that?

**Mr. Gifford:** In the narrow terms of the 1966 treaty, I believe that that is the case. However, of course, the UK is still the sovereign. If it might be breaching the lowest form of treaty—the exchange of notes—by saying no, one could point out that they were in breach of a whole raft of multilateral treaties in getting rid of the population in the first place.

**Q128 Sir Menzies Campbell:** Are you aware of any other circumstances under which the British Government have acted in such an apparently favourable way towards another country in relation to territory for which the British Government are responsible?

**Mr. Gifford:** I am not aware of any other case where the entire territory has been given away for nothing.

**Q129 Andrew Mackinlay:** Quite apart from the outrage, in my view, at the removal of the islanders, surely the legal title of the real estate remains with the islanders. If not, by what instrument was that taken from them?

**Mr. Gifford:** Very interesting. It was carefully planned in Whitehall from the outset. After the exchange of notes in 1966, legislation on the territory was passed by the commissioner alone, by means of an ordinance, to provide for the compulsory purchase of the freehold interest of the plantation company, which then transferred the freeholds to the Government. To make matters clear, another ordinance was passed declaring the entire archipelago to be Crown land.

**Q130 Andrew Mackinlay:** For expedition purposes, could you give us a note on the extent to which there has been parliamentary oversight or authority? From what I make of what you have just said, there has been none or very little. We are interested in the extent of parliamentary oversight. The other thing that I just wanted to touch base with you on is this. To the extent that they are near neighbours, is there not a common sea boundary with the Republic of Maldives and is there not some sea territorial issue with it?

**Mr. Gifford:** The Maldives are 1,000 miles away.

**Andrew Mackinlay:** I know.

**Mr. Gifford:** So there are international waters in between. There is a 200-mile economic exclusion zone all the way around Chagos. However, as their lordships pointed out in the divisional court, any vessel exercising the right of innocent passage can pass within three miles of Diego Garcia itself.

**Andrew Mackinlay:** May I ask a question about Mauritius, or should I come back to it later?

**Chairman:** I would rather stay with this US issue, as I have John Stanley to come in next.

**Q131 Sir Menzies Campbell:** Would you indulge me for just one moment? Compulsory purchase is usually followed by compensation, to compensate the person whose land has been compulsorily acquired for the loss of that land, and specifically for that. Sums of money were disbursed eventually, but was that money provided in reliance of the principle that, where there is compulsory purchase, there should be compensation, or was it provided on some kind of *ex gratia*, unspecified basis?

**Mr. Gifford:** After compulsory purchase powers were passed, they negotiated with the plantation company and agreed a figure of £670,000 for the freehold, which was paid to the company. There was a provision that if anyone else claimed any interest in the land, they had to lodge a claim with the Governor in the Seychelles within a certain period—about six months or so. Unsurprisingly, the Governor did not receive any claims from the Chagossians, even though their customary title had stretched back for five generations over large swathes of the islands, but of course they were unable to access that kind of mechanism and their rights were simply swept away.

**Chairman:** We will come later to some other questions about compensation. Can we just focus for the moment on this US base issue?

**Q132 Sir John Stanley:** Mr. Bancoult and Mr. Gifford, I went to Diego Garcia some years ago. When I was there, it was a military installation that was in very substantial use. The whole of that main island had been taken over for military purposes. So, leaving aside the merits of the case just for a moment, I imagine that you would agree that, in terms of sheer practicality, there is no possibility of a conjunction of continuing US air operations and all the other facilities on the main island of Diego Garcia alongside a return of the Chagossian community, with their agricultural requirements and so on. You would accept that there is no way that they can live cheek by jowl on the same island. I think that that is self-evident, but perhaps you could confirm that. I will come to the outer islands in a moment.

**Mr. Gifford:** For practical purposes, the resettlement plan of the Chagossians, which will be launched in the House of Lords next month, will be confined to the outer islands of Salomon and Peros Banhos. The Chagossians accept that, for present purposes, it is not politically practicable to press for a return to where they mostly originate from, which is Diego Garcia, and where, we have to say, their heart lies. However, as to whether it is practically feasible, we say, “Well, why on earth not?” Although you say that Diego Garcia is entirely occupied by the military, it is clear from this particular map published by the Chagos Conservation Trust, which is in turn funded by the British Indian Ocean Territory, that approximately one half of the island

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is set aside for nature conservancy, or a nature reserve. There are only small parts of the island—well, substantial parts, but probably amounting to no more than a third in total—that are occupied by the military airfield and what they call the downtown area, and that sort of thing. Diego Garcia is 40 miles around, and it is mostly forest. So, in due course, it should not be impossible to re-establish settlements there, but we accept that it is too politically sensitive for the Americans at the present time to push for that.

**Q133 Sir John Stanley:** We do not have a copy of your conservation leaflet. Perhaps you would like to give us a copy.

**Mr. Gifford:** I would be happy to leave the leaflet with you. I have other copies.

**Q134 Sir John Stanley:** Can we come on to the second part of my question? The only practical option it would appear at the moment is a resettlement based on the outer islands. Certainly when I was there flying over them, they all appeared to be absolutely uninhabited, and I believe that is the case. Under your resettlement plan, which I am sure the Committee will be interested to see when you make it available, is it possible to produce an economically viable solution for the returning Chagossian islanders? I understand entirely that that does not bring them back to where their heart may lie and the island they came from, but does it produce an economically viable and acceptable solution in that sense?

**Richard Gifford:** Indeed. We have had an extremely distinguished land economist, well known to Department for International Development and the FCO, working on this proposal in close conjunction with the exiled community. I have a very brief synopsis here. He says that there are no physical, economic or environmental reasons why resettlement on two islands should not take place. I have seen the draft but will not go into detail. He has a fairly well-constructed plan for regenerating the economy, which is not surprising because the Government's own consultants established that you could double or treble the fisheries catch even in a sensitive marine environment like Chagos, without causing damage to fish stocks. You could establish eco-tourism, for which there is a very high demand. The coconut plantations could be rehabilitated. These days you could make biofuel out of coconuts. There is a paper by the man who runs the Marshall islands who says that you can run your Mercedes and the boats on biodiesel made from local coconuts. There are many things that could be done economically.

**Q135 Sir John Stanley:** The issue of the moderately close conjunction of the civilian population and a full-scale operational airfield is one with which we are very familiar in the UK. Many members of the Committee have visited USAF bases, particularly when the USAF was here in larger numbers than it is now. They are under the RAF flag but are basically run by the USAF. They are in extremely

close proximity to the civilian population. Could you explain why the British Government at the time felt it necessary to comply, presumably on security grounds, with the American view that there had to be a complete clearance of all the Chagossians from the outer islands and why they were not allowed, and are still not allowed, to return to the outer islands, when in virtually all cases they would be substantially further removed from the US air base than they would be on some of the remaining operational facilities which the USAF have here?

**Richard Gifford:** I share your view of military bases run by the US. I do not know of any other military base in the world that does not have an adjacent civilian population. Indeed, there are 2,500 civilians living on Diego Garcia at the moment. All but three are imported from the Philippines and Sri Lanka, which is where they prefer to recruit their civilian workers. Three are Chagossians. As a result of a mass application by Chagossians, who had been refused employment on the base for 30 years, three managed to get employed there. The conditions are harsh. They are not allowed home for two years. It is a two years without leave contract. It would be marvellous if they could just potter across the archipelago and go and see their families in the northern islands.

**Q136 Sir John Stanley:** I have one final question. As you may know, the Committee has visited Guantanamo Bay and we have produced a report to the House of Commons on extraordinary rendition. There has been a great deal of speculation and reports in the media that Diego Garcia might be being used for extraordinary rendition. Ministers have rested on unequivocal American assurances that this has not been the case as far as Diego Garcia is concerned. For example, a written answer given by the Foreign Office Minister Kim Howells on 26 October 2006 said: "The US authorities have repeatedly given us assurances that no detainees, prisoners of war or any other persons in this category are being held on Diego Garcia, or have at any time passed in transit through Diego Garcia or its territorial waters or airspace. This was most recently confirmed during the 2006 US/UK Political Military Talks held in London on 17 and 18 October."—[*Official Report*, 26 October 2006; Vol. 450, c. 2076W.]

Have you any evidence to put to the Committee that those assurances given by the US authorities to the British Government are incorrect?

**Mr. Gifford:** I have two pieces of information. I am aware that a retired US general whose name is Barry—I am afraid that I have forgotten his surname—made two broadcasts on national public radio in which he suggested that it was known in the US military that Diego Garcia was used for these purposes. If you have had a paper from Reprieve, I believe that they have summarised the speeches in full.

I myself am aware, because I read it in *The Sunday Times* about a year ago, that *The Sunday Times* tracked the flight records of a particular aircraft that is known to be engaged in extraordinary rendition

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and, when the suspected terrorist Ramzi bin al-Shibh was arrested in Pakistan, that particular flight took him first to Diego Garcia and then on to Guantanamo Bay. Of course, I cannot personally verify that in any way. That is the extent of my information.

**Q137 Sandra Osborne:** Does the Foreign Office have any sort of mechanism, either formal or informal, for finding out what is actually happening on the islands, or is there completely no discussion or relationship with the formal inhabitants of the islands?

**Mr. Gifford:** There is no attempt to consult the population or their representatives about what goes on on the islands. All that I can say is that after about four years of delay, the Foreign Office did arrange and pay for a boat trip for 100 Chagossians, who visited the islands in April and May of 2006. One hundred of the old folk were taken back there for a visit and tended some of the graves. They tried to exclude Diego Garcia from the trip, but Olivier's people said, "No, we will not go if it is excluded, as we are only visitors after all." It was then allowed. As far as I know, that is the extent of it. They do what they like and it is an unsupervised paradise. I think that they like the idea of no oversight, no consultation and nobody looking over their shoulder. The last thing that they want under present policy is to have to consult.

**Q138 Mr. Keetch:** Going back to the base and the exchange of notes, as you described it, back in the 1960s, are you aware of any provision in those notes or have you come across any declarations in Parliament that suggest that the UK might have some control over US activities on the base? In other words, I am trying to follow up on what Sir. John was asking about rendition. If it was being used for rendition, or if the US were using the base for bombing operations, do you know of any agreement by the US that they would require them to seek the UK Government's approval to use that base, for example, in the same way that the UK had to approve operations coming out of US air force bases in England?

**Mr. Gifford:** I believe that there is a liaison committee to deal with military and administration matters. I asked the commissioner some time ago how often it met and was told that it was very sporadic—once or twice a year. There is nothing that I am aware of in the exchange of notes or any subsequent agreement which requires the UK to consent or even to be informed. With regard to building on the island, for example, they recently sought the permission of the British Government to build some shelters for the stealth bombers because they are very sensitive. The British Government gave consent and there was a note published in which they agreed to that. As to operational and military dispositions, I am not aware of any requirement to consult.

**Q139 Mr. Keetch:** As far as you know, has there been any suggestion that there are any British liaison people working at the base?

**Mr. Gifford:** Yes, there is what they call a "Brit rep," who is the senior naval officer. There is a small retinue of naval personnel and there are usually three or four British policemen, known as the BIOT—British Indian Ocean Territory—police, who are seconded from over here. With regard to quite how effective that oversight is, I can tell you that when I visited I was told by a policeman that they were really only concerned with confiscating pornographic videos and drugs and that was the extent of their remit.

**Q140 Mr. Keetch:** Finally, could you answer Sir Menzies's other question about the civil rights of people in Mauritius? He asked if they had the vote, access to health care and so on.

**Mr. Gifford:** Yes, they are Mauritian citizens and dual nationals. The British Government specifically enacted when they detached Chagos that these chaps should become Mauritian at independence. They kept rather quieter about the fact that they also retained their British subject status. They have full civil rights. I would point out that they occupy the lowest rung in a very hierarchical society and suffer various forms of discrimination, but that is not official or governmental.

*Sitting suspended for a Division in the House.  
On resuming—*

**Q141 Chairman:** Can I ask all members of the public to switch off your mobile phones, please, if you are coming in? I do not want any interruptions. Thank you.

Gentlemen, thank you for staying and waiting for us to come back. Can I ask you about the issue of a sustainable return? As you are aware, the Foreign and Commonwealth Office produced a feasibility study in 2002 and there is some controversy about the conclusions of that document, as to whether it was modified in the process, between 2000 and 2002. It has been alleged that the conclusions were interfered with, and one of the submissions that we have had says that. If that is the case, why do you think that the document was interfered with?

**Mr. Gifford:** One would be rather naive if one was not aware of the tendency for official, supposedly scientific, Government-sponsored reports, which are supposed to be totally objective, to have an element of wishing to please those commissioning the reports, and indeed sometimes they are rather too generous with the ability to tailor the conclusions to fit the master's purposes.

However, in this particular case, we have direct evidence of the actual redrafting process. It came in very late, because we asked for drafts of the two studies—the preliminary one in 2000 and the so-called "phase 2B" that came in the middle of 2002—because we were not very happy that the negative bits were being trumpeted by the Government all over the place and nobody ever mentioned the positive bits, at least not in administration circles.

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So we were told that, yes, you can have the draft of the preliminary study, but no, you cannot have the draft of the phase 2B study. Now, that was enough, because the draft of the preliminary study showed very clearly that an unqualified conclusion that there was no problem with up to 1,000 islanders resettling immediately had been amended by a handwritten note, following a meeting with the administration, to make it a qualified conclusion. It actually said, in quotes, “qualify” and “if”—

**Q142 Chairman:** You said “the administration.” Just for the record, who do you mean by “the administration”?

**Mr. Gifford:** The British Indian Ocean Territory administration office.

Lo and behold, the published version, which we already had, showed that settlement is physically possible, but only if a number of qualifications were met, and there were half a dozen qualifications, which in practice did not amount to very much, but they made the conclusion look much more qualified. That was the preliminary study. When it came to the phase 2B study, the only bit that you ever see quoted by Ministers or officials is the so-called “general conclusion.” It is about three or four lines and it amounts to a supposed conclusion that resettlement is precarious and costly. Now, it sticks out like a sore thumb, because it does not follow from what goes before, nor from the body of the research, and nor does it fit in with what follows. What follows is that, in order to proceed with this study, we have to do all sorts of things: we have to consult the islanders, as any resettlement plan must do; we have to look at the costs of resettlement, which they were prohibited from doing by their terms of reference; and we must look at the benefits of resettlement. You would think that those elements were pretty fundamental—costs, benefits and consultation—but they were excluded from considering any of them by their supposed terms of reference. Instead, you got this conclusion that sticks out like a sore thumb and says that it is too costly and too precarious to send the islanders back, none of which was based on any of the research outlined in the rest of the report.

So, being very unsatisfied with the fact that this bit was always quoted in law proceedings, public statements or wherever, we asked for the draft, and lo and behold we were told that all copies of the drafts had been destroyed following a meeting between officials and consultants. We asked why that was and they said, “It is standard practice. We do not keep drafts after six months.” We said, “There was litigation pending at the time, in 2002. You might have been required to produce all drafts of the report. Surely you would not have destroyed them without consultation with the legal department, at least.” There was no answer to that, so we asked for the electronic copies—this is all under the Freedom of Information Act, and the questions were suggested by the UK-Chagos Support Association, so I can refer to it.

The terms of reference in clause 17 say that the consultants will supply electronic and hard-copy versions of their draft report, and following

comments from the Foreign and Commonwealth Office and the BIOT, consultants will then finalise their report. That was the structure built in to the terms of reference. We asked for the electronic copies and all we got was the reply, “There aren’t any.”

**Q143 Chairman:** That was the basis for the ministerial answers. I have one from the then Minister, Bill Rammell, in 2004, who said it would be “highly precarious”—a phrase you used—and would involve expensive underwriting by the UK Government for an open-ended period, probably permanently. The line we are getting from the Government is that there would be contingent liabilities indefinitely and it would not be a sustainable return, therefore there would be an unquantifiable cost to the taxpayer, which means that it is not justifiable. Are you saying that that is not the case, according to some of the earlier drafting? Can you put a figure on the costs of resettlement—both the immediate costs and the long-term costs of contingent liabilities?

**Mr. Gifford:** The Government’s stab at producing figures is very worrying. When Bill Rammell announced to me the cessation of the feasibility studies in June 2004 following the passing of the Orders in Council, he told me that the cost was estimated at £5 million. I was a bit staggered by that and said, “That is not very much. It is the cost of an embassy building. It is not much by the side of expenditure on other Overseas Territories. To right an historical injustice it is very modest.” However, that figure then got altered. By the time we got to court somebody in the Department had recalculated and come up with £22 million. Worryingly, I have just been given a copy of the National Audit Office report and the only reference to the BIOT—

**Q144 Chairman:** Is that the report, “Managing Risk”, which was published recently?

**Mr. Gifford:** Yes. I was staggered to see the description of risk in respect of resettling. Under “potential cost” it says that the 2002 study estimated resettlement costs would be in the order of £40 million over 10 years. The resettlement study in 2002 was expressly prohibited by its terms of reference from dealing with costs, and it did not come up with a single figure. I hardly think that Sir John has cooked up that figure.

**Q145 Chairman:** Sir John Bourn, not Sir John Stanley?

**Mr. Gifford:** Yes.

We must not shrink from the fact that there will be a cost, possibly a substantial cost, for rehabilitating the islands. We think it would be right to share the cost; we think there are funds in Europe. We went to the chairman of the European Development Fund to deal with the Government’s argument, since we were told we could not go to the EDF because we are talking about an unpopulated territory. We got a sympathetic Member of the European Parliament to ask the chairman of the fund, “What if the islanders

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went back? Would funds then be available?" He gave a formal reply saying that a resettled population would be able to apply for the next round of funding from the EDF. So the answer was yes.

I want to come finally to the conclusion of our consultant, which is that clear income opportunities for settlers and general revenues to their local councils have been identified and Chagos would have much less need for annual subventions than most other Overseas Territories.

**Q146 Chairman:** But there would be some need for the Department for International Development or another Government Department to give ongoing support to the community there.

**Mr. Gifford:** Yes, but diminishing support. There are better economic prospects for Chagos than there are in many other Overseas Territories.

**Q147 Chairman:** We are talking a maximum of 1,000 people to be resettled, as we discussed earlier.

**Mr. Gifford:** Yes, the initial phase is identified as 150 families, which equates to about 750 people of different ages.

**Q148 Mr. Keetch:** You mentioned earlier that Salomon island and Peros Banhos had been identified as the two islands to which you would initially want to go back. The map that we have is not wonderful. How far from Diego Garcia are those islands?

**Mr. Gifford:** One hundred and thirty-five nautical miles.

**Q149 Mr. Keetch:** So they are not literally across the bay? They are a long way away.

**Mr. Gifford:** They are a long way away—they are right across the Great Chagos bank, which is rather hazardous to cross.

**Q150 Mr. Keetch:** So people there would pose no clear security threat to what is happening on Diego Garcia?

**Mr. Gifford:** That is our view.

**Q151 Mr. Keetch:** Okay. May I ask what happens on those islands at the moment? If I were to come along in my little yacht and decided to land on Salomon Island, would the US military stop me?

**Mr. Gifford:** No. If that were, by chance, to happen, you would get a visit from the fisheries protection vessel, which would issue you with a ticket for \$30, and that would count as a permit to be on the islands. But you would have to stay on your boat overnight; you are allowed to walk around the islands in the daytime, but you have to stay on your boat at night, which would be moored in the lagoon, along with the 20 or 30 other ocean-going yachts that bowl up.

**Q152 Mr. Keetch:** Who gets that \$30?

**Mr. Gifford:** It goes to the BIOT administration.

**Q153 Mr. Keetch:** So the UK Treasury is getting the funds from moorings and such things over there?

**Mr. Gifford:** Yes, but its principal revenue is from fishing licences, which bring in between £1 million and £2 million a year.

**Q154 Mr. Keetch:** What would you estimate is the revenue that the UK taxpayer gains from fishing and boating—£1.5 million a year?

**Mr. Gifford:** Yes. It has been as high as £2 million in a year, and there are answers to parliamentary questions on all this.

**Q155 Mr. Keetch:** To be clear, we are actually gaining revenue from these islands?

**Mr. Gifford:** Well, it is said that it costs as much as it brings in to run the fisheries protection vessel and the BIOT presence on the island.

**Q156 Sandra Osborne:** Can I ask you about compensation? I believe that there have been some settlements in the past, including a full and final settlement in 1982. It has been established in the UK courts that the UK Government are under no legal obligation to pay further compensation. Why do you believe that there is an entitlement to further compensation?

**Mr. Gifford:** We think that the settlement in 1982 was conducted largely without consultation. In its terms of settlement, it was unfair. In its implementation, the very detailed legal acknowledgement and surrender that the islanders were required to sign was neither explained nor translated. In accepting the last tranche of compensation of about 600 rupees, which was only worth about £20 or £30 in those days—the whole amount was only about £2,500—they were required to thumbprint a very legalistic form that the British Government required the Mauritians to obtain. That, sadly, is held up to be the basis of the finality of the settlement.

Nothing was done to find out from the community what its needs were or whether it wanted training, jobs, housing or repatriation—none of those things was gone into at the time. A lump sum was simply negotiated between the British Government and the Mauritian Government, who were going to disburse it. The question was what they would have to pay to get rid of the problem, but they did not get rid of the problem. The islanders have never integrated: they have maintained their own separate identity and they have suffered more than most in their communities and in their personal lives. There is an illness that the Chagossians recognise; it is called *sagrin*, which we might know as *chagrin*—they die of sadness because they want to go home. It is thought that compensation is appropriate in those circumstances.

**Q157 Sandra Osborne:** Given what you have just said, is there a level of compensation at which the islanders would give up their right to return?

**Mr. Gifford:** Even if you asked the Government these days, I do not think that they would say it was possible to surrender your birthright in that way. I do not think that you could conceptually construct a settlement that would enable that to happen. There

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might be islanders who do not want to go back, and many certainly would wish to receive compensation for what they have suffered. However, I do not think that these days you could bargain away such a fundamental right, as the Court of Appeal said.

**Q158 Sandra Osborne:** Do you have a view on whether the habitual residence test for Chagossian benefits claimants in the UK should be removed?

**Mr. Bancoult:** What happened to the Chagossians has been described as a violation of human rights. As a result of a decision taken by the British Government, we were uprooted and are now living in huge poverty in Mauritius. We are now able to have British passports. I am aware that the Foreign Affairs Committee has just presented a White Paper on citizenship, but it did not mention us, because the island has no population and is used for US purposes. The judgment in 2000 did not give us anything on a plate. It is a shame that we have to go to court to be recognised as British subjects. A special case should be made for Chagossians to settle in the UK, where many facilities can be offered to them. I would also like to raise a very important point about gender discrimination. Some people make a division in families, so that some are entitled to British passports and some are not. I simply request that that be discussed and an explanation found.

**Q159 Chairman:** You said at the very beginning that there are about 1,000 Chagossian people in the UK. How old are they? Are they very elderly or is there a spectrum of ages?

**Mr. Bancoult:** Most of those who have settled in the UK are the second generation: I mean children whose mother or father are Chagossian. Most of the native Chagossians are still suffering in Mauritius. It is very difficult for them, because they have always lived on a tropical island, to come here. I must add that it is very expensive to have a British passport. To get one in Mauritius costs 7,100 rupees, which is more than £110 and is difficult for Chagossians to find. We would like to, but it is very difficult.

**Q160 Chairman:** Because you have to pay for a passport?

**Mr. Bancoult:** Yes. We think that there should be a special desk for Chagossians to assist them in all their needs. For example, we should have detailed guidance.

**Q161 Chairman:** Are you talking about a special desk in the UK or in Mauritius?

**Mr. Bancoult:** In Mauritius. Most Chagossian natives there are facing health problems, because most of them are more than 60 years old. They should be treated as a special case. There are arrangements for a crisis in other Overseas Territories. The same applies to training, which is not available for young Chagossians. We are alone; we have been orphaned. No one cares for us. We should receive the same treatment as other British subjects and UK citizens.

**Q162 Chairman:** Taking up Sandra's question about habitual residence tests and benefits, are there still people coming from your community in Mauritius to settle in the UK? Roughly how many?

**Mr. Bancoult:** About 1,000 people.

**Q163 Chairman:** At what rate are people still coming to the UK?

**Mr. Bancoult:** Most of the Chagossians are still in Mauritius. There are about 1,000 to 1,100 of them.

**Q164 Chairman:** In an average week, are three, four or five people wanting to move from Mauritius to the UK?

**Mr. Bancoult:** That depends. If we had the ambition, the national test could be removed. Our case is very different. If we have to wait six months or more, our position will become very dangerous and difficult.

**Q165 Chairman:** When there was, for example, the volcanic eruption in Montserrat, the British Government took special steps to allow people from Montserrat to come to the UK without having to go through those difficulties with benefits at the start. I had constituents who were in those circumstances. Initially, there were obstacles, but then some MPs took up the case and it was sorted out very quickly. Those people did not have those difficulties. Can we quantify numbers to determine how we should pursue the issue and try to assist people in a particular way in this country?

**Mr. Bancoult:** If that can be done, that would help, because many people who choose to come here face that problem. They must be treated in a humanitarian way. They are ready to go back home.

**Q166 Chairman:** So they do not want to live here or in Mauritius. They want to live in their home.

**Mr. Bancoult:** Yes. We are waiting for our rights to be restored, and we will return home.

**Q167 Mr. Keetch:** May I ask a few questions about the sovereignty dispute with Mauritius? We are told that the UK has given an undertaking that we would cede the Chagos Islands to Mauritius if at any point they ceased to be of military importance. Is that right? Has such an undertaking been given?

**Mr. Gifford:** Yes. It was an undertaking given at the time by the Wilson Government and repeated subsequently by the Thatcher Government to retrocede the Chagos Islands when they are no longer required for defence purposes.

**Q168 Mr. Keetch:** The President of Mauritius has said that he would be prepared to leave the Commonwealth to pursue his claim to the islands. How far do you think the Mauritian Government would go to try to rest their claim? Do you believe that they might take it to the International Court?

**Mr. Gifford:** Yes. The Mauritian Government are very much wedded to the idea of sovereignty. They take the view that "We was robbed". They believe that Mauritius was regarded as an inferior, non-independent country. It was worried about negotiating the terms of its independence at the time,



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and it had its arm twisted, so it was in a lower bargaining position and it was not true consent when it agreed, in return for £3 million, to cede the islands to Britain. There is no doubt that successive Mauritian Governments have tried very hard in a number of ways to persuade the Government to return the islands, and they would love to get a case off the ground in the International Court of Justice, if only they could find the jurisdiction to do it. They believe they have a strong legal case. Unfortunately, jurisdiction is lacking in the absence of consent, and the manoeuvre that you mentioned—seceding from the Commonwealth—was plugged the same day by the Foreign Office when it filed an amended consent to jurisdiction that excluded former members of the Commonwealth. It quickly cut that out on the same day that it arose.

**Q169 Mr. Keetch:** Presumably the Mauritian Government would support the resettlement of the Chagos people too?

**Mr. Gifford:** It is very interesting. Past Governments have been hostile to the Chagossians' claims. I was told by a Foreign Minister in a previous Government that they could not in any way support the islanders' claims against the British Government, because that would be asserting their rights under the British constitution and would somehow compromise Mauritius's claim to sovereignty of the islands. However, I am very happy to say that they have a much more enlightened Prime Minister at the moment and he has made supportive public statements. After the recent victory in the Court of Appeal, he went on record as saying that the interests of the Mauritian people, the Chagossian people and the Mauritian Government were now complementary and they could march forward together. So I think that, as soon as Mauritius realises the commercial benefits that will come to it from re-establishing the economy of the islands, Mauritius will be quite helpful and positive.

**Q170 Mr. Keetch:** Presumably, it is about time that we started asking the people of Chagos themselves what they want. What is the general view of your people? Would you rather return to the islands and they were, say, a British overseas territory, or would you like to see them become part of Mauritius?

**Mr. Bancoult:** The most important thing for us as a people is to give preference to our fundamental rights, because, as far as sovereignty is concerned, that is an issue between two Governments. We do not want to just be concerned by sovereignty. It is a political motor, but the most important thing is our fundamental rights, to be able to return to our homeland and to have everything done so as to let the island develop.

**Q171 Mr. Keetch:** With respect, a British Government might well say, "Well, look, we would quite like to know what is going to happen? If we fund your return to the islands and we start helping you to do that, are you going to turn round in six months and say, right, we want to leave the British

Overseas Territories and join Mauritius?" Surely, that is a legitimate question for us to ask? What is your view?

**Mr. Bancoult:** In the past, all decisions were taken without consultation of the Chagossians. The wish of our people is that we would not like any decision to be taken without consultation.

**Q172 Mr. Keetch:** If the people were consulted, what is your gut feeling about what their answer would be? Would they want to become Mauritian, or would they want to stay as part of a British Overseas Territory?

**Mr. Bancoult:** Frankly, most of us want to stay British.

**Q173 Andrew Mackinlay:** Assuming that this wrong could be remedied, as it were, has there been adequate work about these islands and atolls—to the extent that one can do such work—as to what will happen in the next 100 years? What are the problems with sea levels rising, and that sort of thing? I hesitate to ask the question, but unfortunately the world is as it is, is it not? We have just heard from people in Tuvalu, and other places that have been hit by rising sea waters, so I ask the question.

**Mr. Gifford:** If you read the Government's feasibility studies, they do not say anything specific about that issue; they just talk about a general lack of evidence. However, I believe that the general understanding is that nothing serious is going to happen for about 100 years and an awful lot depends on what measures can be adopted in the meantime. Coral islands are not fixed like granite; they have the capacity to breathe and move. These are the finest corals in the world so the prospects are not bad. My consultant tells me that these islands are better placed than most coral atolls to resist global warming and rising sea levels. I cannot be very specific as it is so complex, but we know that the Americans are investing millions of dollars in shelters, so they are not planning to evacuate at any time soon.

**Q174 Andrew Mackinlay:** Have you investigated the territories' status vis-à-vis the European Union? Gibraltar, for instance, is in the European Union; the islands that are closest, the Isle of Man and the Channel Islands, are not, and neither are the Overseas Territories in the Caribbean, but they have a special relationship. Does the European Union have any legal jurisdiction over these lands or is there a void in that respect?

**Mr. Gifford:** They are one of the Overseas Territories recognised by the European Union. The people are all British citizens, who have the right of movement throughout Europe. They do not have any right to assert their own identity in the European Union because everything has to go through the Government. They are a kind of NGO without a voice. We have attended EU-ACP meetings and been tolerated outsiders. A certain amount of interest has been expressed, but the Chagossians have no official status.

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**Q175 Chairman:** May I take you back to the environmental question? We have taken evidence in which people have told us that one of the perverse advantages of the situation that has developed is that there is an area where the natural environment has developed because there is no human habitation. Consequently, there are rare species and damage could be caused to the area if people were to move back there. What is your reaction to that evidence? Mr. Bancoult, what do you feel about that?

**Mr. Bancoult:** We were the guardians of the environment. We always protect our environment; we do not want to destroy anything. We do not see how people can say that we will damage it. Of course we will look after it.

**Mr. Gifford:** Consultation is beginning between our resettlement team and the Chagos Conservation Trust. A joint plan is evolving to pursue the Chagos

Management Plan that has been adopted and to train Chagossians as conservation guardians. I think it is accepted on all sides that that could be a benefit.

**Chairman:** Thank you. As there are no more questions we have come to the end of our session. I thank both of you for coming along this afternoon. It has been very useful for us as it has given us a completely different perspective on Overseas Territories. As you know, some of the Overseas Territories have lots of sheep and few people, some have larger numbers of people, and your islands have a particular history. We hope at some point they will also have people resident there who can act as guardians of the environment.

**Mr. Bancoult:** May I thank you for allowing me to speak on behalf of my community? It has been a pleasure to explain our wish to return to our homeland.

**Chairman:** Thank you.

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## Wednesday 6 February 2008

Members present:

Mike Gapes (Chairman)

Mr. Paul Keetch  
Andrew Mackinlay  
Mr. Greg Pope

Sandra Osborne  
Rt hon. Sir John Stanley

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*Witness:* **Hon. Joe Bossano MP**, Leader of the Opposition in Gibraltar, gave evidence.

**Q176 Chairman:** Joe Bossano, welcome. You are familiar to many of us here and I suspect that, over the years, you have appeared before various Committees in this place on many different occasions.

As you know, we are currently conducting an inquiry into the Overseas Territories. Although we are not visiting Gibraltar this year, several members of our Committee visited Gibraltar last year, and we therefore thought it was useful to get evidence from Gibraltar as part of the inquiry.

May I begin by asking you how you assess the Cordoba agreement and where we are today, given that you are on the record as saying when it was agreed that it was in some respects contrary to Gibraltar's interests and unreasonable. Is that the view you still hold? How do you assess the progress that has been made?

**Joe Bossano:** Perhaps one needs to define what progress means. Progress means different things to different people. The Spaniards have a very clear idea what progress means from their perspective and therefore progress is anything that advances the prospects of a Spanish Gibraltar. We do not measure progress by the same yardstick.

One needs to distinguish between the tripartite forum, which was created. We took the view then that we would reserve our judgment and evaluate the results. The only result that it has produced has been the Cordoba agreement. The Cordoba agreement had a number of elements with which we disagreed and which we would have altered if we had won the election, which was a very close thing.

One of the elements was that, on a number of occasions in the text, there was a specific reference saying that the references in that document to the sovereignty of Gibraltar was exclusively a matter for the United Kingdom and the Kingdom of Spain and that this was understood and accepted by the Government of Gibraltar. We made it very clear that, if there were a different Government of Gibraltar, that different Government would inform the other two parties—meaning us—that we would not accept or understand that the reference was bilateral to the other two signatories.

There is, of course, a very clear piece of progress from the Spanish perspective: the Spanish pensioners got paid revalued pensions from 1 April last year, and provided that they accepted that that revaluation should be paid directly to them in a Spanish bank account, instead of their coming to collect it in Gibraltar, they got as an inducement an amount of money equivalent to all the increases that

they would have had since 1989 in the Gibraltar social security pensions, which no other contributor has received.

Therefore, we have been very critical of that arrangement, where people who paid the same number of stamps receive different levels of benefit, because one gets retrospective payments and the other one does not. Furthermore, whether they get it or not depends on a number of things. One is that you have to be Spanish: if you are another nationality, you do not get it. That seems to us to be clearly contrary to the entire spirit of Community law on non-discrimination. The second element is that you have to have stopped contributing in 1969, when the frontier closed. So we are rewarding the workers that abandoned Gibraltar in 1969 and penalising those who came to work afterwards. There are other aspects, and therefore, rather than saying whether this is progress or not, we say there are things we have no objections to and things that we object to.

**Q177 Chairman:** Can I ask you about some specific matters? What about telecommunications?

**Joe Bossano:** Telecommunications is a clear win for Gibraltar in terms of its fundamental position, as Spain had to accept the 350 international code, which had been resisted until that time. For the benefit of analysing this element of the Spanish restrictions, we need to realise that this was not something introduced by the Franco regime; it was introduced by democratic Spain, because at the time the telecommunications were removed, the international dialling code did not exist. When telecommunications were restored by the Felipe Gonzalez Government, they refused to restore normality. Instead, they gave us 30,000 Spanish numbers, which were treated for calling purposes as though they were in Spain. In fact, what has now happened is that calls from Spain to Gibraltar are now more expensive, and we pay more for our phone calls, but we have the benefit of being accepted as a different jurisdiction and a different country with its own country code and the calls are international, so we are happy to pay more for them.

**Q178 Chairman:** What about the land border crossing?

**Joe Bossano:** The movement across the border has improved as a result of the actual implementation of the red and green channel, which Spain promised to do when the frontier opened in 1986, as part of the Brussels agreement of 1984. When they signed up to

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the 1984 agreement, they agreed that when the frontier was reopened, there would be a red and green channel. It is progress that it has been implemented, but it certainly is significant to recall that it has taken them over 20 years to deliver what they promised. At that rate, maybe we can project future progress.

**Q179 Chairman:** You referred earlier to the forum. There have been several ministerial meetings since 2004, and the most recent one was in November 2007. The former Foreign Office Minister, Geoff Hoon, informed us last year that, in the view of the Government, the arrangements were on track and working well. What is your assessment of that?

**Joe Bossano:** I do know where the track is leading to and, therefore, little comes out of these things. For example, in the case of the actual arrangements in the Cordoba declaration, nobody knew what was in it until after it was agreed and made public. So in Gibraltar, we tend to rely predominantly on leaks in the Spanish press. Although the three parties are sworn to silence and confidentiality, the system leaks at the Spanish end much more efficiently than at the Gibraltar or UK end. Although reports in the Spanish press are not 100% accurate, the deal on Spanish pensions, for example, was explained in the Spanish media, with something of the order of 90% accuracy, 15 months before it happened. If anything new is in the pipeline and we are on track to achieve it, we will know it after the event and will then have to judge it post hoc. We cannot evaluate it beforehand, because no information is available.

**Q180 Chairman:** May I ask you, then, about the airport issue? Are you still opposed to the airport customs and immigration arrangements that were part of the Cordoba agreement?

**Joe Bossano:** Yes. The new agreement provides for a change in the regime once the air terminal is extended. The Cordoba agreement provided simply for a corridor to be built from the existing terminal to the Spanish frontier, to avoid the arrangements whereby people now get a bus in La Linea to come to Gibraltar and take an aircraft to Spain. The Government subsequently announced their intention of going beyond what was required by the Cordoba understanding and investing something of the order of £30 million in the building of a new terminal. From a point of view not having anything to do with Spain, but rather with public expenditure, we do not support that.

Although there were initially 14 flights a week to Madrid—one run by GB Airways and the other by Iberia—GB Airways pulled out altogether and Iberia cut its flights from seven a week to two a week. We have a terminal in which, until something new happens, we are investing 30 million quid to provide for a weekend flight to Madrid and a daily flight to Gatwick. We do not think that is a good way to spend public money, but that has nothing to do with the foreign affairs dimension of the issue.

As regards the arrangements, what we are seeing now is that, even though something like 60% of the traffic that goes from Gibraltar to Madrid is of

Spanish origin—that is to say, not of Spanish nationality, but originating on the Spanish side of the international border—people from Spain prefer to come into Gibraltar, do some shopping, because we have much lower prices than in many commodities, and catch the Gibraltar-Madrid flight from the Gibraltar end, rather than take the La Linea bus. The bus is operating at very low occupancy levels. That is going to be replaced by a system whereby, technically, nobody will be able to board the aircraft in Gibraltar and exit the aircraft in Spain on landing. Once the extension is there, they will be deemed to have entered Spain before boarding the aircraft and to have remained in Spain after landing, because the exiting from Spain arrangements take place after landing and the entering Spain arrangements take place before boarding.

To us, that is totally unnecessary, and we therefore support the existing arrangements, which give people the flexibility to choose to fly Gibraltar-Madrid or La Linea-Madrid. There are lots of unknown elements in the new arrangements, which will only be tested once they are put in place. Suppose somebody has shown his passport at La Linea, and something happens between him showing his passport and getting on the aircraft. Where is he? In no-man's land; still in Gibraltar; or has he now left Gibraltar and is in Spain? Those things indicate the peculiarity of the arrangements, which are intended exclusively to allow Spain to argue that, in fact, they do not concede that it is an international flight between Spain and Gibraltar, but a domestic flight between one part of Spain and another.

**Q181 Chairman:** May I clarify one thing? The new terminal is not yet under construction.

**Joe Bossano:** No, it was announced in May last year, before the general election, and it was due to go to tender. The last time that I asked in Parliament about this, I was told that three companies had tendered to do the work and that all three were Spanish. As far as we know, to date, the tender has not been allocated.

**Q182 Mr. Keetch:** May I ask about the Odyssey, Mr. Bossano? It seemed to us to be an extraordinary incident, but its ramifications are deeply constitutional and potentially important. Give us your understanding and your picture of it.

**Joe Bossano:** The view on our side of the political fence is that, if an American company or a Panamanian ship does something that is against the law, the answer is for the people who think that it is against the law to take the necessary legal steps to enforce the law. Of course, the Spaniards argued that, because they did not concede any territorial waters under the treaty of Utrecht, we do not have any territorial waters. You have already had the views of the Foreign Office on that, in which it says that the Odyssey was intercepted by Spanish vessels three and a half miles away from Gibraltar. The United Kingdom chose, in our case only, to claim the three-mile limit, even though in all the other

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Overseas Territories, they claim the 12-mile limit, and in the Falkland Islands they have a 200-mile economic exclusion zone.

**Q183 Mr. Keetch:** That would take in most of the Mediterranean. It would be difficult to enforce a 200-mile limit there.

**Joe Bossano:** Remember that the median line that the Foreign Office put in the paper to you—I imagine, to confuse you, because that is its strategy normally—applies only in the Bay of Gibraltar. There is no median line on the eastern side; the next bit of land is when you hit Morocco. You may not have 200 miles, but you can certainly extend the 12-mile limit, as in La Linea. If you go in a straight line from La Linea into Gibraltar in the sea, you are in Spanish waters after three miles, and then you are in international waters, because the United Kingdom has chosen not to extend our territorial waters to the same 12-mile limit. Obviously, for one reason, and one reason only, if Spain does not recognise three miles, it will not be chuffed at having to recognise nine more.

The constitutionally important dimension is that the United Kingdom has the responsibility for protecting and defending the territorial waters of its Overseas Territories. Therefore, what they should have done a long time ago, and what they should do with no further delay, is to increase the three miles to 12 miles and ensure that people are made to respect our territorial waters, as is the case in every other colony.

**Q184 Mr. Keetch:** Just remind me, when a British nuclear submarine got into difficulties and was in port in Gibraltar a few years ago, were you part of the calls from people in Gibraltar that it should be removed, on the basis that you did not want it there?

**Joe Bossano:** No. We objected to it being repaired there, because when I was a branch officer of the Transport and General Workers Union and the Ministry of Defence wanted to cut back on the work load of the dockyard and make people redundant, we tried to persuade the Ministry of Defence that we should be permitted to do repairs on nuclear submarines. The Ministry told us that it could not allow us to do that, as the facilities could not be upgraded in Gibraltar, because we were too small, the population was too close and it was too dangerous. As the population is still the same and the size of the Rock is still the same, it cannot cease to be dangerous just when it suits them. That is the only thing I objected to.

**Mr. Keetch:** We will not pursue that.

**Chairman:** It is one of the great advantages of being an experienced person who has been around a long time.

**Joe Bossano:** Thirty-six years.

**Chairman:** Andrew, you wanted to ask about pensions.

**Q185 Andrew Mackinlay:** Briefly, in the previous Parliament when the right hon. Member for Neath (Mr. Hain) was here, he referred to the pensions

thing repeatedly as a scam, and he blamed the Gibraltar Government, as distinct from the United Kingdom Government. I never really got my head round that, but I notice that the British Government now seem to have resolved the scam. Can you just take me through that?

**Joe Bossano:** Yes, I think that they have done worse than that. They have actually perpetrated a scam against every non-Spanish contributor. That is what the British Government have done. I feel particularly strongly about this because I was in government when pensions were frozen, and I had the difficult job of freezing pensions for all the contributors; it was done for one reason and one reason only, which was to save British taxpayers money.

The United Kingdom said to me, “Look Joe, okay, you have convinced us that we have the responsibility for paying the pensions because Geoffrey Howe promised to do this in 1986, but what we are not prepared to do is give Spanish pensioners annual increases, because you decide to give them to pensioners of all other nationalities. Therefore, either you pay for the pension increases or you freeze everybody, so that we don’t have to pay.” It was Hobson’s choice, so we froze them.

What they have just done as a result of Cordoba is to recognise that the freeze was wrong; they have unfrozen the increases retrospectively to 1989 at a cost of £30 million or £40 million, bringing the total cost to the British taxpayer to £250 million, in exchange for a contribution that the Spanish workers made in the 15 years that they were there, of one shilling and five pence before decimalisation. The total contribution in the 15 years was £250,000. The payback for those contributions has been £250 million, £1,000 for every pound contributed—the best social insurance scheme in the history of mankind. That is a scam.

**Q186 Chairman:** Can I take you up on the figures? You quoted two different figures, £30 million and £250 million. As I understand it, the estimated cost to the UK taxpayer, according to the National Audit Office, is about £100 million.

**Joe Bossano:** They are probably not calculating the costs from 1 January 1986, which is when it started. They are probably calculating the costs from the most recent backtracking that has taken place. The original bill would have been even more. The fact is that it is less than it would have been if they had paid at the beginning, simply because when the United Kingdom made this last agreement, it agreed to pay the surviving pensioners and the heirs of pensioners who died after October 2007. Since then, the latest additional cost is likely to bring the total bill—the total cost past and future—from 1 January 1986 up to when the final Spanish pensioner dies, and his final descendent disappears, to somewhere in the order of £250 million. The £30 to £40 million is the cost of the element agreed in Cordoba.

**Chairman:** Thank you. That is helpful. Paul, you wanted to come in on another issue?

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**Q187 Mr. Keetch:** Yes, I wanted to probe you on something. We did not have a general election in September—although many of us wanted one—but you had a general election in October. Tell us what the results were.

**Joe Bossano:** The result was that the Government won with 500 votes more than the Opposition, which means that, if 250 or 300 people had had the wisdom to change sides, I would now be addressing you as the Chief Minister.

**Q188 Mr. Keetch:** But compared with them, did you do better?

**Joe Bossano:** The number of extra voters who cast a vote in this election was 1,411, and my share of that extra vote was 1,341. But it was not enough.

**Q189 Chairman:** Can I ask you about the Cervantes institute, which is dedicated to teaching Spanish as a second language and promoting Spanish culture? That has been one of the issues in the Cordoba agreement, and it is supposed to start its activities in 2008. What is your view of it, and do you believe that there could be any benefits to Gibraltar from it?

**Joe Bossano:** We are bilingual, and I think that you need to appreciate that in all linguistic communities, in the United Kingdom, in Spain or in any other nation state, the standard variant of the language happens to be the variant spoken by the part of the territory that conquered the neighbours.

The only reason why standard English is the English of the south is that the English conquered the Scots and not the other way round; otherwise the standard language would be the one with the Scottish accent. In Spain, the Castilians conquered the rest, and that is why Castellano is the standard variant of Spanish. The variant that we speak in Gibraltar, which has imported long words from English, Genoese and a number of other elements in our population, is closer to standard Spanish than, say, Catalan or Galician. I do not think that our language will improve, and I do not think that our insight and understanding of the Spanish character needs improving. I think that we have got them sussed out completely.

Independently of that, we have no objection, in principle, to all member states opening cultural institutes in Gibraltar, renting buildings, employing cleaners—preferably TGWU members—and paying rates. We simply object to taxpayers' money being used to provide a public building to a foreign Government to open a cultural institute, when the declared objective of that foreign Government is to increase to possibility of Hispanicisation of the Gibraltarians, of which there is no prospect, and reducing British influence in Gibraltar, of which, again, there is no prospect. From a public finance point of view, I know that part of what you look into is contingent liability and the proper use of public funds. Therefore, we are doing our bit, in our corner of the world, to make sure of that.

**Q190 Chairman:** To be clear, this is a facility whereby the building is being made available by the Government of Gibraltar?

**Joe Bossano:** Voluntarily. It is not part of a deal. It is not that the Spanish said, "We want £40 million for our pensioners and a building for the Cervantes institute." They did not put it that way. The Gibraltar Government, out of the kindness of their heart, wanted to offer it. We have youth clubs and senior citizens clubs—I happen to be the president of the senior citizens' club in Gibraltar—that could do with this kind of public building, if the Government have nothing better to do with the money.

**Mike Gapes:** Could we now move on to the constitution?

**Q191 Sandra Osborne:** I come from the south of Scotland, and Gaelic was never my first language, but the British Government are putting substantial resources into teaching people Gaelic.

May I ask you about the new constitution? I know you have concerns about the preamble, but one of my colleagues will ask you about that. Concerns have been raised that the Executive, under the new constitution, have too much power over the police and the judiciary. Would you agree with that, and do you have any other concerns?

**Joe Bossano:** I was in the Select Committee that was set up in 1997. You have read my paper.<sup>1</sup> This is something to which we attach great importance. I have been in the Gibraltar Parliament for 36 years. My involvement in politics started 44 years ago, when the United Nations first decided that Gibraltar's decolonisation had to be by agreement with Spain. That was what made me go into politics at the age of 25, and I have been campaigning for decolonisation for two thirds of my life. Obviously, before I pass to the other side, I would like to see the job finished, so this is a very important issue for me. The dynamics of the internal mechanism of the constitution is a problem in a small community.

In the United Kingdom, one can say that there are politicians who are in charge of the police, the administration of justice, and so on. With Gibraltar, however, we are talking about a community of 10,000 families. That is what Gibraltar is. We see ourselves as a micro-state, a mini-nation and a people with its own identity, but we are really little more than a small tribe on a speck of limestone at the beginning of the Mediterranean. In a small community, people are interlinked by family, marriages and neighbourhoods, so, in some respects, it may sound as if it is talking in favour of colonialism. Believe me, it is not. As a socialist, I have been ideologically committed all my life to the concept of decolonisation.

In some respects, however, the figure of the Governor—the figure of somebody external to the system—rightly or wrongly, tends to inspire more confidence in its impartiality. In small places, if people apply for jobs and one guy gets promoted and others do not, even if there is no basis for it, they will look for the family links that explain the promotion, rather than saying it means that the person is better. Therefore, it is a sensitive area.

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There is now a Police Board and a Minister for Justice. There was a Justice Bill that we voted against in the House because we had reservations as to whether we wanted a politician in charge of that. It is one thing to say we do not want the Attorney-General to be in Parliament with a vote because he is not elected, and another thing to say we want someone who has a vote and who is elected to be more involved in the administration of justice than has been the case in the past. It is a new thing in our society. I have concerns about it, and perhaps it is too early to say whether those concerns are justified or not. I can assure you that whatever things the Governor was doing in Gibraltar, there was never any worry about him using the police on orders from the Foreign Office. The concern we had about the Governor was whether he was pushing a particular line, for example when we had the Hain-Straw initiative to sell us down the river. The Governor had a job to do in trying to persuade us that we should paddle in the direction they wanted us to go, which we did not do, obviously.

**Q192 Mr. Pope:** I am amazed by your view that the English beat the Scots. It certainly does not feel like that.

In your submission to the Committee, you mentioned concerns about the wording of the second preamble to the constitution.<sup>2</sup> Could you say a few words about what effect you think that has had on the prospect of delisting at the UN?

**Joe Bossano:** It is important to be conscious of the views of the chairman, Sir Julian Hunt, who was the ambassador for St. Lucia. He is very pro-Gibraltar and very sensitive to our views on self-determination. He said delisting is not the objective; delisting is the result. It is not that there are criteria for delisting. There are criteria for having achieved full self-government. In my view, the United Kingdom Foreign Office is still playing a double game. It moved with the second preamble, quite frankly, because I made clear to Geoff Hoon, when he came to Gibraltar, that we would campaign for rejection of the new constitution unless they gave a public commitment in the House of Commons—which they did in answer to a question from Lindsay Hoyle—and in the United Nations, and put in the text that the United Kingdom recognised that we were exercising self-determination. In the first chapter, on human rights, we mention the provisions in the Human Rights Convention of the United Nations that talk about the inalienable right to self-determination. The second preamble is where we ask the British Government to say specifically that the act of voting in the referendum was making use of this right. They did not want to put it in the preamble. Instead, they put it in an answer to a planted question in the House and they said it in the UN.

The Spanish Government were in the loop even during the negotiating period. The proof of that was that, before we finished on the last day, the Spanish

Government came out welcoming the result that was not yet public, which was the removal of that second preamble.

The United Kingdom claims that we have exercised self-determination. We passed a motion in our Parliament asking people to vote in a referendum that was to be the use of that right. In international law, in chapter 11 of the charter of the UN, it is absolutely crystal clear that you only exercise self-determination to come out of a colonial relationship and enter into a new one. The moment that that happens, the obligation of the United Kingdom as an administering power under article 73 e of the charter ceases automatically. The United Kingdom makes no attempt to go to the UN and say: "In the case of Gibraltar, they have now exercised their right to self-determination, and therefore, we are no longer sending you progress reports." Ask yourselves how the UK can have decolonised us in January of last year and still be reporting on the progress we are making towards being decolonised. We are supposed to have gone past that by now.

So, the answer is that they said to us what we wanted to hear to keep us happy, and they said to Spain what Spain wanted to hear to keep them happy, and they have been playing this game for the 36 years that I have been involved. Therefore, I am here today to try to enlist your help in getting them to come clean and get off the fence. If the decolonisation process is not finished, we will campaign until it is.

The UK Foreign Office has got to be tasked about one thing: for years it was castigating the UN C24 by saying that it was being too doctrinaire in saying you are either a colony or you are independent and that, in fact, self-determination and decolonisation did not necessarily equate to independence. I remember, for years, the British Government arguing in the UN, quite legitimately—and they succeeded in persuading the C24—the question of how you can say that the Pitcairn Islands, with 47 people, can only be decolonised by becoming independent. What do they do: open 47 embassies and that is it? Then they run out of population!

Logically, one has to say that the remaining colonial territories are also entitled to the inalienable human right of self-determination. They also are entitled to aspire to emerge from a colonial relationship with a power like the UK, France or Holland. But in each case, it is no longer "one size fits all." What is possible for Bermuda or Gibraltar is not necessarily possible for Montserrat or Pitcairn. Therefore, I feel this Committee has a role to play in closing the colonial chapter and helping to bring about solutions that meet the criteria. Then the UK, as the administering power, is perfectly entitled to go to the UN and say, "The fact is that we have given this amount of self-government to Gibraltar because, in their circumstances, that is what they are capable of handling. But we are not going to give the same to Montserrat, St. Helena or the Falklands—with 2,000 people in the south pole—not because we do not want to, but because they might not be able to do so much for themselves."

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That was what we were promoting in this new constitution for Gibraltar. We think the content of the constitution is capable of meeting that yardstick and our approach at the UN is to say that if it is the UN that has rejected this, let the UN tell us where it falls short. But, unfortunately, at the General Assembly in December, the UK supported a resolution that was identical to the one with the old constitution: still requiring our decolonisation to be on the basis of a negotiated settlement with Spain. There is a caveat at this stage that that will not happen without the consent and support of the Government of Gibraltar.

Let me tell you that when I started in 1964, the UK's position was stronger. It was held that the treaty of Utrecht did not curtail our right to self-determination, even to the extent of independence. The UK was defending in 1964 the position that the Gibraltarians and the Falkland Islanders were not barred from independence and that they did not go because they did not want to. That position has not been restored.

**Mr. Pope:** I think that the UN has difficulties with the concept of people exercising their right to self-determination, but not wanting independence. That has caused real confusion with the C24.

**Q193 Sir John Stanley:** One of the key relationships between this country and the Overseas Territories lies in the limited number of appointments that are made out of this country to senior posts in the various territories. Would you like to make any comments on how satisfactorily you feel the present system for UK-made appointments is carried out and on the level of consultation that takes place? Do you have any comments on the length of the terms for which people are appointed and on procedures that apply if it becomes necessary, for any reason, to terminate an appointment before the end of the due term?

**Joe Bossano:** The appointments that are made by the UK in Gibraltar—now and under the old constitution—are the Governor and the Chief Justice. When I was in government, we wanted to continue to have a military Governor, because in our view they tend to have a closer affinity with Gibraltar because of its military history. People who are of a sufficiently high rank are sufficiently used to giving orders that they can resist taking them from the Foreign Office. Also, they have already retired and are therefore not on a promotion ladder to go anywhere else, so they can not be leaned on.

We had a very clear-cut set of criteria, whether they were an air commodore, a brigadier, a field marshal like John Chapple or a naval officer. In our experience, our military Governors have been tougher defenders of the Gibraltarian interest than civilian Governors. We have had few civilian Governors, and I am happy to say that we now have a Royal Marine as Governor. As you all know, the Royal Marines were involved in the battle to capture Gibraltar in 1704, so presumably he will want to keep what was captured then.

Again, when the present chief justice was appointed, it was not the choice of the Government of Gibraltar. The Gibraltar Government appointee, the head of the civil service who sat on the Public Service Commission, came to me for input. I told him that the only guy who we could say we would like, of the people who were there, was the only person that we knew. That man happened to be somebody who had been Attorney-General in Gibraltar. I thought that he had put up a very tough fight against the Foreign Office to get us a land memorandum, under which land would be transferred to us from the Ministry of Defence without us having to pay. He therefore seemed like a good guy to have in Gibraltar. However, it is not possible to see these people's limitations.

I do not think that we are equipped in some areas to assess the qualities of the appointees. We have to assume that people are being sincere when finding somebody to do a job in Gibraltar and that they are doing it for the right reasons. We have to assume that they are picking people who have the right skills, knowledge and experience to do what is required of them.

The staff who serve the Governor's office and the Deputy Governor are UK civil servants who are seconded to Gibraltar. They are therefore not appointed for a specified time in Gibraltar. They may spend a three-year tour of duty there, but effectively they have a career that includes time in Gibraltar, but which will finish up in another Government Department. I do not think that we have any problems in that area.

We have never had the kind of problems that other Overseas Territories seem to have with their Governors. I came into government from being a trade union leader. Trade union leaders have the reputation of not taking no for an answer. I never had any problems with the Governors who served in my time in government. We had a sufficiently close relationship and friendship. They would always say to me, "I have been instructed to tell you—" and then tell me what they had been instructed to say. We would then have lunch together and they would tell me what they really thought. That worked very well.

**Q194 Sir John Stanley:** So you have no proposals that you want to put to us for any changes to the present system. Although we will not go into any details on the Schofield affair, are there any lessons that you feel need to be drawn from it?

**Joe Bossano:** I can tell you that we voted against the Judicial Services Bill because we were not happy with it. When Chief Justice Schofield talked about making representations about the changes, our position was, "I believe that the people in the system are better equipped than I am as a politician." If somebody wants to argue with me about wage bargaining or trade unionism I feel that I am qualified; I have done that for many years of my life. If you ask me what the best way to ensure the independence of the judiciary is, all I can tell you is that I am 100% committed. I said that even if there were no real difference but he felt more comfortable, I was quite happy to support whatever the Chief



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Justice wanted, because I could not see any downside to it. The legal profession in Gibraltar is very big in relation to the size of its population; I think that we have more lawyers than almost any other corner of Europe. *[Interruption.]* Are you a lawyer by any chance?

**Mr. Pope:** No. There are way too many lawyers in this place.

**Joe Bossano:** All I can tell you is that I have never had a very high regard for the legal profession, because I am used to living in a world where we call a spade a spade. The lawyers then diverge into the colour of the spade, the weight of the spade and the length of the spade, depending on the client. That world, which I do not understand and which I do not particularly like, now seems to be running the show. If the Chief Justice was arguing that there would be a greater level of independence if there was less political involvement in the appointment system, I would have had no difficulty. We were committed in the election campaign to coming back to the United Kingdom and saying, "From the position of the newly-elected Government of Gibraltar we have no problems in accommodating anything that the Chief Justice is asking for; we see nothing wrong in doing it."

**Q195 Mr. Keetch:** When we were in Gibraltar in July the Chief Minister told us that there had been a huge change in relations since the appointment of Sir Robert Fulton. How do you get on with the Governor and have you noticed this huge change in relations?

**Joe Bossano:** I do not know where that huge change is supposed to be. There is greater fluidity at the frontier because after 24 years they have done what they promised to do 24 years ago. All I can tell you is that the latest thing that the Spanish Government have done has been to put a protest because—

**Q196 Mr. Keetch:** This was about the appointment of the Governor.

**Joe Bossano:** I am sorry. I thought you were talking about the Spanish.

**Q197 Mr. Keetch:** No, I was talking about the relations that you have with the Governor, or the relations that the Chief Minister has with the Governor.

**Joe Bossano:** I have had no problems with any Governor as leader of the Opposition and no problem with any Governor as Chief Minister. The problems might be either with the Chief Minister we have or with the Governors we have had. If there are problems between two human beings, which of the human beings is at fault depends on a value judgment. I have tended to like most Governors more than I like the Chief Minister.

**Chairman:** I think we are aware of that, Mr. Bossano. That is a healthy relationship between the Leader of the Opposition and the ruling party. We have just seen it today as well.

**Q198 Andrew Mackinlay:** I am trying to get to the bottom of the constitutional position of the office of Chief Justice. It is not clear to me whether he is a creature of the United Kingdom or a creature of Gibraltar. In the United Kingdom, the removal of a judge requires, I think, votes in the Houses of Parliament—long-enshrined in the Bill of Rights. I would have thought that the Chief Justice of Gibraltar or any other Overseas Territory was a creature of the United Kingdom appointments process. I do not know if you can help me on that. If I am wrong and he is a creature of Gibraltar or other overseas territory, it seems that we do not have comparable constitutional safeguards regarding the removal, discipline or suspension of any Chief Justice. It seems to me a hallmark of democratic processes and the independence of judiciary that there has to be some impeachment process, which we have in the United Kingdom. I am asking whether these Chief Justices in Overseas Territories should be subject to UK safeguards and/or impeachment processes. If not, ought there to be an enshrined comparable safeguard, in micro-terms, in the Overseas Territories?

**Joe Bossano:** The only thing I hesitate about, Andrew, is in trying to explain something which I am not really equipped to give you definitive answers on. All I can tell you is that the provisions in the new constitution are not very different from the provisions in the 1969 constitution. In terms of disciplining a Chief Justice, I would tend to look at these things from my own personal background. If this guy were being disciplined in any other job, I would look at it as a branch officer, saying, "What would I argue in the disciplinary proceedings?" I am not very clear on what it is that the Chief Justice is supposed to have done wrong that has led to him being suspended with full pay and brought into a disciplinary proceeding.

I can tell you that the idea—it is not a requirement of the constitution, but a requirement of the legislation introduced by the present administration before the election, and one which we were committed to change—that you should have, as head of the judiciary, a head of the Court of Appeal, which is permanently in the United Kingdom, seems to me to be wrong and unacceptable. No legitimate reason has been given, and the only one I can think of is the protocol list. Some people care more about status than others. I am not the kind of guy who notices the red carpet. I usually make the mistake of going in the tradesman's entrance. For some people, however, a red carpet is important. Of course, in the protocol list, the Chief Justice is in the queue ahead of the Chief Minister. I do not believe in queues, anyway, so it never mattered to me where they put me.

Since the head of the judiciary is no longer in Gibraltar, when we have, for example, the Armistice day or Trafalgar day ceremony, they are not around to have a car with a flag in front of the Chief Minister's car. I speculated, thinking aloud in Parliament, whether this had had any influence on the decision to change the system, because I could see no other reason for wanting to change it. Therefore, I think there is a negative side to it. I

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believe that the man running the judiciary in Gibraltar should be permanently in Gibraltar, all the year round, and not 2,000 miles north. However, the constitution does not require it, and does not prohibit it. The Government of the day has chosen to do it, they are elected, and it is their democratic right. I would not want to appeal to the Foreign Affairs Committee or the House of Commons to overrule the elected Government of Gibraltar, because that would be a retrograde step from the point of view of decolonisation.

**Q199 Chairman:** Thank you. Can we move on to a topical point? We are debating the Lisbon treaty today. Do you have any comments about the way in which Gibraltar's interests were represented during the intergovernmental conference and the negotiation process that led up to the agreement on the Lisbon treaty?

**Joe Bossano:** There is a long saga of mismanagement on the part of the United Kingdom in terms of protecting Gibraltar's position. This is one of the things that has worried me almost since the day I was elected to the Gibraltar Parliament, in July 1972. The first legislation on which I was asked to vote in the House of Assembly was the accession treaty to the European Economic Community in 1972, so that we would join with the United Kingdom: the equivalent of the Act that you passed here. As a newly elected parliamentarian and legislator, believing that I actually represented the people and had the right to express views and change things, I asked if I could move some amendments. The Attorney General said, "No, no, you are not allowed to move amendments, it has already been signed." That was my introduction to the European Economic Community as a newly elected Member of Parliament in October 1972. Since then, we have had a whole cycle of occasions when things have been done—I remember that an agreement was made in Amsterdam at three in the morning and the Foreign Secretary fell asleep. When he woke up, something had been done about Gibraltar which he had missed and was not able to recuperate. I believe that that continues.

One of the fundamental things that I have never got clarification for from the Foreign Office in all the time that I have dealt with this, has been the concept that we are in the European Union as a European territory for whose external relations a member state is responsible. Linguistically, I look at that definition and I say, "If I am part of a territory for whom a member state is responsible, I cannot also be a part of the member state that is responsible for that territory." The UK argues that for community purposes we are part of the UK, but for UK purposes we are not. That is the system that was introduced, and is one of our bugbears. In the system that was introduced consequentially on this interpretation, none of the EU laws operate between Gibraltar and the UK. All the new laws operate between Gibraltar and the European Union, as if Gibraltar did not exist and we were in the UK. That is now being enshrined and carried forward in the Lisbon treaty.

I am not sure that it is possible to unravel that after so much time, but the way that it has been handled from the beginning has been transposed with every stage of the consolidation process that has taken place since the original European Community, through to the European Union, and now to the Lisbon treaty.

**Q200 Chairman:** There was a problem until recently of a backlog of implementation of European Union directives in Gibraltar. I understand that that has now largely been resolved.

**Joe Bossano:** We still have some directives that we implement now and again and that are overdue, but the bulk of them have disappeared. At one stage, there was a huge backlog that was in dispute. We are not part of the single market in goods—at one stage the European Union decided that, for example, even though there was no free movement of goods between Gibraltar and the European Union, we still had to introduce all the legislation on labelling, even though the goods were not in free movement.

Literally hundreds of provisions were related to the free movement of goods, which we had never had implemented. The Foreign Office originally advised that they were not implementable in Gibraltar. You cannot say that something must be labelled in a particular way—in all the languages of the European Union, for example—if at the end of the day we bring in something from Morocco. It cannot enter Spain because it is a non-EU product, so why should we have to label it in 12 or 24 languages or whatever? A big chunk has been removed from the backlog because the European Union has accepted what we are required to do under our terms of membership. We have to implement things to do with the movement of people, the movement of services, health, employment because of the movement of labour, and social security legislation. Anything to do with the import or export of products, agricultural products, or fishery products—those are ours. That has meant that the amount that we have been liable to implement is less than originally appeared.

The other thing is that, increasingly, we are using the Italian model, which is that we just put a piece of paper and we virtually repeat the text of the legislation, and quite a lot of it is meaningless, I always remember the time I was in government when we were required to implement a piece of legislation that had to do with ensuring that we prevented the pollution of rivers where we grew oysters, especially pollution from effluent from chemical plants. We do not have oysters, we do not have rivers, and we do not have chemical plants, but the Foreign Office told the European Union, "They don't have chemical plants." It did not say anything about the oysters or the rivers, and the EU said, "Ah, yes, but they might have in the future." We might have chemical plants, but we will never have rivers, believe me. At the end of the day, I, as a Minister, introduced the Bill in the House. Although it makes nonsense of the concept of Parliament and legislation, we have got a law to make sure that our non-existent chemical plants do

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not pollute the non-existent oyster beds in the non-existent rivers. That was the easiest way to deal with the issue.

**Q201 Mr. Pope:** I realise that we are short of time. I wanted to ask about your view of Gibraltar's relationship with the British Parliament. Obviously, Gibraltar has some powerful advocates in the House of Commons.

**Joe Bossano:** Yes.

**Mr. Pope:** Including a member of this Committee, the hon. Member for Thurrock and Gibraltar, Central (Andrew Mackinlay).

My point is about the formal relationship between Gibraltar and this place, and whether you think that we would be better moving to a system similar to what happens in France, where Overseas Territories are represented in the National Assembly in France. Now that Gibraltar is in with England, South West in the European Parliament, do you think that there is a case for having representation in the House of Commons, or, as this Committee has recommended in the past, do you think that in a reformed House of Lords, Gibraltar and the Overseas Territories might be represented? Do you think that that would be a helpful step forward in the relationship?

**Joe Bossano:** I said earlier how the UK had shifted position, from first of all accusing the UN of equating decolonisation and self-determination with independence, and that that was not necessarily the correct view. The UN has now accepted and said so categorically that independence is only one option and that there are other options. One of the clear options is the concept of integration. It has been there from the beginning; it has not been used on many occasions, but certainly, both the Dutch and the French integrated their colonies a long time ago and, in many respects, on very generous terms.

I noticed that in some of the questions that you put to representatives of the other Overseas Territories you asked them, "What does it take for somebody from the UK to belong here and to have the right to vote?" Well, anybody from the UK who comes to live in Gibraltar is entitled to be entered in the list of electors after six months, and has the right to vote and to stand for election, provided that his intention is to stay in Gibraltar and make it his home. We do it because we are the colony that is geographically closest to the UK. The influence of this House and the influence of the culture of the UK reached Gibraltar before it reached anywhere else, including our special relationship with the Navy. We were the first and the last port of call of every naval ship leaving Devonport or Plymouth.

Those links make us feel very much at home here, and I believe that it would be entirely consistent with the UK's history in creating, out of the Empire and the Commonwealth, for a solution for the remaining territories to be found that gives them the maximum level of self-government that they can achieve, given their particular geographical and human resources. A way should be found whereby they are involved in representation in Parliament. There is an argument that the level of self-government is not full self-government to the extent that there may be a

residual power in the Parliament of the UK to overrule the Parliament and the Government of the former colony so that it has not ceased 100% to be a colony. However, for as long as that residual power exists, that argument is answered clearly by us participating in voting in that Parliament.

By definition, the argument that our Government started, which was subsequently completed, won us the vote in the European Parliament on the Matthews case, which was about a complaint of a breach of human rights. This argument was that a Parliament that is able to legislate for Gibraltar does not represent Gibraltar because the residents of Gibraltar are not able to vote for that Parliament. Clearly, it was felt that giving an electorate of 20,000 an MP in a place where most MPs represent 750,000, would create problems for everybody, so the compromise was found that we form part of the South-West region. Therefore when Glyn Ford, for example, stood for the South-West region, he got elected as a British Labour Party/Gibraltar Socialist Party candidate, because we endorsed him as our candidate as well as a candidate of the British Labour Party.

It does not require enormous imagination to find a way of reconciling the maximum levels of Government within the territory and the recognition that, for practical reasons rather than for archaic treaty reasons, independence is not a solution for any of us—with the possible exception of Bermuda. One should not look closer at the Dutch model; I would certainly be supportive of that idea.

**Q202 Chairman:** Can we just look briefly at two other areas? First, in the financial sector, there have been significant improvements in the regulation of financial institutions and the offshore financial activities over the recent years—not just in Gibraltar, but also elsewhere in the Overseas Territories. Do you think that there are any lessons that can be learned by the smaller financial centres, such as Anguilla, Montserrat, Turks and Caicos Islands, from the improvements that have taken place in Gibraltar?

**Joe Bossano:** This issue is closely linked to the concept of contingent liabilities in the UK, which is one that the UK Foreign Office always raises with the National Audit Commission. Let me tell you how I think one ought to approach this question conceptually. The concept has to be "polluter pays". By that, I mean that if the United Kingdom says to the territory, "This is what you should do," and the territory says, "I don't agree with you, I want to do something else," then collateral to that, there must be an undertaking that if the territories disregard the advice, they have to underwrite the cost.

The opposite side of that same coin is that, where the UK insists that we do what it thinks best, it has to pick up the bill. The cases that have cost the United Kingdom money was first, Barlow Clowes, which was sent to Gibraltar with a licence from the Department of Trade and Industry when we did not have our own licensing authority. The second was BCCI, which was a case of a UK bank buying a small, Jewish-owned Gibraltar bank which had

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come to Gibraltar from Morocco and which, with £10 million, was totally solvent. I used to have the union bank account there because it was 100% unionised. When BCCI came in, it took the bank over, and increased its activity from £10 million to £100 million. BCCI then took the £100 million from Gibraltar, and put it in London; from London it took it to the Cayman Islands; and from there it disappeared. The third saga was the mismanagement of the pension issue by the United Kingdom.

In all three cases, local advice was overruled because they knew better in London; they all turned belly-up and cost a lot of money. My experience was that the UK gave bad advice, things turned out wrong and they subsequently blamed us. In my time, in 1988, we pushed out the regulatory mechanism from the Treasury. I felt that since we were going to go out on a marketing exercise to attract people to Gibraltar, it was inconsistent to invite people to apply for a licence and then, when they applied, to tell them that they did not meet the standards. So, we would market it but at the same time said to people that there was an independent entity over which we had no control and which laid down the criteria that they had to satisfy.

There must be no possibility of political influence. We are all politicians and we know that if you have an industry and there is something that will cause a lot of unemployment, you are tempted as a politician to try to bend the rules if for no other reason than the good intention of saving jobs and people's livelihoods. There has to be a machinery that is completely independent of the Government. In Gibraltar it is. I should like to see that machinery become so independent that it receives no money at all from the public purse and is financed by the industry. The criteria should be that if it is a small industry, it may need to be partly financed from public funds to get it on its feet but it should have a clear guideline that it is expected to pay its way and raise its own money and then not have to report or explain things to the Government, or to the UK Government either. Independence should be independence of any external influence.

**Chairman:** That is very helpful.

**Q203 Sir John Stanley:** As I am sure you will agree, the 1996 Hague convention on the protection of children is one of the most important international conventions on the protection of children that has ever been concluded. I am sure you would also agree that it is a total human rights disgrace that the ratification of this convention has been held up for some five years by the entire EU—because the EU has to proceed by unanimity—as a result of the inability of the Spanish and British Governments to agree how the convention should be operated in Gibraltar.

The question I want to put to you, because I find it genuinely mystifying, is why, when a simple and almost self-evident solution was available, it took so long to agree it. The simple self-evident solution, which I have advocated in this House, and any number of other people must have advocated in any

number of other Parliaments and international forums, was that agreement be made between the British and Spanish Governments on how the convention should be operated in Gibraltar, with both Governments agreeing that that did not in any way prejudice either side's position on the sovereignty issue.

Our Foreign Secretary made his ministerial statement on 8 January, finally announcing a solution and putting copies of the relevant exchange of letters in the Library. The last sentence of David Miliband's letter to the Spanish Foreign Minister, Mr. Moratinos, reads: "These arrangements or any activity or measure taken for their implementation or as a result of them do not imply on the side of the Kingdom of Spain or on the side of the United Kingdom any change in their respective positions on the question of Gibraltar or on the limits of that territory." So there is the self-evident solution. It is in the Foreign Secretary's exchange of letters. I wonder whether you can provide us with any explanation of why on earth it took five years to agree this simple self-evident solution, at the same time depriving children around the world of the protection of the 1996 Hague convention.

**Joe Bossano:** I have the debate of 21 June here in front of me, and I have read carefully everything that you said in that debate, Sir John. Let me say that one thing on which I disagree with you is that you seem to apportion blame equally. You have to first ask yourself how a civilised democracy in Europe can put all those children at risk for the sake of defending a principle enshrined in the treaty of Utrecht in 1713, which allowed, inter alia, the exportation of slaves from west Africa to the Spanish colonies in 1714. I think it is a disgrace that the Spanish Government should behave in that way. What is wrong is to say, "Look, why do you not find a simple solution?" The answer is that Spain accepted from Miliband something they had been rejecting for the previous five years. That is the answer.

What is even worse is that here we have a nation which is apparently wooing us now, when only two weeks ago they entered a reservation about the extension to Gibraltar of legislation to stop international organised crime. The extension of the UN convention on combating international organised crime was signed by the United Kingdom some years ago and extended to Gibraltar last year. The first thing Spain did was to object to its extension to Gibraltar. You would have thought the last thing they want is for us to become a nest of people who organise international crime, unless they want to be able to point the finger at us because the criminals are there, because we have not got the convention extended.

I know you are a good friend to Gibraltar and I agree with you entirely that it is indefensible that children should have suffered because people are playing games in Madrid or London. The answer is that the stick cannot always break at the weakest link. Because we are 20,000, you are 50 million and they are 45 million and the whole of the EU is 400 million, people say, well, here we are, 400 million and we cannot sign because of 20,000. No, you

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cannot sign because someone says, “Either you screw Gibraltar”—pardon me for saying so—“or I will not sign.”

One of the things the British lads on the Rock used to call us for many years when there were lots of them there was Rock scorpions. It is an apt description of us. We are small, very tough and very proud of our links with the United Kingdom. It is in your culture and in your history that you do not like small guys being stepped on, and we are the small guys in this outfit.

**Q204 Chairman:** Do you have any concerns about human rights in Gibraltar, apart from this issue that has just been mentioned?

**Joe Bossano:** There are problems in Gibraltar in a number of areas. For example, I am dealing with one particular case in an unfair dismissal tribunal which has now been dragging on for two years where the Government, which is supposed to be ensuring that the law on unfair dismissal is observed, is the litigant. Because they are the litigant they have gone all the way to the appeal court in England to argue that somebody that has worked for one year and two days has not worked for 52 weeks because the week starts on a Monday and not on a Sunday. That would make a year 53 weeks long. If I was not there giving a free service, that person would have lost out.

**Q205 Chairman:** Excuse me, if this is subject to legal action at the moment we cannot discuss it here.

**Joe Bossano:** No, we won. It cost the taxpayer a lot of money, but we won.

One of the advantages of a place like Gibraltar is that you have a single system. One of the problems is also that there is no *deus ex machina*—there is no external body to appeal to. If you are fighting the Government in any area, there is nobody above the Government other than the judiciary. In the case I mentioned, we won at the tribunal, we won at the supreme court and then it went to the appeal court. There are people, for example, who have been making representations to you in respect of the gay rights movement. They say it is against human rights not to equalise ages for sex between consenting adults. We decriminalised it in 1988 when we came into government. Therefore there are areas where I can tell you that we are all on paper committed to 100% observance of international human rights. Our new constitution says so.

We actually asked the United Kingdom Government—this was something we felt very strongly about—to have the right to change our constitution in Gibraltar in order to extend the human rights chapter without having to wait for constitutional change. It requires a two-thirds majority of the House and then a referendum to do so. Therefore, the answer is that the political and ideological commitment to human rights is as high as would be found in this country or anywhere else. The reality in practice might not be as high as the theory that we all subscribe to and defend, and I believe that one of the problems is who to go to. We want full self-government and to run our own affairs, but if someone is in a position of too much

power, who do you turn to other than international organisations and so on? If there is a deficiency there, it needs to be addressed and put right, but I am not sure that I have the answer.

**Q206 Mr. Keetch:** You have covered the point about gay issues, but surely there is more that the Government of Gibraltar should be doing, for example, to equalise the age of consent for same-sex couples, legalise the protection against discrimination on the grounds of sexuality, and give legal recognition of same-sex partners. That exists in the UK, but not in Gibraltar. It exists even in this House of Commons, which is one of the most conservative institutions in the land, but it does not exist in Gibraltar.

**Joe Bossano:** No, I agree with you. Sometimes there is a lot of hypocrisy in small societies, where people all throw up their arms in horror at something, but that does not equate to what they actually do in their own lives. For example, I can tell you that one area of fundamental difference that I pointed out in our new year message this year was when the Government of Gibraltar came out talking and implying that some of those areas of complaint from these groups were an attempt to bring in extraneous standards from other places in Europe that are causing the breakdown of the family and society.

I categorically rejected such an analysis and such a view. I believe that the fundamental human rights of people start from one premise and one premise alone: that you must respect people the way they are. No one can be accused of doing anything to destroy the family or society or anything if they are not interfering with anyone else. We live in a mature and civilised world of which the fundamental basis is that it is wrong to treat people differently because of their religion, colour, political views or sexuality. If Gibraltar has a hang-up about sexuality, then it is time that it overcame it. It is as simple as that.

**Chairman:** Thank you. Finally, Andrew.

**Q207 Andrew Mackinlay:** My question is slightly different from what Mr. Pope talked about, because he talked about the representation of Overseas Territories and of Gibraltar. What about the representation of Gibraltar’s Government here in the United Kingdom? We all know the distinguished Mr. Albert Poggio, who ably represented Gibraltar here under both your Administration and that of Mr. Caruana, but it seems that there is one area of discrimination against Overseas Territories, particularly the big Overseas Territories of which Gibraltar is one, and that relates to Remembrance Sunday and to access to the House of Commons. I think that diplomats have access to Parliament, but representatives of Overseas Territories do not. If you want to give us evidence on that, I wonder whether those issues should be repaired or remedied, both in relation to Gibraltar, and speaking for the wider constituency of the Overseas Territories.

**Joe Bossano:** That comes back to the whole point that has prompted my wanting to come to speak

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with you and my original submissions last year.<sup>3</sup> In relation to this business of modernisation, we have a long political battle in Gibraltar between us and the other side as to whether modernisation equated to colonisation. In the Foreign Office paper before you, all the territories are treated as going through a process prompted by the 1999 White Paper to modernise the relationship. However, modernising it and making it more modern does not fundamentally alter the nexus or essence of it. It is the essence of it that has to come to an end once and for all and be replaced by something else. The 1968 constitution of Bermuda is often regarded as being the most modern arrangement, but it is in fact the most ancient, and it is a wonder that it has not been changed. Yet that is the one that is the most advanced in terms of devolved power to the people of Bermuda.

I think that the new element that ought to replace what exists today between the overseas territories and the United Kingdom is a partnership that is real in every sense of the word. That includes that the position of the representatives of those territories in the United Kingdom and the access to Parliament of those territories should be based on what

<sup>3</sup> Ev 233.

partnership means, and partnership means equality. It does not mean having to ask for favours and it does not mean having to bend the rules. It is that philosophical approach that I think ought to produce what I think is required, so that the Foreign Affairs Committee may no longer be responsible for the territories, although I would like to see some Committee of the House of Commons still being responsible. We do not want to be your “foreign affairs” anymore; we are part of the family, not foreigners.

**Chairman:** The reason that we are conducting the inquiry, just for the record, is that the Foreign and Commonwealth Office is the Department responsible.

**Joe Bossano:** I accept that.

**Chairman:** We scrutinise the Department. If the Government chose to have a separate Overseas Territories Department or if some other Government Department had responsibility, no doubt that Select Committee would be conducting the inquiry.

Thank you very much for coming, Mr. Bossano. It has been extremely valuable and we wish you all the best. It has been good to see you.

**Joe Bossano:** It has been a pleasure to be here.

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## Wednesday 5 March 2008

Members present:

Mike Gapes (Chairman)

Mr. Fabian Hamilton  
Mr. John Horam  
Mr. Eric Illsley  
Andrew Mackinlay  
Mr. Malcolm Moss

Sandra Osborne  
Mr. Greg Pope  
Mr. Ken Purchase  
Rt hon. Sir John Stanley  
Ms Gisela Stuart

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*Witness:* **Hon. Peter Caruana QC**, Chief Minister, Gibraltar, gave evidence.

**Q208 Chairman:** Good morning, Chief Minister. We are pleased to see you. Will you introduce your colleagues before we begin?

**Peter Caruana:** On my right is Richard Armstrong, my senior principal private secretary. John Reyes, on my left, is one of my private secretaries.

**Q209 Chairman:** As you know, we are carrying out an inquiry on the Overseas Territories and we thought that it was important to have evidence on the record from Gibraltar. Committee members visited Gibraltar last year, so there has been a recent visit. Obviously, that was some months ago so it will be useful for us to have an update.

I want to ask you about the progress on the Cordoba agreement. Before I come to that, are you satisfied with the recent meetings of the trilateral forum and the outcome of those?

**Peter Caruana:** Yes, it is important to see the trilateral process as the political architecture or structure of dialogue and the Cordoba agreements as simply the first fruits of that. Committee Members will know about this because many of them—indeed, the Committee collectively—were instrumental in assisting us to fight for the terms that we eventually obtained in the trilateral forum: that Gibraltar should have its own voice, that it should be there on an equal basis and that it should be free from agreements imposed on it against its wishes.

All three of those terms were secured and are explicit in the Chevening agreement of December 2005, which set up the terms and conditions of the trilateral forum. My Government have been advocating that process of dialogue since 1996. We were therefore overjoyed when we eventually secured it and put the unacceptable aspects of bilateralism between London and Madrid concerning our affairs behind us.

The Cordoba agreements were a bold political investment by all three Governments because of the new way of handling the political relations and the political issue between Gibraltar and Spain. The UK lubricated the process and contributed quite a lot of money to one element of it, namely, the pensions agreement. The Governments of Gibraltar and Spain were also reasonably bold by the standards of what was acceptable to their various electorates at that time on some of the other issues, such as the airport agreement, the frontier issue and the telephones issue.

All three Governments contributed an important measure to make possible the Cordoba agreements, which in one broad brush stroke removed from the table three or four of the most emblematic, representative manifestations of the difficulties of the previous 30 years. Of course, the fundamental difference is not gone.

**Q210 Chairman:** We will come on to the details and some of the specific points in a moment. Before I bring in my colleagues, may I ask how the agreement and the trilateral forum are perceived generally within the House of Assembly? Is this just the position of your Government, or is there broad consensus and support for what is happening?

**Peter Caruana:** In small places, and Gibraltar is no exception, consensual government is not easy, as you witnessed on interviewing the Leader of the Opposition not long ago. The Government lead and try to secure as much support as possible from opposition parties, but the support that matters is among the electorate in the country. The Government cannot go too far from that. The Government have to lead. If they want to do so, they must be willing to put some distance between themselves and public opinion, otherwise they are not leading. However, there must not be too much distance because then we would not be leading for very long.

The Cordoba agreements have been welcomed overwhelmingly by the people of Gibraltar. Even many supporters of the opposition, while not voting for us simply because we made the Cordoba agreements, would nevertheless privately acknowledge—and indeed have privately acknowledged—that the Cordoba agreements and the trilateral process have been hugely successful not just for Gibraltar, but for the general dynamics of our relations with our neighbour.

**Q211 Mr. Horam:** Chief Minister, one of the specific aspects of the Cordoba agreement is that you can now use Spanish airspace. As one who once experienced a rather dodgy take-off from Gibraltar myself, is that working satisfactorily? Is it safer and better now?

**Peter Caruana:** Yes, it is working better. Discriminatory air restrictions are no longer in operation. Aircraft flying in over the bay now take a much wider arc and fly much closer to Algeciras. There is a proposal, in the context of the airport

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agreement, that aircraft should fly straight in, from above Algeciras and that area, on what is called a straight-in approach, but that is subject to technical study and environmental assessment.

**Q212 Mr. Horam:** What is the point of that?

**Peter Caruana:** The point of that is that you would avoid the L-shape altogether as you came in through the bay. You would just descend from over the other side of the bay.

There is much misunderstanding about the airport agreement. It is not an agreement about shared control or jurisdiction over the airport. The airport remains an exclusively British sovereign territory. The agreement says that it remains under the exclusive jurisdiction and control of the UK and Gibraltar authorities. The management of all governmental, authoritative and statutory functions of the terminal remain exclusively in the hands of the Gibraltar Government.

**Q213 Mr. Horam:** What about immigration, for example?

**Peter Caruana:** That remains exclusively in the hands of the Gibraltar Government as well. Some concessions have been made to Spain, of a non-political kind, in order to make the airport more convenient, but without any loss of jurisdictional, governmental authority or control on the part of Gibraltar and the UK over such issues. For example, passengers entering the terminal via its entrance adjacent to the Spanish frontier will be treated the moment that they step across the frontier line straight into the terminal building as air-side passengers in transit. They will not, as a matter of administrative concession by the Gibraltar Government, be subjected to immigration control on entering Gibraltar, simply because they are walking 30 yards into the airport. That is an administrative concession and the agreement says that the Gibraltar Government, if circumstances require, can remove that and revert to controls.

Then there are passengers flying to and from Spanish destinations—for example, a flight from Gibraltar to Madrid. Madrid is inside Schengen, Gibraltar is outside the Schengen frontier chapters, as is the UK. We have agreed to do something there because, importantly, when the aircraft arrives in Madrid, the passengers will have mixed—those who entered the aircraft from Gibraltar and those who originated in Spain. We have been able to get around all passengers, including the Spanish ones, having to be readmitted into Schengen by doing what you do here now at St. Pancras—it used to be at Waterloo—on Eurostar. Advance Schengen entry clearance is given in Gibraltar by Spanish officials who are not physically in Gibraltar. The passenger is in Gibraltar—I will explain the architecture in a moment, which is interesting—but the Spanish official is not. That is unlike the French and Belgian immigration officials, who give advance Schengen entry clearance to you here at St. Pancras station—they are actually situated in British sovereign territory. That is not the case in Gibraltar airport. The Spanish officials will be sitting on their side of

the frontier line. The corridor runs parallel to the frontier line, so the passenger will always be on the Gibraltar side and the Spanish official always on the Spanish side. It is an extraordinary piece of architecture, but there it is.

That is what we have done, but there is absolutely no question—I think you may have been left with the wrong impression a few weeks ago—of Spanish immigration officials exercising any form of control over entry into or exit out of Gibraltar. What they are doing is giving Gibraltar passengers advance Schengen entry clearance, and deferred Schengen exit clearance, which is also required under the Schengen acquis.

There is no customs, by the way. I heard it said recently that some of these arrangements affected customs as well as immigration control. That is not the case. The arrangements apply only to immigration control. There is nothing in any of the Cordoba agreements about those aspects of customs control, so customs control would carry on as normal.

**Q214 Mr. Horam:** Finally in this area, will the new terminal provide value for money?

**Peter Caruana:** Value for money has to be measured against various factors. You could say, “Do I need it today? Do I need to invest in this facility today for the demand that there is today?” The answer to that is probably no, we could get away with a smaller airport for the use that we put it to today, but public investment in expensive public infrastructure that takes six or seven years to build is about long-term vision. It is about what you think the demand will be. In other words, you want growth space, too. We think that Gibraltar airport will be an important part of the transport, social and economic infrastructure not just of Gibraltar’s future, but of the future of the neighbouring parts of Spain immediately on the other side of the border. We think it is a very good, sound, visionary investment. Oppositions rarely share the visions of parties in government, and my opposition are no exception to that rule.

**Q215 Sir John Stanley:** Chief Minister, I understand that as far as aircraft are concerned, the Cordoba agreement dealt only with civil aircraft. I should be grateful if you could tell us whether any process is ongoing or contemplated whereby there are plans to ensure that the indefensible restrictions applied so far by the Spanish on the use of Spanish airspace by NATO aircraft landing in or taking off from Gibraltar are removed, as they should have been many years ago.

**Peter Caruana:** As you rightly say in your question, Sir John, the Cordoba agreement dealt only with civil air traffic—of all sizes, not just small aircraft. It delivers for Gibraltar a normal EU airport subject to the obligations of, and enjoying the benefits of, all EU liberalisation, open skies directives in so far as civil aviation is concerned. Those of you who are long-serving members of the Committee or who are interested in the affairs of Gibraltar will know that a historical grouse of ours has been that we were



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excluded from EU aviation measures and did not therefore benefit from free movement. All that has been swept away. The Cordoba agreement converts Gibraltar into a normal British, European airport subject to the whole EU regime.

What the agreement does not do, which is the point of your question, is deal with the military side at all. I think it is the view of Madrid and probably also of London, although I have not actually asked, that defence relations are a matter between them and not something that is my constitutional competence or responsibility. It was not part of the agenda of the Cordoba agreement on aviation, but I agree with the sentiment that I think your question underlines, which is that Spain and the United Kingdom have been for many years NATO allies; Gibraltar is British sovereign territory by valid and binding, as far as Spain and the UK are concerned, international treaty; and there is no justification for Spain treating the British military any differently from the military of any other of her NATO allies. Spain does not dispute that Gibraltar is properly, in law, British territory. Therefore, this is not disputed land. She has a political claim to the return of Gibraltar sovereignty, but she does not dispute the fact that in proper international law, she ceded sovereignty to Britain in perpetuity and therefore it is undisputed British sovereign territory. In those circumstances, there is no justification, in my humble opinion, for Britain to be treated in the way that we are discussing. I remember that, when the late Robin Cook was Foreign Secretary, we came very close to this being unravelled, but in the end, in bilateral discussions between the UK and Spain, that did not materialise. I was not privy to that, but I know that we came close at that time.

**Sir John Stanley:** Chairman, I wonder whether we could have a note from the Foreign Office in answer to the particular question I have raised.<sup>1</sup>

**Chairman:** I am sure that we can pursue that with the Foreign Office after this evidence session. Sandra Osborne.

**Q216 Sandra Osborne:** Chief Minister, may I ask you about the pensions deal? Do you think that it is satisfactory and fair, and do you believe that the UK should be worried about the cost? The National Audit Office has estimated that it will come to £100 million, but Mr. Bossano gave evidence to this Committee that it was more likely to be in the order of £250 million. What is your view on that?

**Peter Caruana:** Can I come to the cost? I will give you the correct figures in a moment. The answer to the question of whether it was a worthwhile deal has various dimensions. I do not think that it lends itself to the treatment simply of how much it cost, and whether it is too much or too little.

There was also a political aspect to the deal over Gibraltar, which was a huge obstacle to improving relations between the United Kingdom, Spain and Gibraltar. This Committee has looked in depth in the past into the pensions question and made certain

recommendations, to which I believe the UK Government have been faithful. The Committee recommended that the British Government should try to resolve the pensions issue and I think that the Government did that.

The political aspect was that the decks needed clearing to make the trilateral process possible, and all the agreements have flowed from that. There was also an EU legal challenge, which could have been far more expensive than the actual pension settlement.

What is more, Spain had a parallel claim. Members of the Committee will know, I am sure, in which case, shut me up straight away, Mr. Chairman, that there are rules in Europe whereby people who have worked in a host country and contributed to its social security scheme, but who then return home to retire in their own home country must be provided with health services by the home country where they live. However, the home country can then make a claim on the social security system of the host country where the person worked, to recover that cost. I am not sure whether I have made myself clear; I may have done.

Spain had such a claim, and tabled it in respect of the thousands of Spanish workers who have worked in Gibraltar, not least in the royal naval dockyard over the years. That claim was settled and bought off as well. It could have been substantial, because, as you know, there is an EU tariff—a certain amount of money, which is not just so much money for the worker but is upgraded for the worker's family. So there was a significant claim in addition to that for pensions, in relation to the health service, that was also negotiated away by this pensions settlement.

Of course, there was also the historical aspect of how the matter arose. The problem was brought upon Gibraltar's social security system by the UK Government back in 1982, in the face of warnings from the then Gibraltar Government that what they were doing should be prevented, but they did not listen. All those aspects provide the backdrop and the various dimensions.

Remember, the settlement related to the question of increases. The UK Government have effectively been paying Spanish pensions since 1986 at frozen rates, as the Leader of the Opposition told you when he was here. The deal was therefore about two things. I must correct the Leader of the Opposition in respect of a couple of the points he made, but the main essence of the deal was about unfreezing the pensions for Spanish pensioners. Indeed, that permitted us to unfreeze it for our own pensioners as well, which we did.

On the cost, let me give you the figures, which I am sure you are most anxious to have. The UK Government said, "Look, we will pay you an amount in compensation," which the Leader of the Opposition described as discriminatory arrears payment—completely politically opportunistically and erroneously, in my view. The UK Government said, "We will give you compensation if you will leave the scheme altogether." The Leader of the Opposition told you that the only thing the Spaniards had to do to achieve the payment was to

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agree to have the money sent to a bank account, as opposed to coming to Gibraltar to collect it in person. That is not the case. In return for this lump sum payment, those who opted for it from among the Spanish payments had to physically leave the Gibraltar statutory scheme. They had to cease to be a member of it and to have any claim under Gibraltar statutory pensions law altogether, which the vast majority did. I think from memory—please do not hold me to this figure—that fewer than 100 Spanish pensioners have stayed in the Gibraltar scheme. The rest are no longer Gibraltar pensioners at all. That was what the lump sum was for. That is what happened and that is how the agreement describes it.

The lump sum element for that cost the UK Government £25.25 million. Because they are now no longer Gibraltar pensioners entitled to pensions under the Gibraltar scheme, a special UK fund administered by Crown agents has now been set up, and our information is that the ongoing cost of that—not per annum—is £49 million for the frozen element and £48 million for the uprating and future increases. I think that you are looking there at £100 million for the future and £25 million for the historical element. Some of that—£50 million—was already there. It is not the result of Cordoba; the result of Cordoba is the £25 million for the historical element and the £50 million for the future uprating. The second £50 million for the future would have been paid, even without Cordoba, because that is what Britain has been paying since 1986—the frozen element. You could argue that Cordoba has cost the British taxpayer £75 million.

**Chairman:** Thank you—that is very helpful and comprehensive. No doubt we can pursue this in correspondence with the Government to see if they give us the same figures.<sup>2</sup>

**Q217 Mr. Pope:** Relations have clearly been transformed since the Cordoba agreement. We have heard about the improved flights, and the border situation is a lot easier and the phone line problems have been resolved. That is to be welcomed. However, have these improved relations with Spain been damaged by Spain's arrest last year of the Ocean Alert 3.5 miles off Gibraltar and the whole Odyssey Marine Exploration saga?

**Peter Caruana:** I do not think that it is had damaged relations because one of the main gains for all sides of the trilateral forum is that it has established a degree of normality of contact and relationship between the three Governments. When you have contact and a relationship it is easier to manage problems when they arise. All countries have problems and issues with each other and Gibraltar and Spain, having not been the exception to the rule, are not suddenly going to become the exception so that there are no issues between us. We are more likely to have such issues than other countries, but now we have a political architecture that allows us to telephone each other. I speak regularly to Spanish

Ministers and Spanish foreign office officials. There is thus the means to manage issues when they arise. Spain will not stop doing things that she thinks are important for the protection of her fundamental position on the sovereignty dispute, just as we will not stop doing things that are fundamentally important to us on our position on our sovereignty and self-determination. The difference now is that we pick up the phone and distil the issues to the minimum for either side. In the case of the Odyssey, Spain did what she felt she had to do to protect her national interest. The rest is subject to political management. That is one of the great achievements. We thoroughly oppose what Spain did as regards the Odyssey. That is not because she sought to enforce her national domestic heritage preservation legislation, which she is free to do, and not even because she misbehaved in terms of enforcing her laws in international waters, which is a matter for the UK, as we do not strut around on that sort of global stage. Our concern is that Spain was asserting that she was entitled to arrest the Odyssey where she did not because they were international waters but because they were Spanish waters. That boat was in the three miles of water that are beyond Gibraltar's three British miles. Spain was saying: "As we don't recognise that the first three miles are under British sovereignty, therefore the next three miles can't be anything other than Spanish. We think the first three miles are Spanish, not British, and if the first three are Spanish, then because Spain claims 12 miles, the next three and the next six after that are Spanish too." Our objection to the Odyssey saga was that, indirectly, Spain was denying the British sovereignty of the first three miles. What Spain does outside our territorial waters is of relative lack of interest to me, except to the extent that it impinges on the sovereignty of my three miles.

**Q218 Mr. Pope:** That is interesting, because when we were in Gibraltar in the summer I understood that, if you leave aside the first 3 miles and go into the 9 miles beyond, Spain is now claiming a dog-leg of territorial waters surrounding Gibraltar. Is not the answer to that, surely, that we should extend our territorial waters 12 miles out from Gibraltar? We do that with quite a few of our other Overseas Territories. That would resolve the situation, would it not? It would resolve it from your point of view if we were to do that. What is the view of your Government?

**Peter Caruana:** Yes, it would certainly resolve one issue; whether we would create different ones is a matter for diplomatic balance sheet calculations. The position of Gibraltar is simple. Gibraltar runs roughly on a north to south axis. On the western side of Gibraltar—the Bay of Gibraltar—there would be no point in extending beyond the 3 miles, because we do not even have that now; the median line runs down the middle of the bay, which is less than 3 miles, so you could extend it to 200 miles in that direction and you would achieve nothing at all. On the other side—for those of you who know Gibraltar, the Catalan bay and the Mediterranean, rather than the bay side—you could theoretically go

<sup>2</sup> Ev 361

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12 miles. In the straits, you could not even go to 12 miles, although you could probably go to six, because the straits are also subject to a median line calculation. The straits of Gibraltar are only 15 km of water, so you could not actually go 12 miles into the straits, but you could certainly go more than three. You could go 12 miles on the eastern side of the Rock.

We have no economic or social need for more than 3 miles of territorial water. There are some countries that claim 50 miles of territorial waters. Spain could do exactly the same between 12 and 15 miles as she did between 3 and 6 miles if she wanted to. That would not resolve the issue. The underlying fundamental issue is that Spain claims that Gibraltar has no sovereign territorial waters—a claim that is unsustainable, because there is a 1952 United Nations convention on territorial waters, which gives every spot on the planet the treaty right to territorial waters for a minimum of 12 miles. Spain subscribed to that treaty, making no reservation whatsoever in relation to the Gibraltar question. International law makes Spain's denial of territorial waters in Gibraltar completely unsustainable in law. To us, that is the important question.

**Q219 Mr. Pope:** It is a de facto recognition. I thought that the Spanish were very clever, or certainly astute, in making sure that they did not detain the Ocean Alert within 3 miles—it was 3½ miles.

**Peter Caruana:** I think that they were politically astute. I honestly do not believe that in the Odyssey saga Spain was motivated by any Gibraltar, still less anti-Gibraltar, dimension. The respect for possible Spanish shipwrecks lying in an unknown position somewhere near her coastline obtained a huge domestic political dimension in Spain; it acquired a huge momentum and the Spanish Government and authorities were responding to that. It had Gibraltar manifestations and there were certain issues that we had to do our best to safeguard, which we did, but this was not an intervention by Spain that was in any sense driven by her politics towards Gibraltar, it was driven by her politics towards her own heritage conservation.

**Chairman:** Can we now move on to Fabian Hamilton, please?

**Q220 Mr. Hamilton:** Chief Minister, can I just ask you about the Cordoba agreement? One of the issues discussed and agreed in the Cordoba agreement was that pedestrian traffic flows would be considerably improved at the border crossing. When some members of the Committee were there in July last year, we noticed that the flow was better. Does that continue to improve? I remember some time ago having to wait several hours there, and it was a real pain.

**Peter Caruana:** The mechanics of the border are not working as well as we think they could, but there is a huge improvement in the fluidity of transfer. We are not even in the same ball park as the situation that you and other members of the Committee saw so often when you visited. Now, delays are almost

always due to peak times. There is a gap in the fence in the border crossing. Let us say that 500 cars are trying to get across. Remember that we are outside the Schengen passport area and outside the common customs area; the Spanish authorities are entitled—indeed, obliged—under EU law to carry out passport and customs checks. So if they spent just 30 seconds doing customs and immigration controls on each of 300 or 400 vehicles—well, do the mathematics for yourself. We have to be realistic in our assessment: the benchmark is not that there is no delay at all. There is most often more delay in the passport queue at Heathrow airport than there is in the frontier queue going into Spain.

**Q221 Mr. Hamilton:** That is quite a change from three or four years ago, is it not?

**Peter Caruana:** A huge change. One of the other advantages of the Cordoba agreement in relation to frontiers and fluidity is not what it has already delivered, but that it contains the explicit political commitment of the Spanish Government to continue to modify the frontier system to maximise at all times frontier fluidity. In other words, what has been delivered is not the endgame. The endgame is a constant commitment to further improvement until it is as fluid as is physically and legally possible.

On a day-to-day basis for example, one of the innovations of the frontier agreement was that there would be a red and green channel system. Those of you who are long-standing observers of Gibraltar, as many of you around the table are, will know that one of our complaints was that this was the only border in Europe without red and green channels. We have secured that in the agreement and the system is that in the green channel you do not have to stop. Before every car stopped, and was subjected to a check. Now, in the green channel you flow unless you are stopped, and you are then put to one side, not searched in the green channel itself, thereby delaying everyone behind you. It has to be said that there are occasions when—at an operator level—the chap on duty disregards that and searches cars in the green channel and causes some unnecessary delay, but that is in no sense a political decision by the Spanish Government.

**Q222 Mr. Hamilton:** So there is now considerable good will.

**Peter Caruana:** Yes, I think that there is. There is adherence on the whole to the terms of the agreement, but more attention needs to be given to how sometimes the system is physically operated by the guards on duty, which is not a political decision.

**Q223 Mr. Hamilton:** But those are technical issues, are they not?

**Peter Caruana:** Yes.

**Q224 Mr. Hamilton:** Can I come back to something that you said earlier about customs? When you talked about the airport in response to my colleague's question, you mentioned that customs does not come into the Cordoba agreement. Can you clarify that? The Leader of the Opposition in

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Gibraltar, when giving evidence to the Committee, was somewhat sceptical about the agreement, on customs particularly.

**Peter Caruana:** I do not think I said that it did not come in at all; I said that it did not come into the passenger side. There are some very beneficial aspects of customs in the airport agreement; for example, diverted flights—flights that are heading to Gibraltar and end up having to go to Malaga because of bad weather. There is now a customs agreement whereby the cargo and the mail can be taken off the flight in Malaga and brought by road to Gibraltar. That used to be impossible. There are some very positive aspects about customs in the agreement.

What there is not in the Cordoba agreement—if you have been told anything to the contrary, you have been mistold—is anything whatsoever that delivers a concession to passengers using the terminal to go to and from Gibraltar in relation to customs control. It speaks about Schengen and Schengen controls, which relate to immigration rather than customs. Schengen has nothing to do with customs.

**Q225 Mr. Hamilton:** Finally, may I ask you about the Cervantes Institute? That was obviously part of the Cordoba agreement as well, and you are providing and allocating a building for which there will be some public cost. How important will that building and the opening of the Cervantes Institute be to your relations with Spain?

**Peter Caruana:** To us, this is something that is welcome and is not politically controversial. That is not universally true in Gibraltar. As far as we are concerned, there is no denying the huge Spanish cultural influence in daily life in Gibraltar—you need only visit the place to see that. Our political views and aspirations and our not inconsiderable skill in protecting our political positions, obviously with huge support here in the UK, have—in our judgment, if not that of others—nothing to do with culture and sports and things like that.

I think that it would be an insular and retrograde step for Gibraltar to start seeing the defence of our political position as requiring us not to have anything to do with Spanish language or culture. You only need to visit Gibraltar to know that there is a very considerable influence from the Spanish language and Spanish culture, which many people in Gibraltar admire, like and want to have more of; they do not feel that by doing so, they are somehow conceding anything on the political front. That sort of pseudo-nationalistic approach to the politics of Gibraltar can be pursued by others, but it will not be pursued by my party, either in government or in opposition. We welcome the Cervantes Institute in Gibraltar.

The Spanish Government party in Gibraltar is fighting an election campaign today, and one of its principal policy offers in the educational field is that school children should have to learn English. We are not going to get mealy mouthed about whether we should have cultural resources available to us to improve our spoken Spanish, which is the language that most people speak in day-to-day life in

Gibraltar. To me, it is a non-political issue. The Cervantes Institute is very welcome, and the Gibraltar Government will certainly comply with their commitment in the Cordoba agreement.

**Chairman:** Chief Minister, I am conscious of time, and we want to talk about a number of governance matters, so I shall now bring in Eric Illsley.

**Q226 Mr. Illsley:** With regard to the process of negotiating the new constitution, you said in your submission that you were “well satisfied” with the outcome for Gibraltar of that negotiating process and said that it was “lengthy, but constructive and businesslike (and . . . often consensual)”.<sup>3</sup> Is that still the case? Are you still happy with the constitution, and is that process a model for other Overseas Territories to follow?

**Peter Caruana:** I think that the answer to all of those questions is yes. I think that our constitution renegotiation process benefited from and we were beneficiaries of the fact that, in the immediate aftermath of the failed joint sovereignty policy, the UK Government wanted to aim some tender loving care in our direction. I think that that was right, because there were fences to be mended; I think that it was important, because the quality of the relationship between Gibraltar and the United Kingdom is important to us as well. Gibraltar has no interest in and very little to gain by being at odds with the UK. Of course, we have to disagree when a particular UK Government pursue a particular policy, but in the aftermath of that the UK Government were in a receptive mood to our constitutional development, and I think that that was why the process was businesslike, but consensual and constructive.

There were only a few issues on which we were pushing for a bit more than London was willing to give us, but what we have in the constitution is a document containing a constitutional relationship with the United Kingdom that achieves everything that Gibraltar wanted. First and foremost, and most importantly for almost all Gibraltarians, it preserves our British sovereignty and enshrines our right to remain British for as long as we want to. For the first time ever, our right to self-determination is enshrined in our constitution, albeit that, in oblique language that we may disagree about the interpretation of, Britain has signalled that she regards that the Treaty of Utrecht denies us the right to independence without Spanish consent. We disagree about that as a matter of international law, but we have no difficulty with it politically because the people of Gibraltar do not seek independence—indeed, what we seek is to retain our British sovereignty.

Thirdly, it maximises our self-government. It is difficult to construct a constitutional relationship between an Overseas Territory and the United Kingdom that gives the Overseas Territory more powers of self-government and leaves fewer levers in the hands of the United Kingdom—less

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responsibility, role and power to the UK Government. This document does so, while at the same time preserving a sovereignty and constitutional link between the two territories.

As far as the Gibraltar Government are concerned this constitution is a win-win-win for Gibraltar—a win in relation to sovereignty and enshrinement of the UK's commitment; a win in that it enshrines our right to self-determination; and a win in the sense that it maximises our self-government to the greatest possible degree consistent with our desire to retain both our British sovereignty and close constitutional links with the United Kingdom. The constitution is therefore a model for Overseas Territories that share those aspirations. However, for Overseas Territories that aspire to or seek independence, then of course this is not the endgame—this is not an endgame constitution.

**Q227 Mr. Illsley:** Has the row with the Chief Justice over his allegation that the constitution gave too much power to the Executive been resolved?

**Peter Caruana:** No, it has not been resolved, but that is not the nature of the row. The constitution gives very little power—none—to the Executive. By the way, while I am answering this question, you were left with a false impression by the Leader of the Opposition when, in answer to a question, he failed to dispel the premise that the constitution or the police Act that flows from it gave the Executive in Gibraltar power over the police. Neither the constitution nor the police Act actually gives the Executive in Gibraltar any power over the police whatsoever. If members of the Committee are interested in that, I am happy to speak specifically to that issue.

The constitution creates a Judicial Service Commission. It puts the judiciary further than ever away from the Executive. Before, the position under the constitution was that all Executive authority in Gibraltar was vested in the Governor. The Governor was the Executive and we elected politicians in a sense simply discharged a sort of delegated function on behalf of the Governor, who was not only the Executive, but the person solely responsible for the judiciary. It was under the old constitution that the Executive had control over the judiciary—not day-to-day control of the courts, but in constitutional terms. The new constitution has worked very hard at putting miles and miles more distance than used to exist between the Executive and the judiciary. It sets up a Judicial Service Commission, in which there are seven members, with three judges.

By the way, the Chief Justice has been suspended. He has been suspended from his office pursuant to a constitutional procedure that I will describe in a moment—you may recall that Joe Bassano was not able to describe the process to you. He has been suspended pursuant to a unanimous vote of the Judicial Service Commission, including his brother judges who sit on it. The idea given the week before last by the Leader of the Opposition—which I think was a good deal less than serious enough to bring to a Committee of this importance—that the Chief

Justice's difficulties in Gibraltar, which that led the President of the Court of Appeal and the stipendiary magistrates on the Judicial Service Commission to vote for his suspension from office, arose from a dispute over precedence between the Chief Justice and the Chief Minister and who got into his car first, shows less than the respect that this Committee deserves to be shown.

There are huge issues affecting the Chief Justice. The matter is now in front of a tribunal, so we should not steer into it too far, but what has been followed is the constitutional process. In this country, you unseat judges by votes in this Parliament. We do not do that. The Legislature in Gibraltar and, through the Legislature, the Executive, does not have the ability to remove judges. I return to a question that you asked the Leader of the Opposition, who was not sufficiently familiar with the constitutional procedure to answer. A tribunal, on which three eminent United Kingdom judges sit chaired by Lord Cullen, has to advise the Governor whether he should even refer the matter of the judge's possible removal to the Privy Council in the United Kingdom. Only if the tribunal advises the Governor to refer the matter to Her Majesty the Queen through the Privy Council does the Governor do that. The Privy Council then makes the decision. We could not be further from the process for removal of a judge than that.

**Q228 Mr. Illsley:** Can we have a written brief on that? It is fascinating.

**Peter Caruana:** It is dealt with in section 64 of the Gibraltar constitution, a copy of which is attached to your documents.<sup>4</sup>

**Chairman:** We have some questions in other areas. I am conscious that because of time constraints we might not touch on some of them.

**Andrew Mackinlay:** What time were we to finish?

**Chairman:** We were to finish at 11.30 am, but we may have to go beyond that if hon. Members are content to do so. However, Prime Minister's questions are coming up, and the Chief Minister also has travel constraints today. If there is anything you wish to add, Mr. Caruana, the best thing would be if you sent it to us in writing. That would be very helpful. Let us now move on—Mr. Horam?

**Q229 Mr. Horam:** What are the prospects of Gibraltar being delisted by the United Nations?

**Peter Caruana:** That is another issue on which the Leader of the Opposition misinformed the Committee a fortnight ago. He said that the moment an administering power—in our case, the United Kingdom—feels that a territory that it has administered on the UN list had been decolonised, it is entitled to stop automatically sending in reports to the United Nations under article 73e of the charter. Regrettably for Gibraltar, that is not the case. The charter, resolutions and procedures of the United Nations require the administering power to continue to send reports to the United Nations until the United Nations itself has resolved in the General

<sup>4</sup> Not printed.

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Assembly to remove a territory from its list. Under the charter of the United Nations, a member state is not entitled unilaterally to decide to stop sending reports of its territories to the United Nations under article 73e.

As for whether Gibraltar can be delisted, in my view, under the United Nations current criteria for deciding whether a place has stopped being a colony or a non-self-governing territory as it calls them and therefore can be delisted under those criteria, the answer is no. There are aspects of its criteria with which the constitution does not comply and with which the people of Gibraltar do not want it to comply. One of their criteria is that the administering power should in no circumstances retain any right whatever—even residually, which is the case in Gibraltar—to make laws for the territory. I shall cite the most important example. It is not possible to have a close constitutional relationship with the United Kingdom, let alone have British sovereignty, without the United Kingdom having even the remotest residual power of intervention in the territory. The United Kingdom would not be willing to have a relationship with a territory on such terms. Therefore, the terms that we would have to deliver to the United Nations to meet its antiquated, old-fashioned and unrealistic—for the remaining 16 territories on its list—criteria are not delivered by this document and the people of Gibraltar would not want them to be delivered by it. If it did deliver the criteria, that would mean that we would forfeit and be in non-compliance with Britain's minimal requirements—not just of Gibraltar, but of all other territories—for a remaining constitutional link.

Britain has made the requirements clear to all of its Overseas Territories. To the others it said, "If you do not like them, you can opt for independence." To us, it said, "But you cannot have independence." That is another of our complaints. Putting that issue aside, Britain has said that the least it is willing to give us is a decolonised constitution. It has said, "I am willing to have the constitutional relationship that the constitution delivers, which is not colonial in nature and therefore you cannot really be said to be in a colonial relationship with us. I am willing to maximise your self-government. I am willing to interfere as little as possible in your affairs, as far as you are able to look after yourself. However, I am not willing to have international responsibility without even the means in extremis to deliver and discharge my international responsibilities." That little bit, which is the only thing that Britain demands of Gibraltar, is in breach of the United Nations' decolonisation criteria, if I may put it that way.

The answer to the question is therefore no. That does not mean that we have not been decolonised by any objective measure. Nobody looking at this constitution and at Gibraltar in practice could possibly conclude that the United Kingdom and Gibraltar remain in a colonial relationship. Indeed, the Foreign Secretary—

**Mr. Horam:** That is fine, thank you very much.

**Q230 Mr. Moss:** May I turn to matters European, Chief Minister? It seems particularly apposite to do

so on today of all days, given the vote that we will have later. Do you wish to make any comments on the way in which Gibraltar's interests were represented at the intergovernmental conference on the Lisbon treaty?

**Peter Caruana:** There is no doubt about it that starting in 2004, when the document was described as a constitution, through the hiatus period to when it suddenly re-emerged in a different form in June last year, Gibraltar's specific interests have given way to a broader UK national interest approach. In other words, when the 2004 constitutional treaty text was being negotiated, we had to keep abreast of it and we identified a long list of issues on which Gibraltar had concerns. We approached the British Government when Denis MacShane was then the Minister for Europe at the Foreign Office. The answer we received was that, even though it was the first time that we had had the opportunity to raise the issues, it was too late—the negotiations were already a fait accompli. The Foreign Office did its best to give us reassurance and comfort on our points of concern, but they were not dealt with in the way that we would have liked, which was in the negotiation of the treaty language.

We then relaxed a little—not in the sense that we gave up the agenda, but the whole constitution seemed to go away in 2005. It then re-emerged suddenly, with very little notice, in June, when we were told at a General Council meeting that it was re-emerging in another form. We saw the text. You may remember that it was published on 20-something June after the European Council. There was a document attached to it called "the mandate" with a list of amendments to the original 2004–05 text.

We pored over the French version of the text and identified how many of our original Gibraltar-specific points remained. We wrote a detailed memorandum to the Foreign Office, but the answer was, in effect, that a political agreement had been struck at the June Council meeting not to renegotiate and not to reopen the original text, except the points appended to the June Council meeting decision itself, which contained none of the Gibraltar points. The reason given for that deal was that the UK had managed to secure its own red lines, whatever those might have been at the time. We were told that it was a good deal for the UK and that it was in the UK national interest not to seek to renegotiate the treaties. Again the UK Government sought to give us much reassurance and tried to persuade us that many of our concerns were not real and would not materialise as we feared. However, in many of them there was scope for argument. The UK was, in effect, expressing its opinion that our concerns would not materialise, but that is no substitute for clarifying the text.

So, both in 2004–05 and in 2007, we were in effect presented with a fait accompli. We were not given the opportunity of input into the negotiations and when, at the earliest opportunity, we identified the Gibraltar points, we were told that it was too late. Whether this was a Foreign Office decision or a higher decision is not for me to say. I believe that by

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the time that these decisions were taken, it was too late for the Foreign Office to bat for Gibraltar. My assessment is that political decisions were taken on behalf of Her Majesty's Government at a much higher level than the Gibraltar department of the Foreign and Commonwealth Office.

**Mr. Moss:** May I follow up briefly?

**Chairman:** Briefly.

**Andrew Mackinlay:** Chairman—

**Chairman:** No, just wait—let Mr. Moss ask his question, please. I am chairing the meeting, so just wait.

**Q231 Mr. Moss:** Do the original list you compiled under the constitutional treaty and the list of your interests that you compiled under the amended treaty compare, like for like?

**Peter Caruana:** The second one was longer—there were new points in the treaty. For example, there was language about territorial scope that had not been present in the old treaty. There was language about territorial integrity and the right of member states to protect their territorial integrity that had not been present in the original text. Our concern about that was that the principle of territorial integrity—which was put in by Spain—is precisely the principle that Spain relies on in relation to Gibraltar at the United Nations.

We have been reassured by the Foreign Office that those clauses will not become problems for us, but had we been given the opportunity to negotiate around that language at an early enough date, we would certainly have sought on many issues to put the matter beyond doubt by having safe rather than ambiguous language, which others in the future might try to interpret differently to the way in which the UK interprets it.

**Q232 Mr. Moss:** The point I am getting to is that the concerns that you highlighted and discovered in the constitutional treaty text were replicated in the later text.

**Peter Caruana:** Absolutely.

**Q233 Mr. Moss:** So there was no difference between the two.

**Peter Caruana:** No. Chairman, I am happy to leave for the Committee a copy of the Government of Gibraltar's full memorandum of points, together with my letter to the Minister.<sup>5</sup> I would prefer not to give the UK Government's reply. I could give the response, but not the covering letter. I am not in favour of publishing other people's correspondence, as a matter of policy. I can give my own document and also the appendix to the Minister's letter, which is the point-by-point response, but not the covering letter—I would be so bold as to ask the Committee to seek that from the Foreign Office itself.

**Chairman:** Thank you. I am sure that we will pursue these matters further.

**Q234 Sir John Stanley:** Chief Minister, I want to return to the issue of appointments made by the British Government to Gibraltar. I am obviously referring to the appointment of the Governor and any other individuals who have significant authority in Gibraltar, whether executive or judicial. Do you have any proposals or criticism to make to us as to the procedure adopted for such appointments and the degree of consultation with the Government of Gibraltar on those appointments?

**Peter Caruana:** We are beyond the stage of making proposals. We have a brand new constitution, which is a very balanced document, and we are happy with it. The net result of that document is that the UK has no role whatsoever in any appointment in Gibraltar except the Governor, and I query whether that is Her Majesty's Government in the UK. The appointment of the Governor is a Queen's appointment on the advice of the Foreign Secretary, but acting as a Privy Councillor, not as the Foreign Secretary. It is not even an appointment made on the recommendation of the British Government; the recommendation is made by one of the Queen's Privy Councillors. The only office anywhere in the Government/public administration of Gibraltar in which the UK Government have any role whatsoever—whatever the proper analysis of that role—is the office of Governor itself. Neither the Foreign Office nor any other Department of State in the British Government has, under our constitution, any say whatsoever in the appointment of anybody else.

All Gibraltar appointments are made by local commissions: the Judicial Service Commission, the Specified Appointments Commission and the Public Service Commission. Those are our constitutional bodies, staffed by citizens or officials of Gibraltar, making all the appointments for Gibraltar. That is one of the gains under the new constitution. The answer to your question, Sir John, is that we are very satisfied with the new arrangement for making appointments.

On the consultation on the appointment of the Governor, you know that there is an issue generally between Overseas Territories and the UK Government. First, let me say that we have been very fortunate. Certainly while I have been in office—I am now in my 13th year—we have not had a Governor who has not been good for Gibraltar or someone with whom the Gibraltar Government have not been able to work very well. So whatever may have been the degree of consultation that took place at the front end and whether or not it was less than we might have liked, the result is not thereby to be impugned.

Other Overseas Territories have different issues, because the relationship between Governments and Governors in other Overseas Territories is markedly different, because of the different role that the Governor plays in some of them compared with Gibraltar. I know that Chief Ministers of other Overseas Territories feel that there should be much more consultation. The position of the British Government, unless it has changed in the past year or so without my knowing it, is that they are willing to consult on the characteristics that a candidate

<sup>5</sup> Received in confidence.

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should have, but not about the person himself. In other words, it is a case of “Chief Minister, we need to appoint a new Governor. What do you think? Do you think it should be military or civil? Do you think it should be a person expert in the economy or a person expert in fisheries policy?” What we cannot say is, “We would like you to consider Sir John Stanley.” Or if the Foreign Office says, “We are considering these candidates,” it will not entertain representations about a particular candidate. That seems to be where the UK has drawn the line on consultation with the Overseas Territories about Governors.

I am consulted in that generic way. I do not get a shortlist of names. The UK Government do not say to me, “We’ve reduced it to these three or four names. Which do you prefer? What do you think? Do you think these are good guys or bad guys?” Once I am consulted about the qualities that a Governor should have, the next I hear of it is when I am told, for example, “It’s Sir Robert Fulton”—the present incumbent, who is, by anybody’s definition, an excellent Governor.

**Q235 Sir John Stanley:** You raise a very interesting point about whether the appointment of the Governor continues to be an issue on which the British Government continue to have accountability, most particularly to our Parliament, for the appointment that is arrived at. That might be a very interesting point—

**Peter Caruana:** On that point, if the Chairman will just give me 15 seconds—

**Q236 Sir John Stanley:** If I may just finish, I think the Committee would find it very interesting to have advice on whether, if a Member or the Committee tabled a question to the Foreign Office on that issue, it would be deemed to be answerable by the Government.

**Peter Caruana:** I will certainly be most interested in the answer to that question, which I suspect will tax legal advisers at the Foreign Office quite a lot. May I ask members of the Committee, not just in relation to Gibraltar but generally in relation to the relationship between the UK and all its Overseas Territories, not to overlook the House of Lords judgment in the Quark case, which is transcendental in its analysis of who the Governor is, on whose behalf he is exercising powers, whose representative he is and whose representative he is not? The view that appears to prevail in the United Kingdom, that somehow the governor is the instrument of Her Majesty’s Government and the United Kingdom, has really been killed stone dead by the House of Lords in this Falkland Islands-related case.

It is, I believe, the principal piece of architecture that legally defines the nature of the relationship between the Overseas Territories and the United Kingdom; the powers of the United Kingdom Government to issue directives to governors; the question of whom governors are acting for when they do things; and, most importantly, whether Secretaries of State, when they advise Her Majesty, are acting on behalf

of the United Kingdom Government at all. Those are all answered in this case and they are of crucial importance.

**Q237 Chairman:** Thank you. We need to move on to some other areas now. Can I ask you about the status of Gibraltar Government representatives in the UK? Do you have any suggestions about whether it would be a good idea to enhance that status? If so, how? Related to that, are you also satisfied with the current relationship with the UK Parliament?

**Peter Caruana:** Albert Poggio, who is an excellent Gibraltar Government representative in London, has made it clear that the evidence he submitted to the Committee was submitted in a personal capacity and not on behalf of the Gibraltar Government.<sup>6</sup> I say that just to make it clear that whether we agree or disagree with anything that he said—there are quite a lot of things in it with which we agree—I do not want the Committee to think that he was somehow proxying for something that the Gibraltar Government had thought about and on which they had come to a view. The Gibraltar Government had not addressed their mind to the subject matter of that question until we saw Albert’s evidence.

We do not think that this is a question of nomenclature and status. I think that Albert Poggio has a huge amount of access. Indeed, the Gibraltar Government—and this is perhaps another difference between Gibraltar and other Overseas Territories—have regular access, and as much as we want, to UK Ministers, officials and Parliament. Some of the more distant territories have a different experience in that respect and therefore have different needs.

The access that Albert Poggio has to the UK Parliament—the relationship that he enjoys with parliamentarians here and his ability to brief them—enables us to keep parliamentarians informed about Gibraltar issues. We think it is great. We have made a suggestion—I think I said this in my paper<sup>7</sup>—that access arrangement should not rely on a particular Member of Parliament facilitating it through one of the arrangements that everyone knows exist, but which I am not sure I should mention.

I think that the UK Parliament should say to the official Government representatives of its Overseas Territories, who do not represent foreign Governments but Governments of United Kingdom Overseas Territories, that their official designated London representative is entitled to have a Houses of Parliament access pass, without having to double up as some MP’s this or some MP’s that. That would be a huge improvement and it would be a good formal link between this Parliament and its Overseas Territories.

**Q238 Chairman:** Do you think that Gibraltar should in some way be formally represented, perhaps in a reformed House of Lords or in some other way within the legislature? The French, for example, have overseas senators.

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<sup>6</sup> Ev 132

<sup>7</sup> Ev 296



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**Peter Caruana:** You cause me to plunge into schizophrenia in answering this question. Half of me would welcome it very much. But for what I am about to explain to you, the answer would be an unqualified yes. There would be a huge value in that for Gibraltar, even if it was not a voting member. In the US Congress, the representatives of Puerto Rico are allowed to attend and participate in debates but not to vote—

**Q239 Chairman:** And Guam?

**Peter Caruana:** And Guam. It would not be right that we should vote on UK taxpayer issues when we are not UK taxpayers. So it would have to be modified in that way.

My concern is that the EU has a very big stick in its hand called state aid rules, which prohibit regional selectivity; in other words, you cannot treat one of your regions more favourably than another one, unless it is within the official EU regional development aid policy. Indeed, we are waiting for a judgment in the European Court, where the UK Government and the Gibraltar Government—separately, but in tandem—are resisting an EU attempt to say, in effect, that Gibraltar is no more than a region of the United Kingdom—of course, that is constitutionally nonsensical—so we cannot have a different economic and fiscal regime from the United Kingdom. In other words, we would have to mimic your economic laws, which would be fatal to our economic model. I would be very wary right now of doing anything that would make us look more like a region of the United Kingdom, which is what the Commission is wrongly arguing that we are.

So, yes, I would love to have some sort of representation for Gibraltar in Parliament—indeed, in both Houses of Parliament—but that would have to be done in a way that did not undermine Gibraltar's ability to be economically and jurisdictionally separate and distinct from the UK in the EU legal framework.

**Chairman:** Thank you. That is helpful. On this point, Mr. Mackinlay.

**Q240 Andrew Mackinlay:** I do not know whether you have given this any thought, but looking at the constitutions of Bermuda and Gibraltar, as distinct from other Overseas Territories, it seems that the competencies, rather than the franchise, and the Governor relationship, are very similar to those that prevailed in the Federation of Rhodesia and Nyasaland and, from the break-up of the federation, of Southern Rhodesia before the unilateral declaration of independence, with full domestic powers and the governor relationship that you outlined. However, there also used to be a High commissioner in London, who—this goes back to the small, but not unimportant point raised by Lindsay Hoyle—used to lay a wreath on Remembrance Sunday along with the other High commissioners. Is there not a case for reminding the UK that the status and powers, not of all Overseas

Territories, but of Gibraltar and Bermuda are comparable to those of the lawful Federation of Rhodesia and Nyasaland?

**Peter Caruana:** Yes, what you have described, Andrew, is an accurate summation of the extent of our powers of self-government. It needs to be borne in mind that, under the new constitution, the Governor's role in the governance of Gibraltar is very limited. It is limited to external affairs, which are actually not done by him, but by the Foreign Office; defence, which is not really done by him, but by the Ministry of Defence; and formal appointments. In other words, he is the appointer of public officers, but he does not even exercise any discretion, because he has to act on the advice of the local commissions, as I have explained. The role of the Governor in governing is therefore almost a misnomer. The answer to your question is yes: the degree of self-government would certainly justify such a view.

On the question of laying a wreath at the Cenotaph, I remember Chief Ministers asking for that at the Overseas Territories Consultative Council. The informal feedback was that that would do the Foreign Secretary out of a job because, although nobody in the United Kingdom appears to know this, when he lays a wreath at the Cenotaph, he is there solely and exclusively on behalf of the Overseas Territories, so if they were to lay their own wreath, the Foreign Secretary would have to be written out of the ceremony.

**Q241 Andrew Mackinlay:** But my point was that you and Bermuda are unique—it, too, could be unique—compared with Tristan da Cunha and St. Helena, and I mean no disrespect by that.

**Peter Caruana:** We would be honoured and privileged if we could lay our own wreath at the Cenotaph. It has to be said, of course, that we are very proud of Gibraltar's direct physical links with the second world war, in particular. We are very proud of our own, quite high-scale Cenotaph-like ceremony in Gibraltar on Remembrance Sunday. I would hate to have to be torn, although I am not sure that they coincide in dates. *[Interruption.]* Yes, they do.

**Q242 Andrew Mackinlay:** Your high commissioner would do it if you had one—that is the point. I am giving you clues here.

**Peter Caruana:** Yes. I am always looking for extra work for Albert.

**Chairman:** I am very conscious of time. I want to conclude in five minutes.

**Andrew Mackinlay:** I have one more question.

**Chairman:** Very briefly.

**Q243 Andrew Mackinlay:** Of course. I shall be brief, as all the other Members—who are not here now—were. They have peeled off.

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We are looking at the Overseas Territories, and we are particularly looking at your constitution and probably Bermuda's. You have full, internal self-government and you have a new constitution, of which you are very proud, jealously guarding its powers. However, as much as you wish to remain an Overseas Territory, as you have outlined, one of the things that we must consider in this inquiry is what are United Kingdom/EU norms? In my brief, I have a list of areas, but there are issues such as same sex marriage or civil partnerships, and various issues regarding the question of what are deemed to be human rights.

I am not suggesting in any way that there is any flaw in Gibraltar, as it were. However, when we are looking at the Overseas Territories, we must have regard for that issue. I wonder whether you have a view on it. Clearly, there is now a mood in the United Kingdom Parliament about matters relating to sexual orientation such as civil partnerships. There is also the issue of the freedom of the press. We have heard a complaint from somebody who says that your Government will not advertise in a particular journal, for example. I hesitated before raising this issue, because I thought, "Well, that's a matter for you." On the other hand, is not freedom of the press something that, overall, is a norm? It is something for which we must have regard.

I use those issues only as examples. We must decide, if you want to be in the club, as it were, of Overseas Territories, whether or not there are certain expectations—a line, as it were, in which we say, "Yes, you must legislate for that and you have discretion in your own legislature, but we expect this level to prevail."

**Peter Caruana:** It depends where you draw the line on that level. As I say in my paper, the United Kingdom is certainly entitled to demand and expect from its Overseas Territories that they comply fully and promptly with international legal obligations binding on the Overseas Territories through the United Kingdom. That certainly meets with no resistance from Gibraltar; that is absolutely right.

In Gibraltar, our constitution—you have the document in front of you—contains human rights provisions that reflect every provision of the European convention on human rights. Unlike in the United Kingdom, where you have only been able to have recourse to the United Kingdom courts for alleged breaches of your rights under the ECHR since the Human Rights Act 1998 was introduced, citizens of Gibraltar have been able to have access to domestic courts in Gibraltar to allege breaches of human rights since 1969, or even 1964, because the constitution, which explicitly sets out those rights, coinciding with the European Convention on Human Rights, is primary law in Gibraltar. The constitution supersedes any statutory law that the Gibraltar Parliament might pass. So, our people have been in the position in which your citizens have been since the Human Rights Act was passed in the United Kingdom since 1964.

Our human rights observance in Gibraltar is complete. What happens, Andrew, is that lobby groups elevate their wish list to human rights, and they are not human rights. Human rights are things that countries have got together and agreed, in the European Convention on Human Rights in the case of Europe, to be human rights. Once countries agree that those things are human rights, they become legal international obligations. Gibraltar fully complies with that. There is an issue about the equalisation of the age of consent, and I am very happy to express the Government's position on that issue.

However, if you are asking whether I think that the Overseas Territories, as part of being part of the club, as you put it, should be obliged to mimic UK domestic policy on things that fall below the radar and are not legal human rights, such as a particular Government of the United Kingdom choosing to allow same sex marriages, and whether it should be legitimate for the United Kingdom to say to its Overseas Territories that, as a condition of remaining Overseas Territories, they, too, must permit same sex marriages, when there is no human rights international legal obligation to do so, the answer to that question is, in my opinion, a very loud no. It would be completely intrusive and interfering to export UK culture to some physically remote places that have different cultures, such as the Caribbean and elsewhere. So, the answer to that question is no.

On the question of the newspaper, Mr. Chairman, will you please just allow me—

**Chairman:** We have one minute, and then I must conclude.

**Peter Caruana:** I will deal with the questions in 30 seconds. On the equalisation of the age of consent, a European Court of Justice case states that it is a breach of the European convention on human rights not to have the same age of consent for gay and heterosexual sex unless an objective justification can be made for it. It seems unlikely that we will be able to make an objective justification, and therefore it seems probable that we will have to equalise our ages of consent. If that is the case, we will do so.

We have not withdrawn advertising from any newspaper. The newspaper that you have in mind is not advertised in by the Gibraltar Government, and neither was it advertised in by the Gibraltar Socialist Labour Party Government when they were in office, because even they recognised that it was a party news sheet. I have not withdrawn advertising. I have followed the practice of the previous Government in that respect and that is understood.

**Chairman:** Chief Minister, I am very sorry, but Prime Minister's Question Time is starting in four minutes, and many of us have to go to the Chamber. We have already extended this sitting. I hope, if there are any other matters that we wish to pursue, that we may do so in writing. Thank you very much to you and your colleagues for coming this morning. It has been a valuable session.

## Wednesday 26 March 2008

Members present:

Mike Gapes (Chairman)

Rt hon. Sir Menzies Campbell	Mr. Malcolm Moss
Mr. Fabian Hamilton	Sandra Osborne
Rt hon. Mr. David Heathcoat-Amory	Mr. Greg Pope
Mr. Eric Illsley	Rt hon. Sir John Stanley
Mr. Paul Keetch	Ms Gisela Stuart
Andrew Mackinlay	

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*Witnesses:* **Mr. Jim Murphy MP**, Minister for Europe, **James Sharp**, Head of Western Mediterranean Group, and **Ivan Smyth**, Legal Adviser, Foreign and Commonwealth Office, gave evidence.

**Q244 Chairman:** Minister, welcome to you and your colleagues. We are pleased to have you here. This, as you know, is a two-part session in which we have two Ministers—first, yourself, talking about Gibraltar, and then your colleague, Meg Munn, talking about the other Overseas Territories. It is interesting that we have this split of ministerial responsibilities. May I ask you to introduce your colleagues, and then we will begin?

**Jim Murphy:** Thank you for the invitation to be here today. I look forward to the time that will be devoted to Gibraltar. James Sharp is head of the Western Mediterranean Group, and Ivan Smyth is a legal adviser at the Foreign and Commonwealth Office.

**Q245 Chairman:** May I begin by asking you a general question about the new Gibraltar constitution, and what it means for the UK? Are there risks in increasing and maximising the level of self-government to an overseas territory?

**Jim Murphy:** In Gibraltar's case specifically, the new constitution that it agreed to by referendum is about the right balance. It does not jeopardise UK sovereignty, and that is very clear. There is general acceptance of that, and that was the basis of the understanding around the agreement and the referendum. It changes the relationship, while not jeopardising sovereignty, and shows that the UK is involved only when it is appropriate to be involved. It gives the Gibraltar Government a greater formal role in the governance of Gibraltar in an important and sensible way. It is a modernisation, and it has been described by others as an end to the colonial relationship, although I have never described it in those terms. It is a modernisation and improvement, and a sensible move forward, while establishing and protecting the principle of British sovereignty.

**Q246 Chairman:** But it will mean that on some issues relating to, for example, social policy, there will be different legal requirements in Gibraltar than in the UK.

**Jim Murphy:** The Government of Gibraltar will come to their own policy and legal positions within the terms of the agreement. That is the unavoidable consequence—but a desired one on occasion—of the nature of devolution and such constitutional arrangements.

**Q247 Sandra Osborne:** These differences in policies between devolved Administrations and others are issues that we are familiar with. Despite the constitution, as far as the UN is concerned, Gibraltar is still a colony and is listed as such in the UN Special Committee of 24. How important is it for Gibraltar and the UK for Gibraltar to be de-listed as a colony as far as the UN is concerned, and what are the UK Government doing to try to achieve that?

**Jim Murphy:** I will not respond to the initial comment, because we are here to talk about Gibraltar rather than Scotland.

**Chairman:** That is not an overseas territory.

**Jim Murphy:** I look forward to it never being so.

On Gibraltar, the fact is that the UN Special Committee of 24 process is still there. We do not think it reflects the modern sentiment between the United Kingdom and Gibraltar. We continue to argue the case, but we continue to co-operate on the fantastically titled form 73E—Ivan will correct me if I am wrong—on the basis, first, that it is part of the UN charter and, secondly, that it shows a determination to continue to co-operate in a process and sea change. It is important, not just in Gibraltar, but in terms of the UN's posture on that committee. Generally, the committee's colonial description does not reflect the modern reality of Gibraltar, and perhaps Meg Munn, my fellow Minister, will reflect on whether it reflects the modern sentiment in other overseas territories. Generally, I do not think it does, and we should move away from that UN process. We continue to argue that.

**Q248 Sandra Osborne:** Presumably the Spanish would oppose Gibraltar being de-listed. Would that be a stumbling block?

**Jim Murphy:** I think we must get agreement through the UN, and Spain's voice is important. We continue to discuss, and to convince. It is not and cannot be—Mrs. Osborne will be aware of this—a matter of us shouting our case more loudly. It is about making our case increasingly coherently, based on the modern arrangements between the United Kingdom and Gibraltar. That is a task that we continue to be committed to.

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**Q249 Mr. Heathcoat-Amory:** Can we visit the European Union for a minute? It is a subject on which we have exchanged views in the past and, I am sure, will do so again, because it touches on the interest of Gibraltar? Mr. Peter Caruana gave evidence to us, and said that Gibraltar was not given any opportunity to influence the outcome of the treaty negotiations, even though it is, of course, part of the European Community and looks to the Government to defend it. It was told that it was a *fait accompli* and that its concerns could not be addressed. Is that your reading of the situation?

**Jim Murphy:** I look forward to our future endeavours in debates, of course, on the EU, but I thought that we would find common cause in the view that Gibraltar at least was able to agree its new constitution by a referendum.

The fact is that the Lisbon treaty is pretty clear, and I think we have reassured Peter and others. We are certainly clear that Gibraltar's status as a consequence of the Lisbon treaty is unchanged. There is a declaration to that effect, and on that basis the remaining substantial issue—Peter is more than capable of speaking effectively for himself—is the role of the Parliament. The facts are, as the Committee will be aware, that these issues are outstanding not just in terms of what happens in Gibraltar and the deliberations of politicians in Gibraltar, but in terms of politicians here in the House of Commons, the House of Lords and the devolved Administrations throughout the United Kingdom. That is something that must be worked out with Peter and his colleagues—the exact democratic opportunity for the Parliament and the Government to be involved.

**Q250 Mr. Heathcoat-Amory:** I am talking about negotiation of the treaty, which will be binding on Gibraltar. Directives that we agree to are, of course, binding on Gibraltar, so it will be affected by changes to existing treaties and their replacement by the treaty of Lisbon. Mr. Caruana said that the memorandums that he submitted were effectively ignored, and that he was told that the negotiations were a *fait accompli*—that was the phrase he used. That is not very good stewardship of an overseas territory. Will you tell us whether you met his concerns, and, if not, why not? Gibraltar is a self-governing entity, but it seems to have been unrepresented at the negotiations, which affect it. According to the Chief Minister, you failed to do that. That is serious.

**Jim Murphy:** I met the Chief Minister to discuss those very points, and I think that the Committee has copies of the relevant correspondence between him and me.<sup>1</sup> Let me give details of the chronology: he sent his memo, and I received it, after the intergovernmental conference mandate had been negotiated. The United Kingdom was involved on that basis—you rightly followed the issue with great care, Mr. Heathcoat-Amory, over that period—and its chief negotiating position was about achieving the much-discussed red lines. The memo from Peter

came after the mandate was concluded; we did not want to reopen the mandate, for well rehearsed reasons, and we felt that there was no requirement to do so because Gibraltar's position was unaffected. As I have said, I received the memo after the conclusion of the IGC mandate.

**Q251 Mr. Heathcoat-Amory:** Mr. Caruana says that he submitted a memorandum in 2004—before the final terms of reference on the treaty were decided, so you had plenty of time. Again, we did not meet his concerns. Given that the Bill ratifying the treaty is still before Parliament, is not there a way in which to correct some of this by ensuring that Gibraltarian concerns are met, at least regarding the degree of oversight of how the treaty is implemented?

**Jim Murphy:** There is obviously no opportunity today, and nor has there been in recent months, to reopen the IGC mandate process or to rewrite the treaty. As I have said, the treaty does not affect Gibraltar's status; both we and Spain are clear about that. The major consequence for Gibraltar is about providing an opportunity for politicians there to be part of the important new role for regional or sub-national Parliaments.

In terms of the earlier memos, there was, of course, earlier correspondence based on the old constitution. I do not think that the Committee would thank us for rehearsing our arguments of recent months on that. That memo was relevant to the old constitution. On the IGC negotiation process on the Lisbon treaty, I received a memo after the IGC mandate had been concluded, so the opportunity was not there. Of course, there is still to be a process of debate in the House of Lords on whether the treaty should be ratified in the Bill, but it is for their lordships to reflect on whether this issue should gather their attention. I reiterate, however, that the situation in Gibraltar is unaffected. The memo on the treaty was received after the mandate. This issue might have been mentioned occasionally during our recent, prolonged debates in the House of Commons—some would say that the debates were not long enough—but it was not a issue on which parliamentarians or the Government were lobbied by the Government of Gibraltar on specifics during the passage of the Bill.

**Q252 Andrew Mackinlay:** The suspension of the Chief Justice of Gibraltar is a source of considerable disquiet, although not necessarily because of the circumstances. The suspension of any Chief Justice anywhere cannot be done lightly or in a fickle way—I am not suggesting that it was—but some of us are concerned that there are not sufficient safeguards. However, there is a London Foreign Office dimension, through the Governor, because he is a creature of the Foreign Office and he has acquiesced to the suspension. In the UK, there is a high hurdle to clear before suspending or dismissing a judge. Are you happy about the machinery to deal with the specific instance, because at this moment the Chief

<sup>1</sup> Received in confidence.

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Justice is suspended? Are we meeting international norms? There is considerable disquiet among your colleagues here about that.

**Jim Murphy:** I am sure you are right. The process and the specifics will cause disquiet to anyone who is in personal contact with the Chief Justice. It is a remarkably difficult time for the individuals involved, so I will not comment on the specifics of the case.

**Q253 Andrew Mackinlay:** No, I was not asking you about that. It is the principle. In a democracy, can you have a small legislature, or Government or even a Governor suspending a Chief Justice? Should not the hurdles be high? Indeed, should not there perhaps be a London dimension to this?

**Jim Murphy:** The Committee will reflect on this in its findings. The established process is that this is not a decision for London; it is a decision for the Governor. Under the constitution, it is for the Gibraltar Judicial Services Commission to address these very points on whether to suspend the Chief Justice. There is a legitimate debate as to whether that is something in which London should have a smaller or greater role. It is a judgment for the Committee and it is a judgment generally. Our judgment is that it is an issue that should be handled by the Governor in the context of this constitution. We talked earlier about Gibraltar having an additional power and role in terms of its own democracy and its own functioning. This is an important part of it.

**Q254 Andrew Mackinlay:** I may want to return to this when we speak to your colleague Meg Munn later on the wider principles. Is this Chief Justice a contract Chief Justice, or—I am not sure of the correct legal term—is he there in perpetuity until normal retirement age?

**Sir Menzies Campbell:** Ad vitam aut culpam.

**Jim Murphy:** I am advised that he is there for a set period of time. If that is not the case, I will write to the Committee.<sup>2</sup>

**Q255 Andrew Mackinlay:** May I explore this with you and you may want to come back to this? A judge who is there for a specific period of time, both in this overseas territory or anywhere else, is particularly vulnerable. Basically, if he is not liked, he can be got rid with a little bit of patience and by his contract not being renewed. This cannot be right, can it? Judges should not be fearful that their contracts might not be renewed.

**Jim Murphy:** This is an important point about the independence of the judicial process, but without being tempted—I know that you are not tempting me to do so—to trample on to the specifics, I should point out that some of the material that is already in the public domain may be pertinent.

**Chairman:** We will move on to the wider issue of the Overseas Territories generally and then I will bring you in again later, Mr. Mackinlay.

**Q256 Mr. Hamilton:** Minister, may I move to relations between Gibraltar and Spain? As you know, we have had quite a few meetings with the Trilateral Forum since September 2006. When the Government of Gibraltar gave their memorandum to this Committee, they spoke very positively, as you would expect, about the forum. They said, “The agenda is open, and thus not focused or preconditioned on sovereignty. And nothing can be agreed unless all three sides agree, thus giving Gibraltar an effective veto on unacceptable agreements.”

However, when the Leader of the Opposition in Gibraltar, Joe Bossano, gave his evidence to the Committee, he totally contradicted that, as you might expect. He said, “little comes out of these things . . . If anything new is in the pipeline and we are on track to achieve it, we will know it after the event and will then have to judge it post hoc. We cannot evaluate it beforehand, because no information is available.” Are you satisfied with the outcomes of the meetings of the Trilateral Forum since September 2006?

**Jim Murphy:** Generally, yes. First of all in terms of the structure the trilateral process is a better more mature structure. That is an important new architecture—if you like—of agreement and discussion that enshrines the right of the Government of Gibraltar to be an equal partner in those discussions. In principle, having all three parties in the room at one time, rather than the series of bilateral meetings, is a step forward. I do not wish to get involved in the internal disagreements between Peter and Joe but it is generally regarded that, on the freedom of movement of people, roaming charges and other important matters, there has been substantial movement during this process: on ease of movement across borders, traffic lines and additional lanes. Important improvements of substance, not just structure, have been made on those things.

It might be helpful if I inform the Committee—I do not know whether this is in the public domain or the Committee is aware of it—that in November last year the relevant officials agreed a shortlist of six new areas for future agendas, which included co-operation on the environment, financial services and taxation, maritime communications, education, justice and law enforcement, and visa issues. Those are substantial and important additional subjects that will now be placed within that trilateral process. The important thing is that the structure is now in place and that we can go beyond just celebrating its establishment, which inevitably was what happened initially—in itself, its establishment was a step forward. We must now ensure that the structure delivers. It has done so in important ways already, but we can now do much more.

**Q257 Mr. Hamilton:** Clearly, following the election of Zapatero’s Government, and their subsequent re-election, there was a sea change in relations between Spain, Gibraltar and the United Kingdom. Of course, before that, there were constant discussions about Gibraltar’s sovereignty and whether it had a

<sup>2</sup> Ev 361

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right to continue as it was. Are sovereignty discussions between Spain and Gibraltar now permanently off the agenda, or is the sovereignty issue still in the background as far as Britain's relations with Spain and Gibraltar are concerned?

**Jim Murphy:** I share your assessment about the very mature and principled position of the Spanish Government. We have seen a real willingness to engage on the principle and the detail. Without infringing on Spanish politics, I should say that we now have a very healthy dynamic. Of course, on occasions, we disagree. Is sovereignty off the agenda for ever? Such conversations cannot stop people raising matters, but we have made it very clear—I think, Mr. Hamilton, that you were at the Gibraltar day celebrations at the Guildhall when I made this speech—that the UK Government will never—“never” is a seldom-used word in politics—enter into an agreement on sovereignty without the agreement of the Government of Gibraltar and their people. In fact, we will never even enter into a process without that agreement. The word “never” sends a substantial and clear commitment and has been used for a purpose. We have delivered that message with confidence to the peoples and the Governments of Gibraltar and Spain. It is a sign of the maturity of our relationship now that that is accepted as the UK's position.

**Q258 Mr. Hamilton:** I am sure that the people and Government of Gibraltar will be very grateful, as is the Committee, for that statement and reiteration.

**Chairman:** Now can we switch our focus? Sir John Stanley please.

**Q259 Sir John Stanley:** The Cordoba agreement was a huge step forward that had eluded previous Governments of all political complexions in putting relations over Gibraltar between Britain and Spain on a sensible and constructive basis. I commend and congratulate the Government on that achievement. However, I am not easily satisfied, and I hope that the Government will now achieve the same resounding success in the military sphere as in the civil sphere. I am sure that you will agree that it is intolerable and indefensible that a NATO ally of this country should continue to impose restrictions on NATO flights and Royal Navy sea passage to Gibraltar in the area of Spain. Those restrictions, as I know you will acknowledge, are totally contrary to the letter and the spirit of the NATO treaty, and I hope that you will tell the Committee what steps the Government will take to produce a military and NATO equivalent to the Cordoba agreement on Gibraltar in the civil field.

**Jim Murphy:** Sir John makes a fair point about the agreement, which has eluded Governments of both political persuasions; it is a testament to the consistent work done over a number of years not

only by politicians, but by a number of very dedicated and talented officials, and it has been warmly welcomed.

On the military issues, you are right that it is unacceptable—in a NATO sense and because this is a nation with which we have otherwise excellent relations—for such restrictions to be in place. We will therefore continue to press the Spanish authorities. We are also monitoring the consequences. Although some of the public comment has suggested that this will undermine Gibraltar, and people can make that point, the more substantial impact in the long term will be on the UK's military posture and military capacity as a result of that lack of sea, air and road movement. We monitor the consequences in precise detail, and, thus far, despite our objecting in principle to Spain's position, the measures have not had an impact on military capacity. There have been issues about pieces of kit, and I think diving equipment is the one example where there has been an issue on the border. Generally, however, we monitor the situation, and we will continue to press Spain because it is unacceptable for a NATO ally and a country with which we have great relations to have such restrictions in place. We are determined to make progress on this and we do so through the Foreign Office and the Ministry of Defence.

**Q260 Sir John Stanley:** Can you tell us whether ongoing negotiations are taking place to produce a NATO military equivalent of the Cordoba agreement?

**Jim Murphy:** Whether it is equivalent or parallel to Cordoba, there are certainly ongoing efforts to bring a solution to this. Whether you could call it parallel to Cordoba, we will know only by the end of the process, but there is a process of bilateralism. Perhaps the Committee would find it helpful if I said that, despite the Trilateral Forum mentioned earlier, this remains a bilateral process, for understandable and important reasons. Bilaterally, we are working hard with our friends in Spain on this matter. It may be helpful in time to update the Committee as that progresses, Mr. Chairman.

**Chairman:** Thank you. In fact, if you can send us a note on that, we would be very grateful.<sup>3</sup> Unfortunately, because of our time constraints, there are one or two other issues that we may want to pursue in writing.<sup>4</sup> However, we are conscious of the fact that we have another Minister waiting to come in, so we thank you, Mr. Murphy, and your colleagues, Mr. Sharp and Mr. Smyth, for your contributions, and we look forward to seeing you on future occasions. We will now break for a few minutes while we change witnesses and we will then continue the session.

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<sup>3</sup> Ev 361

<sup>4</sup> Ev 361

*Witnesses:* **Meg Munn MP**, Parliamentary Under-Secretary of State, **Leigh Turner**, Director, Overseas Territories Directorate, and **Susan Dickson**, Legal Counsellor, Foreign and Commonwealth Office, gave evidence.

**Q261 Chairman:** Good afternoon, Minister, and good afternoon to your colleagues. I ask members of the public who have just joined us to switch off mobile phones or put them on silent.

Welcome, Mr. Turner and Ms Dickson. As you are aware, we are continuing this afternoon's double-hatted session with discussion of the other Overseas Territories, in which we have much wider responsibilities, both geographically and in terms of complexity, than the Minister for Europe has. Nevertheless, we are pleased to see both Ministers. Can you give us a sense of how the Foreign Office deals with the Overseas Territories overall in establishing consistency among them with regard to amendments to their constitutions? How do you decide how much self-government and responsibility we are prepared to entrust to particular territories, given their differences and complexities?

**Meg Munn:** Perhaps you will permit me to say a couple of sentences first about how we approach that overall as it leads into the constitutional basis. When I first came into post, I obviously wanted to understand the relationships, so I went back to the 1999 White Paper, which clearly set out the principles on which the relationship between the Government and the Overseas Territories is worked out. Four fundamental principles basically still hold true in terms of the territories: self-determination, mutual obligations and responsibilities, freedom for them to run their own affairs to the greatest possible degree and a firm commitment from the UK to help the territories develop economically and assist them in emergencies. That is the broad framework within which we operate.

In relation to the constitutions, the White Paper set out the view that it was important to modernise them to take account of the current situation and developments that had happened. One of the key issues is the size of the territories themselves, their capacity and what the people of the territories want to see in terms of their constitution. A negotiated process takes place. There is an important aspect. We continue to have legal obligations, in relation to which there are certain points that we will not give to them: our responsibility for international obligations, defence and, broadly, security. I think that covers the broad framework.

**Q262 Chairman:** What we will not give over in the general sense is one thing, but within the different territories there are different criteria, or at least different practices, as regards the level of self-government. Could you be more specific? For example, do you make judgments about the competence of people, or the degree of influence by undesirable elements, both locally and in the region?

**Meg Munn:** I do not think that is part of the discussion. Perhaps Leigh Turner, who is a bit closer to some of the ongoing negotiations, can give you a more specific response on that.

**Leigh Turner:** Broadly speaking, we have principles that apply to all the Overseas Territories, which the Minister has set out. There might be a case, such as St.

Helena, where the Governor retains responsibility for shipping. There might be a case, such as the Falklands Islands, where we have retained responsibility for permission to develop hydrocarbons. There will be a range of specific instances, varying from territory to territory, but we would also look at the capacity of the territory concerned. If it were a big territory, such as Bermuda or Cayman, it might have well developed institutions, compared with somewhere such as Pitcairn, which has limited capacity to run itself. There would be a sliding scale. I do not believe that we have ever said that a territory is so problematic that we cannot give it powers.

**Q263 Chairman:** But in the case of Pitcairn, which has so few people, you cannot give it many powers, can you?

**Meg Munn:** In relation to Pitcairn, clearly the structures and the way in which it operates are different from the way in which Cayman or Bermuda operate. There is a locally elected body, but it is clearly at a different level.

**Q264 Mr. Keetch:** What about human rights—for example, a Bill of Rights? On legislation covering, for example, homosexual equality and civil marriages, would you require all overseas territories to have the same level of what we might call western European human rights views, as opposed to the different tradition that some of those territories might have on some of those issues?

**Meg Munn:** There is a range of positions within what you said. In terms of UN conventions, the British Government are responsible for those, including in the territories, so we want the territories to be able to sign up to them and to have them as part of their legislation and the like. That has been one of the things that I have been particularly concerned about. At the Overseas Territories Consultative Council we discussed the fact that some territories had not signed up, particularly to some key conventions, and we want that to happen. In terms of the constitutions that are now being discussed for territories that have not put new constitutions in place, our view is that they should include issues relating to human rights, so that is part of the negotiation. Where there is a difference, we do not intend to say that territories must enact, for example, civil partnerships. That is not something we have gone that far with currently. It is an issue that I was questioned about at great length when I visited Cayman, which expressed concern that signing up to human rights within its constitution would automatically mean that it would have to have civil partnerships. That was not our view.

**Q265 Mr. Keetch:** So, to be clear, you will not insist that any overseas territory would have to write civil marriages into its constitution.

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*Meg Munn:* No.

**Q266 Mr. Illsley:** You gave the example of the Falkland Islands and said that the Government's permission would be needed to develop hydrocarbons. Is that what you meant—that the Falkland Islands would need the Government's permission to develop the hydrocarbon industry?

*Leigh Turner:* What happens at the moment is that the Falkland Islanders have, in a number of cases, requested permission to license areas of hydrocarbon development. Those permissions have been granted and the development of hydrocarbons is going ahead, but if there were to be a major new change of policy on hydrocarbons, for example in relation to licensing a number of major new areas of Falkland Islands' waters, we would expect that to be cleared with us.

**Q267 Mr. Illsley:** Does that imply that Her Majesty's Government own the rights to hydrocarbons around the Falklands? I know that issue is part of the negotiations on the new constitution.

*Leigh Turner:* No, the Falkland Islands own the resources about which we are talking. But the point is that we regard something as important as the development of hydrocarbons as having potential international implications so it is right that we have some sort of handle on it.

**Q268 Mr. Illsley:** Does that mean income as well as some sort of input and responsibility? Will HMG demand an income from any revenues from hydrocarbons?

*Meg Munn:* We have not yet got to the position where any have been located. That would be a discussion we would have with the Falkland Islanders.

**Q269 Mr. Illsley:** But will the Government be looking to obtain an income stream from that development?

*Meg Munn:* That would be part of negotiations with the Falkland Islanders. They have not found any so we have not had that discussion.

**Mr. Illsley:** I will take that as a "yes" then.

**Q270 Chairman:** We will come on to some detailed questions about the Falklands later. At the moment, may I focus on more general questions? This may seem academic, but I think I should ask the question anyway. Could an overseas territory be granted independence without a referendum taking place in that territory?

*Meg Munn:* The Government's position is that that is the way by which we would expect a territory to indicate that it wanted to have independence, but that does not rule out other mechanisms that might be acceptable—for example, if a political party went into an election on the basis that it would pursue independence and there was a clear majority for that party. We would have to look at each circumstance, but our position is that a referendum is the preferred route.

**Q271 Chairman:** At the moment, because of changes with regard to relationships with the European Union, but also because of their own desire, there is not a pressing demand for independence in any overseas territory, is there?

*Meg Munn:* I have not heard any territory Government express that view, but there are varying views. Certainly, when I was in Cayman they were in the process of constitutional discussions and some people wanted greater independence but still wanted to keep a link with the UK. I was clear about the issues on which we would not negotiate. Beyond that, I have not heard any expressions of a desire for independence.

**Q272 Mr. Moss:** I was part of the delegation that went to Bermuda and as you well know, it had its referendum some years ago. It was put to us strongly that many people there would be against the second proposal to which you alluded, whereby a party could go into an election with a manifesto commitment to have independence. If you look at the results of the last Bermuda election, the percentage difference in votes was tiny. If there is a low turnout, there would be a move towards independence on less than 50% of the popular vote. Are you suggesting that would be acceptable?

*Meg Munn:* No, which is why I was saying that if a territory wanted to go for independence on the basis of something other than a referendum, it would entirely depend on the circumstances. If a political party went into an election saying that it wanted independence and received 90% of the vote, that would be a different situation from the scenario that you have described. We would want to consider that matter.

**Q273 Mr. Moss:** May I turn to the appointment and role of Governors? What level of consultation does the FCO carry out with the Governments of the Overseas Territories before Governors are appointed?

*Meg Munn:* There is a discussion with the particular overseas territory, ahead of the Governor's appointment, about the characteristics, experience and so on that they think are important to the position. That happens before the advertising and recruitment takes place.

**Q274 Mr. Moss:** Is there any evidence to suggest that relations are improved if the appointment of, say, the Deputy Governor is a local appointment?

*Meg Munn:* Not necessarily. Sometimes it can be the other way around, because we are talking about relatively small communities. Even the larger overseas territories are still, in our terms, relatively small communities, and there can sometimes be friction due to the long personal or political histories of people who are appointed as Deputy Governor. On another occasion, they can be somebody who is perfectly acceptable to, and enjoys the respect of, a range of people, so there is no clear correlation from appointing somebody who is local.



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**Leigh Turner:** In a number of recently agreed constitutions, there has been a slight trend towards Deputy Governors being locally appointed. We think that it is a good thing in principle; the question is how well it works in practice, and we are still sucking it and seeing.

**Q275 Mr. Moss:** What are the key criteria that you consider when appointing a Governor?

**Meg Munn:** I shall ask Leigh to give you a little more detail about the experience of appointments, but generally, one of the things that we bear in mind in the appointment of Governors is that it is a Foreign and Commonwealth Office role unlike any other. For people who have had experience in a number of other posts or missions in the Foreign Office, it demands a range of skills and abilities in addition to those that they have, so the right person may not necessarily be somebody who has had a career in the Foreign Office. People who have spent time in the Overseas Territories Directorate often make good Governors, but there is a range of specific issues.

**Leigh Turner:** The basic principle, as for any other appointment, is that we want to get the best possible person to do the job. It is extremely demanding: it requires a good understanding of policy and, what we call these days, delivery issues—the ability to make things happen, often in environments where making things happen is not that straightforward. We have recruited several Governors while I have been in this job, and in some cases we have had a good field from within the diplomatic service or we have trawled Whitehall. On one occasion, in the case of the Governor of St. Helena, we recruited together with DFID, because it has large interests there, and we ended up advertising externally. We had 147 applicants before the deadline—a few came in after—and we appointed somebody from outside the diplomatic service, although they had Overseas Territories experience. It is a range of things. We have just appointed in the Turks and Caicos Islands somebody who does not have OT experience, but has a range of other experience operating in small posts—a very experienced character. In other cases, we try wherever possible to appoint people with direct experience.

**Q276 Mr. Moss:** Are you saying that there are in place mechanisms that the Foreign Office can use if there is a problem with an incumbent Governor?

**Leigh Turner:** Do you mean if somebody has already been appointed?

**Mr. Moss:** Yes.

**Leigh Turner:** That was not what I was saying.

**Q277 Mr. Moss:** All right. May I extend the question to ask you whether such mechanisms are in place?

**Leigh Turner:** Certainly, as with any other appointment. It has not happened in recent memory, not while I have been in the job, but we monitor the performance of our Governors very carefully. We try to keep very close communications with them. They operate in quite remote environments, and often they are the only people of their type there. It is not like being an ambassador in a big post, with a lot of

ambassadorial colleagues, so we try to offer Governors as much support as we can and stay in close touch with them to ensure that they are doing a good job, which, I am happy to say, they all are.

**Q278 Mr. Moss:** Why was the decision taken to upgrade the posting of the Governor to the Turks and Caicos Islands?

**Leigh Turner:** Basically, we always look at all our posts, and we try to ensure that we have resources in the right place. We looked carefully at TCI, and we had been considering upgrading it for quite a while. Partly as a result of more flexibility in the way we are allowed to move resources around within Foreign Office budgets, which came to my aid, we were able to upgrade that post, which seemed to us an important one, in which we could use even more fire power than we had already.

**Q279 Mr. Moss:** Should the head of the Overseas Territories Directorate be a less experienced official than the Governor who is reporting back to him?

**Leigh Turner:** That is not really a question for me to answer.

**Meg Munn:** I think that the process within the Foreign Office is to recruit people with the required skills and abilities to take on the role. It is essentially competence-based. That is the process for all posts. Some of the skills and abilities that one needs to run the Overseas Territories Directorate would overlap with what was needed to be a Governor, but some would be different. Someone who was a director of the Overseas Territories Directorate might well make a good Governor, but they might not. Those are different roles and competences, so it is not a question of more or less experience: it is about the right competences.

**Chairman:** You touched in a previous answer on the Turks and Caicos Islands. May we now focus on those?

**Q280 Sir John Stanley:** Minister, you may wish to be aware that at the present time the largest number of memorandums that the Committee has received from a single overseas territory has come from the Turks and Caicos Islands—both public memorandums and those sent to us privately. In our recent visit we discovered that in the Turks and Caicos Islands there is no prohibition on Ministers having commercial business positions while they are serving as Ministers, and there is no publicly accessible register of Ministers' interests. The single largest and most valuable traded commodity in the Turks and Caicos islands is Crown land released for development, and there are no publicly accessible texts of planning applications. Also, the electorate is a mere 7,000 and a considerable number of people inside and outside Government are related to each other.

Against that background I hope that you would agree that a key responsibility of the Foreign and Commonwealth Office is to give the utmost support to, and ensure the continuity of appointment of, the handful of people in the Turks and Caicos Islands who are appointed by the Foreign Office from outside

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and are therefore independent of local political pressures: in particular, the Governor, the Chief Justice, the Attorney-General and the Chief Auditor. Is not it therefore a matter of the utmost concern that when the Attorney-General's office was subject to an arson attack a few months ago and he sought additional security protection from the Foreign and Commonwealth Office, he was told that it was not a matter for the FCO, even though it has specific responsibility under the constitution for internal security in the Turks and Caicos Islands?

Is not it a matter of equal concern that the Chief Auditor, whose term of office expires about today, and who is about to leave the islands, if he has not done so already, is not being replaced, because the FCO has not found a replacement for him, and that that appointment is now the subject of a local job share by existing members of his staff? I put it to you, Minister, that that is a quite shocking display of lack of support of key personnel in the Turks and Caicos Islands, and of singular lack of competence in ensuring continuity of appointment.

**Meg Munn:** If I can respond to the wider issues first, I agree absolutely about the importance of the Foreign and Commonwealth Office supporting key personnel there. I also agree with you about the importance of those people, because they are not subject to local political pressures. A lot of what we look at in terms of good governance recognises that some of the problems that we encounter in overseas territories are as much a factor of them being small island communities as they are of them being overseas territories. Therefore, the relationships and pressures that you described are something that we have to be very aware of. I will ask Leigh to deal with the positions of Attorney-General and Chief Auditor.

**Leigh Turner:** The Governor clearly works very closely with the Attorney-General in the Turks and Caicos Islands, as in any territory. I know that they discuss all matters frequently. To be quite honest with you, I had not heard about the issue of the Attorney-General requesting security and being refused. That is the first time that I have heard that.

Clearly, security in the TCI is a gubernatorial responsibility, but at the same time, operational police matters are dealt with in the TCI itself, and the money for policing comes from the TCI Government. What happens in practice is that all those matters are discussed regularly between the Governor and the police. I know that the Governor has a weekly police briefing from the head of the police force on what has been happening and what can be done, so I will be happy to look into that question. Similarly, I am afraid that I am unsighted on the Chief Auditor not being replaced. We will have to get back to you on that one.<sup>5</sup>

**Q281 Sir John Stanley:** Minister, I have listened to your official, and I must say that I am shocked and appalled by the response that he has given on those two issues. It is disgraceful that apparently nobody in the Foreign Office is aware that the Attorney-General requested additional security after the arson attack

on his office and was fobbed off with, "This is not a matter for the Foreign Office," and it is quite appalling that your Department in London is unaware that we face a key vacancy, this minute, in the post of Chief Auditor.

**Meg Munn:** I agree that they are important issues. Obviously, we have not been made aware of them. We need to find out why, and we will give that great priority.

**Q282 Mr. Pope:** When we hold any inquiry, the Committee receives lots of written evidence. Typically, the senders of a handful of that evidence request confidentiality, but for the TCI, a large number of people did. That is of real concern. I am finding it hard to put that in context, but the only other place that I have been where people have insisted on such confidentiality was the People's Republic of China. I am shocked that people are doing that in a country that has the Union Jack on the flag. What is your view?

**Meg Munn:** In relation to the specific issue about allegations and concerns, I am very concerned to hear that people have such a level of worry that they will be passed on. I have, obviously, looked on your Committee's website for the ones that have been made public, but I understand that a significant amount have not. We take extremely seriously issues of allegations and corruption. I have had discussions with the Government about it.

I also discussed the general issues that Sir John Stanley raised about Crown land with the Premier when he was here in December. There have been a number of attempts to obtain firm evidence about it. There was a process some time back where police officers from the UK went to the Turks and Caicos Islands to take evidence and information about it, but insufficient evidence was provided to take the matter forward. There have been other issues exactly the same where that has not been possible and people have not followed through, despite reassurances about confidentiality and how such things happen.

I am very exercised about what I hear about your visit there. It gives me great concern that there continue to be allegations that are not being substantiated, and I think that we need to look in more detail at the whole situation there. There are a number of legislative measures in progress to improve some of the matters that Sir John Stanley raised. We will need to continue to keep them in mind to see whether they deliver greater transparency and confidence in the systems.

**Q283 Mr. Pope:** Will you keep an open mind as to whether there should be a commission of inquiry by a British judge, because there are serious concerns? I do not expect you to answer yes or no to having a commission of inquiry, but will you at least keep an open mind?

**Meg Munn:** I have a completely open mind on that. If the Committee wishes Susan Dickson to give some of the legal bases on which a commission of inquiry could be established, I am very happy for that to happen. So far, there has not been sufficient evidence to proceed with one. Obviously, it is a serious matter to take forward a commission of inquiry, and we

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would want to do so on the basis of good evidence. My mind is completely open on that, and if we had that evidence we would want to see that happen.

**Q284 Mr. Keetch:** The three of us were quite astonished by what we discovered. There are three communities on the Turks and Caicos Islands: the belongers, who are not just those born and bred on the island, because people can be given belonger status by the Government, often at short notice; the long-term expatriates; and those who want to gain belonger status, but are not necessarily expats. Concerns were expressed in all three communities, not just one.

I want to ask you a specific question. When we visited the Cayman Islands, the Governor had instituted a commission of inquiry, without the Cabinet's knowledge, which is due to report either at the beginning of the week or almost immediately. Can you make it absolutely clear—I echo what Mr. Pope said about not saying yes or no to any inquiry—whether the Governor of the Turks and Caicos Islands could order a commission of inquiry without consulting the Cabinet or the Chief Minister on the island? I want to be clear about whether the Governor's powers are the same as those that we understand were exercised by the Governor of the Cayman Islands recently.

**Meg Munn:** I should like to ask Susan Dickson to explain this, because we have looked into it since receiving the feedback from your visit. I should also like us to clarify what the Governor of the Cayman Islands did, so that everyone is absolutely clear about the relevant powers and processes and how they work.

**Susan Dickson:** Commissions of inquiry are dealt with in local legislation rather than in the constitutions of the Overseas Territories. Both the Cayman Islands and the Turks and Caicos Islands have a Commissions of Inquiry Ordinance that governs the creation and operation of commissions of inquiry. I have here the ordinance of the Turks and Caicos Islands: it allows the Governor to appoint commissioners to inquire into the conduct and management of any public body, the conduct of any public officer, or into any matter whatsoever which is, in his opinion, of public importance. The Governors of both the Cayman Islands and the Turks and Caicos Islands have discretion to set up such commissions, so they do not have to act on the instructions or advice of anyone else.

**Meg Munn:** May I ask Leigh Turner to explain what happened in the Cayman Islands, so that we are absolutely clear? There is an interesting aspect to the issue that he will explain.

**Leigh Turner:** I shall attempt to explain it; Susan will correct me if I get any of it wrong. The Governor proposed to hold a commission of inquiry, but the Cabinet did not want it to go ahead, thinking that it was unnecessary in Cayman, and declined to fund it. Of course, the Cabinet has control of the purse strings. At that point, the Governor consulted the Foreign Office and said, "We think that it is very important to hold a commission of inquiry; please will you give me instructions to overrule the

Cabinet," which is the way that it happens. We consulted Ministers and agreed that it was important, so the Governor was issued with instructions to overrule the Cayman Islands Cabinet in order to allow a commission of inquiry to be set up.

**Q285 Mr. Keetch:** So let us be quite clear: if the office of the Attorney-General—our appointment—is attacked, he will require money from the local police and voted for by the local government to protect him, and if the Governor wants to appoint a commission of inquiry, which he has the power to do, without consulting the Cabinet, he expects it to pay for it, but we will not pay for it. That sounds ridiculous. If I were a Governor of one of these places, and wanted to appoint a commission of inquiry, I would expect Her Majesty's Government to pay, even though it might be looking into aspects of management of that territory—I am not saying that that is the case here—that are directly affected by whether it would pay for it. Can you give us an assurance that, if the Governor of the Turks and Caicos Islands wanted to commission an inquiry, and the local Cabinet refused to fund it, we would?

**Leigh Turner:** We would not need to, because we could issue an instruction to overrule it.

**Q286 Mr. Keetch:** And he could do that without previously consulting the Cabinet?

**Leigh Turner:** It would not be the normal way of doing business for the Governor by himself to do something like that without consulting the Cabinet.

**Q287 Mr. Keetch:** But he could?

**Leigh Turner:** In theory, yes, but we usually try to do things by consensus.

**Susan Dickson:** The point is that the Governor needs the power to do that on his own, because he might be looking into what the Government have done—the rest of it, because he is a part of it. He might be looking into the conduct of a Minister. If it was reliant on him getting permission from the Cabinet to set up the commission, it could obviously block it. The other thing to remember is that this is a local inquiry conducted under local legislation. It is not a UK inquiry. The Governor is acting as the Queen's representative in the territory and in right of that territory, not as the UK's representative.

**Q288 Mr. Keetch:** I accept that, but there was some confusion about this: if he wanted to, could the Governor appoint a commission of inquiry?

**Meg Munn:** Yes.

**Q289 Mr. Pope:** On a separate issue, but still relating to the Turks and Caicos Islands, one of the other things that struck us while we were there were the extraordinary problems that its Government are having with illegal immigration—they discover about 400 or 500 illegal immigrants a week, which is an astonishing number. They also estimated—although it is very difficult to judge—that the actual number of illegal immigrants might be double that, but that they are only catching half of them. They have a detention facility before returning the illegal

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immigrants to Haiti, which we looked at. It is safe to say, in life's lottery, we were all pleased that we were not in the detention facility for long. Can the British Government provide any further help to the Turks and Caicos Islands either to do with the detention facility or with assisting them in catching those illegal immigrants? They told us that things are noticeably better when a British frigate is patrolling the territorial waters, during the hurricane season, providing radar and technical assistance. Are the British Government willing to do anything?

**Meg Munn:** The illegal immigration issue is complex, because it also relates to those working on the Turks and Caicos Islands. As is the case with all immigration, it is not just a matter of what happens externally—patrol ships or whatever—but of labour markets and so on. The Government of the Turks and Caicos Islands need to be more active in relation to work permits and clamping down on illegal working. We have discussed with them what they need to do in order to reduce the pull factor. In relation to the external waters, again, that is a devolved matter for them. Therefore if they feel that they need more help on that, they would need to consider what they want to do. We could certainly assist with advice and technical assistance. In relation to the detention facilities, we have had some general concerns about the prisoners there. I think that the adviser for the area is visiting.

**Leigh Turner:** We have a regionally based prisons adviser who regularly visits the prisons in the region. He has recently been to TCI.

**Meg Munn:** So that is the additional assistance we are giving.

**Q290 Sir Menzies Campbell:** Would you have expected the Governor of the TCI to report back on issues such as the Attorney-General's request for greater security and the fact that it was not possible to replace the auditor?

**Leigh Turner:** I do not know how much to make of the question about the Attorney-General's security, because I do not know why the Governor did not bring it to my attention or to—

**Q291 Sir Menzies Campbell:** That is why I am asking you the question. Would you have expected him to do so?

**Leigh Turner:** It would have depended what happened in the discussions. I do not know whether, in this case, for example, he discussed it with the police and they said, "Okay, we'll provide additional protection", but the Attorney-General was not happy with that. I just do not know the background on that. But we would expect the Governor to bring to our attention anything that we considered to be of major importance. If the Attorney-General was not happy with his security, that would be quite an important thing.

**Q292 Sir Menzies Campbell:** Is reporting back done on a regular or ad hoc basis? For example, do you expect a report every month or every three months? What are the time scales? What are the criteria for the contents of these reports?

**Leigh Turner:** It depends on the territory, but as a rough rule of thumb we would expect to have some kind of round-up of what is going on about every week from a major territory. We are in touch with Governors or Governor's offices nearly every day in many of our territories, including, for example, the Turks and Caicos Islands. We are in ceaseless contact with the Governor's office there on a range of issues. We do not talk so often to some of our territories that—shall I say?—do not cause us so much policy interest, such as Bermuda, for example.

**Q293 Sir Menzies Campbell:** Were you aware that the Attorney-General's office had been fired?

**Leigh Turner:** Yes, we knew all about that.

**Q294 Sir Menzies Campbell:** You knew that? Did anyone from the Foreign Office make inquiries about how that came about and whether any consequences flowed from the fact that it happened?

**Leigh Turner:** We discussed it with the Governor. The Governor informed us of it and informed us that they were looking into what they could do about it.

**Q295 Sir Menzies Campbell:** That would have been a natural context in which to consider the question of additional security for the Attorney-General.

**Leigh Turner:** As I say, I was not aware that he had problems with the level of security that he was being provided with.

**Q296 Sir Menzies Campbell:** So far as Her Majesty's Government's powers are concerned, as I understand the legislation, which you helpfully read out, the co-operation of the Governor is required before there can be an inquiry under the legislation. Do Her Majesty's Government have the power to—forgive the colloquialism—send the heavies in themselves if they are not satisfied with the conduct of any part of the Government?

**Meg Munn:** Yes, ultimately. In relation to a wide range of concerns, the Government could do that. Obviously, as we set out our relationship, we need to be aware of what the implications are for it. But if you look at the issues in relation to Pitcairn a few years ago, where there were allegations of child abuse and subsequent prosecutions for that, clearly, the Government got very involved and the whole process went through to prosecutions and imprisonment.

**Q297 Sir Menzies Campbell:** Has any consideration been given to mounting an investigation into the conduct of government in the Turks and Caicos?

**Meg Munn:** In relation to the range of allegations that have been made, I discussed the matter myself with the Governor and, as Leigh Turner has said, there is regular contact. Sufficient evidence has not been provided even for the Governor to feel that it has reached the level where a commission of inquiry could be started. If further evidence in relation to that—

**Q298 Sir Menzies Campbell:** That is the Governor's view, but I am asking about our Government's view.

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**Meg Munn:** We have not been provided with sufficient evidence even to go beyond that. There is, if you like, a hierarchy, and we would get involved if things went significantly beyond what the Governor could deal with independently, but it has not reached that level.

**Q299 Sir Menzies Campbell:** Is it entirely a matter of coincidence that the post has been upgraded?

**Meg Munn:** No. I think Leigh Turner explained earlier that there is a range of problems and difficulties there and that the situation is demanding, so he felt that it was appropriate that there be a Governor of a higher grade.

**Q300 Sir Menzies Campbell:** That level of problems and difficulties has not yet triggered in the mind of Her Majesty's Government the need to mount an inquiry of their own?

**Meg Munn:** No, because we have not got firm evidence that there is a need for that.

**Q301 Sir Menzies Campbell:** So problems and difficulties to upgrade the post, but not problems and difficulties to mount an inquiry.

**Meg Munn:** Yes.

**Chairman:** I will take a couple more questions on Turks and Caicos, but we must then move on.

**Q302 Sir John Stanley:** May I put to you just one further angle on the issue of illegal immigration into the Turks and Caicos Islands? When we were there—to give us and perhaps yourself a perspective on the scale of the issue—we were told that illegal immigration into the Turks and Caicos was equivalent to illegal immigration into the UK of between 4 million and 5 million people. It was put to us—I believe rightly—that this really is a ticking time bomb on the islands. There is already a huge cost associated with it. We saw that for ourselves when we went to the detention centre. A new detention centre is having to be built. We went to the prison, where a big extension is being built. We were given the figures for the way in which violent crime is rising. Have you had any discussions with the Haitian Government about what the British Government might be able to do to deal with the problem at source? I hope that you might reflect on the fact that, in anything but the short term, this might be far and away the most cost-effective solution for the British Government. We were told that the northern shores of Haiti, from which most of the illegal immigrants leave in their boats, are completely unpoliced and unpatrolled. Will you consider whether it would be a very sensible investment by HMG—whether through your Department or DFID—to do something serious to help the Haitian Government prevent these people from taking off for the Turks and Caicos Islands? Once they land there, as you may know from the topography, you have a huge area of absolutely impenetrable vegetation, so it is a matter of the utmost ease for people to disappear, and it is absolutely impossible for police and security forces to track them down.

**Meg Munn:** Certainly, illegal immigration from Haiti is an important issue, and that relates not only to the Turks and Caicos Islands but to the Dominican Republic, which I visited in December. Our ambassador there is also responsible for Haiti, and we discussed the issues there. Work is going on in relation to the Haitian Government, and things are improving. I have not got the details in front of me, but perhaps I could write to the Committee about the work that is being done on the issue.<sup>6</sup> I entirely take your point on that, and I accept the premise that both the push and pull factors are important in relation to immigration and issues in Haiti, and we will certainly look at what you have said.

**Q303 Mr. Keetch:** May I have a one-word answer? Am I correct in assuming that because Britain retains responsibility for defence and internal security, visits by British warships to Turks and Caicos waters, or indeed the visits by any of Her Majesty's armed forces, can take place without the agreement or prior knowledge of the local Government?

**Meg Munn:** I think that is a legal question. I am not sure of the answer on that.

**Susan Dickson:** Technically, the answer is yes, but as a matter of practice, I do not think it would be done.

**Q304 Chairman:** No doubt you will write to us if you need to amend that. Can I take you to a completely different part of the world—the British Indian Ocean Territory? As you are aware, the Foreign Secretary made a statement on 21 February about rendition. My questions are specific. They are not about that statement but about the allegations in the evidence to us about US ships which have some role in this process being serviced from Diego Garcia. Has the UK sought reassurance from the United States about any of those allegations that ships outside the territorial waters were being serviced from Diego Garcia?

**Meg Munn:** Just to be clear about ships generally, because that came up in the statement, we have had no evidence to suggest that any ships outside the territorial waters of Diego Garcia have been involved in rendition, nor that they have been serviced from the island.

**Q305 Chairman:** My question was have we sought reassurance, not whether we have received any evidence.

**Meg Munn:** I will come on to that. We have no evidence to suggest that that is the case. The issue in relation to the territorial waters is more complex. There is an issue about how far outside the territorial waters they are if they are outside them. We are still in the process of putting together the information that will go to the US in relation to a whole range of issues. I do not know whether this would be one of the specific issues that we would ask. If they are outside our territorial waters our responsibilities are different from if they are inside.

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**Q306 Chairman:** So the answer to my question is that at this moment we have not yet sought reassurance.

**Meg Munn:** No, and as you will be aware, we want to do an extremely thorough job in relation to the whole issue of Diego Garcia. So where there are any suggestions or there have been any allegations or any concerns about any possible flights and the like, all that information has been put together and will be passed on to the US. That information has not yet gone.

**Q307 Chairman:** No doubt we will be pursuing this. You will be aware that I have written to the Foreign Secretary following his statement.<sup>7</sup> As I understand it, the agreement, in the sense of the exchange of notes between the British and American Governments, that was signed in 1966 will continue in force for a further 20 years after 2016 unless it is terminated. Have you given any consideration or had any discussion with the US about the possibility of terminating the agreement in 2016?

**Meg Munn:** No.

**Q308 Chairman:** Or in terms of changing the terms of the agreement to increase UK oversight if it does continue beyond 2016?

**Meg Munn:** No. I have not been involved in any discussions of that nature.

**Chairman:** Perhaps we can get a note to the Committee if there have been any discussions of any kind and we can then consider them. Thank you.

**Q309 Mr. Keetch:** Could I ask about the Chagossians? As you know, there has been a long, ongoing case. First, why did the FCO decide to appeal against the Law Lords?

**Meg Munn:** There were three basic reasons for the appeal. First, there were the defence obligations to the US in relation to Diego Garcia, as we have just been discussing. Secondly, there is the legal point that, as I understand it—and I am not a lawyer—the ruling in and of itself would call into question the way in which we make legislation for all the Overseas Territories. Thirdly, the process that we went through some years ago in relation to the Chagossians was to consider whether it would be feasible for them to live on one of the outer islands. The feasibility study suggested that that could not be the case without incurring significant ongoing liabilities for the UK.

**Q310 Mr. Keetch:** You have pre-empted my next two questions wonderfully, Minister. There has been a suggestion by the Chagos Refugee Group that that report in June 2002 was altered before it was published by the FCO. Can you guarantee that the consultants' findings were not altered?

**Meg Munn:** As I understand it, and as I have been informed, it was an independent report and was not altered by the Foreign Office.

**Q311 Mr. Keetch:** What that report basically said, as you rightly mentioned, was that if they went to live on that outer island, they would be caused some

difficulties because they would not have generators and all sorts of other things. Surely, if they wanted to go there, it should be up to them.

**Meg Munn:** That is a view that could be taken. As I understand it, I have read that the views of the gentleman who is leading on the court case are that he would expect the provision of resources so that they could re-establish living there. As the Minister for the Overseas Territories, I am well aware of the issues and concerns that arise when people live on small islands, particularly in small numbers. Pitcairn is an example of that and of being in need of budgetary support. I would be very concerned about the ongoing liabilities to the UK from people going to live in environments such as the Chagos Islands. Mr. Turner has been there, and as I understand it, the biggest of the outer islands is about the size of St. James's Park, so we are not talking about a big place.

**Leigh Turner:** Hyde Park.

**Meg Munn:** Sorry, Hyde Park.

The islands are small and low-lying, so would be susceptible to storms and so on. Issues that affect many low-lying islands would face the islanders in addition to the problems of establishing the ability to live there in the first place. Obviously, there would also be issues such as employment and sustainability generally.

**Q312 Ms Stuart:** Before I take you to Ascension Island, can I query your usage of a term that you have just used in an answer? When you said, "As I understand it," did you mean that you have asked the question and have been told the answer?

**Meg Munn:** Yes.

**Q313 Ms Stuart:** So you told the Committee that you asked whether the independent report was tampered with and were told no.

**Meg Munn:** Yes, that is absolutely correct. As I was not there, because I was not the Minister at the time, I did not see it, but I have asked the question and was told no.

**Q314 Ms Stuart:** Now, I turn to Ascension Island, which is somewhere else that is completely volcanic with not many people. In the introduction, you referred to the 1998 White Paper. I had the impression that that still roughly represents the Government's attitude to the Overseas Territories.

**Meg Munn:** Yes. There are obviously a number of issues beyond that, such as climate change and 9/11, but essentially I was of the view when I became the Minister that that framework was still appropriate. Therefore, it does.

**Q315 Ms Stuart:** If you talk to people on Ascension Island, they drew a conclusion from that White Paper that the granting of property and residential rights was something that the Foreign Office would be working towards. I perceive that there has been a complete U-turn by the Government. Is that the right perception, and what was the reason for that?

**Meg Munn:** I have also visited Ascension Island, and had that conversation with people there. I understand from them that they were given that impression. It is

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the Government's view that, again, it would not be sensible to establish a permanent base there for people for a permanent overseas territory. The people who are there work for a limited number of organisations, and if they decided to move for any reason the same issues of sustainability difficulties would arise. I had a full and frank discussion with a number of people on Ascension Island, and I believe that at the end of it they were clear about the position and that we wanted to move forward on having an Ascension Island council re-elected, because we believe that people living there and working there, even without permanent rights, should be involved in governance issues—it makes for better governance. Part of that process will be to establish a mechanism by which, without having permanent property rights, it will be possible for businesses to develop in a more sustainable way than is currently the case.

**Q316 Ms Stuart:** So you would say that the statements made in 2000 and 2001 were misunderstood on Ascension Island?

**Meg Munn:** Again, I find it difficult to say, because I was not part of that conversation. The Ascension islanders told me that that was the understanding that they were given, and I regret that, because it is not the Government's position.

**Q317 Ms Stuart:** But you do want to take forward the constitutional reform and the representative function?

**Meg Munn:** Yes.

**Q318 Ms Stuart:** But it appeared to us on our visit that they could not even find people to stand as candidates, and nobody had any idea how to take that forward. How would you suggest it could be progressed?

**Meg Munn:** Discussions are ongoing with the Ascension islanders about it. A timetable was originally set for trying to have an election; I cannot remember if it was April or May.

**Leigh Turner:** By April this year.

**Meg Munn:** It was certainly in the early part of this year. In my discussions with them, it was clear that that was unrealistic, and that people still felt very angry and felt that they had been misled. It was my view that we needed a longer period, so that there would be absolute clarity about what would be allowed and what the role would be, provided that that could be achieved. Certainly, what they said to me was that while they might disagree about the issue of residence, their biggest issue was being misled, and that if we were moving to a stage where we would be absolutely clear about what could happen and what arrangements could be made, people might well be willing to reconsider standing for council, but in my view, that position would not be achieved before later this year. We are looking at autumn rather than spring.

**Q319 Ms Stuart:** Having refuelled your plane, may we travel on to the Falklands?

**Meg Munn:** I am retracing my steps as you speak.

**Q320 Ms Stuart:** Now that we have arrived at the Falklands, one of the things on everybody's lips is the fact that President Kirchner is visiting the United Kingdom and is expected to meet the Prime Minister. Can you confirm that that meeting will take place, and do you have any indication whether sovereignty, flights and the rights of veterans' families to visit the Falklands will be discussed? What are the nature of the discussions that you expect to take place?

**Meg Munn:** My understanding is that President Kirchner has been invited to visit, and that she wants to visit. I do not know whether that is going ahead, what the nature of it will be or whether there will be individual meetings with the Prime Minister. I assume that that will happen, but I do not know what is currently on the agenda, or whether those particular issues will be discussed.

**Q321 Ms Stuart:** Before I hand over to my colleague, Eric Illsley, I should say for the record that the people in the Falklands are extremely concerned about that visit. They are extremely concerned about the discussions on sovereignty, and there is a sense that although the British Government are supportive in action, we are not quite as assertive as they would sometimes like us to be.

**Meg Munn:** Can I be absolutely clear? There are no plans to have any discussions on sovereignty. The British Government are absolutely clear about the sovereignty of the Falkland Islands, and there is absolutely no reason to doubt that, as I made clear myself when I was there. There are no proposals to discuss sovereignty with the Argentinians, and in any of our dealings with Argentina, we are always absolutely clear about that.

**Q322 Mr. Illsley:** The relationship with Argentina is crucial, and the issue was raised with us on a number of occasions during our visit, as it probably was during yours. In particular, there was the question of flights into the Falkland Islands from other countries in South America, especially Chile, which operates a Lan Chile flight into the Falklands once a week. Time and again, the future development of the Falkland Islands seems to be dependent on increasing the number of flights into the islands by only a small amount, but any increase in flights is determined by Argentina, which has complete control over the airspace of that area and has, if you like, the whip hand over Chile. It can dictate to Chile how many flights go into the Falklands and could even stop those flights, if it wanted to, by putting pressure on that Government—similarly, with Brazil.

Are the Government standing up to Argentina sufficiently robustly to put the case for the Falkland Islands in terms of improving communications on to the islands? Are we doing anything to say to the Argentinians, "Why don't you take this air blockade away and allow other flights?" For example, in respect of the proposed visit of Argentinian relatives of those buried on the Falkland Islands, the Argentinians are pressing for a flight into the islands

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for some 600 relatives, while at the same time preventing any use of their airspace for charter flights into the Falkland Islands.

**Meg Munn:** I discussed that at length with the Falkland Island councillors when I was there. I have also discussed it with some of the councillors when they have been in the UK. The Falkland islanders are, if you like, in the driving seat on discussions about flights and we talk to them about other options, because we have concerns about the reliance on the air bridge, and whether there are any other options that could be looked at.

In relation to Argentina, as I say, we are always clear that sovereignty is not an issue for discussion. We believe it would be beneficial to co-operate with Argentina on a range of issues, including fishing and the like, because that would help with the relationships. But that has, in a sense, gone the other way in more recent times and there has been less co-operation.

On the specific issue about the families' flight, I entirely understand the position of the Falkland Island councillors, which is that if Argentina will not allow any charter flights through their airspace into the Falkland Islands, why should they agree to a specific flight from Argentina? I talked to the councillors about whether there might be a way to begin to open up discussions further on charter flights, but you will know where the Falkland islanders are on that matter.

It is clear that the Falkland islanders do not prevent Argentinian families from visiting the graves—that goes on regularly—but this is a visit of a different nature given the number of people. In relation to the logistical problems, it is fair to say that you can look at this both ways. On the one hand, if people flew into the Falkland Islands in those numbers and if, for any reason, particularly during their winter, they were unable to fly off, there would be a logistical problem of a population of 3,000 people accommodating 600 others all of a sudden. That is a real concern and a real issue. On the other hand, the suggestion of a ship, which is an option that the Falkland islanders have said that they would be happy with, gets over the problem of accommodation, because people can stay on it. However, I understand that that would mean that it would take considerably longer for the Argentinians to get to the Falkland Islands and back than if they flew. There are issues on both sides.

It would be good if we could find a way through this. That would be a positive message for both populations and it would be humane as far as the Argentinian families are concerned. But I understand entirely the problems on both sides.

**Q323 Mr. Illsley:** The point being, of course, that if the Argentinians co-operated, they could fly into the Falkland Islands at any time.

**Meg Munn:** Yes.

**Q324 Mr. Illsley:** Let me mention another point that was raised with us, concerning the application of our international treaty obligations in respect of the various organisations—the United Nations and so on—and their applicability to areas such as the

Falkland Islands. One matter that springs obviously to mind is the Ottawa convention on de-mining, which I am sure was raised with you in terms of the minefields in the Falkland Islands. Although it would be good to have them removed, the cost and danger involved in doing so could be disproportionate to the population of the Falkland Islands. Similarly, civil aviation regulations applicable to small overseas territories place an enormous burden on places such as the Falklands to comply with requirements on their aircraft. Such regulations are intended for much larger overseas territories that fly larger fleets.

Another matter that came up while we were there was the World Health Organisation convention on the searching of ships at sea, which again places a huge financial burden on a small community to meet a convention that is more applicable to larger territories. Is there any way in which we could have a de minimis principle that says that such conventions should not apply to places such as the Falklands or our smaller territories? That would avoid an excessive cost or burden being imposed upon them.

**Meg Munn:** I would like to separate those points out because the Ottawa convention and the issue of de-mining is separate to the other matters. In theory, the former is a one-off as opposed to the other two issues, which are ongoing.

We are aware of our obligation under the Ottawa convention. We are also aware of the difficulties that there are and, having been to the Falkland Islands, I am aware of the views of the Falkland Islanders that you have expressed. We have had a feasibility study done to assess how practicable de-mining would be in relation to the Falkland Islands and whether it could actually be done. Anyone who has been there knows that the terrain is quite difficult. Having had that report done, we have to reflect on that matter and consider whether we should go ahead, what the time scales would be and other such issues. That is actively under consideration at the moment.

On the other issues, you are getting beyond my knowledge in terms of whether it is possible to have things adjusted in that way—on a de minimis principle.

**Susan Dickson:** Generally, treaties that are concluded within the UN tend to not to have territorial application provision because there is a reluctance in that forum to talk about colonies or to recognise that states have “colonies”—that is what they are often called. Such forums tend to be silent on that, which means that we take the position that we decide ourselves whether we want to extend the treaty to the territory or not. Other conventions, usually in Europe, tend to have territorial application provisions that set out the mechanism for extending treaties to the territories.

Generally speaking, there is not an automatic application of a treaty to a territory. That is something we usually look at and take a decision on. I do not know what happened 50 years or more ago, but nowadays we never extend a treaty to the territories without consulting them. We have the power to do so—we could extend a treaty if we wanted to—but we always have consultation. We



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tend to be accused of not consulting properly but to my knowledge, we never extend anything without consultation.

To answer the question, there is a de minimis consideration because not all treaties are extended to all territories. Sometimes the territory says no because it does not have the infrastructure or facilities in place to have it applied. Therefore, we do not extend it. I could give examples of treaties that have not been extended.

**Q325 Mr. Illsley:** Just to give you an example, on the searching of ships at sea, we arrived in the Falkland Islands at the same time as the health director of the Falkland Islands returned from a conference he had attended in London where that matter was discussed. The Falkland Islands had not been invited to the conference and they were not informed about it. They did not know of its existence until they found out about it on the grapevine. They attended the conference to determine whether it applied to them. They found out from the NHS, which organised the conference, that it did not know whether the conference applied to the Falkland Islands or not, so they were left in a bit of a quandary. That is why I raised my eyebrows when you said that there is consultation with the islands on all conventions.

**Susan Dickson:** There is consultation at the time of extension. Sometimes, the problem is that the territories lose sight of what applies to them. But we have lists in our treaties section. They can ask, and we can give them the information.

**Chairman:** We must now move from discussing the Falklands and go back briefly to the subject of Bermuda.

**Q326 Andrew Mackinlay:** I want to ask three swift things about Bermuda. First, were you aware that the Auditor-General was placed under arrest and held in custody? I cannot say the exact duration of that, but I think that it was for a day. Were you aware of that?

**Meg Munn:** I was not.

**Leigh Turner:** We were aware of it, yes.

**Q327 Andrew Mackinlay:** What was your reaction? What happened then? He was the equivalent of the Comptroller and Auditor General.

**Leigh Turner:** I understand that it was just for a day and that he was released subsequently. I cannot go into details at this point.

**Q328 Andrew Mackinlay:** The second question concerns judges. There are apparently two categories of judges in the Overseas Territories. There are judges who are appointed—Menzies Campbell helped me with the Latin term—not in perpetuity, but for a term until they eventually retire. There are also contract judges. They are very vulnerable because, if they aggravate people locally, they might not be reappointed. What say you about the veracity of that, and are you confident that that is an acceptable norm? Do you understand the point?

**Meg Munn:** Yes. I am not aware of the specifics in relation to Bermuda.

**Andrew Mackinlay:** I was going pan-Overseas Territories on that point.

**Meg Munn:** I understand your point.

**Q329 Andrew Mackinlay:** You might want to come back to us about that, because it is an important constitutional point. If Miss Dickson is happy about the point that I am making, I really want her reaction.

**Susan Dickson:** Some judges have different terms. Some are appointed until they retire, while others have contracts. *[Interruption.]*

**Q330 Andrew Mackinlay:** My colleague rightly says, “Why, why?” A contract judge might aggravate those who have jurisdiction over you, and that might include the Foreign and Commonwealth Office. That is a serious point. If some essence of their appointment is local, their independence is impaired by the fact that they are contract judges.

**Susan Dickson:** The first thing to note is that the judges are not appointed by the United Kingdom. They are appointed by Her Majesty or by the Governor in right of the territory.

**Q331 Andrew Mackinlay:** Well, a judge might aggravate the Governor.

**Susan Dickson:** They have security of tenure, and that can be for the duration or within the contract. It is possible to have security of tenure within a contract. What is not desirable are short contracts. The other point is that there is a procedure for the removal of judges in the constitution of some of the very small territories.

**Q332 Andrew Mackinlay:** But removal would not apply to a contract judge who just would not be reappointed.

**Susan Dickson:** But he could be removed within the term of his contract.

**Andrew Mackinlay:** Of course, yes, but I think that you are missing the point.

**Susan Dickson:** There is no objection to a judge having a contract, as long as it is of sufficient duration.

**Andrew Mackinlay:** Perhaps that is a matter for the Committee to return to when we make a submission.

**Chairman:** We have literally seven minutes. President Sarkozy will not wait.

**Q333 Andrew Mackinlay:** In one minute, I want to deal with the Bermuda Regiment. Both informally and in the House, the Minister has said that it is a matter for the locals. We have probed the matter and it is not quite like that. The fact is that the Bermuda Regiment is under the Governor—a creature of the Foreign and Commonwealth Office. The Bermuda Regiment has conscription, but it is discriminatory on gender, which I put to you is unacceptable and should be alien to this Government’s policies.

There have also been a sufficient number of complaints to justify an independent assessment about the nature of the training regime, which is the subject of dispute. In fairness, we were courteously received by the Bermuda Regiment and had a frank discussion. There was a rebuttal of some of the

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accusations that have been made. However, there have been accusations about bawling out in recent times, things that you should be familiar with and also with some of the training regimes. Do you not see that there is a case for you to request from London, as has happened before, that our military attaché in DC or wherever else should go down there and make an assessment? That military outfit is very proud, and the people are very proud of it—we were impressed by that. Could it be a modern defence unit, comparable to the Royal Gibraltar Regiment—there are parallels? The Royal Gibraltar Regiment sends people to Kosovo and other theatres on secondment. That could also happen with the Bermuda Regiment. Is there not a responsibility for you now to look at the Bermuda Regiment in the round, for reasons which, because of the time factor, I have had to brush over rather?

**Meg Munn:** In relation to the second point, on complaints and concerns about their treatment, my expectation would be that, if the Governor felt that there were real concerns there, he could request someone from the UK to go and have a look and make some kind of assessment. I do not think that that would be a particular problem, in that we would want to see in relation to a whole range of things that human rights were respected and the like. In relation to the legal position, because we have had a number of conversations about this, again I have asked Susan Dickson to clarify the responsibilities—which matters are devolved and which ultimately come back to the UK Government.

**Susan Dickson:** The Bermuda Regiment is not provided for in the constitution of the territory. That is something created within the territory. The regiment was established by the Bermuda Defence Act, so it is established under local legislation. I am afraid that I do not know the details.

**Andrew Mackinlay:** But I do.

**Chairman:** Perhaps we will not have that discussion now. In the four minutes left, I would like to get in a question on the Cayman Islands from Mr. Keetch, who wanted to ask something briefly.

**Q334 Mr. Keetch:** Very briefly. Environmental protection in the Caribbean is hugely important. The highest point on the Cayman Islands is the rubbish dump. The islands get visited by cruise ships, with a lot of garbage and waste going on there. We need to do something to help them to deal with this waste management problem. Would the FCO be willing to offer the Cayman Islands any technical assistance or any ideas about how they can help do this themselves?

**Meg Munn:** Certainly in relation to issues of technical assistance, one of the things that I have been keen to do is to look to other Departments where that might

be appropriate. So, there is no problem about us seeking to identify some technical support for that. That happens in relation to a range of areas.

**Q335 Chairman:** Finally, representation of the Overseas Territories—we met the members of the Overseas Territories Consultative Council and took evidence from some of them in December. How do you ensure that your decisions and discussions are followed up—not by yourselves, but by other Departments?

**Meg Munn:** In relation to the Overseas Territories and the other Departments, that is done from within the Overseas Territories Directorate—liaison and keeping in touch with the other Departments.

**Q336 Chairman:** May we have a note on that?

**Meg Munn:** Yes, certainly.<sup>8</sup> One of my personal views is that where the territories lack expertise, that is something we could probably do a great deal more about. I want to develop that with other Departments and Ministers.

**Q337 Chairman:** Related to that, can you give us a note on the relationship with DFID and its aid programmes—Montserrat, St. Helena, Pitcairn?<sup>9</sup> Finally, do you think that there is a case for individuals from the Overseas Territories being offered or given membership of the House of Lords on a personal basis, or having a role in some reformed institution or second Chamber, as for example happens in France?

**Meg Munn:** Our relationship with our overseas territories is very different from those of France. I really hesitate to step into Lords' reform at all.

**Chairman:** Everyone else is.

**Meg Munn:** I do not see that, in the relationship that we have with the Overseas Territories, we would want to have people in the Lords who were there as representatives of the territories. Whether they are there on a personal basis would relate to wider issues of appointment to the Lords.

**Q338 Ms Stuart:** When you do the note on St. Helena, could you also justify why the airstrip is the length that it is and why it is not longer, which would allow flights from there on to South Africa?

**Leigh Turner:** I can answer that immediately. The planned length of the airstrip, in the context of the entire design, would allow flights to go from there to South Africa.

**Ms Stuart:** We were told they would not—okay.

**Chairman:** Thank you and your colleagues, Minister. Some of us now have to rush off to pursue the entente. We thank you very much for your time.

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<sup>8</sup> Ev 357

<sup>9</sup> Ev 357

## Written evidence

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### **Letter to the Chairman from the Lord Triesman of Tottenham, Minister of State, Foreign and Commonwealth Office**

#### BRITISH VIRGIN ISLANDS: DRAFT VIRGIN ISLANDS CONSTITUTION ORDER

I refer to my previous letter of 29 April 2007 enclosing the above draft Order, which sets out a new Constitution for the Virgin Islands.

I am writing to advise you that at the request of the Government of the Virgin Islands (BVI), we have amended Section 2 (2)(d) of the draft Order as follows (bold text indicates new text added):

- (d) is born outside the Virgin Islands of a father or mother who is a British overseas territories citizen by virtue of birth in the Virgin Islands or descent **from a father or mother who was born in the Virgin Islands** or who belongs to the Virgin Islands by virtue of birth in the Virgin Islands or descent **from a father or mother who was born in the Virgin Islands;**

The new wording is intended to ensure that qualification for status as a Virgin Islander by descent for those born outside the Virgin Islands is restricted to the second generation, and does not extend further. Although this wording is now narrower than was originally proposed by the BVI and agreed by the UK, the limitation is reasonable, and I have agreed to this change.

*David Triesman*  
The Lord Triesman of Tottenham

6 June 2007

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### **Letter to Richard Cooke, Head, PRT, Foreign and Commonwealth Office from the Clerk of the Committee**

As you know, members of the FAC visited Madrid and Gibraltar last week to review progress following the Cordoba Agreement between the United Kingdom, Spain and Gibraltar.

While the groups were in the region, a vessel—the Ocean Alert—was intercepted by the Spanish authorities as it left Gibraltar’s territorial waters. This incident was discussed by both groups, who not surprisingly received different explanations from the authorities in Madrid and in Gibraltar.

The group in Madrid were left in no doubt about the strong concern of the Spanish government about the activities of the Ocean Alert in waters which Spain lays claim to, and in relation to the alleged raising of artefacts from the wrecks of Spanish ships. Members received strong protests about the berthing of the Ocean Alert in Gibraltar, apparently in a Royal Navy area of the dockyards, and about the removal by air of marine artefacts. The Spanish claim to the waters between the 3-mile and 12-mile limits off Gibraltar was made clear.

The group in Gibraltar were shown charts which demonstrated that the waters in which the Ocean Alert was intercepted are regarded by the Government of Gibraltar and by HMG as international waters. They were told that neither GoG nor HMG had any responsibility for Ocean Alert or its sister vessel.

The Committee wishes to receive a memorandum on the Ocean Alert incident, including a full explanation of the application of international law to the waters off Gibraltar; responsibility of the British and/or Gibraltar authorities for the activities of Ocean Alert while it was operating from Gibraltar and for the removal of artefacts recovered from the seabed apparently to the United States by air from Gibraltar; and confirmation of whether the Odyssey vessels had the use of a RN berth or other RN facilities in Gibraltar. The Committee hopes to receive this memorandum not later than Monday 10 September.

20 July 2007

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### **Submission by Sergio Lottimore, Bermuda**

#### **ABOLISHING THE BERMUDA DEPARTMENT OF DEFENSE’S CONSCRIPTION POLICY**

The Bermuda Regiment prides itself on strong morals, values and civic duty. Yet the institution’s selection process explicitly contradicts these very same values by humiliating, criminalizing and persecuting Bermuda’s young males that choose not to participate in this organization. As a recent selectee, I find myself faced with the possibility of imprisonment and/or fines for violating an unfair and unjust edict. By violating my human rights through forced labour, sexism and ageism; I recommend that the Bermuda Regiment should modify its selection process in a manner that espouses the organization’s stated ideals.

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I am a 22-year-old recent university graduate from McGill University. I graduated with a Bachelor of Commerce degree with concentrations in International Business and Strategic Management. I have subsequently returned home and have gained full employment at an international reinsurance company. In the fall, I will undertake courses to pursue a professional designation at the Bermuda Insurance Institute. I understand that each and every one of us has a civic responsibility to give back to their country. As a former Bermuda Government scholar, I fully understand the benefits of investing in the community and I have already committed to positively contributing to my island community. I have only been back in Bermuda for two months; therefore, I have only had limited contributions to my community thus far.

One of my more notable roles has been working with my employer to establish a scholarship for Bermudian students seeking to study abroad. I also plan on becoming involved in the Bermuda Government Mirrors Programme, the Centre on Philanthropy and I will also participate in a local community sports club. These undertakings will come in due time and I am really looking forward to working in these organizations. The key concept to recognize is that it was my *choice* to join these organizations. I was neither forced nor threatened with disciplinary measures. Out of my own volition, I have chosen to commit *my* time to the associations that I feel I can contribute the most to. This path is mutually beneficial for myself, as well as my community. I can understand that some of my peers may not want to do anything at all—that is fine with me. I am not here to judge them and I respect their right to choose where they want to spend their time—this is a fundamental notion of any democracy. The Bermuda Regiment does not mesh well with these ideals; however, the institutions gross violation of human rights is perhaps the most grotesque aspect of its existence. The concept of conscription has received global condemnation from leaders for decades due to its “degradation of human personality and the destruction of liberty”.<sup>1</sup>

Ageism, sexism and Universal Declaration of Human Rights violations pervade the Bermuda Regiment selection process. If the Department of Defense believed so strongly in the learning environment at Warwick Camp, why is it that they do not extend these “privileges” to all of society including women and older, able-bodied people? If they deem these activities fit for young males, then surely it would be good for all members of society. The conscription policy also clearly violates numerous articles of the Universal Declaration of Human Rights.<sup>2</sup> I do believe that there is a role for a similar institution in Bermuda; however, the Bermuda Regiment currently does not satisfy the necessary functions that I think it should provide.

One such function should be performing marine patrols to secure Bermuda’s shores. Bermuda has a significant illicit drug problem—with 12 nautical miles of oceanic territory, there is no dedicated authority to monitor Bermuda’s marine traffic. The Bermuda Regiment could potentially provide these forces in addition to more civil crisis response services. Apart from clearing roads after hurricanes, the Bermuda Regiment could provide disaster relief services similar to that of the Red Cross or the United States’ Federal Emergency Management Agency. Implementing more of these necessary measures and eliminating many of the redundant military components will strengthen the Bermuda Regiment and make it a more attractive organization to civilians, particularly younger people. The current conscription scheme is what stands in the way of upgrading the Bermuda Regiment into a 21st century organization.

The fact that the institution is automatically endowed with new recruits every year means that regimental authoritative figures do not have to do anything to attract a high quality, dedicated labour force. Ending mandatory military service will force the Bermuda Regiment to modify its current offering in order to entice more recruits. These modifications include, but are not limited to, implementing the recommendations above in addition to providing enhanced compensation and benefits. With more committed and qualified recruits, the Bermuda Regiment could become a leaner organization that fulfills all of its duties with minimal labour requirements. This would make it easier for the organization to meet its annual human resource quota. The only way this will happen is if conscription ends.

The abolishment of conscription in Bermuda will lead to improved, more suitable services being performed by the Bermuda Regiment. As a democracy, Bermudians cannot accept a system that places an inequitable burden of Bermuda’s shared civic responsibilities on the shoulders of the country’s young males. We as a country must come together to develop an institution that will reflect the morals and values of our community—until that day comes, we will continue to produce young adult males who are discontent with a superfluous military organization.

29 July 2007

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<sup>1</sup> See Manifesto Against Conscription and the Military System.

<sup>2</sup> See Universal Declaration of Human Rights.

**Submission from John A Epp, Complaints Commissioner, Cayman Islands**

CAYMAN ISLANDS—EVIDENCE—TRANSPARENCY AND ACCOUNTABILITY—OCC

I reply to your public invitation to submit evidence dated 5 July 2007 concerning Overseas Territories. I address the situation in the Cayman Islands in my role as Complaints Commissioner.

1. The Office of the Complaints Commissioner (OCC) has a role very similar to that of the UK Parliamentary Commissioner and other public sector Ombudsman.

2. The aim of the OCC is to investigate in a fair and independent manner complaints against government to ascertain whether injustice has been caused by improper, unreasonable, or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.

3. The Cayman Islands (Constitution) (Amendment) Order 1993 amended the Constitution of the Cayman Islands to establish the Office of the Complaints Commissioner. Section 49N states: “(1) Subject to the provisions of this Constitution, a law may make provision for the office, functions, jurisdiction and powers of a Complaints Commissioner”. Section 49N continues: “(5) In the exercise of his functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority”.

4. The OCC was initiated pursuant to the Complaints Commissioner Law, 2003, Law 18 of 2003. The office was fully functional by December 2004. The OCC answers to a committee of the Legislative Assembly (primarily financial oversight) which is chaired by a member of Cabinet, Hon. Alden McLaughlin.

5. Law 27 of 2005 amended the CCL and authorised appointments of staff to be made by Commissioner in keeping with Public Service Management Law 2005.

6. A Revision of the Complaints Commissioner Law was issued in 2006.

7. Regulations for the better operation the OCC were suggested by the Commissioner and approved by Cabinet in 2006. They were to be laid before the Legislative Assembly by the Chairman. Unfortunately this was delayed first due to scheduling conflicts and later due his cycling accident and the period of recovery. The regulations will clarify that the Commissioner is to set the rate of remuneration for technical advisors or mediators that are retained, and gives a framework to make the payment of expenses incurred in aid of investigation.

8. The jurisdiction of the OCC includes almost all government entities. Currently the OCC is seeking support from MLAs to clarify the list of entities excluded.

9. The investigative powers of the OCC are substantial and they extend to any person who has knowledge of the matters under investigation including Ministers of Government. Currently the OCC is seeking support from MLAs to clarify a few issues such as the power to enter property and the power to cite a person for contempt of court for failing to cooperate in an investigation.

10. Cooperation from government entities generally has been good with some of the resistance arising from ignorance of the role of the OCC or from the past era of closed government.

11. Whilst there have been a few long delays in making public certain reports of the OCC (through the introduction and tabling the report by the Chairman of the Committee in the Legislative Assembly) the delays can be attributed to a variety of innocent problems. These include, first settling the procedure, and then issues of scheduling, and more recently the absence from the Assembly of the Chairman.

12. I am disappointed by the decision of MLAs not to debate any of the nine reports that have been tabled. The reports are available on [www.occ.gov.ky](http://www.occ.gov.ky).

13. I have taken an active approach to publicising the role of the OCC in the media, and have often granted interviews to the media on a variety of topics including the recommendations arising from investigations made in the public interest on my own motion. This approach has met with almost no comment from MLAs or senior civil servants.

14. The budget granted to the OCC remains satisfactory.

15. The Commissioner does not report to His Excellency the Governor. A respectful and supportive relationship exists between these officers.

16. On the whole the Commissioner is satisfied with the support of the OCC demonstrated by the Legislative Assembly, Cabinet, and the government.

*15 August 2007*

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**Letter to the Committee from Mr Alan Savery, Banking Supervisor, St Helena**

1. I understand that you are conducting an enquiry into the FCO and its responsibilities in relation to the Overseas Territories including the regulation of financial sector in those territories. Clearly as the Banking Supervisor for St Helena I have an interest in this enquiry.

2. I advised the Government of St Helena on the setting up of a commercial banking operation there, managed the implementation of the plans, drafted the Banking Ordinance and was appointed Banking Supervisor in 2003. The Bank of St Helena was established in 2003 and has been very successful in providing the residents with an efficient and cost effective service.

3. In addition I currently have a contract with DFID to draft a Financial Services Ordinance for St Helena.

4. My experiences in dealing with Government Officials in St Helena and the FCO have not always been satisfactory. The main problems have arisen where the officials concerned did not have a sufficient technical grasp of the issues. This has resulted in long delays particularly as a result of the FCO having only one person with the necessary technical skills to advise them on such matters and that person trying to carry out a full time job in the Cayman Isles at the same time.

5. Another problem area for me which is particularly acute at present is the turnover of key personnel in the Government of St Helena. It can be difficult to get Government Officials to focus on important issues when they know that their term of office is drawing to a close. At present this problem is exacerbated by the fact that the term of office of all the key officials appointed by the FCO (including the Governor) comes to an end over the next few months. I fail to understand why when these officials are appointed on fixed term contracts there is consistently a significant time interval between someone leaving and their replacement being identified. My key contact on most issues is the Financial Secretary. It has been known for at least six months that she will not renew her contract when it expires at the end of September but the recruitment process to find a successor only started a few weeks ago. Whereas in such a key role there really ought to be a handover period, it is quite clear that there will once again be a significant gap before a successor is appointed.

6. Although St Helena has banking legislation and a regulatory regime for banks it has at present no legislation relating to other financial services or money laundering. There have been indications that certain parties would like to take advantage of this situation and one website described St Helena as the "last unregulated financial centre in the world". To deal with this situation I have been trying to get financial services legislation introduced for almost three years. The delays in doing so have largely been with the FCO and DFID. However, as noted above I am currently working on draft legislation and will be visiting the island in September to discuss this. One of the problems I have had with this work so far is persuading FCO/DFID officials that as a very small community and economy St Helena does not need (and cannot afford) the type of regulatory regimes that are necessary in the developed world. In creating a regime for a country like St Helena it is extremely important to have a thorough understanding of the needs of the local economy and the manner in which business is done there. I think I have proved this point through the successful establishment of the bank and an appropriate level of regulation but am still fighting this battle in relation to financial services.

7. If I can be of any further assistance to your enquiry I would be happy to help.

20 August 2007

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**Submission from Correy Forbes, Turks and Caicos Islands**

**PROLOGUE**

All persons should have the right to a country that they can call home from the moment they enter the world. This country should primarily be the country of their birth. They should have a right to, and unhindered access to all rights of ordinary citizens of that country.

There is currently an immigration law in the Turks and Caicos Islands that states that All children born in the Turks and Caicos Islands must take the nationality of their mother. These children are systematically denied passport and other common rights of other children born in this country.

Some of these children's mothers are from countries that does not automatically render citizenship to persons born outside of its borders, thus, rendering these children stateless for at least the first eighteen years of their life. At eighteen they can opt for full citizenship in this country (for a humiliating fee).

#### CASE SCENARIO

Approximately two years ago my wife's son applied for a passport, it was a very difficult process. His mother was born in the Bahamas, but he was born in Providenciales. Turks and Caicos law excludes him from full citizenship in the Turks and Caicos thus he is not entitled to a passport. The Bahamas Law is equally as discriminating, because even though his mother was born in the Bahamas she is not a Bahamian because her mother was born in the Turks and Caicos Islands. These issues effectively renders him stateless and excludes him from ever becoming a Bahamian citizen, except through marriage, financial or political favours.

It took us over a year and some strongly worded email to the Governor of the Turks and Caicos for a passport to be issued to him. This is wrong. We taught this boy from a little child to be a patriotic Turks and Caicos Islander, this is the only country that he knows and call home. He should not be made to feel less than any other child born in this country; he should not have to pay for citizenship in a country in which he was born. Three of his grandparents were born in Grand Turk the other was born in Providenciales. In 1970, when his grandmother decided to give birth to his mother in the Bahamas, the medical facilities here in the Turks and Caicos Islands was at a minimal standard. It was common for mothers to lose two and three children at birth. Sadly, in 1972 when she went to the sole hospital in Grand Turk to have another baby it cost her her life, at a very young age.

In my conclusion, we are now seeing many countries who have implemented similar types of discriminatory laws, (Design to restrict the rights of the children of immigrants) are now seeing these children growing up with disdain for the country of their birthplace.

Currently, these children here cannot be turned down for full citizenship at 18, what is the point in putting them through 18 years of inferiority? Imagine after a school break some children talk about their trips abroad while the others have to be quiet because they are not entitled to a passport to travel? Give these children full citizenship at birth. This is the least we can do for them.

2 September 2007

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#### **Submission from Mr Ray Carbery, President, Turks & Caicos Islands Olympic Committee (Steering)**

#### **RECOGNITION OF THE TCI OLYMPIC COMMITTEE BY THE INTERNATIONAL OLYMPIC COMMITTEE**

##### BACKGROUND

Most of you are unaware that for approximately six years the TCI Olympic Committee has been working assiduously to be recognized by the International Olympic Committee (IOC). This quest has been an uphill struggle . . . to say the least.

Our problem originated at the 1992 Olympic Games, held in Barcelona, when the IOC decided that at the next Olympic Games, in 1996 in Atlanta, the Olympic Charter would be modified and a new rule would be introduced: Dependencies or Territories of Sovereign States would no longer be allowed IOC recognition unless they became *independent*.

When the IOC members voted in 1996 in favour of this new rule, they did so with the knowledge that some existing and recognized National Olympic Committees (NOCs), specifically those of Bermuda, Cayman Islands, BVI, Hong Kong, USVI, Guam, American Samoa and Netherlands Antilles, were permitted to continue to be part of the Olympic movement even though they represented countries who were not independent.

Although no specific provision as been added to the Olympic Charter to justify their continued acceptance by the IOC, the NOCs of these countries, which have the same or similar political status as the TCI, enjoy all the benefits of being a member of the IOC while we continue to be denied this opportunity.

The TCIOC was formed when the TCI Sports Commission requested that research about IOC membership be undertaken by the Tennis Federation and that they subsequently reported to a special meeting of all National Sports Associations. That meeting was held in Grand Turk on 31 July 2001 under the auspices of the Director of Sports and the Sports Commission. At that meeting the TCIOC was established and a Board of Directors was appointed as a steering committee to investigate how the recognition process by the IOC.

Since the establishment of the TCIOC all of our attempts to be heard by the IOC, the British Olympic Association (BOA) and the UK's Foreign & Commonwealth Office (FCO) have been unproductive to date.

The International Olympic Committee; in their few replies to our many enquiries, has steadily maintained that the new rule is written in stone and we just have to resign ourselves to be without a recognized NOC until our country chooses to become independent. We have contended repeatedly that if the rules have been changed once they can obviously be changed again and that there are mechanisms for modification of the

Olympic Charter exist, clearly spelled out in the *Fundamental Principles* which is the backbone of the Olympic Charter. To illustrate our case we provided a nine page Memorandum outlining how they could revisit our case without opening the floodgates. The major question we have . . . why should Bermuda, Cayman and BVI have a recognized NOC and not the TCI? The IOC has refused to accept our challenges basically disenfranchising our youth and our Territory.

The British Olympic Association; claims to be satisfied with the status quo and chooses so far to maintain a stiff position of neutrality and disinterest in regards to our quest. They have refused to endorse our request for support and have on numerous occasions failed to respond to our letters/emails . . . and a face to face meeting, repeating their stance “they cannot/will not help us”. We find their attitude particularly disturbing considering that their executive Olympic Members (Princess Royal, Craig Reedie, Dame Mary Glen Haig), knew ahead of time of the pending change to the Olympic Charter and voted for this change. This disgraceful position has discriminated against our Territory and more importantly our youth. The BOA have violated our Constitution rights along with our Human rights, that is why they have informed us that they can no longer correspond with us on this matter!

**The Foreign & Commonwealth Office;** was contacted when we ran aground with the IOC and the BOA and requested their assistance in this matter . . . they replied sorry “there is nothing we can do for you” basically informing to get lost! We asked the FCO the following questions:

- Did they know about the pending change of the Olympic Charter in 1996?
- If they did . . . did they notify the Territories of this pending change? No . . . why not?
- How could they (FCO) allow a Company Limited by Guarantee registered in England & Wales registration #1576093 have Constitutional voting rights over the future of Territories long term goals. They had no clue until we brought to their attention . . . why?
- Did they (FCO) review the Olympic Charter and see how this debacle came about. No . . . they did not have a copy of the Charter until we brought to their attention. Why?
- Did they (FCO) seek assistance to from the BOA to help change the imbalance of the other Overseas Territories; Cayman, Bermuda & the BVI. No . . . why not? The list goes on and on.

The FCO have failed their fiducial responsibility and disenfranchised the Turks & Caicos Islands people and their youth. Their inability to bring this debacle to a conclusion has taken us six years to get them off first base . . . only to inform us that we have sour grapes! Lord Triesman Head of the Overseas Territories has not once responded to our letters/emails he fails miserably heading up this important department and has added to the discrimination, the human rights issues and our violation of our constitutional rights of our people and should be help responsibly for his non actions. There are others within the FCO who have taken the same attitude . . . “let’s not rock the boat”, hence another ongoing challenge for us. Our plight has gone “*UN-NOTICED*” to the following people (Tony Blair MP, Frazier Wilson FCO, Tom Watson MP, David Cameron MP, Kate Blacker FCO, HRH Princess Royal, HM The Queen, Dr Denis Mac Shane MP; plus a list of countries and worldwide organizations eg UN).

We have secured legal advice from our QC in London and know exactly where we stand as does the FCO, BOA and the ICO. This is no idle threat from us . . . it is purely a passion for our rights . . . for what we want for the youth of the TCI . . . to stand on the world podium of sport with the rest of the world.

We do hope that you all see the merits of our challenge, feel the unfairness of our predicament and support our efforts. Thank you for your attention

*Discrimination against people has no place in the world of sport . . . including the Olympic Games. The Crusade continues.*

#### Memorandum

Recognition by the International Olympic Committee (“IOC”) Of a National Olympic Committee (“NOC”)

The Case of the Turks & Caicos Islands (“TCI”)

The Olympic Charter, NOCS and Recognition of NOCS by the IOC

1. The Olympic Charter governs the organization and operation of the Olympic movement.
2. The criterion for belonging to the Olympic movement is recognition by the IOC.
3. The Olympic movement includes the NOCS, when recognized by the IOC.
4. In order to promote the Olympic movement throughout the world, the IOC may recognize as NOCS organizations the activity of which is linked to its role. Such organizations shall have, where possible, the status of legal persons in their countries. They must be established in accordance with the Olympic Charter, and the IOC must approve their statutes.
5. The mission of the NOCS is to develop and protect the Olympic movement in their respective countries in accordance with the Olympic Charter. The NOCS have the exclusive powers for representation of their respective countries at the Olympic Games and at regional (eg Central American & Caribbean Games) Continental (eg Pan Am Games) or world multi sports competitions patronized by the IOC.



6. The IOC helps the NOCS fulfill their mission through its various departments and “Olympic Solidarity” (its funding arm for sports development).

7. The Olympic Charter, Rules 31 & 32 and the by-laws thereto, set out, define and govern the conditions for recognition of an NOC, its mission, several roles and other relevant matters. From these, the following important points emerge in regard to the recognition of an NOC.

(a) *The Technical requirements*

(1) The applicant must submit to the IOC for approval, two copies (in English or French) of its statutes. These statutes must comply with the relevant sections of the Olympic Charter. Note: an attorney drafting the statutes should be carefully briefed; a precedent of the statutes in English of an existing NOC, which have been revised up-to-date to comply with the recent additions to the Charter, approved by the IOC, would be very helpful to the draftsman. Use of a special type of company “not for profit”, as no doubt permitted/allowed for the TCI companies Laws, (as in the Cayman Islands) will be suitable.

(2) The applicant NOC must obtain from each International Federation (“IF”) to which a member national federation (of the applicant NOC) is affiliated, an attestation certifying to the IOC that such national federation is a member in good standing of the IF concerned.

There must be (at least) five such national federations (members of the applicant NOC) that govern sports on the current Olympic program: these include: Athletics, Football (soccer), Basketball, Sailing, Tennis, Table Tennis, Swimming, Triathlon & Softball those sports are National Associations active within the TCI. The seven sports underlined are already members of their International Federations/Associations.

(3) Each applicant NOC, whose statutes have been approved;

Will provide a copy thereof, to the IOC with a formal request for recognition, and a list of members of its Executive—all documents to be certified as true copies by its President and Secretary General.

(b) *The “Political” aspect of Recognition*

(1) In or about 1996, the IOC decided that it would not recognize the NOC of any country or territory that was not a sovereign independent state. However, existing NOCS already recognized by the IOC (eg Bermuda, Cayman Islands, Hong Kong the BVI, Guam, American Samoa, Netherlands Antilles, U S Virgin Islands) whose territories are not sovereign independent states, were permitted by the IOC to continue as NOCS “recognized” and belonging to the Olympic Movement (a so-called “grand fathering” process)

(2) The Olympic Charter does not appear to provide a direct and distinct prohibition against the recognition of the NOC of an “non independent state” In Rule 4—the principal rule dealing with recognition by the IOC, and Rules 31 & 32 (+ bylaws) there is no prohibition against or distinction of a non-independent state, for purposes of recognition. There is merely an (added) short Rule 34(1) that states: “In the Olympic Charter, the expression ‘country’ means an independent state recognized by the international community”.

(3) The effect of Rule 34 (1) is its relationship to Rule 4 (Recognition) and to Rule 31 & 32 (+ bylaws)—(governing NOCS). These latter rules and bylaws make mention several times of the words “country” or “countries” in describing the recognition, the role, duties and functions of NOCS. Thus, the probable interpretation that the Olympic Charter does not now empower the IOC to recognize the NOC of a state that is not an “independent state”.

(4) A question could well be asked here as to the authority in the Olympic Charter for continued recognition of non-independent territories (listed above) or authority as to their roles, duties and functions. There does not appear to be an actual (“grandfather”) provision in the Charter to authorize this continued recognition and function.

8. NOC OF TCI—EFFECTS OF NON-RECOGNITION BY THE IOC

In the event that the NOC of the TCI shall be unable in the near future to obtain the essential “recognition” by the IOC, the youth and sport of the TCI will undoubtedly suffer significant and really unnecessary hardship, for reasons as follows:

(a) TCI will be prevented from joining the Olympic Movement and thus taking its rightful place amongst the family of sporting nations. This will have occurred principally because TCI, along with other smaller countries in its region (eg Bermuda, etc), is linked to the UK as a British Overseas Territory, but one that is effectively self-governing.

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- (b) Virtually all the smaller islands, territories and countries of the PAN AM or Caribbean Basin region benefit from IOC recognition of their NOCS. Since many have the same exact political status as the TCI, the absence of TCI is a truly significant exception!
  - (c) The present, and growing population of TCI is of size approximate to the BVI, San Marino, the Cook Islands and Nauru (smaller) and perhaps others, with Liechtenstein, Monaco, Cayman Islands and others, only slightly larger. Those territories or countries all have recognized NOCS.
  - (d) TCI is in need of development aid, advice and funds. However, non-recognition by the IOC will prevent its NOC from receiving the now-significant funding from Olympic Solidarity. This has been increased recently by the IOC and is perhaps worth near to USD \$100,000 per annum for coaching, development projects, administration expenses, and scholarships (etc)-all really needed by TCI.
  - (e) Non-recognition by the IOC, will also exclude TCI from all the excellent educational and cultural aspects of the Olympic Movement. TCI will also be unable to benefit from a much-needed IOC course for sports administration.
  - (f) Non-recognition will have the effect that the NOC of TCI will not have the right to attend meetings of PASO, CACSO, ANOC and of NOCS meeting with the Executive of the IOC. It will be cut off from the information, advice and fellowship to be gained at all such assemblies of sports nations.
  - (g) TCI will suffer from the unfortunate inconsistency (however unintentional) of the IOC recognizing the NOCS of some non-independent states but not the NOC of TCI.
  - (h) There is no dispute over sovereignty or ownership of TCI, as between any other countries, as was apparently the case with certain other smaller countries or territories—such disputes the Olympic Movement may have wished to avoid.
  - (i) The athletes of TCI and other British Overseas Territories compete for their own country and not for Britain. The case of some French Islands such as Martinique and Guadeloupe is quite different, as they are apparently part of France itself, and can compete for it.
  - (j) Non-recognition of the TCINOC will in effect, “disenfranchise” the youth of TCI from most benefits of, and participation in world sport. It will be very difficult to explain to them why this is so. Choosing just one of our good neighbors for comparison purposes: In what are we different from British Virgin Islands?
  - (k) With respect, it is not the place or purpose of the IOC or the Olympic Movement to formulate or influence the political system of a country or territory. Certainly the IOC should not wish or endeavor to tell a country “when you become fully independent we will accept you into the Olympic Family” Such would be completely extraneous to the fundamental principles of Olympism!
  - (l) It is understood that a significant reason behind the IOC’s decision that, in future, it will only recognize the NOC of an “Independent State”, is its desire to avoid any involvement in any political or other conflict that might arise when a province or a section of a larger country, seeks to “breakaway” and/or to establish its own borders and/or identity (and hence might also seek to have its own NOC recognized by the IOC.)

This reasoning should not be applied against the recognition of the TCI NOC. The case of the TCI is quiet different, fundamentally so! There is no conflict or dispute, political or otherwise, with any country; there is no “breaking away” from a larger country.

Similar to Bermuda, the Cayman Islands and the BVI, all within the same Pan American region, TCI have been a separate territory by identity, world known, with its own self-government, its own passport issued to its citizens, its own flag, its own postage stamps, and moreover, it does not share any boundaries with any country, nor does it lie within any larger Country-its chain of islands are separated by sea from all the nearest other Countries.

Being a small territory, like the other three islands named above, TCI peacefully and properly elects to remain within the “British Family”, and hence it is termed as a “British Overseas Territory”.

TCI is a member of the Commonwealth Games Federation. TCI athletes have competed under its own flag and in their own colors and uniforms in the CARIFTA Games (since 1978) and in the Commonwealth Games (since 1978). TCI has its own national Football team and is a member of CONCACAF and FIFA since 1998.

In addition to the NOCS of Bermuda, the Cayman Islands and the BVI, the NOCS of the (American) Virgin Islands, Guam, American Samoa, Hong Kong and the Netherlands Antilles-none of which are known to be “Independent States”, are nevertheless “recognized” by the IOC. Surely the case in favor of the “recognition” of the TCINOC would be just as fair and sensible, as for those eight NOCS!

## 9. RECOMMENDATIONS

Since the Second World War almost all of the former colonial countries have now become independent and the IOC has already recognized their respective NOCS. The few existing British Overseas Territories, including TCI, are a small exception; of these three of the main ones are already recognized. Recognizing the NOC of TCI will hardly open a “floodgate” of applications for recognition. The few other very small dependent territories would find it difficult or impossible to meet the requirements of entry to international sport.

It is highly recommend that the IOC, as part of its new and revised approach to world sport, in this new millennium, should seriously consider an appropriate amendment (probably slight) to the provision in the Olympic Charter relating to the recognition of NOCS, especially those of non-independent territories or countries. Such amendment should enable the IOC, in its discretion, to recognize an NOC in a case such as that of TCI provided of course, that all the technical requirements have been complied with.

It would appear to be necessary, (or, be good sense) to make a slight amendment to the Olympic Charter. This amendment could be made in order to duly authorize the continued recognition by the IOC of several territories that are non Independent States, but whose NOCS were recognized prior to 1996. If, making this amendment, it would be timely, and it is suggested, appropriate, to give also to IOC discretion, in future, in the matter of the recognition of a NOC of a non-independent state.

It is respectfully suggested that the IOC should consider an added provision-perhaps to Rule 4(1) of the Olympic Charter, stating (in effect) that “In the case of the NOC of a territory or country that is not a country as defined by Rule 34, the IOC may nevertheless, in its sole discretion based upon the circumstances of each case, recognize the NOC of such territory or country that is not an independent state-and the IOC may continue the recognition already granted to the NOC of such a territory or country”.

If this recommendation shall be accepted (as a small amendment to the Olympic Charter) and then appropriately approved by an annual Session of the IOC, then the Olympic Movement will indeed have continued to fulfill one of its fundamental principals:

“The goal of Olympism is to place EVERWHERE sport at the service of the harmonious development of man, with a view to encouraging the establishment of a peaceful society concerned with the preservation of human dignity . . .”

### Development of Sport in the Turks & Caicos Islands

#### Becoming a Member of the Olympic Family

#### Recognition by the IOC

The Turks & Caicos Islands (“TCI”) are certainly developing, so is their sport. More facilities are planned, with a Football Stadium being built.

Seven National Associations of Olympic sports, Athletics, Football, Basketball, Softball, Swimming, Tennis and Triathlon are constituted, active and members of their International Federations. Other active Olympic sports associations are proceeding towards membership of their IF’s: Sailing and Table Tennis. TCI has competed at the Carifta and the Commonwealth Games for years. Our National Football team has competed internationally in the region for the past few years.

TCI now has a National Olympic Committee (“NOC”)—The first step is to apply for and obtain RECOGNITION by the International Olympic Committee (“IOC”)—this recognition being the criterion for belonging to the Olympic Movement, from which many benefits will ensue.

The “Technical” requirements for recognition by the IOC can be satisfied by TCI. The Charter of its NOC is being prepared carefully to comply with the Olympic Charter. BUT there stands in the way a (most unfortunate) “political” requirement: Circa 1996, the all—important Olympic Charter was amended affecting the matter of “recognition” of NOC’s—A “Country” is now defined as: “ An Independent State recognized by the International Community”.

By choice, TCI remains a “British Overseas Territory”. Though self-administrating it is not an “independent country”.

Prior to 1996, the IOC recognized—and indeed continues to recognize—the NOCS of some territories that are not “independent states”—eg: Bermuda, BVI, Cayman Islands (similar territories to TCI), also American Samoa, US Virgin Islands, Guam—and, Hong Kong and the Netherlands Antilles.

The principal reason, (we are reliably informed) for the ban on non-independent countries seeking “recognition” by the IOC, was the IOC’s wish to avoid involvement in political disputes between an existing country and an aspiring “breakaway” province (eg Quebec, Basques, etc)—The case and circumstances of TCI, surely are in no way related thereto:—A separate territory, with its own identity and administration it does not seek to “breakaway”.

Belonging to the Olympic Movement secures many essential benefits, especially to a developing territory:

- (i) Financial assistance—almost US \$75,000 or more per annum from Olympic Solidarity/IOC and other games sources for coaching and development purposes;
- (ii) Games—“Recognized” NOCS only can enter teams to the Pan American, Central American & Caribbean and Olympic Games, each held every four years;
- (iii) Meeting attendance—Important international organizations: ANOC, PASO, CACSO are restricted usually to representatives of “recognized” NOCS—significant information, advice and fellowship to be gained at these regular assemblies;
- (iv) Educational & cultural—valuable aspects of the Olympic Movement;
- (v) National pride—in taking ones place within the Family of Sports Nations; and
- (vi) Most important, the resulting aspiration of the youth to improve their standards towards the Olympic games levels!

To prevent the “recognition” by the IOC of the NOC of TCI would be harsh and unnecessary, and, indeed unfair.

TCI’s growing population is the same or larger than the BVI, San Marino, Cook Islands, Nauru, and Monaco, and is almost the size of others—all with NOCS presently recognized by the IOC.

Desired solution—To persuade the IOC to consider, and hopefully to grant recognition of the NOC of TCI.

If the IOC’s response is favorable, it would appear that it might be necessary for the IOC to make a small amendment to the relevant section of the Olympic Charter, whereby the IOC would be given a discretion in the matter of “recognition” of the NOC of a non- “independent state”, depending on the circumstances of each case.

This amendment would have the further advantages of giving the IOC the constitutional authority to:

- (i) Continue to recognize the NOCS of the non Sovereign States that were previously recognized.
- (ii) Use its discretion to guard against excessive or insignificant attempts to seek recognition by the NOCS of non Sovereign States.

The Olympic Charter tells us, “The goal of Olympism is to place EVERYWHERE sport at the service of the harmonious development of man . . .” It is our respectful hope and prayer that the IOC will assist us, to enable us to effectively place sport at the service of the development of the youth of the Turks & Caicos Islands.

*4 September 2007*

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#### **Submission from Mr David R McCann, Bermuda**

I am a Bermudian citizen who believes that the regiment draft is wrong. I returned to Bermuda after completing by Associate and Bachelors degree in the US, and when I returned, was drafted. How can I put all my effort into getting my career properly of the ground if I have to give three years to the regiment?? I do believe it is a 21st Century form of slavery, as people who I know have gone through with it have described the abuse. Officers yelling, shouting and cursing, even threatening, and carrying out acts of physical violence.

I have been deferred for medical reasons, I suffer from diverticulitis, and have a bad back. This however does not stop them from trying to draft me every year. I have to go back to the doctor and get a new letter every year, and go to the regiment for about five hours waiting in line to see if they will accept my doctor’s opinion. This is ludicrous! If anything, conscription should be an option for criminals, who instead of serving jail time could give their services to the regiment as an alternate form of punishment. This would ease our prison, and allow the regiment to get the numbers it wants. Why hinder the process of educated citizens trying to move forward with their lives?

*5 September 2007*

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#### **Letter and memorandum to the Clerk of the Committee from Head, Parliamentary Relations Team, Foreign and Commonwealth Office**

Thank you for your letter of 20 July, forwarding a request from the Foreign Affairs Committee into the detention of the Ocean Alert in international waters off Gibraltar in July. This incident took place while members of the Committee were visiting Gibraltar and Madrid.

As requested, I attach a memorandum on the Ocean Alert incident, including a full explanation of the application of international law to the waters off Gibraltar; responsibility of the British and/or Gibraltar authorities for the activities of Ocean Alert while it was operating from Gibraltar and for the removal of artefacts recovered from the seabed apparently to the United States by air from Gibraltar; and confirmation of whether the Odyssey vessels had the use of a RN berth or other RN facilities in Gibraltar.

#### THE OCEAN ALERT INCIDENT

##### *Application of International Law to the Waters off Gibraltar*

The *Ocean Alert*, a Panamanian-registered vessel belonging to the US company Odyssey Marine Exploration, was detained by Spain's Guardia Civil at a point 3.5 miles south of Gibraltar on 12 July, in waters which the United Kingdom considers to be high seas. Accordingly, in our view, the detention should only have taken place with the consent of the flag State. This was the basis for our protest to the Spanish authorities.

Under the terms of the 1982 United Nations Convention on the Law of the Sea (UNCLOS—ratified by the UK in 1997), coastal States are entitled, but not required, to claim territorial sea up to a maximum breadth of 12 nautical miles. Where the coasts of two States are opposite or adjacent—as is the case around Gibraltar—neither is entitled, unless they agree otherwise, to extend its territorial sea beyond the median line. The British Government considers a limit of three nautical miles to be sufficient in the case of Gibraltar. Under UNCLOS, the nine miles beyond that limit are high seas, and cannot be claimed by another State; it was in this area that the *Ocean Alert* was detained.

Spain maintains that the Treaty of Utrecht of 1713, which granted sovereignty over Gibraltar to Britain, ceded only the town and castle, together with the Rock's fortifications and its port. Spain therefore disputes our claim that, as a result of later developments in international law, including particularly UNCLOS, Gibraltar generates its own territorial waters.

We categorically reject the Spanish view, and we do not allow Spain's assertion that Gibraltar has no territorial waters to go unchallenged.

This was most recently explained to the House of Commons in an answer to a written Parliamentary Question tabled by the Honourable Member for Romford, Andrew Rosindell, on 2 March (Official Record, Column 1625W).

A map of our interpretation of the status of the waters is attached.

Responsibility of the British and/or Gibraltar authorities for the activities of Ocean Alert while it was operating from Gibraltar and for the removal of artefacts recovered from the seabed apparently to the United States by air from Gibraltar.

Odyssey Marine Exploration is a private US company specialising in deep-ocean shipwreck exploration.

Since 2004, they have had a contract with the Disposal Services Agency of the MOD to identify and excavate the possible wreck of *The Sussex*, a British military ship which sank in a storm off Gibraltar in 1691 with the loss of her crew and valuable cargo. Work on this project has been delayed due to Spanish objections. After nine years of intervention and delay, Spain finally agreed in March this year to allow the project to proceed as long as two Spanish experts were on board Odyssey's vessels. However, there were further delays as the Andalucian Government failed to nominate its two experts.

While waiting in Gibraltar for work on *The Sussex* to proceed, Odyssey worked on other projects in the Mediterranean and Atlantic. On 10 April and 16 May they sent consignments from a wreck they named *Black Swan* to the USA via chartered flights from Gibraltar. Odyssey told us that this wreck lay about 180 miles off the coast of Portugal, in the high seas outside Spanish or Gibraltar waters. Both consignments were given export licenses by the Government of Gibraltar, in accordance with Gibraltar law. These consignments, containing gold and silver coins, are now the subject of a court case in Florida between Odyssey and the Spanish Government.

The Spanish Ministry of Foreign Affairs has been particularly critical of the MOD's role. The MOD has no authority regarding Gibraltar Customs procedures, as the Government of Gibraltar is responsible for its own Customs controls. The MOD is obliged to honour its contract with Odyssey unless a legal or operational security issue exists to prevent it from doing so.

Neither the British or Gibraltar authorities were responsible for the activities of Odyssey in relation to the *Black Swan*.

Confirmation of whether the Odyssey vessels had the use of a RN berth or other RN facilities in Gibraltar.

Odyssey have had a commercial contract with the MOD (Defence Estates, Gibraltar) since December 2005 to use the MOD berths and facilities within the military part of Gibraltar harbour. Such an agreement is not unique.

Two of the company's vessels, the *Ocean Alert* and the *Odyssey Explorer*, have operated out of Gibraltar throughout this period.

7 September 2007

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**E-mail submission from Mr Herman E Ross, The Turks & Caicos Maritime Heritage Federation**

Honoured Members of this Committee, The attached was written as a Letter to the Editor about my puzzlement in the question of mother country responsibility in the fundamental area of cultural heritage education.<sup>3</sup>

I have lived on two British Overseas Territory island groups and the same concept seems born amongst both by the Islanders that the UK is trying its best to get rid of them, or at least marginalise them.

About six months ago I wrote to the UK National Archives in the beginning of research I was attempting to do on the work boat linkage between the TCI and the UK but found that the Turks and Caicos Islands was not on their mailing list! The UK National Archives did not have a BOT on their mail selection list?!

I addressed a complaint to the concerned department about this omission and received the following:

“Dear Mr Ross

I am sorry that you have not been able to find our listing (as yet incomplete) for Turks and Caicos Islands correspondence”.

It went on to give me some useful information but nothing that contained anything directly categorized under the Turks and Caicos Islands? The UK National Archives does not have any TCI information that originates in the TCI. They have Bermudian, Bahamian, Jamaican and even some North American and Canadian links but nothing directly from the TCI?

So, thus I am submitting this attached writing about what I feel is presently happening in the TCI because of its peculiar position.

I also want to add that our organisation, the T&C Maritime Heritage Federation, a not for profit community organisation is struggling to move ahead, though it is probably the most popular movement in the Turks and Caicos Islands and we want assistance from the UK. HE Governor Richard Tauwhare is a Governnor on our Board. My vision is to set up a centre for Caribbean maritime studies here in the TCI to bring in presence from all the Caribbean Basin countries and Bermuda to show really how the people within these cultures adapted in the area most important to most of them, the commerce of the sea, and especially how Great Britain laid down fundamental moral concepts, based upon seafaring, that persists to this day in adapted forms.

I feel Great Britain should be proud of its seafaring legacy and it is still alive in the Caribbean.

8 September 2007

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**E-mail submission from Mr Brian Swan, Bermuda**

I am glad that someone is finally looking into the Bermuda Regiment Lottery. This practice of randomly selecting male Bermudians is a kin to punishing a person because they where born in the wrong country and are the wrong sex. It is a horrible feeling to know that your freedoms may be taken from you when you reach a particular age and you will be forced to learn how to kill. Military service should be voluntary. This will enable the military to have a soldier that is dedicated to their job. Forcing people into the military simply leads to a poor quality of soldier, one not willing to do what they are asked without question. A person should not be discriminated against because of their birth place or their sex. The law should cover every one and not just half or a random selection of the population. I know people that have left the island not to return because of this disgusting draft, so they could live life freely. If national service is required it should be something that everyone does, not just a select few, and teaching people to kill should not be the only option.

10 September 2007

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<sup>3</sup> Not published, as publicly available.

**Submission from Mr Michael Hardy, Bermuda**

First let me introduce myself. My name is Michael Hardy, I am a FCA (ICEAW) and have been active as an auditor, accountant and manager of Insurance and Reinsurance companies in Bermuda for 25 years up to 2003. I am a past director of the Bermuda International Business Association, past President of the Bermuda Insurance Managers Association and past member of the Insurance Advisory Committee to the Bermuda Government.

I would like to bring to your attention to, what in my opinion, is a long standing weakness in the in the enforcement of criminal law as it applies to financial crime, particularly with regard to entities regulated by the Bermuda Monetary Authority (BMA). It has been my long standing contention that insufficient emphasis has been placed by regulators for the last 25 years on the investigation of licensed companies, managers and executives under Bermuda Law with regard to suspicious activities. This is born out by the remarks to me by Munroe Sutherland a past director of the BMA (paraphrasing his remarks "It's not a major priority for the BMA") and their Objects set out on the BMA website—[http://www.bma.bm/Home/BMA\\_Objects](http://www.bma.bm/Home/BMA_Objects)

**BMA OBJECTS**

1. To issue and redeem notes and coins.
2. To supervise, regulate and inspect any financial institution which operates in and from within Bermuda.
3. To promote the financial stability and soundness of financial institutions.
4. To supervise, regulate or approve the issue of financial instruments by financial institutions or by residents.
5. To assist with the detection and prevention of financial crime.
6. To foster close relations between financial institutions themselves and between the financial institutions and the Government.
7. To manage exchange control and regulate transactions in foreign currency or gold on behalf of the Government.
8. To advise and assist the Government and public bodies on banking and other financial and monetary matters.
9. To perform such functions as may be necessary to fulfill the said objects.

The BMA has not made, as far as I can gather, any significant "official" Criminal Complaint (or Suspicious Activity Report) to the Police Fraud Unit in that time period. This is according to police officials. I am told an "official" complaint from the BMA is required by the police fraud unit before an investigation can take place.

Whilst Bermuda companies and executives have been investigated overseas for fraudulent activities in cross border transactions etc, there have been no such transparent investigations and indictments in Bermuda. Bermuda entities having involved in transactions with foreign companies accused of nefarious activities, have not been reported as investigated for such activities in Bermuda, such as:

- First Virginia Re—part of a fraudulent scheme to siphon off insurance premiums from a US Insurance Company—<http://www.valawyersweekly.com/anlir16.cfm>
- Michael Bott & Associates—quoted by a judge in a civil case as being involved in fraudulent transactions (Bott v SCRAP in 80s and Kansa International v Herald in 90s).
- AIG and its overseas subsidiaries managed out of Bermuda—Mike Murphy indicted (later dropped) for shredding documents. Also brought to light by Spitzer, Bermuda being office for Carribean companies involved in suspicious activities and having Bermuda officers <http://www.assinews.it:8080/rassegna/articoli/arc/nyt050405ai.html>
- Bermuda Commercial Bank and in particular John Deuss. Media exposure of possible nefarious oil deals, before he was accepted as a beneficial owner, director and officer of Bermuda companies including the Bermuda Commercial Bank. Now the scandal regarding its 30% holding company, First Curacao International Bank, was being investigated for money laundering by regulators in the Netherlands and on the Dutch Caribbean island of Curacao.
- Bermuda Hedge Funds managed and or recommended by MDL Capital Management  
"A second element of the growing Ohio scandal involves cruel irony. the loss of at least \$215 million of Bureau funds invested by a Bermuda-based hedge fund run by MDL Capital Management" [http://www.larouchepub.com/eiw/public/2005/2005\\_20-29/2005-26/pdf/34-39-26\\_ohio.pdf](http://www.larouchepub.com/eiw/public/2005/2005_20-29/2005-26/pdf/34-39-26_ohio.pdf) and many other published articles
- Renaissance Re—  
"USA (Bloomberg), WASHINGTON: Renaissance Re Holdings, a Bermuda-based reinsurer, will pay \$15 million to settle accusations it created an accounting 'cookie jar' to help smooth earnings in bad years, the US Securities and Exchange Commission has said".

Please note that I do recognize that Bermuda is no different to any other major business centre in that it will and has attracted some unsavory characters. Since Spitzer, Enron, Tyco and many others, there has not only been an insistence that companies and executives clean up their acts, but that regulators investigate and punish wrong doing. Also, the goal posts have been moved regarding what transactions are acceptable and those that are not. Many were originally agreed to by external consultants, lawyers and auditors. Their roles being found to have an ominous lack of independence or professional judgment and more a view of commercial expediency.

To an outside observer, it appears that the BMA, whilst dealing with unsavoury situations by cooperating with overseas regulators and providing them with significant help where required to put criminals in jail in foreign jurisdictions, does not proactively investigate suspicious circumstances themselves, passing evidence of criminal wrong doing to the police:

1. Are the Bermuda parties involved breaking any laws in Bermuda?
2. Are the companies in Bermuda facilitating illegal activities abroad?
3. Are Bermuda service providers (lawyers, accountants and managers) being diligent enough to spot any suspicious activities?
4. Was proper due diligence done by these service providers and the Registrar of companies to ascertain whether the Bermuda entities were to be used for any criminal activity in Bermuda or more likely overseas?

I therefore urge you to look into this perceived lack of enforcement of Bermuda laws by the BMA and commitment towards helping the police identify criminals operating under the guise of Bermuda regulated companies, by placing sufficient emphasis on investigation, sanctions and ultimately official criminal complaints to the appropriate police unit.

- An Object of the BMA should be to proactively investigate suspicious activities.
- There should clearly be a separate investigative branch of the BMA, which works closely with the police on suspicious activities.
- Business plans for insurance companies should include a letter from a tax consultant in the owners' home country to ensure there is no tax evasion or illegal avoidance of tax involved in the proposed transactions to be undertaken by the new Bermuda company.
- The public should be informed of penalties etc meted out to Bermuda entities and their officers, including sanctions against doing business in Bermuda.

18 September 2007

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### **Submission from Felix Alvarez, Chairman, Gibraltar Equality Rights Group (GGR)**

#### 1. SYNOPSIS

On accession, the United Kingdom attained High Contracting obligations under the European Convention of Human Rights (EConHR) extending to Gibraltar as a jurisdiction of applicability. In contrast to Her Majesty's Government's swift compliance with European Court of Human Rights jurisprudence in the area of age of consent for same-sex relations within the United Kingdom, it has, unfortunately, failed to date to ensure similar compliance by the Government of Gibraltar (GoG). Furthermore, the United Kingdom cannot absolve itself of this obligation by reference to provisions of the Gibraltar Constitution 2006 inasmuch as its obligations under the Convention are non-delegable and its primary obligation under Art 1 of the Convention is to "secure" its provisions "to everyone within their jurisdiction". These obligations are heightened where GoG not only fails bureaucratically but also fails practically and evidentially through act or omission to satisfy such requirements.

In addition, the United Kingdom acquired responsibilities for the social and human rights development of Gibraltar via its submission of terms extending membership of Gibraltar to the European Union through its own accession. There is little evidence that in its periodic progress reporting to the European Union any reference is made on either positive developments or lack of progress in social and human rights to Gibraltar's citizenship, alongside similar reporting regarding parallel citizens rights in the United Kingdom in the context of EC law. This leads to a "blind spot" regarding Gibraltar at EC level which results in little if any attention being paid by the European institutions to Gibraltarian citizens' concerns as a matter of procedural governance. What little attention has been paid by Europe to such localised matters has usually arisen independently, as a result not of transfer of information on the state of Gibraltar issues but as a result of independent initiatives, such as those of the NGO authoring this submission.



## 2. INTRODUCTION

- (a) Equality Rights Group GGR is a not-for-profit, independent, Non-Governmental Organisation (NGO) based in Gibraltar which campaigns and works for the advancement of a wide range of human rights issues. It was originally set up in September 2000 and was formerly known as Gib Gay Rights (initialised as GGR).
- (b) When it was first established, GGR's focus was purely on sexual minority rights, particularly on sexual orientation discrimination. Whilst the UK had decriminalised consenting homosexual relations under the Sexual Offences Act 1967, Gibraltar did not do so until almost three decades later when, following pressure from Her Majesty's Government regarding an unsustainable disparity between European Convention of Human Rights (EConHR) requirements and Gibraltar law (which up to then still penalised such relations with imprisonment), in 1993 the Government of Gibraltar (GoG) introduced amendments to the Gibraltar *Criminal Offences Act 1960* decriminalising same-sex relations. No further social or legislative change had taken place, however since the early 90s; and no social or political debate existed in relation to the issues affecting sexual minorities in Gibraltar. GGR thus came into being in a context where social debate and a movement for change was considered increasingly necessary by citizens who felt these constraints. However, with the years, and as a result of approaches from the wider Gibraltarian community, GGR became increasingly and publicly active in a wide range of human rights issues, such as disability rights, the rights of the elderly, the rights of trade unionists, the rights of EU nationals in Gibraltar and the rights of children to protection from abuse. However, the main focus of GGR remains that of sexual minority rights and gay and lesbian equality; and GGR remains the only NGO in Gibraltar on this issue, being widely perceived as Gibraltar's primary NGO on the wider human rights front. GGR's work on gay and lesbian equality includes:
- Working with other NGOs such as the Citizen's Advice Bureau to provide support and expertise on issues raised.
  - Providing professional training for new recruits to the Royal Gibraltar Police in order to sensitise them to the legal and social issues relating to policing the gay and lesbian community in Gibraltar.
  - Working with the majority of Gibraltar's political parties to raise the profile of sexual minority rights; GGR successfully negotiated the inclusion of manifesto commitments for the rights of sexual minority citizens by Opposition parties at the 2003 Gibraltar General Elections; and at this year's General Elections in Gibraltar 3 out of 4 political parties carried Manifesto commitments on sexual minorities which were the direct result of Equality Rights Group GGR's negotiations and active involvement in promoting dialogue.
  - GGR is a recognised NGO at EU level, having been the first Gibraltarian organisation to have directly met with EU Commissioners to raise the issue of human rights in Gibraltar. As a result of this meeting, Justice Commissioner Franco Frattini, on behalf of the EU, requested a report from the Chairman of GGR, Felix Alvarez, on the status of human rights in Gibraltar (copy attached).

## 3. THE UNITED KINGDOM'S HUMAN RIGHTS RESPONSIBILITY TO GIBRALTAR

### 3.1 *The European Convention of Human Rights (EConHR)*

The United Kingdom's obligations as a High Contracting party under Article 1 EConHR to "secure to everyone within their jurisdiction the rights and freedoms defined in Section I" of the Convention are clear; and they conform both those provisions set out in the Convention and its Protocols and also the jurisprudence emerging from the European Court of Human Rights. Our focus of concern being Gibraltar, it is a fact that the Rock is one of the relevant jurisdictional territories of applicability, with extensions recognising the right of individual petition before the European Court of Human Rights (ECtHR) applied for by the United Kingdom on a rolling fiveyear basis.

The EConHR, however, is a living document and cannot, therefore, be viewed in a contextual vacuum. Within this purview (but limiting ourselves to the core area of this submission) when the European Commission on Human Rights found that the UK's then discriminatory age of consent violated the Convention (*Sutherland v UK, 1997*), and within the context of an already emerging legislative movement through the introduction of the *Human Rights Act 1998* (with its concerns for legislative, institutional and judicial compatibility with the Convention), Her Majesty's Government moved quickly to respect Convention jurisprudence by introducing the *Sexual Offences (Amendment) Act 2000*. In this way, HMG complied not only with ECtHR case-law, but with its fundamental High Contracting Party legal and moral obligations in the matter of an equal age of consent law.

The ECtHR has reiterated its judicial insistence that inequality in the sexual age of consent in Signatory Member States' legislation breaches the Convention through its later (post-Sutherland) judgments in *L & V v Austria, 2003* and *S.L. v Austria, 2003*.

To date, the GoG has still not complied with this equalisation requirement. The heterosexual age of consent under s.116 Gibraltar 1993 Amendment to the Criminal Offences Act 1960 remains at 16 for heterosexuals and 18 for consenting homosexual men. Below is an excerpt of a letter written by Chief Minister Peter Caruana, QC (Reference 3850, dated 20 January 2005) in response to this Organisation's request for clarification on this issue:

*“Criminal Offences Ordinance—Section 116*

*Thank you for your letter dated 23 November 2004. I apologise for the delay in replying.*

*The Government is not, as a matter of policy, in favour of lowering the age of consent for homosexual sex to 16. However, as the Chief Secretary told you in his letter dated 5 February 2003, the Government is strongly committed to complying with and implementing it's [sic] clear and established obligations under the European Convention of Human Rights. Government Policy preference would not suffice to avoid such compliance.*

Signed: Peter Caruana”

There is little doubt following this response that the Government of Gibraltar expresses little moral compulsion to comply with equalisation requirements that are not of a strictly legal order. It is this Organisation's contention that it is *precisely* an obligation of a serious legal order that is indeed at issue in this matter. The contention by Chief Minister Caruana that GoG is “strongly committed” to compliance with EConHR contrasts with the stark reality—almost three years later there has been none in the matter at hand! It is important to note that the equalisation requirement under Convention jurisprudence carries no obligation as to the precise age of consent to be fixed, merely *that it be equally applied irrespective of sexual orientation*. The Chief Minister's disagreement with an age of consent at 16 is therefore irrelevant to compliance and avoids the issue: it is the mechanism for achieving equality which is the point.

Following the enactment of the Gibraltar Constitution 2006, fundamental provisions similar but not identical to those in EConHR are established under Gibraltar law; whilst it may be held that such parallelism places a greater burden on GoG to comply with obligations under the Convention, it does not absolve HMG of its primary *non-delegable* obligation to secure compliance under *Art 1 EConHR*. To all intents and purposes, therefore, the Convention rights paralleled in the Gibraltar Constitution 2006 represent—in terms of HMG's Convention obligations—no more than a voluntary code of conduct requiring HMG's supervision and intervention in instances where self-regulation fails to meet the requirement for HMG to “secure” Convention rights in that jurisdiction under international law. Gibraltar constitutionally-based argumentation, therefore, cannot absolve HMG of its signatory obligations under the Convention and, by extension, must lead to rejection of any such rationale: securing rights provided under the European Convention cannot be construed to signify delegation of obligations contracted by HMG to the Government of Gibraltar, especially in the light of the latter's apparent distaste for favourable same-sex Convention jurisprudence.

It is, therefore, up to this Committee to respond regarding the clarity of the duties incumbent upon HMG to ensure the United Kingdom's own non-delegable Convention obligations are not prevented from seeing fruition by what the Chief Minister of Gibraltar has clearly delineated as a mere “preference” on the latter's part; and within the framework of its investigation into issues of good governance in the Overseas Territories in the particular concerns which (i) form the specific reporting areas within the Committee's current investigations and (ii) for which the Committee is parliamentarily entrusted generally.

### 3.2 *The European Community framework*

Good governance, in the UK-Gibraltar context is further extended in meaning by the terms of the United Kingdom's accession to the European Communities. All primary and secondary EC law not subject to specific exception *under Article 28 of the Treaty of Accession* of 22 January 1972 therefore applies to Gibraltar as an EC territory.

Standards of good governance in the territory of Gibraltar therefore require the application of fundamental protection against sexual orientation discrimination in the *Treaty of Rome* recognised under *Articles 3(2) and 13 EC*. It may be enlightening for the Committee to consider statements made in an Introductory Memorandum of the *EC's Committee on Legal Affairs and Human Rights* and entitled *Implementation of judgments of the European Court of Human Rights*<sup>4</sup> in which the role of National parliaments regarding the EC's obligations regarding enforcement of human rights provisions under EConHR is contextualised thus:

“1. Ratification of the European Convention of Human Rights (ECHR), including the compulsory jurisdiction of the European Court of Human Rights and the binding nature of its judgments, has become a requirement for membership of the Organisation. Indeed, the

<sup>4</sup> Memorandum declassified by the *EC Committee on Legal Affairs and Human Rights* at its meeting on Tuesday 21 June 2005; reference AS/Jur (2005 35) 20 June 2005.

binding nature of the Court's judgments, with the Committee of Ministers' acting as the guarantor of their proper execution by states, is the main pillar of the ECHR's system and its effectiveness.

2. The ECHR's mechanism does not, however, operate in a legal vacuum: the Court's judgments are implemented and translated into real life through a complex legal and political process, which involves a number of domestic and international institutions. National parliaments and the Parliamentary Assembly are also called upon to play an important role in this process and can be instrumental in ensuring proper implementation of the Court's judgments".

We conclude, therefore, that it is properly held that the UK's membership of the EC itself is a source of obligation to implementation of the European Convention in Gibraltar. It is, however, our Organisation's respectful submission to this Committee that the total lack of periodic EC reporting by HMG on Gibraltar issues of the type being addressed in this submission leads to an informational 'blind spot' whose consequence is to effectively delete by omission the supervisory role of EC institutions in their human rights obligations to Gibraltar. In terms of good governance, it is suggested, that in the absence of Gibraltar tracking feedback in HMG's procedural periodic reporting to the EC, neither the European Commission nor the European Parliament can currently rely on up-to-date information regarding the effect or otherwise of European Social Agenda advances or failures on this tiny European territory. This information deficit should be addressed in terms of its central importance to the area of good governance given the EC dimension in the Gibraltar configuration. Good governance is, almost by definition, not reachable without information.

#### 4. CONCLUSIONS AND RECOMMENDATIONS

4.1 Standards of good governance have Gibraltar dimensions both within the context of the *European Convention on Human Rights* and under EC law. The Committee's deliberations under this Inquiry will no doubt take these political and legal coordinates into account within its mission of assessing the achievement or otherwise of objectives against Strategic Priority No 10 (the security and good governance of the Overseas Territories).

4.2 With respect to the Convention: good governance obliges the Foreign & Commonwealth Office to either (a) require the Government of Gibraltar comply with ECtHR jurisprudence in similar fashion as it saw fit in 1993 (when Gibraltar was obliged to decriminalise homosexual relations between consenting males); or, in the alternative, (b) exercise the powers vested in the Governor of Gibraltar under *s 20 of Annex 1 to the Gibraltar Constitution Order 2006* (the Gibraltar Constitution) to ensure compliance.

4.3 With respect to EC law: good governance requires that UK periodic reporting should explicitly include parallel reporting on Gibraltar EC matters so as to correct the current EC "blind spot" regarding Gibraltar issues consequent upon no such information being passed to the EC institutions. If a periodic reporting duty exists in respect of UK matters across all fields of concern, a similar duty, as a matter of construction and by extension, exists with respect to Gibraltar's approximately 28,000 citizens.

24 September 2007

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#### Submission from Mr Peter Williams, Turks and Caicos Islands

During your enquiry in Turks & Caicos, I am convinced it would be worthwhile to look into government contracts awarded to the Premier's family, including his wife. It seems, eg, that the Turks & Caicos Tourist Board is being used as a slush fund to funnel government funds to companies owned by the First Lady—and by extension, the Premier himself.

The Tourist Board's budget was \$2.3 million in 2003, the last year of the previous government's term. Last year, the Board went through \$9.9 million. During that period, it is said that tourist arrivals rose from 165,000 in 2003, to \$200,000 last year. The 200,000 figure is only a guestimate, as unlike in 2003 when there was a statistics department, today there is no such thing.

Millions have gone into the Annual Jazz Festival, the Annual Film Festival and now they are inaugurating the Annual Gospel Festival. These are all promoted by the Premier's wife's company. We are not a music destination, we have no film industry—the First Lady is an actress, and we do not need an annual gospel festival with high-priced gospel stars from the US. Again, these events cost the taxpayers millions of dollars—only a tiny fraction of the costs is recovered from ticket sales. The government, through the Tourist Board picks up the rest.

In Grand Turk, there is a major real estate development project, involving a gated community with high-priced homes to be sold to foreigners. The project is being built on what used to be crown land, now deeded to a member of the Premier's family. This is in the Breezy Brae area of the island.

There is another major contract in Grand Turk, involving the grant of crown land. This is a conch farm, to be a tourist attraction, and the principals—all government supporters—include a government back bencher, and a supporter that ran and lost a few times for the current governing party.

Also worth looking into, is how the Premier, who came to office not a wealthy person, was able to build a multi-million dollar home, before completing his first four-year term. It is alleged that Johnston International, the contractors, built the mansion with plans to recover their costs from the hospital contract awarded by the government. The two hospitals are to be built at more than twice the cost of a similar facility now being built in the BVI.

Incidentally, the premier is paid \$10,000 monthly by TCIG to live in his own home.

5 October 2007

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### **Submission from the Falklands Islands Legislative Council**

This evidence is drafted by Cllr Mike Summers OBE on behalf of the Legislative Council of the Falkland Islands Government (FIG), and has been agreed by all Members of the Legislature.

#### 1. STANDARDS OF GOVERNANCE IN THE OVERSEAS TERRITORIES

Standards of Governance in the Falklands are described by all commentators as high.

The Legislative Council of eight Members is made up of all independents; the lack of a party system (there has never been one) makes members responsible only to their electorate and removes the cloak of protection provided by a party system, and responsibility to the party's policies. Members therefore tend to know their electorate very well and are responsive to public concerns.

We believe that corruption does not exist in Government, or in any other sector of society, on any significant scale. Wages for Public Servants and the Police are at least equal to those in the private sector at most levels. There is an active FIG internal audit function, but it has not raised any issues of probity in recent memory. The Tender Board is fully scrutinised and its activities subject to review by Executive Council where any doubt exists.

In such a small society where everyone is well known the public plays an active scrutiny role, and has almost instant access to Councillors.

Appointments to the public service are in the control of the Governor, delegated in the main to the Chief Executive (Head of the Civil Service), who takes advice from Elected Members on key appointments, but is not bound by it. The dangers of nepotism and cronyism in Government appointments are clearly understood; under the current Constitution the Governor provides the scrutinising function and is ultimately responsible for all appointments.

The Nolan Principles on Standards in Public Life have been formally adopted into Standing Rules and Orders of Legislative Council and into the Public Service Management Code; they also apply to lay members of Government Committees. There is an open system of declaration of interests that applies to all Committee meetings and Council meetings. The public is very intolerant of any suggestion of personal interest influencing decision making. Formal sanction for breach of standards by public servants is by way of the Management Code, but there is not as yet any formal sanction for failure to comply with required standards by elected members.

Financial management systems are open and robust. Successive external audits (including an EU audit on public finance) have found no substantive issues either of control or of use of public funds.

FIG operates a very open system of government. The Committees (Access to Information) Ordinance provides for all Government Committee meetings to be open to the public, unless there are matters of personal or a commercially confidential nature, or it is not in the national interest for an issue to be discussed in public, in which case there is provision for there to be a close session of the agenda

#### 2. THE ROLE OF GOVERNORS (AND OTHER OFFICE HOLDERS APPOINTED BY OR ON THE RECOMMENDATION OF THE UK GOVERNMENT)

Office holders appointed by the UK Government are restricted to the Governor, the First Secretary, who is also Deputy Governor and acting Governor in his absence, the judiciary, and all appointments to HM Forces in the Falkland Islands. Appointments to the posts of Attorney General, Chief Police Officer and Principal Auditor are FIG appointments and would normally be referred for Foreign Office approval, though there is no Constitutional obligation to do so.

Under the current Constitution (1985 vintage) the Governor may exercise executive power with few formal restrictions. Although custom and practice suggests that the Governor would on all important matters consult Executive Council and accept their advice (including on important foreign affairs issues), he is not bound to do so. This is clearly unsatisfactory in the development of democracy and of internal self government, which is the declared aim of the 1999 White Paper. The Select Committee on the Constitution has proposed that this should be reviewed, and the circumstances in which the Governor may act without the advice of Council, and the processes to be followed, be clearly set down.

The current Governor is fully seized of the importance of democratic development; his immediate predecessor was not. There appear to be few mechanisms for the Foreign Office to intervene when personal style and interpretation are inappropriate for the Territory. Most Governors come from mainstream diplomatic activity, and have little or no experience of running a country. It has been suggested to the Foreign Office that longer and more intense induction would be helpful for incoming Governors; we are not aware that this has been taken up.

The level of consultation with the Overseas Territory prior to and during the appointments of Governors is superficial. Inappropriate appointments might be avoided by more trust and partnership working in the appointments process.

In the Falklands circumstances the role of the Governor in foreign affairs and defence is critical, and it is therefore essential that there is a strong working relationship between Councillors and the Governor, and between the Governor and the Commander British Forces (CBF), who sits *ex-officio* on Executive and Legislative Councils. There should therefore be a role for Councillors in reviewing the appointment of the Governor, and the Governor in reviewing the appointment of the CBF.

### 3. THE WORK OF THE OVERSEAS TERRITORIES CONSULTATIVE COUNCIL

The OTCC has, from our perspective, operated in a largely satisfactory manner, dealing with issues of common interest to the OT's. In practice many of the concerns in the Caribbean are not concerns in the Falklands and vice versa. The temptation to try to find common solutions to disparate problems and issues nevertheless remains a holy grail for bureaucrats, and the OTCC helps to remind some people that we are all different.

Follow up from the OTCC is noticeably weak; there have been few real outcomes over the years, the decision last year on university fees being the notable exception (largely because the OT's Minister moved to the relevant education portfolio!).

The role of Governors in the OTCC has become an issue for some, but is not currently of concern to the Falkland Islands. Those Territories with a poor relationship with their Governor appear to object more strongly than those with a good relationship. The validity and effectiveness of the appointments process may mitigate some of these concerns.

### 4. TRANSPARENCY AND ACCOUNTABILITY IN THE OVERSEAS TERRITORIES

The Falkland Islands Committees (Access to Information) Ordinance provides for largely transparent Government, with all major Committees (including the Standing Finance Committee but excluding Executive Council) held principally in public. For an item of business to be in the closed section of a meeting the case has to be made and stated on the agenda; all items of business are assumed to be public unless otherwise determined. The Chief Executive is the responsible officer for the determination of procedure.

The Select Committee on the Constitution is of the view that some parts of Executive Council could also be held in public. This proposal will be taken forward in due course.

All minutes from Committee meetings are made public, as are the papers for those meetings unless the matter is exempt (was heard in closed session). Executive Council papers are made public unless they contain items of a personal or corporately confidential nature, or if they are work in progress whose publication would not provide clarity on Governments intentions.

All Councillors hold a public meeting once a month prior to Council meetings. These alternate between themed and open agendas, and are moderately well attended.

In an effort to further increase accountability the Select Committee on the Constitution has developed a new system of portfolio responsibility for Councillors. This is also designed to increase scrutiny of decisions made in Committees and in Executive Council. A full explanation can be found in Annex I of the Final Report of the Select Committee on the Constitution and will be implemented in November 2007.

Nevertheless there remain concerns in some quarters that too many decisions are taken in caucus (in the General Purposes Committee (GPC) consisting of all elected Members) which is not open to the public, causing reduced public debate in Legislative Council; the Select Committee on the Constitution concurred with this view. To address this there is a regular briefing of the press on the GPC agenda and discussions, and Executive Councillors are not bound by any recommendations or views from GPC. A revised system of portfolio responsibility has been devised (see Annexes to Report on the Constitution) which is designed to create a division between Committee level decision making and Executive Council, to increase scrutiny and accountability. This will come into operation in November 2007.

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## 5. REGULATION OF THE FINANCIAL SECTOR IN THE OVERSEAS TERRITORIES

There is no Financial Services industry in the Falklands.

## 6. PROCEDURES FOR AMENDMENT OF THE CONSTITUTIONS OF OVERSEAS TERRITORIES

The Overseas Territories have been left to determine their own procedures for review of the Constitution.

The Falkland Islands chose to form a Select Committee consisting of all elected members of Council. Evidence has been solicited from members of the public and officers of the Government; a number of early meetings were held in public and members of the public were invited to address to Committee on any matters they wished. There have been three reports from the Committee, each made widely available. Councillors held a series of public meetings on both main islands following the publication of the second report, following which the final report was produced and published.

There has been little controversy in the review, and not a huge amount of public interest. Arrangements are in place for initial negotiations with the Foreign Office in December 2007. A full copy of the Final Report is annexed to this evidence.<sup>5</sup>

## 7. THE APPLICATION OF INTERNATIONAL TREATIES, CONVENTIONS AND OTHER AGREEMENTS TO THE OVERSEAS TERRITORIES

This is an area that causes us regular difficulty in two respects.

The first is where international agreements have been negotiated by UK Government departments (with the intention that they should be applied to the OT's on signature) who have little or no knowledge of the OT's, and very probably take no account in their negotiations of the possible effects that these agreements might have on OT's. Subsequent application after negotiations are completed can be onerous. Consultation with the Foreign Office as a matter of course might avoid some potentially serious and embarrassing outcomes. Recent examples in this area include a series of ILO conventions (111, 138, 182), the UN Convention against Transnational Crime, and the SOLAS Convention and ISPS Code.

The second difficulty come in other areas where the Falkland Islands have no difficulty with the principle of application of the agreement, but to do so would use up a disproportionate amount of officers time in researching the law, implementing protocols of no practical effect or writing voluminous reports to international bodies of no practical significance. Examples here in addition to the above are the European convention on the Suppression of Terrorism, the UN Convention on the Rights of the Child and the UN Convention against Transnational Organised Crime.

## 8. HUMAN RIGHTS IN THE OVERSEAS TERRITORIES

The 1985 Constitution already has a well developed Chapter I dealing with fundamental rights and freedoms, and there is extensive subsidiary legislation dealing with discrimination, legal processes, and the right to education. Some legislation has been amended to take account of the ECHR, and other Ordinances would be so amended where necessary when legislation is updated. A revised Chapter I is proposed for the new Constitution which will take full account of ECHR and other international obligations (Right to Family Life, Rights of the Child, etc).

There is a free press in operation. The local newspaper "*The Penguin News*" (PN) and the Falkland Islands Radio Station (FIRS) both operate under the Media Trust, an independent Trust set up by Ordinance originally to oversee the PN. All the trustees are private citizens. At Governments' insistence the radio station was transferred to the Media Trust three years ago to deal with the perception, if not the reality, that Government could influence editorial content. Government still owns the broadcasting assets and provides a subsidy to the Media Trust in respect of broadcasting.

Considerable work has taken place in recent years on improving legislation and training of police and social workers in the protection of children from abuse. Levels of abuse are not considered abnormal but are sometimes hard to detect; other family related violence is at normal levels, and again resources have been put into creating the necessary protection mechanisms.

The community contains a mix of white and coloured people (mainly migrants from St Helena and Chile). There is no evidence of racial human rights violations.

The Falkland Islands is a prosperous and egalitarian society—there is no poverty and full employment. We have not considered it necessary therefore to introduce minimum wage legislation. There is some evidence that migrant workers employed by MoD contractors at the Mount Pleasant military base are forced to work very long hours and are deprived of basic employment rights. We believe the MoD shirks its responsibility to ensure that its contractors are good employers. FIG is reluctant to introduce new legislation to deal with issues that are effectively UK Government responsibility, but will do so if necessary to protect our reputation.

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<sup>5</sup> Not printed.

The Falkland Islands Government nevertheless recognises that we can always improve in important areas of protection. The Immigration Ordinance provides protection against unsuitable living conditions, and we continue to review any reported cases of low pay. We are in the process of constructing a new prison to improve prison conditions; a specialist group is reviewing the provisions of the Mental Health Ordinance; we have updated criminal evidence legislation to provide for increased protection for children and the victims of domestic violence (and have further draft legislation in train). There are working groups in place to report on child protection issues and working conditions on some foreign fishing vessels.

#### 9. RELATIONS BETWEEN THE OVERSEAS TERRITORIES AND THE UNITED KINGDOM PARLIAMENT

The Falkland Islands Government and its elected members enjoy excellent relations with the UK Parliament, and are generally afforded good access to Ministers and MP's when requested. This is principally effected through our office in London established after the war in 1982, whose principal purpose is to keep Parliament and the UK media apprised of current developments in the Islands.

There is strong cross party membership of the FI All Party Group.

#### 10. FALKLANDS SPECIFIC ISSUES

Each of the Overseas Territories is unique in its own way, and the Falklands are no different in that respect. However its combination of remoteness, the Argentine claim to sovereignty of the Falklands and South Georgia, and the economic success and potential of the Islands (fishing and hydrocarbons especially) makes for special circumstances.

We have no requirement for a working relationship with DIFID, but a strong requirement for good working relationships with both the FCO and MoD.

##### *Airbridge*

The UK/FI airbridge has been successfully operated by the MoD, on behalf of HMG, to serve both the civil and military communities, and the Ascension and St Helena communities, for many years. In view of current and foreseeable non-cooperation from Argentina in developing east-west air links through Chile, there is a clear strategic need to develop this service to support further economic development in the Falkland Islands, particularly tourism and a new hydrocarbons drilling round. Joint FCO/MoD/FIG discussions have commenced but have been slow to yield results; political confirmation of the UK national interest in a joint service may be required in due course.

##### *Fishing*

The fishing industry is well established and stable, and provides the majority of economic return to the Falklands (around 55% of GDP). The need for a Regional Fisheries Management Organisation for the SW Atlantic remains a key priority, but we have not to date been able to secure any cooperation from Argentina. The role of the EU in initiating discussions may be crucial.

##### *Hydrocarbons*

A second drilling round is planned to take place in 2008/9 following the successful farm-in of Australian minerals giant BHP. Companies in both northern and southern regions remain highly optimistic of commercial finds. Recent publicity has highlighted plans for UK continental shelf extension proposals through UNCLOS (to include OT's); it is important for the protection of the UK's sovereignty over the Falklands that this proposal is submitted in good time, though it has no short/medium term exploration implications.

8 October 2007

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#### **Submission from Mr Kedell Worboys, Chair, The United Kingdom Overseas Territories Association (UKOTA)**

#### 1. INTRODUCTION

UKOTA welcomes the opportunity to give evidence to the Committee for its Inquiry into Overseas Territories. However, it asks the Committee to bear the following in mind:

- UKOTA's role is to act as a representative for the Overseas Territories in the UK and it is on this basis that this evidence is submitted.
- The views expressed follow consultation with the individual territories.

- Evidence given by UKOTA should not be seen as a replacement for evidence given by the individual territories.
- UKOTA cannot comment on the affairs of the individual territories.

## 2. UKOTA

2.1 UKOTA succeeded the Dependent Territories Association following the 1999 White Paper, *Partnership for Progress and Prosperity: Britain and the Overseas Territories* which sets out the policy on the Overseas Territories.

2.2 The members of UKOTA are: Anguilla (Representative: Robert Williams), Bermuda (Representative: Marc Telemaque), the British Virgin Islands (Representative: Dawn Smith), the Cayman Islands (Representative: Jennifer Dilbert MBE), the Falkland Islands (Representative: Sukey Cameron MBE), Gibraltar (Representative: Albert Poggio OBE), Montserrat (Representative: Janice Panton MBE), St Helena (Representative: Kedell Worboys), the Turks and Caicos Islands (Representative: Tracy Knight) and Pitcairn Island (Representative: Leslie Jaques OBE).

2.3 The Governments of the Overseas Territories are represented on UKOTA, in the main, by their official representatives in the United Kingdom; Bermuda and Pitcairn send representatives to attend meetings when possible. The strategic direction for UKOTA is provided by the UKOTA Political Council which comprises the political leaders of the Overseas Territories.

2.4 Officers rotate annually. The current Chair is Kedell Worboys, the St Helena Representative. Tracy Knight, the Turks and Caicos Representative, is the Treasurer and Janice Panton, the Montserrat Representative, is Secretary to the Association.

2.5 The Objectives of UKOTA are:

- To provide a forum for exchange of ideas and discussion of relevant issues of common interest.
- To work for the mutual benefit of the signatories to the Mission Statement.
- To share information about issues of interest and benefit to the signatories to the Mission Statement.
- To make recommendations to the Governments of the Overseas Territories on appropriate courses of action where relevant.
- To develop relationships, as a group, with HMG, the European Union, the Commonwealth and other appropriate organisations and institutions.
- To share best practice in relevant areas.
- To defend the collective interests of the Members and to represent those interests.

2.6 UKOTA understands that the focus of the Inquiry is the exercise by the Foreign and Commonwealth Office (FCO) of its responsibilities in relation to the Overseas Territories and the FCO's achievements against its Strategic Priority No.10, the security and good governance of the Overseas Territories. We believe that for the Committee to obtain a good understanding of this, it is vital that the views of the Overseas Territories' Governments and their official representatives in the United Kingdom are taken into account.

2.7 It should be noted that while the Government of Gibraltar is an active member of UKOTA, it is not affected by many of the issues that UKOTA is addressing in its evidence. Its views are not therefore represented in this submission.

2.8 The principal relationships between the FCO and the Overseas Territories are strong and the proposition from the 1999 White Paper that the basis of that relationship be one of partnership is supported by the Overseas Territories. It is with this principle in mind that this evidence has been submitted.

2.9 Many of the proposals made by the Overseas Territories to the Select Committee during evidence taken in preparation for the 1998 report were accepted by the Committee and then by the UK Government. These included the right to full UK citizenship with no reciprocal arrangements, the change in nomenclature from Dependent Territory to Overseas Territory, the closing of the Barbados Secretariat and the establishment of the Overseas Territories Consultative Council and its annual meeting. The Overseas Territories warmly welcomed these changes and were grateful to the Committee for its support.

## 3. REQUIREMENT FOR GREATER UNDERSTANDING OF THE OVERSEAS TERRITORIES ACROSS GOVERNMENT

3.1 While the day to day relations with the Overseas Territories Directorate of the FCO are good, we are sometimes surprised at the attitude of other government departments where there is a lack of understanding about the status of the Overseas Territories. There are two current examples which typify the issue: pensions up-rating and National Health Service quotas.



*Pensions Up-rating*

3.2 The UK Government's policy on this issue is that it up-rates the UK State Pension of those living abroad where there is a legal requirement to do so or where there is a reciprocal agreement in place. Up-ratings are currently paid to all UK pensioners living anywhere in the EU, including Gibraltar and Switzerland. It is also paid in a number of individual countries and territories where reciprocal agreements are in place, including Bermuda and Gibraltar (although the latter's agreement has largely been superseded by European law). However, there are a number of countries where UK pensioners live where there are no reciprocal agreements including Australia, Canada, New Zealand and South Africa. Pensioners in these countries have run a campaign for a number of years calling for a blanket up-rating agreement on the basis that they have worked in the UK and made the requisite payments and therefore should have right to the up-rating. This is a call that the UK Government to date has resisted on the grounds of cost and its declared focus on pensioners in the UK. However, in addition to pensioners living in the major commonwealth countries, UK pensioners living in the other Overseas Territories do not receive an up-rating. The UK Government's reasoning for this is that it would not be appropriate to single out the residents of the British Overseas Territories with UK pensions as any more deserving of the up-rating provisions than those living in former colonies or Commonwealth countries.

3.3 In fact UKOTA believes that on the contrary the Overseas Territories should be given special consideration. Unlike the Commonwealth countries or former colonies, the Overseas Territories are sovereign British Territory. Therefore any UK citizen living in an Overseas Territory should not be discriminated against by any UK law. Indeed, this argument was accepted by the UK Government when it changed the basis on which tuition fees were charged to students from the Overseas Territories. The change recognised that the Overseas Territories were a special case and that the requirement for a certain period of residence in England, Scotland or Wales should no longer apply. As a result Overseas Territory students are now charged the same as UK resident students by UK universities and colleges provided that they have resided in an Overseas Territory for a period of three years prior to the 1st of September in the academic year in which they are to commence their studies in England, Scotland or Wales.

3.4 In terms of numbers, the up-rating would currently affect about 600 people. According to an answer given in the House of Lords (June 2007), the cost would be just under £500,000 for 2007–08 on the assumption that the frozen pension is brought up to the current value and then up-rated. We believe that by acceding to this request the UK would not be setting a precedent either for other countries or in terms of law.

## RECOMMENDATION

Given the unique status of the Overseas Territories, low cost and small number of people concerned, the UK Government should up-rate the pensions for UK citizens living in the Overseas Territories and in receipt of UK state pensions.

*Medical Treatment*

3.5 There are currently reciprocal agreements in place to allow British Overseas Territories' citizens to be treated in the UK by the National Health Service (NHS) and for British nationals to be treated in the Overseas Territories in the case of primary care. However, there are significant disparities when it comes to secondary care. Some Overseas Territories are allowed an annual quota of patients who can be treated in the UK, some are allowed to have as many as necessary to be treated and some have no quota at all.

3.6 There are signs that the Department of Health is now questioning this system querying the value the Overseas Territories bring to the British taxpayer to allow its justification. It is a question that does not make sense. If British visitors are in need of primary medical assistance in the Overseas Territories they will receive it as the reciprocal agreement indicates. In the case of secondary care, British citizens would receive it in the UK. Overseas Territory citizens themselves only travel for secondary care if they cannot receive it in the territory itself so there can never be reciprocity in the way that the Department of Health envisages. Indeed, the standard wording in the agreements requires that the patient sent to the UK must be "... in need of hospital care, for which, in the opinion of the competent authority ... adequate facilities do not exist in the [name of Overseas Territory]". It should also be noted that under the various agreements, the Government of the Overseas Territory sending the patient(s) is responsible for all their transportation and living expenses while they are staying in the United Kingdom.

3.7 All Overseas Territory citizens have the right of abode in the UK and the right to a British passport. If they were to move here they would gain automatic access to the NHS, based on residency, so it seems strange that the Department of Health is questioning the quota system.

3.8 It is not in the interests of the Overseas Territories to flood the NHS. Like most people their patients would prefer to be treated closer to home where they can be visited by family and friends. However, there are cases where this treatment is not possible and where, therefore, UK assistance is required. It seems unnecessarily harsh to impose an inflexible quota system which dictates that the best chance of accessing secondary care on the NHS is to become ill early in the year rather than later.

## RECOMMENDATION

UKOTA recommends that where a person is in need of medical treatment for which, in the opinion of the competent authority of that Overseas Territory, adequate facilities do not exist in the Overseas Territory, the person concerned will receive that medical treatment in the United Kingdom.

*National Curriculum*

3.9 It is not only across government that knowledge of the Overseas Territories is sporadic. The same is true across society and while the Overseas Territories do undertake some degree of public information in the UK, there is unfortunately a limit to what any one can achieve. If knowledge about the Overseas Territories was communicated to school children, there would be far greater societal understanding of the Overseas Territories, their status and the role they play. To achieve this we believe that more should be done to insert information about the Overseas Territories into the National Curriculum.

## RECOMMENDATION

UKOTA recommends that teaching about the Overseas Territories be inserted into the National Curriculum to ensure that over time there is a better understanding among the general public of the Overseas Territories and the position they occupy.

In the case of both of the pensions' up-rating and the health quotas, support has been expressed by FCO officials but they have difficulty in persuading other departments to listen to them or convince other departments of the duties they have towards the Overseas Territories.

## RECOMMENDATION

There is still a need for a greater knowledge and understanding among other government departments and the FCO must support this process by ensuring that the requisite communications systems are in place.

*Student Loans*

3.11 One issue that has recently arisen following the long awaited acknowledgement that students from the Overseas Territories qualify for home student fees, is their ineligibility for UK student loans and this factor may deter students from applying for a place at a university in the UK.

## RECOMMENDATION

UKOTA recommends that the FCO investigate the feasibility of students from the Overseas Territories becoming eligible for student loans from Student Finance Direct.

## 4. THE ROLE OF GOVERNORS AND OTHER OFFICE-HOLDERS APPOINTED BY, OR ON, THE RECOMMENDATION OF THE UNITED KINGDOM GOVERNMENT

4.1 The individual territories may wish to comment in more detail. However, UKOTA asks the Committee to note that the experience of the official representatives is substantial and they can provide a degree of insight in pre-briefings that the FCO and other UK Government departments may lack. As a result the FCO frequently ensures that the relevant Representative briefs a Governor before he/she is appointed. We believe that this practice should be extended to other officials appointed by, or on the recommendation of, the United Kingdom Government.

4.2 Furthermore, there is a tendency for the FCO to use the Governors as an exclusive channel to Overseas Territories' Governments when in fact using the Representatives in addition to the Governors would be more efficient. This is something, for example, which the Commonwealth and Parliamentary Association (CPA) has recognised and as a result knowledge and information exchange with that organisation has improved. The Overseas Territories' Governments assume that we are kept informed and use us to co-ordinate meetings and as a channel to the UK Government. It is important that this is recognised by the FCO as well and that it is a two way channel.

## RECOMMENDATION

UKOTA recommends that all office-holders appointed by, or on the recommendation of, the United Kingdom Government are briefed by the appropriate Representative on UKOTA before they leave for their respective Overseas Territory. Furthermore, we recommend that the FCO recognises the link that UKOTA and the Representatives can collectively and individually provide between the UK and the Overseas Territories and acts accordingly.

## 5. THE WORK OF THE OVERSEAS TERRITORIES CONSULTATIVE COUNCIL (OTCC)

5.1 The OTCC has become an important component in relations between the FCO and the Overseas Territories. The annual meetings give the political leaders of the Overseas Territories an opportunity to meet their political counterparts and senior officials in the UK, and to discuss a range of issues of interest and concern to the Overseas Territories.

5.2 However, it may be that the time has come for a change in format. The new Constitutions that are being discussed and adopted give a greater degree of variation in terms of autonomy for local governments so the “one size fits all” approach can no longer be taken. In addition, in recent years there have been signs that the partnership approach taken so successfully has not been followed through by the FCO. For example, it is UKOTA’s view that any changes to the composition of the meetings should be agreed by the political leaders of the Overseas Territories before such changes are implemented. However, in 2005 the FCO took the decision to invite the Governors to attend without consulting the Overseas Territories. The lack of consultation on this proposal not only flew in the face of the partnership approach, which had been successful to then, but created a lot of unnecessary tension.

5.3 UKOTA believes that the format be refined to ensure that the partnership approach is effectively continued by the FCO.

## RECOMMENDATION

UKOTA recommends that the fundamental reason for the creation of the OTCC must remain to provide a forum for direct discussion between the political leaders of the Overseas Territories and their UK political counterparts in the United Kingdom and as such, it would be beneficial for the proceedings of the Council to include:

- A series of individual bi-lateral meetings arranged with other Government Departments around the time of the OTCC on issues requested by the individual Overseas Territories. Most importantly, other Departments should be briefed on the issues to be raised beforehand so that they can prepare their responses.
- A final round up meeting to be organised with the political leaders of the Overseas Territories, the relevant Ministers and officials.
- Governors should not be in attendance—they have a separate meeting with the FCO which the Overseas Territories’ political leaders do not attend.

## 6. PROCEDURES FOR AMENDMENT OF THE CONSTITUTIONS OF OVERSEAS TERRITORIES

6.1 Many of the Overseas Territories have either recently completed constitutional talks or they are still ongoing. This is huge step for all and the partnership with the FCO has worked well. In the Overseas Territories there has been extensive public consultation and the FCO policy and legal teams have worked with the Overseas Territories to ensure that, so far as possible, each Overseas Territory has the autonomy that is required without exposing the UK’s contingent liabilities.

## 7. THE APPLICATION OF INTERNATIONAL TREATIES, CONVENTIONS AND OTHER AGREEMENTS TO THE OVERSEAS TERRITORIES

7.1 With a few exceptions most international treaties, conventions and other international agreements which the UK ratifies must also be transposed into law in the Overseas Territories. Individual Overseas Territories may wish to comment on this process. However, from UKOTA’s perspective, there are two elements which need to be brought into consideration.

7.2 Firstly, the Overseas Territories should be alerted to such agreements at an early stage. Frequently, the FCO only alerts the Overseas Territories at a relatively advanced stage when it is too late for them to make representation. Such delay can lead to a break down of trust in the relationship between the Overseas Territories and the FCO.

7.3 Secondly, it is important that other UK Government departments have a clear understanding of what can and cannot be applied to the Overseas Territories and the FCO must communicate this adequately to them. UKOTA recognises that the Governor is the formal link between the Overseas Territories and the UK Government. However, this does not have to be an exclusive channel. All the UKOTA representatives maintain strong and regular links with their individual Overseas Territory Governments and if this channel is also utilised then messages and alerts have a greater chance of being acted upon.

## RECOMMENDATION

UKOTA recommends that the FCO institute a system whereby UKOTA representatives are alerted early to prospective new international treaties, conventions and other agreements to ensure that Overseas Territories' Governments are informed of such developments on a timely basis.

7.4 Secondly, the transposition of such agreements often requires a significant amount of legal drafting which can be difficult for Overseas Territories because, although willing, they may have limited resources. It is important that the FCO takes this into account when considering what it expects of the Overseas Territories and within what timescale.

## RECOMMENDATION

UKOTA recommends that each transposition is taken on a case by case basis but that the FCO always consider what legal drafting assistance the Overseas Territories might require and provide this support if requested.

## 8. HUMAN RIGHTS IN THE OVERSEAS TERRITORIES

8.1 The UK has signed the European Convention of Human Rights and these rights have been extended to the Overseas Territories as part of this agreement. In addition, as part of the constitutional review process, Overseas Territories are adding a substantial Human Rights chapter to their Constitutions to enshrine these rights on a Territory by Territory basis for the first time. This has already happened in Gibraltar, the British Virgin Islands and Turks and Caicos and the other Overseas Territories are following suit as they review their Constitutions.

## 9. RELATIONS BETWEEN THE OVERSEAS TERRITORIES AND THE UNITED KINGDOM PARLIAMENT

9.1 Relations between the Overseas Territories and the UK Parliament tend to be driven either by the Overseas Territories or MPs who have a specific interest. There are All Party groups representing most of the Overseas Territories and one group, the All Party Overseas Territories Group, which acts as an umbrella for all of the Overseas Territories. In addition all Overseas Territories engage with Parliament on a regular basis and a number arrange Parliamentary visits to ensure MPs and peers obtain direct experience of them.

## 10. UK NATIONAL EVENTS

10.1 There has been much improvement in the way that national events in the UK have been expanded to include the Overseas Territories and this is welcomed. However, there is one area which has not. This is attendance at the Cenotaph on Remembrance Sunday. Many Overseas Territories' citizens have fallen in defence of Britain. The Overseas Territories all now have democratically elected Governments who have representatives at many international events. It seems strange and anachronistic for their representatives to be excluded from the Remembrance Sunday ceremony at the Cenotaph.

## RECOMMENDATION

UKOTA recommends that Representatives of the Overseas Territories are invited to join the ceremony at the Cenotaph and lay wreathes on behalf of their individual Overseas Territory.

10 October 2007

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**E-mail submission from Anthony L Hall, Esq, Turks and Caicos Islands**

My name is Anthony Hall. I am a "Belonger" from the UK Overseas Territory of the Turks and Caicos Islands (TCI).

I am writing to you in your capacity as the newly-appointed Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office, with responsibilities for Overseas Territories—particularly the Caribbean.

I understand that the Foreign Affairs Committee is currently taking evidence pursuant to a new enquiry to assess the FCO's achievements against its Strategic Priority No 10, the security and good governance of the Overseas Territories.

In this regard, I suspect that very troubling evidence will be submitted to the Committee with respect to the TCI. More to the point, however, I fear that even a cursory audit of the TCI financial sector will reveal gross shortcomings in the required standards of transparency and accountability. Moreover, I suspect that the Committee will be compelled to deem these shortcomings so egregious that they indict the leadership and integrity not only of our local government, but also of the Governor appointed by the UK Government.

Perhaps I should offer a little here to establish my bona fides: I am a practicing lawyer—headquartered in Washington DC. But, for the purposes of this appeal, it is probably best to refer you to my weblog, which contains my biography and might indicate why I was moved to contact you: <http://ipjn.com>

Specifically, I would like to draw your attention to an article I published only today, which highlights my concerns about the TCI Premier's disregard for the rule of law and the chilling effect his abuse of power is having on law enforcement and our Judiciary: "No public interest" in prosecuting TCI Premier Misick for assault, theft and obstruction of justice?!

Clearly, I cannot fully convey in this forum the growing apprehension and unease Premier Misick's rule is causing amongst TCI professionals, especially those in our expatriate community. But the FCO should be mindful that Premier Misick has made it patently-clear that he intends to play the Mugabe card to undermine the Committee's findings of rampant corruption throughout his government, which he and most TC Islanders fully expect will be the case.

I am convinced, however, that there's a way to not only report your findings, but also to act upon them in manner that furthers justice with minimal civil unrest.

But I shall end here to give you a chance to review this e-mail and my standing in this regard. After you have done so, however, I hope that you will deem it worthwhile to invite me to discuss these matters further.

10 October 2007

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#### **E-mail submission from Victoria Timms, Jesus College, Oxford**

This statement of written evidence is a synopsis of on-site fieldwork and analysis undertaken by Victoria Timms, finalist at Jesus College, Oxford University. The purpose of the research was to provide an accurate and comprehensive account of the structure of environmental governance in the Cayman Islands, with specific focus on the engagement of civil society. The investigation explored the role of non-state actors in governance, defined to include the more abstract elements such as international conventions as well as corporations and national and international individuals. Several conclusions that might be of use to your inquiry were made, based on evidence provided by a triangulated methodology which was comprised of textual analysis, a discussion session with members of the Legislative Assembly, the Cabinet and related government departments, and 10 semi-structured interviews. These interviews were conducted with leading figures in politics, business and environmental groups. This fieldwork was analyzed and will be presented as a dissertation counting towards my undergraduate degree.

##### **(i) ACCOUNTABILITY**

From discussion with politically-orientated individuals it was ascertained that there is a strong tide of feeling that there is no need for a bi-cameral system due to the accountability already inherent in the current political institution, and consistent opportunities for the feedback and evaluation of development plans would seem to indicate this. However, in discussion with non-state actors it was suggested that the government could stand to gain legitimacy with a stronger and more defiant media role and with greater presence of advocacy groups. It would therefore appear that there is some feeling held by those outside the government that greater accountability is desirable. The majority concluded that greater accountability would be best ensured by an increased role for civil society, achieved through campaigns of political education and an increased sense of national identity.

##### **(ii) INTERNATIONAL TREATIES, CONVENTIONS AND OTHER AGREEMENTS**

The second conclusion of relevance to your inquiry concerns the application of international treaties, conventions and other agreements to the Overseas Territories. In particular my investigation centred on the UK White Paper "Partnership for Progress and Prosperity", as embodied in the Overseas Territories and Environment Charter (2001). The terms have since been drawn up to form the National Conservation Bill, due to be tabled later in 2007 although likely to be subject to some moderation during the process, and the Darwin Initiative-led BAP. It also being used a lever by the Department of Environment to ensure that the government fulfils its commitments to the environment. The second is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which the Cayman Islands became party to through the UK's acceptance on 31 October 1976. This in the main has been well received for its environmental intentions, and has been applied fully to the economic hindrance of the Turtle Farm, now named Boatswain Beach. It is felt that the sale of specifically-bred turtle meat and products is a part of Caymanian culture and should not be held in the same light as the illegal trade in furs for example.

10 October 2007

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## Submission from the Chagos Conservation Trust

### BRITISH INDIAN OCEAN TERRITORY

#### 1. SUMMARY AND RECOMMENDATIONS

The British Indian Ocean Territory (BIOT) has the most pristine tropical marine environment surviving on the planet. Its half million square kilometres are Britain's greatest area of marine biodiversity by far. The UK Government and BIOT Administration are committed to managing BIOT as if it were a World Heritage site and have enacted significant legislation to protect this globally important environment. However a more robust and extensive framework for conservation is needed to meet future challenges. The CCT invites the FAC to include the following in its recommendations to the Government in respect of governance of the BIOT:

- (a) The existing environmental safeguards should be strengthened and extended to create a robust, long-term conservation framework with the maximum international support.
- (b) This should include: extension of the existing Ramsar Area on part of Diego Garcia to the whole of the Archipelago; the removal of exclusions to the Environment Zone; establishing a "no-take" fishing zone covering at least one third of the Territory's coastal and lagoonal waters; and international support for a new, comprehensive reserve area (eg Ramsar, UNESCO, IUCN).
- (c) Greatly increased surveillance should be instituted, notably by the employment of a second patrol vessel.
- (d) In preparing for any extension of the Agreements with the United States beyond 2016, the Government should seek to secure a greater US Government contribution to environmental conservation within BIOT.
- (e) The issue of human settlement needs to take full account of the environmental implications.

#### 2. BACKGROUND

##### (a) *BIOT*

The Chagos Islands, in the centre of the Indian Ocean, have belonged to Britain since 1814 (The Treaty of Paris) and are constituted as the British Indian Ocean Territory (BIOT). The area includes 55 tiny and remote islands, 10 coral reefs, and five coral atolls. Only one island, Diego Garcia, is inhabited (by military personnel and civilian contract employees). It accounts for over two-thirds of the total land area of 50 square kms. The other 54 (tiny and uninhabited) coral islands cover a total area of only 16 square kms. They are set in some 500,000 square kilometres of sea in the central Indian Ocean.

BIOT is in two key respects distinctive among the Overseas Territories:

- (i) Formed in 1965 for the defence interests of the UK and the USA, it has since the early 1970s been devoid of population, save for a small British administrative team and personnel manning the US base on the largest island, Diego Garcia.
- (ii) Its submarine topography and life forms make it, as Ministers have stated, "of global environmental importance"; they have undertaken to administer it "with no less regard for natural heritage considerations than areas actually nominated as World Heritage Sites".

##### (b) *Chagos Conservation Trust*

The Chagos Conservation Trust (CCT) initially named The Friends of the Chagos, was founded in 1992. It has environmental, educational and scientific objectives, principally to conserve the environment of the Chagos Archipelago (constituted as the British Indian Ocean Territory (BIOT) and to study and make known the science and history related to the area.

The Trust is fortunate to enjoy the participation of some of the foremost experts in the relevant specialist fields of marine biology, notably that of coral reef ecology. Under the joint auspices of the CCT and Warwick University two major multi-disciplinary expeditions were mounted, in 1996 and 2006. Both were led by Professor Charles Sheppard, who is currently also Conservation Consultant to the BIOT Administration.

The Trust also has links, not least through its Executive Committee members, with other leading organisations involved with science and conservation in the area, including: RSPB, the University of Wales, The Nature Conservancy, the Zoological Society and Coral Cay Conservation. Additionally the Executive Committee contains members who have had personal experience of BIOT as Commissioner and UK Representative.

The Trust, for its part, discusses the data available and conveys its own views to the FCO on priorities for action; and it collaborates with the UK Overseas Territories Forum to the same end. At the same time, it undertakes original research into the history of the Archipelago. Its findings, both historical and natural

historical, are published regularly in its journal, Chagos News, as well as through the internet and in other formats, eg CDs, brochures and a book, *Peak of Limuria, The story of Diego Garcia and the Chagos Archipelago* (2004). It occasionally organises public conferences, of which the next is to take place on 25 October this year at the Zoological Society of London. The Trust's website is: [www.chagosconservationtrust.org](http://www.chagosconservationtrust.org) or [www.chagos-trust.org](http://www.chagos-trust.org).

(c) *The Global Importance of BIOT's Natural Environment*

These are features which make the Chagos an outstandingly important environmental site:

- (i) The archipelago has the most pristine tropical marine environment surviving on the planet.
- (ii) The wildlife biodiversity of Chagos is very rich. It provides at least 220 coral species and over 1,000 species of fish with a stronghold which is vital. It is also a refuge and breeding ground for whales, sharks, dolphins, marine turtles, rare crabs and other crustaceans, and some 270 species of birds. In marine terms BIOT is by far the most bio-diverse part of the UK and Overseas Territories.
- (iii) The islands are isolated and at the very centre of the Indian Ocean where it acts as an "oasis" for marine and island species (which are nearly all in decline under pressure from the effects of massive, recent human population growth in the region).
- (iv) The Chagos contains the world's healthiest coral reefs and the world's largest surviving coral atoll. Their importance increases as most reefs elsewhere are being damaged or destroyed by human activity. Scientists fear that half of the world's few remaining coral reefs could be lost by 2050. It is essential to save them. Hundreds of millions of people in the world depend on healthy reefs in one way or another. Living reefs provide food, protect beaches from erosion and form a treasure house of genetically diverse creatures and plants.
- (v) The Chagos coral reefs also have a unique bio-geographical function by providing a point for larvae of many species, brought by west-moving currents from the eastern part of the Indian Ocean, to mature and spawn fresh larvae, thus enabling the depleted reefs off the African coast to be restocked.
- (vi) Most of the Chagos is uninhabited. This is the main reason why the ecology of the Chagos is nearly pristine and full of diverse life, a rare surviving example of nature as it should be; where human pressures do not conflict with environmental needs and lead to degradation and impoverishment.
- (vii) Also, because it still has a mainly unspoilt and healthy environment, the Chagos provides us with a scientific benchmark for how the world should be; and this is evidently important in helping us to understand and deal with such problems as pollution, loss of biodiversity and climate change.

### 3. PRESENT SITUATION

As CCT understands the position, the current priority for the governance of BIOT is the assertion of sovereignty and the treaty arrangements with the United States in respect of the military facilities on Diego Garcia. CCT considers that that the long-term protection of BIOT's globally important natural environment should also be treated as a priority and that greater resources should be devoted to this end.

Key features of the Trust's assessment of the present environmental situation in BIOT are that:

- (a) For reasons described above the condition of the Chagos reefs (in contrast to those in most of the world) is outstandingly good, owing to their isolation and freedom from pollution. They are exceptional in terms of the number and diversity of species found.
- (b) The seas and low-lying atolls of the Chagos Archipelago are no less affected by climatic change than other parts of the tropical seas. Rising sea levels and sea surface temperatures, increasing in line with predictions, are causing accelerated erosion, periodic coral mortality, and the storm surges which threaten the freshwater lenses on which vegetation depends.
- (c) The pressures of over-fishing and illegal fishing in the Indian Ocean are increasing and will continue to increase in the light of the massive increase of human population in the area in the past 50 years (a fourfold increase in India alone). The apparent reduction of the shark population by 90% in the period is an indication of this. Increasing visits by environmentally careless yachtsmen are a lesser but further factor. The Administration's single patrol vessel, *Pacific Marlin*, which is also responsible for deep sea fisheries surveillance and plays a crucial role, is insufficient to fulfil the full conservation needs in this huge area. Moreover the arrangements for fisheries control, contracted out to the Marine Resources Assessment Group, should be better integrated with the overall Conservation Management Plan.
- (d) There is no formal protection for the northern islands of Peros Banhos Atoll, Eagle Island, or any part of Salomon or Egmont Atolls. Furthermore there is no protection for the non-islanded reef systems, including wide areas of the Great Chagos Bank and the surrounding shallow reefs and banks. Marine protection is restricted to those areas adjacent to the existing protected areas.

#### 4. PROPOSALS

##### (a) *Extension of Ramsar Protected Natural Sites*

CCT proposed in 2005 a phased extension of this coverage. The Government agreed in principle to the first phase named “The Chagos Islands Ramsar Site”. This site would include all of the land areas and their adjacent territorial seas, a designation producing a site with seven separate areas.

If at any point the BIOT government were to extend the territorial waters to 12 nautical miles, as is now the norm in most countries, we propose that this Ramsar designation should be extended accordingly. This 12 nautical mile limit is already used in the fisheries management regime. This extension would aggregate this Ramsar Site into two separate areas.

There is no doubt that this Ramsar site meets the requirements for designation. It encompasses some of the most important nesting sites for seabirds in the western Indian Ocean. It includes some of the least disturbed island ecosystems in this Ocean, including several islands not impacted by alien invasive species. It also includes some of the most extensive shallow water reef ecosystems, including entire atoll ecosystems in the case of Egmont, Peros Banhos and Salomon.

This designation will, CCT believes, tie in well with the recently declared BIOT Environment Zone. The latter provides a statement of intent with regards to environmental protection from the edge of Territorial Waters to a distance of 200 nautical miles. Ramsar designation would effectively fill the gaps of the Territorial Waters within this Environment Zone.

##### (b) *Proposed Removal of Exclusions to the Environment Zone*

Currently the Environment Zone has an outer boundary (the 200 nm limit) and several inner boundaries around each island or group of islands. This has the effect of excluding from the Environment Zone all islands and their immediately adjacent reefs and shallow waters (the areas which are richest in biodiversity and in particular need of environmental protection). The simple removal of all inner boundaries is proposed.

##### (c) *The Chagossians*

The Trust is concerned that a satisfactory outcome be agreed in respect of the claim of the Chagossian people, for whom members of the Trust have much sympathy, but the Trust itself cannot constitutionally involve itself in the legal, political or diplomatic issues involved in finding solutions to their claims. The Trust nevertheless remains keen to involve the Chagossians in discussion of the environmental issues pertaining to the Chagos Archipelago. The CCT however wishes to offer three observations, which the FAC may care to take into account:

- (i) The CCT believes that it would be dangerous for the Government to ignore the likely effects of climatic trends in considering the longer term future of these atolls, and in particular any proposals for new human habitation.
- (ii) The Trust considers that even as the legal arguments continue it is not too soon for the British Government and other concerned bodies to begin to draw up a long-term framework for sustaining the environmental integrity of the Chagos Archipelago while taking the possibility of human habitation into account.
- (iii) Any such proposals for new human habitation need to take account of the importance of safeguarding the unique, delicate and vulnerable ecology of the archipelago. This is not only because new human settlement would have a profound impact on important ecosystems and species, but because any degradation of the environment could adversely affect the welfare and prosperity of possible human communities.

10 October 2007

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**Submission from Mr Eric W George, Speaker of Legislative Council, St Helena**

#### INTRODUCTION

1. Over the past 14 years I have held office as a member of the Executive Council of the Government of St Helena (SHG). My responsibilities during that time have included:

- Member of Executive Council;
- Chair of Public Health Committee;
- Chair of Building Authority 1993–2001;
- Chair of Highways Authority;
- Chair of Water Authority;



- Chair of Electricity Authority and Public Works Committee;
- Member of Finance and Development Committee 2001—2006; and currently
- Speaker of Legislative Council

2. I have previously given evidence to the Foreign Affairs Committee in December 1997, which helped form part of the Overseas Territories White Paper *Partnership for progress and Prosperity*. The subjects on that occasion were the four Cs: Citizenship, Constitution, Communications and Commitment. I would wish to give evidence on the various subjects submitted below, if accepted by the Committee to do so on this occasion.

3. I am submitting information to the Foreign Affairs Committee, as evidence of what I consider is the result of the lack of practicing Good Governance in the overseas territory of St Helena. I became more aware of what is absent and what is expected after being attached to the Kent County Council earlier this year, and studying their Code of Governance and the operations of the Council. A copy of my report will be sent by electronic mail as a part of my submission, for your information.

#### ECONOMIC DEVELOPMENT

4. St Helena throughout its history has never been financially self-sufficient, as it was not intended to be. It was taken possession of and settled by the British Government and run by the East India Company to safeguard British interests in the lucrative sea trade route to the Far East around Cape Horn.

5. The Department of International Development (DFID) previously known as the Overseas Development Administration (ODA) administers the level of financial input by the British Government to meet the basic needs of the Overseas Territory of St Helena. The two main sources of revenue for the Island are the British aid and remittances and related incomes from Islander's working offshore on contracts, often not accompanied by their wives.

6. Having recognised the state of St Helena's economy, the British Government through its responsible administrative department has not addressed the situation of the poor state of the island's economy, nor accepted the assessment of the St Helena Government in negotiations about the level of financing and the impact on the lives of the people of St Helena. The economic situation on St Helena has not improved and has now reached a crisis. Almost half the local the working population work offshore (often not being accompanied by their family) with adverse social consequences and a strain on the running of essential services. (See copy of SHG Press release) The situation has now reached a point where personnel are being imported from other countries to help run the medical and education services. Certain issues given below draw also draws attention to the seriousness of the matter.

7. HMG reneged on a signed agreement with SHG not to increase local revenue until evidence of a substantial growth in economic development had taken place, which "In the absence of a significant improvement in economic growth, leading to the possibility of greater SHG revenues, more budgetary aid will be required" (see Development Assistance Planning Mission report 10-14 January 2000). This was endorsed in 2004 by the DPAM team. The Governor of St Helena and the Head of OT's DFID both signed the aid memoir.

8. Unfortunately, increases in local revenue continued as before, including shipping freight charges and fares, driving food prices, etc, higher and exposing the vulnerable to even greater hardship. As an example, the Electricity Distribution Project to upgrade line plant to a safe and efficient state has just been approved after some four years of discussion. Electrical services were held up until an agreement was reached on Full Cost Recovery. In the meantime, project costs escalated and restrictions on new electrical connections were put in place that slowed down private sector house building and delayed the connection to the new Elderly Care Centre. An improvement in the distribution system will realise a saving in line loses of 19%, which will reduce the need to increase electricity charges to the public. However, this delay has had a negative impact on the Island going forward, and is encouraging more people to leave the Island. Up to 50% of the Island's key staff have left, which in turn means the recruitment of key staff from overseas to fill vacant posts in education, health and other public sector posts at much higher cost to the UK Government and detrimental to the Island.

#### BULK FUEL INSTALLATION

9. The Bulk Fuel installation (BFI), the only Island fuel supply, was designed to improve the island's economy by providing cheaper fuel. However, The appointed managers' in 1987 are, some 21 years later, still allowed to continue despite the fact that the management contract has never been advertised, but Solomon & Co, who are the current managers, is allowed to continue. An investigation is needed in this area, because there is a conflict of interest of SHG being involved in a commercial Company and representing the people of the Island. This needs to be investigated because of monopolistic occurrences that are allowed, which is not in the best interest of the Island. An Ombudsman would be well placed on the Island at this time and I recommend one be appointed immediately.

## SHIPPING

10. Shipping is one of the Governor's constitutional responsibilities. Council have asked through questions raised in the House about the shipping and why the SHG Auditor is not auditing the management accounts of the ship. The annual shipping subsidy of some £3.3 million last year is provided to offset the shortfall in the operating account. All other SHG and Agencies accounts are audited and accounted for by the Island's Public Accounts Committee. Although the sum of £3.3 million forms part of the Island's budget, the Island has no means of control over how that money is spent.

11. St Helena Line, which owns the ship on behalf of the Island, was appointed without contest from other would be takers. St Helena Line has been superintending the RMS management since 1990. An assessment and findings of their performance can be found in the High-Point Rendel report: *St Helena Comprehensive Review of Shipping Arrangements* of December 2003. There is evidence to suggest a Value for Money Study should be carried out, both in the interest of the British and St Helena tax payers. In particular, there are answers the Island cannot obtain locally, to justify increases in both freight charges and passenger fares at the same time. as an increase in the shipping subsidy. I would urge the National Audit Office (NAO) be requested to look into our shipping service to see if the St Helena and the British Tax payer are getting value for money.

12. I refer now to the Public Accounts Committee of the House of Commons, Thirteenth Report of 17 April 1991 on *A New Ship for St Helena*. In particular I would draw attention to Questions 337–339 put by Mr Shersby MP and answered by Mr Lankester Permanent Secretary, Overseas Development Administration, when giving evidence to the Committee of Public Accounts. To summarise; there are issues at present that need clarification: Are commitments given to the above questions still valid? See also Para 30 of the Introduction and Summary of the Committee of Public Accounts Report, where The Administration assured us that the substantial increase in cost would not affect in any future United Kingdom aid to St Helena nor the annual operating subsidy which the British Government had agreed to provide for 20 years at an expected cost of £25 million. Excepting an element for inflation, it is difficult to accept increases in freight charges and passenger fares go hand in hand with increases in shipping subsidy.

13. During the tenure of the former managers of the ship, the figure of £25 million was very much adhered to, indeed often came under the stated allocation. One reason for this is the ship kept to its original schedule. Since the new managers were appointed, the subsidy increased and increased further to an even greater level with the rescheduling of the vessel. Our economy, already at a critically low level, has no chance of recovery unless the Island is in a position to examine the issues that are having a negative impact on the Island. I am afraid shipping has one such effect on the Island, although it is our only link with the outside world.

14. It would be of benefit if the Island were to be given an opportunity to establish at the highest level whether:

- The commitment given in the Public Accounts Committee of the House of Commons Report in Q 337-339 is still valid and
- The subsidy of £25 million over 20 years (Q. 338) is extra to the £2.5 million allocated to the shipping subsidy in the Island budget estimates for 2007, is in keeping with the commitment given in the report mentioned above, as subsidies increases with increased freight and passenger charges are a regular occurrence.

It is recommended that an enquiry by the NAO to establish whether the people of the Territory and the British taxpayers are getting Value for Money.

15. Without the services of an Ombudsman and a Scrutiny or Standards Committee, the Island becomes vulnerable. Although a Resolution to this effect was given full support in the House in July 1994 without any dissenting voice, the matter has not been taken forward. The Office of an Ombudsman is a must for St Helena if the good governance of the Island is to be taken seriously.

16. I would earnestly request that the FCO/DFID be requested as a referee, to initiate the process that will ensure that good governance is seriously working in the territory and it requires that governments of the UK and St Helena observe the following principles:

- respect of law;
- accountability—political, legal, public, auditing;
- openness and transparency;
- maximise the effectiveness of government; and
- encourage public participation

17. There is a need to strengthen democracy and trust. It should be noted that an Island of some 4,000 people has had at its disposal £1/4 billion over the last 20 years. The question is: why are we continuing with the present situation? The Island was striving for many years to come to a point of being financially self-sufficient and to meet our Vision: "A prosperous and democratic society for all achieved through sustainable economic, environmental and social development leading to a healthy and eventually a financially independent Island".

18. The author of the Island's 1996–2000 Strategic Review states in the "Economic Context":

"There is considerable evidence that the fall in UK Aid was a significant factor in the contraction of the economy."

In effect, the economy contracted because the private sector (which includes: exports, offshore employment, and domestic production) and SHG's offshore revenue source (which included fishing licences and portfolio investments) were unable to generate resources to replace those lost from the real fall in UK Aid. The public Sector Reform Report of 1996 also gave the same warning that the recommendations contained in their Report would be placed in jeopardy if there was a continuing fall in UK Aid. These were warnings from costly consultants that seem to have been ignored. I recommend that the economic position on the Island be seriously investigated. I would be pleased to elaborate on the above if the opportunity was there for me to give oral evidence.

19. I would further recommend to the Committee that the White Paper *Partnership for Progress and Prosperity* of 1999 be examined to ascertain that the four principles mentioned in the Secretary of State's Foreword, that underpinned partnership are being met. I submit that they form the basis of the partnership that remained for generations—the deep bond of affection and respect that exists between the people of Britain and the people of the Overseas Territories. I feel our future is threatened by HMG imposing conditions on the Island's development aid projects and renegeing on signed agreements (as mentioned above), which are contrary to meeting the aims of the White Paper.

20. Human Rights are also a pressing concern where there is outright opposition by the British Government to Islanders not having the right to nationality under Article 15 of the Universal Declaration of Human Rights. There are also differences of opinion when dealing with a specific issue in that children born after 1998 of St Helena parents are now deemed to have St Helena status and not Islander status (as have those born before 1998). Islander status is included in the Ordinance, but must be applied for by outsiders. To classify a child as having St Helena status and not Islander status means they cannot inherit property until the age of 15 years. Until such time their property is placed in Trust. People who are none Islanders obtain Islander Status through application, must first reside on the Island for five years. One was allowed to purchase a huge property without first applying for a licence under the Immigrants Land Holding Ordinance. In doing so, it deprived Saints having an opportunity of acquiring that land. No immigrant can purchase any land without first obtaining an Immigrants Land Holding Licence. In short, the child born after 1998 has no greater status than someone who acquires St Helena status through application or by being resident on the Island on an extended visa for a five year period. I wish to go back to the position whereby all children born of St Helena parents automatically acquire Islander status with the same rights as all others born before 1998. In the Caribbean this is called "belonged" status. In all other cases, St Helena status must be applied for, and application must be sought in order to be able to purchase land.

#### RECOMMENDATIONS FOR ACTION

- (a) To appoint an Ombudsman for the Island of St Helena—Para 9 to 14.
- (b) To establish Scrutiny and Standards Committees as part of the SHG—Para 15.
- (c) To appoint the National Audit Office to look into the Island shipping service to establish whether the St Helena and the British tax payers are getting value for money—Para 11 to 14.
- (d) To examine the White Paper *Partnership for Progress and Prosperity* to ascertain whether the four principles mentioned in the Secretary of State's Foreword that underpin the partnership between Britain and the Overseas Territories are being met—Para 19.
- (e) To reinstate the position whereby children born after 1998 of St Helena parents are deemed to have Islander status—Para 20.
- (f) To permit the Speaker of the Legislative Council of St Helena to give oral evidence to the committee on these pressing issues—Para 2.

21. I trust I have advised the Foreign Affairs Committee of information that could be used to the benefit of the Territory of St Helena.

12 October 2007

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**Further submission from Mr Eric W George, Speaker of the Legislative Council, St Helena**

#### COMMISSION OF ENQUIRY

1. I wish to advise the Foreign Affairs Committee of a serious and unaccounted-for injustice suffered in the Overseas Territory of St Helena that was instigated by the Queen's Representative and was allowed to rest until now, when the opportunity has arisen through this enquiry to submit evidence on good governance in Overseas Territories.

2. I wish it to be known that in 1997, as a Member of Executive Council, I was summoned by the then Chief Secretary and Acting Governor of St Helena, Mr Perrott, to be told that he was considering commissioning an inquiry into alleged impropriety in the operation of the Building Ordinance.

3. At that time, I was chairman of the Building Authority, the body responsible for enforcing compliance with the Building Ordinance. I believe that Mr Perrott acted out of malice towards me, and that setting up the commission was a deliberate attack on my integrity. Particularly in a small community, any attack on the actions of a statutory body is seen as an attack on the actions of its members and on its Chairman in particular.

4. The Acting Governor advised me that he had received a complaint from a dissatisfied member of the public, which he intended to investigate. When I asked him to show me the letter of complaint, he refused. When I sought independent legal advice to defend my position, it was denied. All I wanted was proper advice, and it was entirely wrong for the Acting Governor to deprive me of the opportunity to obtain it.

5. I told Mr Perrott that if due process were not followed in conducting the investigation, in accordance with the principles of natural justice and according to law, he would be undermining the Building Authority and the judicial process, and acting *ultra vires*, constituting a misfeasance in public office. There is an Appeals Board appointed by the Governor under the Building Ordinance to which the complaint should have been forwarded.

6. He nevertheless insisted he would conduct the inquiry as Acting Governor and a *Gazette* notice was issued, advertising the appointment of a Commission Board to inquire into the above.

7. I seriously believe this action was a deliberate attempt to silence and discredit me in the eyes of the public because of my efforts to address the financial shortcomings of the Island's economy through the judicial review process. This refers to my attempts to establish whether the British Government and the Island were getting value for money, and my criticism of the British Government for not taking into account of, and making proper provision for, the reasonable needs of the Island when imposing the Grant-in-Aid figure for St Helena. In particular, I believe the Acting Governor used his position of privilege to protect himself and other officers from embarrassment, which can never be justified.

8. Evidence of the Acting Governor's actions is submitted as an example of the lack of good governance on the Island at that time. It was wholly unjustifiable and unlawful to allow an inquiry of this kind, involving allegations of impropriety concerning a member of Executive Council, to take place in violation of Article 6 of the European Convention on Human Rights (the right to a fair trial) and without regard to several of the fundamental principles of natural justice, *viz*:

- A person accused, or at risk of some form of loss (in this case myself, as Chairman of the Building Authority), must be given adequate notice about the proceedings and the nature of any charges or accusations; and
- A person who makes a decision (in this case the Acting Governor in commissioning the inquiry) should be unbiased and act in good faith. He therefore can not be one of the parties in the case, or have an interest in the outcome. This is expressed in the latin maxim, *nemo iudex in sua causa*: "no man is permitted to be judge in his own cause".
- Proceedings should be conducted so they are fair to all the parties—expressed in the latin maxim *audi alteram partem*: "let the other side be heard". In this case, attempts were made to deny my right to access independent legal advice. (I only secured such advice after bringing proceedings before the Chief Justice of the St Helena Supreme Court, despite these proceedings being opposed by the then Attorney General on behalf of the Acting Governor—see attached Judgment).
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party. (This can only be done if the other party's evidence is made known, which was denied in this case).

9. At no point did I claim to be exempt from, or above, the law or due process. The Commission Board was well placed to deal with any such complaint. As a result of their independent investigation into the alleged complaint, they found no evidence whatsoever to substantiate the alleged complaint and concluded that there was no case to answer (see attached Report).

10. I requested that the public should be made aware of the Commission's findings by notice in the Government *Gazette* in the same way as the Acting Governor's inquiry was first published, but this was refused.

11. Unfortunately, my wife and family were put under considerable stress because of my having been summoned to attend a hearing. My wife never recovered from the shock of me being publicly and unfairly pilloried in this way. I consequently claimed for damages of £2,000 for the pain, distress and suffering caused as a result of the inquiry and the manner in which it was convened. Neither the findings of the commission nor the claim for damages were granted or even considered. I had no satisfaction from the St Helena Government for their malicious attack on my character and the consequences caused to my family, and I was once again denied access to justice.

12. My reason in bringing this to the attention of the Committee, is to ensure that similar situations are not allowed to occur again in this Territory, whereby members of the public or indeed Councillors are penalised for carrying out their lawful duties, and where individuals are free to address and challenge serious issues of financial inadequacy without fear or favour. Our situation today, some ten years later, reveals how little the Island has progressed during that time.

13. I request that the Committee be good enough to consider the case outlined above in the interest of democracy and Good Governance with a view of not allowing such incidents to occur ever again. I look forward also to the possibility of my claim for damages being considered and awarded.

#### RECOMMENDATIONS FOR ACTION

- (a) To address this issue in the light of stifling democracy and upholding justice, human rights and the rule of law.
- (b) To make sure as far as possible occurrences of this nature are not allowed to undermine the Good Governance of the Island of St Helena.

12 October 2007

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### Submission from the Citizenship Commission of the Island of St Helena

#### THE CITIZENSHIP COMMISSION

1. The Citizenship Commission is a non-government charitable organisation set up by the Anglican Church in 1992 with a mandate to restore citizenship rights and seek the establishment of the Island of St Helena as a British Island of the United Kingdom. St Helena is Britain's second oldest colony. Britain established a settlement in the uninhabited island in 1659 with its own people, their English citizenship status, in perpetuity, clearly set out by Royal Charter in 1673 "to all intents and purposes as if they had been abiding and born within this our Kingdom of England" (Ref 1). The setting up of the Citizenship Commission in 1992 was to address the erosion of citizenship rights as result of the British Nationality Act of 1981.

2. The Commission has wide local recognition and public support. In its campaign to restore citizenship rights it has also gained recognition overseas, including that of the British Government. Special mention is made in the March 1999 White Paper on the Overseas Territories, which shows that

*St Helenians feel a strong sense of British identity by birth, language, history and culture. They have never known any other sovereignty. They consider that modern immigration and nationality legislation has cut them off from the UK and has added to their isolation.*

*Such was the strength of local sentiment that the Bishop of St Helena set up the "Bishop's Commission on Citizenship," in 1992 . . . to support restoration of the full rights of citizenship to those British subjects who are St Helenians. (Ref 2)*

3. Help and support came from various people, groups, organisations, politicians both here and overseas, particularly British people and MP's. It included Canadian lawyers from Toronto University putting St Helena's case to the UN in July 2000. (Ref 3) In the event, full citizenship rights were given by Britain to citizens in all the British Overseas Territories, the law bringing this into effect on the 21 May 2002, the timing being the most significant contribution to St Helena's 300 anniversary celebrations for the discovery of the Island and the important role it played for Britain in the early days of trade with the Far East.

4. The evolving role of the Commission changed to it now being the Citizenship Commission as a voice for ordinary citizens, taking up issues of public concern on their behalf.

#### PUBLIC CONCERNS

5. St Helena was settled to be a vital staging post for the British during the early days of trade with the Far East and played an important part in establishing Britain as a great trading nation. From early settlement in 1659 to the present day St Helena has never been self-financing. When the English East India Company pulled out in 1834 and the Crown took over, the Island became very poor. From this time to the present day because of lack of employment, there has been a history of Islanders immigrating or seeking work offshore. It reached a stage several years ago before British citizenship was restored, and is still current today, when about half the working population work offshore on contract, many not being accompanied by their families. Remittances sent home directly and indirectly, mostly to build family homes, are one of the main sources of the island economy. The other is British Aid. Though income from Islanders working offshore supports the economy it also has severe social consequences. As an example currently there is almost a quarter of the total school population that has at least one parent working offshore. The large number of the working population working offshore impacts on the running of essential services.

6. The British and St Helena Governments are attempting to address the situation through improved access by providing an air service. At the moment access to the Island is by ship, the purpose-built RMS St Helena that carries passengers and provisions. In the whole process of development and change, with an economy to be mainly based on tourism and moving to a free market economy, the Commission is concerned that basic needs for Islanders are being neglected. Housing is one example. The Commission put its concerns to an informal meeting of the Island's Legislative Council in November 2005. A copy of the paper dated October 2005 presented to Council is attached. (Appendix A ref 4)<sup>6</sup>

7. The same month, November 2005, the Chairman of the Commission, Councillor Stedson George, expressing the concerns in the Commission paper, put the following motion to a formal session of Legislative Council:

That this House requests that government put in place a bridging strategy and plan to take the Island from its present economic situation to anticipated improvements stemming from air access taking account of the need to upgrade infrastructure particularly to cater for housing demands for Islanders.

The motion, put up on the 14 November 2005, was given unanimous support.

8. The Commission is concerned in the far-reaching developments that are taking place in preparation for air access and changes in the economy towards a free market economy, that it is creating a divide in Island society particularly when it comes to housing. In March this year the St Helena Government issued a Land Disposal Policy (Ref 5) setting out policies and prices for commercial and social housing for Government land. Social housing in local terms means the St Helena Government scheme whereby Islanders buy a plot of Government land to build their own family homes. The St Helena Government over the last decade has itself built few council houses. It should be noted that the St Helena Government and Solomon and Company Plc in which the St Helena Government is the majority shareholder, own most of the land on the Island. What the Land Disposal Policy has done overnight is to increase the price of land for social housing by some 2,000% putting it out of reach of the majority of Islanders earning a living on St Helena. With the St Helena Government over the last decade building few council houses, changes in development are depriving Islanders from basic affordable housing, a basic human right.

9. The Land Disposal Policy was not put out for public consultation, The Commission is concerned about important policies for changes that are being driven by a Government Administration disproportionately weighted with FCO/DFID appointees. One such body is the Corporate Management Group (CMG). This group is comprised of the Governor, an FCO appointee; the staff officer, another FCO appointee; a DFID representative and appointee; the Chief Secretary; the Financial Secretary; and the Attorney General. The public has not seen any terms of reference for the CMG and yet, as far as can be ascertained, this body prepares most of the papers for Executive Council. Four of the members, ie Governor, Chief Secretary, Financial Secretary and Attorney General, of the CMG are then present when these papers are presented to the five elected members of Executive Council. The way the CMG functions in government policies and decisions affecting the lives of ordinary people on St Helena calls into question the whole democratic process and transparency of government.

10. The public is questioning for example why the post of Chief Secretary has not been substantively filled for most of the three year term of office of the present governor which expires this month. They want to know why in an interview with the Independent and the DFID representative on the matter, that although other posts can be advertised and filled, that of the Chief Secretary was delayed. (ref 6 and 14) The filling of this key post substantively is essential at a time when there are critical developments taking place in connection with air access and the need for the government administration to effectively manage that change. As the Chief Secretary is the head of the civil service, the public is questioning whether the lack of such an appointment in part has contributed to the crisis with staffing and conditions of service in major services particularly the health service. There is currently a crisis in the health service especially for caring for the elderly (ref 7). It is recommended that an enquiry should be made into the whole question of staffing and conditions of service for essential services on St Helena.

11. The fact that the public has not seen any terms of reference for the Corporate Management Group, nor how this body is constitutionally represented in matters of—government, leads to public distrust and questions as to whether the central government administration is safeguarding the interests of the people on the Island. Nothing has been done for example about foreign vessels poaching fish in St Helena's territorial waters even though it has been reported to the local authorities for several years. (Ref 8) The fishing industry is a vital part of the Island economy, so too is the marine environment generally for tourism. The public also questions why the local authorities have accepted that the Dutch Government can lay claim to an early 17 century wreck in James Bay, the main harbour of the Island and port of Jamestown (ref 9) and whether there was any involvement by the CMG with the Attorney General both on the CMG and Executive

<sup>6</sup> Not printed.

Council. The public also questions why the accounts of the running and management of the RMS St Helena are not made available to elected members of council or the public. Lack of transparency in this core sector of government administration raises public concerns and speculation.

12. The influence of important government matters being presented from the top down, is shown in the ongoing debate on constitutional reform, the details of which appeared in the St Helena Independent in July 2007 (Ref 10) Paragraph 6 on Fundamental Rights and Freedoms shows:

Councillors have already begun work on reviewing this chapter, which HMG has indicated that it would welcome being put into an Order in Council. This would mean that the freedoms could not be overturned by any local Ordinance passed by Leg Co

What concerns the Commission is that the list of Human Rights that was put forward by the Government Administration for discussion did not include the right to nationality. (Appendix B)<sup>7</sup> It only included the right to have St Helena Status. This contravenes a basic human right in the 1948 UN Declaration of Human Rights, article 15 what states:

- (i) Everyone has the right to a nationality; and
- (ii) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

If Councillors were persuaded to agree to the inclusion of what the Government Administration proposed to put in our constitution it would deprive Islanders of a basic human right. This is another matter, which adds to public suspicion about where the interests of certain sectors of central administration lie.

13. In a supplementary memorandum by the Foreign and Commonwealth Office given in the Foreign Affairs Committee report of January 1998 on the then Dependent Territories, governors were asked to seek the views of Government and opposition parties represented in local legislature on future constitutional arrangements and links with HMG. Governors were given discretion to consult more widely than members of legislatures. (Ref 11)

14. On the question of constitution status of the four options put forward by the British Government for people of the overseas territories to consider was

- (iii) Crown Dependency status along the lines of the Channel Islands.

The Citizenship Commission was invited to give its view, which it did so on 27 October 1997. It favoured St Helena becoming a British Island under terms similar to those of the Crown Dependencies. It recommended that specific constitutional change would need to account for St Helena's unique situation and that some aspects of the French Republic's arrangement with its territorial collectives could be a model. The Commission felt a different title would naturally follow change in its constitutional status. Though the Commission had made its views known, it stated that the views of the people of St Helena should also be sought. (Ref 12) The Response to the White Paper was sent under cover of a letter reference SHLC/CC/1/99 of the 30 June 1999 from the Speaker of the St Helena Legislature (Appendix C).<sup>8</sup>

15. It should be noted that elected members of the Island's Legislature who are not members of the Executive Council were not consulted and not asked to give their views. They constitute the majority of elected members in the Island's Legislature. It means that the supplementary memorandum by the Foreign and Commonwealth Office supplied to the Foreign Affairs Committee on 27 October 1997 and contained in the report did not fully reflect the wishes of the democratically elected members of the Legislature. The report states, "apart from some limited interest in Crown Dependency status there is no interest in a change in the status quo". It is submitted that from the outset the wishes of the people of St Helena through their elected councillors had not been properly represented. (Ref ii) The Commission requests that the option to change the status of St Helena to a Crown Dependency should be put forward for consultation with the people of St Helena.

16. On the 21 July 1995, an elected member of Legislative Council put forward the following motion:

*"that this Government initiate legislation for the establishment of the office of an Ombudsman".*  
(Ref 13)

Though the motion was carried in a formal session of the Island Legislature, after 12 years it has never been implemented. Had this office been established, it would be a means by which there would locally have been a channel to examine matters of public concern.

17. The public feels disillusioned with the present governance of the Island reflected in poor attendance at constituency meetings. (Ref 15)

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<sup>7</sup> Not printed.

<sup>8</sup> Not printed.

## RECOMMENDATION

18. It is recommended that an enquiry should be set up to look at the governance of St Helena taking account of the critical period of transition through which the Island is presently going with a view to improve the political, social and economic situation for Islanders taking account of the matters raised in this submission. The matters raised relate in the focus of the enquiry to (a) the role of Governors and other office holders appointed by or on the recommendation of the United Kingdom Government (b) transparency and accountability (c) human rights, and also other matters of importance concerning the lives of people on St Helena.

12 October 2007

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**Submission from Mr Richard David Gifford, Chagos Refugees Group**

MEMORANDUM CONCERNING BRITISH INDIAN OCEAN TERRITORY TO ASSIST THE  
FOREIGN AFFAIRS SELECT COMMITTEE OF THE HOUSE OF COMMONS IN ITS  
ENQUIRY INTO THE GOVERNANCE OF THE OVERSEAS TERRITORIES

1. I am Richard David Gifford, a solicitor of 35 year's standing, with experience in immigration, nationality, human rights and public law.

THE PROBLEM OF THE DISPLACED POPULATION OF BIOT

2. In 1997, as chairman of the Anglo-Mauritian Association (a London based charity) I visited Mauritius and became aware of protests outside the British High Commission by the displaced inhabitants of the Chagos Islands. They were protesting that they had been removed from their homeland in the late 1960s and early 1970s to Mauritius and Seychelles, and felt that their treatment was unlawful and inhumane. It transpired that the entire Archipelago of 65 islands (spanning an area of approximately 200 miles in width) had been swept of its permanent population to give just one island to the USA for an airbase.

DISCOVERY OF GUILTY KNOWLEDGE OF THE UK GOVERNMENT

3. I was instructed as a solicitor to investigate the legality of the deportation of the population, for which purpose I caused enquiries to be made in the Public Records Office during January 1998. My researchers discovered correspondence from the files of the FCO which underlay the policy of de-populating the island of its permanent inhabitants. These documents demonstrated two principal facts:

- (a) The Colonial Office and the Foreign Office were aware of the permanence of the population of the Chagos islands which was settled there since before the islands were ceded to Britain in 1814. However officials were prepared to describe them as merely "contract workers". As the permanence of the population legally prevented the islands from being depopulated.
- (b) It was therefore apparently decided that the UK Representative at the UN should mislead the UN Committee on Decolonisation by concealing the fact that the Islands had a permanent population who were to be removed without any consultation.

This limited glimpse into official policy-making appeared to show the adoption of proposals which were known to be a breach of the UN Charter's "Sacred Trust" (Under Article 73) for a Colonial Power to promote economic and social advancement of a non-self-governing territory. It also seemed to be a breach of fundamental rights of the population and the starkest possible example of Abuse of Power in the Administration of a Colony of British subjects.

BIOT REFUSES TO ENTERTAIN THE COMPLAINT OF UNLAWFUL EXILE

4. In 1998 I commenced correspondence with the Commissioner for BIOT, a civil servant based in London who was appointed by the FCO (and who thus lacked any democratic credentials) and in whom were vested powers of legislation for the territory. On behalf of the population I complained at the widespread breach of human rights involved in removing the entire population from their homeland between 1968 and 1973. The new colony of BIOT had been established in November 1965 as a separate colony of the Crown and was detached from the territory of Mauritius (which was due to become independent, and did so in 1968). I complained that to remove the whole population and to dump them without homes or jobs in a foreign country amounted to inhuman and degrading treatment, a serious interference with the right to family life and with enjoyment of property, all of which rights are guaranteed by the European Convention on Human Rights.

5. The Commissioner replied seeking to justify removal of the population, and the prohibition on its return, by stating that the BIOT Immigration Ordinance 1971 made it a criminal offence for anyone to be on the island without a permit. He later supplied a statement of policy that Chagos Islanders, following an



appeal decision, were permitted to visit the outer islands (excluding Diego Garcia where the American base is situated) provided that they did not spend a night on any island. I complained that in view of the geographical remoteness of the Archipelago (over 1,000 miles from Mauritius and in the absence of public transport), it was impossible for any islander to have access to his homeland. Before this decision on an administrative appeal, BIOT policy had been to deny permits outright to any native Chagossian. The limited success on appeal (decided by “A person” appointed by the Commissioner to give an independent decision—he was in fact the Commissioner’s predecessor in office) indicated to me that somewhere in official thinking was a recognition that you cannot separate a person from his homeland, but also there was a refusal to give effect to this right in any meaningful way. It was clear that both the BIOT Immigration Ordinance and the Policy adopted in its implementation were open to serious objection

#### THE FIRST JUDGMENT THAT DEPOPULATION WAS UNLAWFUL: 3 NOVEMBER 2000

6. In September 1998 I instituted proceedings for a judicial review on behalf of Olivier Bancoult, the leader of the Chagos Islanders in Exile, for a declaration that the BIOT Immigration Ordinance 1971 was ultra vires and unlawful, and the Policy of virtual exclusion of the population was disproportionate and unlawful. On 3rd November 2000 the Divisional Court quashed the offending section of the Ordinance declaring it to be beyond the power of “peace, order and good government” of the territory. The Court stated that the people were to be “governed not removed”.

#### ROBIN COOK ACCEPTS THE JUDGMENT

7. On the same day, the Foreign Secretary Robin Cook MP made an important announcement:

*“I have decided to accept the Court’s ruling and the Government will not be appealing.*

*The work we are doing on the feasibility of resettling the Ilois now takes on a new importance. We started the feasibility work a year ago and are now well under way with phase 2 of the study.*

*Furthermore, we will put in place a new Immigration Ordinance which will allow the Ilois to return to the outer island while observing our Treaty obligations.*

*This Government has not defended what was done or said 30 years. As Lord Justice Laws recognised, we made no attempt to conceal the gravity of what happened. I am pleased that he has commended the wholly admirable conduct in disclosing material to the Court and praised the openness of today’s foreign office”.*

#### THE LAW IS CHANGED

8. A new Immigration Ordinance was then passed by the Commissioner (The BIOT Immigration Ordinance 2000) enabling the displaced citizens of BIOT and their families to travel to the outer islands, but not to Diego Garcia where a permit was still required. Of course, this did not of itself enable resettlement to take place, since the economy of the islands had been allowed to collapse when the Plantation Managers, Moulinie & Co. had been excluded from Diego Garcia 30 years before and there was no civilian infrastructure for the population. Nor was there any transport to take them the thousand miles which separate the Chagos Archipelago from Mauritius

#### A FEASIBILITY STUDY IS SET UP, BUT IT IS NOT INDEPENDENT AND LACKS OBJECTIVITY

9. The study to which the Foreign Secretary referred was a preliminary feasibility study following investigations in the Chagos Archipelago by consultants appointed by the BIOT administration. The consultants submitted to the Commissioner in May 2000 a favourable preliminary report stating that there was no reason why at least 1,000 islanders could not resume immediate occupation of the islands, and prescribed a number of steps necessary to achieve this. It was later discovered that there had been interference with this positive conclusion so as to make it a heavily qualified one. Moreover, following the Cook announcement, BIOT proceeded with further stages of the “Feasibility Study”, but the islanders were never consulted, editorial control was retained by the Government (by clause 17 of the terms of reference), and it is evident that the next stage of the study published in July 2002 lacked objectivity and suffered from probable further interference from officials (see below). Finally it was aborted before it had even completed Stage II by an about-turn which reversed Robin Cook’s policy: on 10 June 2004, again without any consultation with Chagossians or their representatives.

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 THE ISLANDERS SEEK REDRESS 2001–04

10. Following the decision of November 2000, that their removal had been unlawful, the islanders waited for the FCO to make proposals for compensation and resettlement. None such was forthcoming despite numerous meetings between the islander's leader, myself and Ministers of State and BIOT Commissioners.

11. The Chagossian Community which numbers approximately 5,000, mostly resident in Mauritius, gradually lost faith in the FCO making the anticipated proposals in pursuance of the Constitutional convention that the Government would adopt a lawful policy. Thus, by December 2001 I had received written instructions from 4,287 Chagos Islanders authorising me to introduce claims for compensation and a declaration of their right to return to any part of the Archipelago. The claims were based largely in tort and alleged various civil wrongs such as misfeasance in public office, deceit, negligence, breach of rights under the Mauritian constitution and interference with property rights. These claims were wholly dismissed by Mr Justice Ouseley in October 2003. However, Ouseley J stated:

## JUDICIAL CRITICISM OF FCO—OCTOBER 2003

*“It does appear that, in the absence of unexpected compelling evidence to the contrary, at least some claimant Chagossians could show that they were treated shamefully by successive UK Governments. Whatever view might be taken of the importance of the strategic defense aims underlying the creation of BIOT, the evacuation of the islands and the establishment of the base on Diego Garcia, some who had lived there for generations were uprooted from the only way of life that they knew and were taken to Mauritius and the Seychelles where little or no provision for their reception, accommodation, future employment and well-being had been made. Ill-suited to their surroundings, poverty and misery became their common lot for years. The Chagossians alone were made to pay a personal price for the defence establishment on Diego Garcia, which was regarded by the UK and US Governments as necessary for the defence of the West and its values. Many were given nothing for years but a callous separation from their homes, belongings and way of life and terrible journey to privation and hardship”.*

## COURT OF APPEAL ALSO CRITICISES FCO—JULY 2004

12. The Court of Appeal, in July 2004, upheld the dismissal largely on the ground of the passage of time, but made this observation on the treatment of the Chagossian population:

*“The political history of the removals and of the endeavours to secure redress can be found in compelling detail, first in the judgment of Laws LJ in Bancoult (below) and secondly in the judgment of Ouseley J in the present proceedings. In the light of it, it would be wrong of us to move on to the legal issues without acknowledging, as Ouseley J went out of his way to do in a judgment to the comprehensiveness of which we pay tribute, the shameful treatment to which the islanders were apparently subjected. The deliberate misrepresentations of the Ilois' history and status, designed to deflect any investigation by the United Nations; the use of legal powers designed for the governance of the islands for the illicit purpose of depopulating them; the uprooting of scores of families from the only way of life and means of subsistence that they knew; the want of anything like adequate provision for their resettlement: all of this and more is now part of the historical record. It is difficult to ignore the parallel with the Highland clearances of the second quarter of the nineteenth century. Defence may have replaced agricultural improvement as the reason, but the pauperisation and expulsion of the weak in the interests of the powerful still gives little to be proud of.”*

## WHY DOES FCO DEPOPULATE WHEN NOT REQUIRED BY UK/US TREATY?

13. The policy of depopulation of BIOT, although desired by the United States, was not required by any Treaty or agreement between the US and UK. These were silent as to clearance of the Archipelago, and a secret attached Memorandum provided only that once an island was required by the USA, the UK was to remove the population from that island. In fact the USA has never required more than one out of 65 islands (namely Diego Garcia alone). Despite this the UK passed legislation (the BIOT Immigration Ordinance 1971) making it a criminal offence for any Chagossian to remain on any island. In the Judgment of 3 November 2000, this policy was held to be illegal, being described by Laws as “an abject legal failure”.

## FCO DEFIES NOVEMBER 2000 JUDGMENT AND SHIFTS THE GOALPOST ONCE MORE: PREROGATIVE ORDERS 10 JUNE 2004

14. It is not known whether the United States Government forced the UK Government to change the policy announced by Robin Cook, or whether the FCO simply misinterpreted its Treaty obligations to the United States with an excessive zeal. However, the result was that on 10 June 2004 the Royal Prerogative was used by Ministers to pass two Orders in Council, the BIOT Constitutional Order and the BIOT Immigration Order, whereby all right of abode in the Chagos Islands was purportedly abolished. This was intended to reverse the decision of the High Court in November 2000 which the Government had accepted

and against which it had decided not to appeal. It was done abruptly and without consultation with the Chagos Islanders or their representatives. Five days later I was summoned to a meeting at the Foreign Office by Minister, Bill Rammell. He shocked me by handing copies of the Orders in general which he said had already been passed. He claimed to base the decision largely on the ground of the cost of resuming habitation. I was surprised by this. I pointed out to him that the consultants had been expressly prohibited by their terms of reference from considering both costs or benefits of resettlement and he admitted that his own department had made a rough estimate of costs at £5 million. He had sought funding neither from DFID nor from the European Development Fund (of which BIOT is listed as a potential beneficiary and where the available funds stood at around €17 billion).

#### FCO TRIES TO JUSTIFY PREROGATIVE ORDERS

15. He also referred to the supposed conclusion of the Consultants in their Phase 2B report, that life for a returned population would be “precarious”. I pointed out that the USA had recently invested millions of dollars in special shelters for Stealth bombers at Diego Garcia, and there was no sign that the Military was planning to leave the Archipelago. It seemed to me that these measures were a betrayal of the promise made to the islanders by Robin Cook, and I left the meeting in disgust explaining that I had not expected this Government to behave in such a shabby and inhumane way.

16. Proceedings were again instituted by me in September 2004 on behalf of Mr Bancoult challenging the Orders in Council as being contrary to the decision of 3 November 2000, unlawful on the ground of ultra vires, and a breach of Human Rights Law and International Law of self determination.

17. The Government’s evidence sought to justify the claim of abolition of the right of abode largely on the ground that it was necessary to maintain the effective use of the defence base on Diego Garcia (which is over 100 miles away from the outer islands were Robin Cook restored the right of abode), and upon the supposed cost and precariousness of resettlement. It was claimed that the decision was made hastily because Mr Bancoult had appeared at a political meeting in Bombay sharing a platform with a Mauritian group called Lalit whose policy (which in fact is not shared by Mr Bancoult or his group) was to get rid of the US air base and send a “peace flotilla” to the Archipelago. In a Westminster Hall debate in the House of Commons on 7 July 2004, Minister Rammell misdescribed this supposed plan as “the imminence of resettlement”. It is notable that existing legal powers would have been quite sufficient to exclude any third party from Diego Garcia, and any non-BIOT national from the outer islands without seeking to abolish the Islanders’ cherished right of abode in their homeland.

#### THE EVIDENCE OF MIS-GOVERNANCE 1964–2004

18. To meet this misleading historical account and its attempt to obfuscate fundamental issues, I prepared a statement in rebuttal dated 30 March 2005 which gave a detailed and documented account of the misgovernance of the islands from the date of their establishment so as to demonstrate the continuing victimization of this population and the reckless disregard of International and Constitutional Laws.

19. It referred to:

- (a) the FCO’s misdescription of the true character of the population and its way of life (para 6.)
- (b) The misleading account given to the Decolonisation Committee of the UN on 16 November 1965 by the UK representative (para 7).
- (c) The achievement of the Policy of deporting the population (para 9–10).
- (d) the misery suffered by Chagossians following removal (para 11).
- (e) It contained a detailed section on the mishandling of the so called Feasibility Study which failed to consult the Islanders, lacked objectivity and was subject to political interference (para 14).
- (d) It detailed work which I undertook at the request of the Commissioner, relating to the numbers of Chagossians wishing to return home, and to the level of commercial interest in investing in the renewed economy of the Islands. In a letter dated 29 October 1999 (p 463 of documents attached) I set out the results of a fact-finding mission which I then conducted in Mauritius and Seychelles. This report demonstrated considerable commercial interest in BIOT, and a population aching to return there.
- (e) A report by a resettlement consultant instructed by the islanders Jonathan Jenness (p 394 of attached documents).<sup>9</sup> Mr Jenness reported that the islands were benign, had a promising economic future and could easily be the subject of beneficial resettlement.

Unfortunately, neither of the last two items had at any stage been considered by the Commissioner, nor were their contents even referred to by BIOT or the official consultants.

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<sup>9</sup> Not printed.

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 CONCERN AT THE QUALITY OF THE FEASIBILITY REPORTS EMERGES

20. I was dissatisfied with the lack of consistency in the work of the phase 2B feasibility reports, and worried by the apparent lack of support in the scientific annexes for the so-called “General Conclusion” in the body of the report itself. This stated that:

*“To, conclude, whilst it may be feasible to resettle the islands in the short term, the costs of maintaining long-term inhabitation are likely to be prohibitive. Even in the short term, natural events such as periodic flooding from storms and seismic activity are likely to make life difficult for a resettled population”*

21. Strangely the next paragraph of the summary went on to recommend further stages: an economic analysis to determine financial viability, an assessment of resettlement needs, determination of the “optimal carrying capacity of the islands”, and consultation with those wishing to resettle” since it was “essential to incorporate their needs and aspirations into the resettlement debate”. It was as if these recommendations were written prior to the “General Conclusion”, since they were clearly irrelevant to the General Conclusion which supposedly preceded them.

## EVIDENCE OF INTERFERENCE EMERGES: THE PRELIMINARY STUDY MAY/JUNE 2000

22. Moreover, this negative summary was in contrast to the generally favourable findings in respect of the re-establishment of the islands’ economy (eg fisheries, mariculture, tourism and agriculture). So worried was I as to the authenticity of parts of this report, that in December 2006 I asked for draft copies of the preliminary Feasibility Study and of the Phase 2B Study. The FCO’s legal representative then supplied me with a copy of the draft feasibility study. For the first time I was able to see the conclusion delivered in May 2000 to BIOT by the preliminary consultants which clearly presented their unqualified acceptance of resettlement by “up to 1,000 Islanders”, without any stated difficulty. However, this report had been suppressed. Instead the Conclusion had been altered in the published version dated June 2000 so as to present a qualified conclusion.

23. The draft report by consultants dated May 2000 contained the following unqualified conclusion:

*“The conclusion of this Preliminary Study is that there is no obvious physical reason why one or both of the two atolls should not be repopulated, by the sort of numbers (up to or around one thousand) of Ilois who are said to have expressed an interest in resettlement.”*

But above the text of the original draft there appears a handwritten phrase: “qualify—“If . . .””

This addition explains the alteration to the text then made, since the published version dated June 2000 is in the following terms:

“The conclusion of this Preliminary Study is that resettlement of one or both of the two atolls is physically possible, but only if a number of conditions are met. These include confirmation that:

1. “a sustainable and affordable water resource can be developed” (I observe that these are among the wettest atolls in the world and historically the population used the abundant rainwater which they captured at no cost).
2. “The nature and scale of resettlement will not damage the environment” (surely an attempt to put the cart before the horse).
3. “Public money is available to finance infrastructure and basic services” (I had already provided the Commissioner in my letter of 29 October 1999 considerable evidence of private commercial interest, and the Commissioner had already mentioned to me the funding available to BIOT from the European Development Fund).
4. “one or more private investors are willing to develop viable enterprises which can generate sufficient incomes to pay for the investment and recurrent costs of resettlement”(See comment at point 3 above).

## EDITORIAL CONTROL OF THE FEASABILITY STUDY RETAINED BY FCO

It now became quite clear that considerable interference with the substance of the Preliminary Study had been practised in pursuance of the editorial control stipulated by BIOT and provided by clause 17 of the terms of reference of this study:

“17. A draft report will be produced for the FCO and the Government of BIOT. On receiving comments on the draft report from the FCO and the Government of BIOT, the consultant will finalise the report and provide the text in both paper and electronic form to the Government of the BIOT and the FCO”

#### ALL DRAFTS OF THE FINAL (PHASE 2B) STUDY HAVE BEEN DESTROYED: JULY 2002

24. I also asked for drafts of the Phase 2B Study (the supposed “General Conclusion” of which was used by ministers to justify the Reversal of Robin Cook’s policy and the abrogation of my clients’ right of abode). However, neither Government nor its consultants have been able to supply it either in hard copy or electronic format. (both of which are stipulated at clause 17 TOR supra). Apart from the requirement to keep orderly records this was doubly surprising in view of the pendency of the Group Litigation which might have required all such copies and their respective drafts to be produced in pursuance of the Duty of Disclosure to the Court. A request by the UK Chagos Support Association for the information contained in the draft Phase 2B Study is the subject of a request under the Freedom of Information Act. This request is still unanswered.

#### A SERIOUS ACT OF MISGOVERNANCE

25. So there is grave doubt that any objective study has been allowed to see the light of day, and instead the Chagossians are being cheated out of their homeland by a doctored conclusion that is at variance with the facts and unsustainable with reference to the true conclusions of consultants. Alternatively it must be assumed that the consultants were never truly “Independent” (as claimed by Minister Rammell in the House on 7 July 2004) and are susceptible to the Government’s drafting control. Either way I suggest that to base a harsh policy on a suspect dossier is a serious act of misgovernance.

#### *The High Court again criticises BIOT policy and strikes down the Prerogative Orders: 23 May 2006*

26. On 11 May 2006 the Divisional Court quashed the two Orders in Council of June 2004, holding that they were “repugnant” and *ultra vires*. The FCO appealed, and on 23 May 2007 the appeal was unanimously dismissed both on the ground of *ultra vires* and on the ground that Robin Cook’s statement had created a legitimate expectation of resettlement. Sedly LJ said at paragraph 58.

#### THE COURT OF APPEAL AGREES AND FURTHER CRITICISES THE POLICY OF DEPORTATION

“few things are more important to a social group than its sense of belonging, not only to each other but to a place. What has sustained people in exile, from Babylon onwards, has been the possibility of returning home. The barring of that door, however remote or inaccessible it may be for the present, is an act requiring overwhelming justification”.

27. The Government was refused leave to appeal but has now petitioned the House of Lords, apparently determined to continue its victimisation of these impoverished and distressed subjects.

#### PROPORTIONALITY OF DEPOPULATING THE ENTIRE BIOT ARCHIPELAGO

28. Moreover the policy of depopulation appears to be entirely disproportionate to the aim of “maintaining the effective use of the Defence facility”. Diego Garcia is approximately 135 miles distant from the remaining habitable Atolls of Peros Banhos and Salomon, and indeed the Eastern half of Diego Garcia is not occupied by the military. It is described on Admiralty Charts as “Nature Conservation Area”, and is almost entirely given over to Coconut Forests and the preserved former capital township of East Point. The case for keeping the entire Archipelago swept of population, when the issue comes to be argued in the various Court hearings, is invariably put forward by the FCO, not in the form of serious military evidence from a senior military strategist or Civil Servant, but in the form of a letter from the US Dept. of State. I attach the latest of these which was produced during the hearing in the Divisional Court on 19 January 2006. The argument that a returned population would in some way facilitate the installation of electronic jamming devices was dismissed by Hooper LJ during the course of argument, when he pointed out that any vessel exercising its right of innocent passage could pass within three miles of Diego Garcia, a far closer distance than the Outer islands which are over 100 miles distant and where the Chagossians’ right of Abode was restored by Robin Cook.

#### FCO REFUSES TO ACCEPT ITS RESPONSIBILITY: FURTHER JUDICIAL CRITICISM

29. Another criticism of FCO Policy was made by Hooper LJ in his judgment dated 23 May 2006. In answer to the judge’s question to the FCO’s Counsel “What does the FCO say was the true reason that the Population was removed?”, the answer was given after consultation in court between Counsel and Officials, that the reason was that “The plantations became uneconomic and closed down”. This was criticised by the Judge as follows:

61. *In the course of argument Mr Howell QC, when asked why the families left Diego Garcia, replied (on instructions) that they did so because of the closure of the plantations. In our view the answer should have been: they left because they were required to leave in fulfillment of the 1966 confidential Minute which required the United Kingdom to take those “administrative measures” “necessary for modifying or terminating any economic activity then being pursued in the islands, resettling any*

*inhabitants". We confess to being considerably disappointed by this attempt to obfuscate the history. It runs counter to what Mr Robin Cook said in 2000: "This Government has not defended what was done or said thirty years ago."*

I would only add to that corrected explanation that the prescribed steps in the memorandum were only to apply when "an island" was required by the USA.

#### POLICY DEPENDS ON CONSISTENTLY ASSERTING FALSE FACTS

30. Minister Bill Rammell attempted in the Westminster Hall debate in July 2004, to disavow the actions taken in the 1960's and 70's of deporting the population, whilst claiming to face the reality of "today" by maintaining the self-same policy. But, as the above attempt to "obfuscate the history" shows, neither the policy of "then", nor of "now" is remotely sustainable without falsifying the facts and arguments. Indeed, if there has been one consistent thread which underlies the conception, implementation and maintenance of a policy which has now been declared illegal (by no less than three Separate Courts and seven Senior judges), it is that only by closing departmental eyes to the truth can the policy be pursued, and this has taken the following forms:

- (a) misleading the United Nations (on 16 November 1966),
- (b) passing a law in 1971 which was described by the FCO lawyer as "maintaining the fiction" (that the islands lacked a permanent population),
- (c) pretending that it was not the FCO but the Plantation owners who removed the population (as criticized by Hooper LJ), and
- (d) conducting a so-called Feasibility Study of which the conclusions were modified by FCO in an attempt to suggest that resettlement was not feasible, and aborting it in breach of the promise made to the islanders by Robin Cook (supra)

#### FCO CLAIMS THAT HUMAN RIGHTS APPLY IN ALL OT'S SAVE BIOT

31. It is, I suggest, instructive to examine the FCO's attitude to the Human Rights of the Chagossian People, after reminding ourselves what the FCO set out as their policy with regard to Human Rights in the Overseas territories:

##### *Human Rights in the Overseas Territories*

The UK Government regards the establishment and maintenance of high standards of observance of human rights as an important aspect of the partnership with the Overseas Territories. Our objective is that those territories, which choose to remain British, should abide by the same basic standards of human rights, openness and good government that people in Britain expect of their Government. This means that Overseas Territory legislation should comply with the international rights, which have been extended to them.

#### BUT FCO EXTENDED ECHR TO CHAGOSSIAN PEOPLE

32. It is notable that the protection of the ECHR was indeed extended to the People of the Chagos Islands in 1953, when by notification to the Council of Europe under Art 56, the UK extended the Covenant to, inter alia Mauritius, of which the Chagos Archipelago then formed part. This "territorial Extension" was a voluntary act of the FCO which remained with the people of BIOT when their islands were detached from Mauritius and remained a "Territory for whose International relations the UK remained Responsible", in the words of Art 56(now 62). There has been no denunciation of the Covenant in respect of the Chagos islands, but the FCO claims that Chagossians enjoy no Human Rights protection at all, simply because this territory has been missed off an informal list maintained by FCO, where they claim the Covenant still applies under Art 62 (formerly Art 56). By such self-serving acts, do they claim that Fundamental Rights and Freedoms, once solemnly conferred, can be simply airbrushed away.

#### A FAIR AND HONEST POLICY

33. I respectfully suggest that any principled and humane policy would recognize the right of the population to return to their homeland, and would accept the repeated decisions of the English courts (without appeals or fresh legislation to set aside the Court's decisions) and the "paramountcy" of the islanders rights to live in peace under the British flag would be respected as the "Sacred trust" to which the UK is pledged by Art 73 of the UN Charter.

34. Moreover, such a policy would require the most modest co-operation of the USA who, as already pointed out by Hooper LJ, have no right under the US/UK treaties to any more than the single Island which they have needed for military purposes, the remainder remaining unused and derelict for 40 years.

#### THE INTERNATIONAL LAW DIMENSION: ANOTHER DENIAL OF RESPONSIBILITY

35. As to the International Framework for these egregious violations perpetrated by the FCO on its British citizens from BIOT, it is pertinent to point out that the ICCPR is, just like the ECHR regarded by FCO as “having no application to a territory without a population”. This shameless claim is maintained despite the unlawful exile of the population, and despite the obvious Universality of the Covenant’s application. Unlike the ECHR, there is no “Territorial Application” clause in the ICCPR, but still the FCO claims that it does not apply to a Territory where they wish to maintain breaches of Fundamental rights.

#### BUT THE UN HUMAN RIGHTS COUNCIL DISAGREES WITH THE FCO AND SUGGESTS A PROPER POLICY

36. The ICCPR is monitored by the Human rights Council of the UN. After the first High Court decision, the HRC made some stinging observations on the UK’s failure to implement the implications of the domestic ruling. In its “Concluding Observations” on the UK’s report, the HRC on 6 December 2001 observed that:

“The State Party should, to the extent still possible, seek to make exercise of the Ilois’ right to return to their Territory practicable. It should consider compensation for the denial of this right over an extended period. It should include the territory in its next periodic report”.

No such steps have been adopted, leaving the Islanders to fight yet again to recover their birthright by whatever legal or political means may be available to them.

#### CONCLUSION

37. The treatment of the Chagos islanders is a source of embarrassment and ridicule in the international arena, and undermines any hope that the UK can provide an example of good governance in regard to its own citizens. The advice of the HRC (para 34 supra) is the self-evident policy to adopt if the FCO wishes to comply with the minimum standards. To adopt a policy of resettlement and compensation, with access to the major sources of International funding which are available for returning the displaced population, is no less than what these long-suffering subjects, are entitled to receive.

12 October 2007

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### Submission by the Royal Society for the Protection of Birds

#### THE ROLE OF THE FCO IN RELATION TO THE OVERSEAS TERRITORIES

##### INTRODUCTION

The RSPB is the UK partner of BirdLife International, a network of over 100 grass-roots conservation organisations around the world. As part of our commitment to the conservation of biodiversity worldwide, we have for over 10 years provided financial, technical and advisory support to emerging NGO partners and local governments in the UK Overseas Territories. Much of the RSPB’s work in the Overseas Territories contributes to the priorities identified in the White Paper, *Partnerships for Progress and Prosperity* (March 1999), and assists them in meeting their commitments under the international conventions, including the Convention on Biological Diversity, and under the Environment Charters agreed between each territory and the UK Government.

RSPB works on the Overseas Territories because of their outstanding importance for biological diversity, including 32 globally threatened breeding bird species. This richness, compared with no globally threatened breeding bird species in the UK, places a very high level of responsibility on the UK, including the Foreign Office, to protect the biodiversity of these territories. We have calculated this requires a minimum of £16 million/year.

We have only responded to the aspects of the inquiry that relate to the FCO’s responsibilities for biodiversity conservation and environmental governance on the Overseas Territories. Our submission has common strands with evidence recently given to the Environmental Audit Committee’s inquiry on Trade, Development and Environment: The Role of the FCO.<sup>10</sup> We strongly support the conclusions from this inquiry and that of the enquiry into the UN Millennium Ecosystem Assessment.<sup>11</sup>

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<sup>10</sup> Report is available from [www.parliament.uk/parliamentary—committees/environmental—audit—committee.cfm](http://www.parliament.uk/parliamentary—committees/environmental—audit—committee.cfm)

<sup>11</sup> Report is available from <http://www.publications.parliament.uk>

## STANDARDS OF GOVERNANCE IN THE OVERSEAS TERRITORIES

1. The Overseas Territories are mainly small islands rich in biodiversity but with small human populations. For example, Pitcairn, supports more globally threatened species than the total human population of the island. The Territories are particularly reliant on the natural environment for their livelihoods and quality of life. For example, the economies of many of the islands depend heavily on the revenue raised from fisheries and tourism, and mangroves, forests and coral reefs provide protection from severe weather events, which under current climate change projections are likely to increase in the future.

2. As in many regions of the world, the natural environment on the Territories is increasingly under threat, which is in part caused by a failure to implement systems of effective local governance. For example on many of the Caribbean Territories the rate of tourism development is increasing rapidly<sup>12</sup> and is in danger of destroying the natural assets which attract visitors to the islands. The loss of mangroves along the coastline to mainly tourism-associated development is increasing the vulnerability of the islands to hurricanes.<sup>13</sup> Areas that have been previously proposed for protection are still not approved by governments.<sup>14</sup> Protected Areas that have been approved are in the process of being degazetted.<sup>15</sup> Unlike the UK or Europe, the legislation on most Territories does not require that development plans and proposals undergo a Strategic Environment Assessment. Where there is provision for Environmental Impact Assessment, there is often inadequate expertise or capacity to accurately assess the Environment Impact Assessments produced by the developers. This information in turn is then often not considered by decision makers on a strategic basis.<sup>16</sup> Environment Impact Assessment reports are frequently difficult to access and rarely shared with the public. Planning procedures are rarely transparent and do not always engage with civil society.

3. The Territories' capacity to implement effective environmental governance and respond to environmental crises is strongly constrained by limited human and financial resources. Environment departments and local conservation organizations, if they exist, only have small numbers of staff that are stretched very thinly. The scale of the conservation department is often matched to the size of human and financial resources available on the Territory, not to the scale of the biodiversity, which is of great global significance. In some Territories, for example Tristan or Pitcairn, the population is so small that no significant capacity or finance is available to deal with pressing biodiversity issues.<sup>17</sup> On yet other Territories, for example South Georgia or BIOT, there is no local population. Many local conservation organisations rely to a significant extent on funding from Territory governments so are not able to respond objectively when consulted on development proposals because they may be threatened with budget cuts if they raise objections. Staff may not have the skills and/or sufficient time to engage effectively in planning processes.

4. In some Territories, tourist and/or environmental taxes are charged but all of the revenue raised returns to Central Government. Only a small proportion of the central budget goes back into an environmental fund and/or projects. There could be better reporting by governments on the expenditure of environment funds. As the natural environment continues to deteriorate and governments appear to be taking little action to remedy this, it could lead to unwillingness to pay in the future.

5. Overall, the current lack of capacity and finance in many Territories coupled by the lack of interest or support from the UK Government in these issues means that the deterioration of ecosystem services and species extinction continues largely unabated. It is essential that if this is to be avoided, sufficient resources need to be provided to Territories so that they can implement similar environmental standards as we have in the UK and Europe. We fully support the development of visitor/environmental tax systems on Territories where meaningful revenues can be derived from such a system. We also would like to see a greater proportion of the revenue raised going into locally established environmental funds and systems, so that expenditure is transparently linked to the purpose for which the funds were originally raised.

<sup>12</sup> Anguillan Economist, Dr Aidan Harrigan, speaking in a personal capacity, expressed his concern about over-development and its potential impact on the social and environmental capital of the island in his address at the annual Walter G Hodge Memorial Anguilla Day lecture on June 5th, 2007 ([www.anguillian.com](http://www.anguillian.com)) as there are 10 major tourism developments awaiting approval. He warned if Anguilla, "over-develops to the point that the physical and social capacity of the island to handle the level of development is inadequate, it would create a host of problems and cause the island to lose the very essence that made it attractive in the first place."

<sup>13</sup> The cost of Hurricane Ivan to the Cayman Islands is estimated at 1 billion pounds.

<sup>14</sup> The Government of Anguilla has still to approve the designation of Sombrero island which was proposed in 2005. On Bermuda, Coopers Island is proposed as a national park but the process of designation is still to be completed.

<sup>15</sup> On TCI, Protected Areas have been degazetted to allow for built development.

<sup>16</sup> An airport is currently proposed for St Helena. Under local legislation there is no requirement for an Environmental Impact Assessment though the UK Government has agreed to follow good practice. Of serious concern are the associated developments that could arise because of the airport. A strategic environment assessment on the land development control plan is urgently required to ensure the cumulative impacts of development are avoided.

<sup>17</sup> For example the recent stranding of an oilrig off the coast of Tristan and the storm that has damaged the last couple of wild bastard gumwoods on St Helena. In these situations, the territories are forced to rely heavily on the FCO which does not always appear to treat these matters as a priority.



THE ROLE OF GOVERNORS AND OTHER OFFICE-HOLDERS APPOINTED BY OR ON THE RECOMMENDATION OF THE UNITED KINGDOM GOVERNMENT

6. The RSPB appreciates the support given by Governor's offices on Territories to biodiversity conservation projects and efforts made by the FCO to brief Governors and other office-holders before they take up office on Territories. However, considering the fundamental importance of the natural environment to the economies of the Territories, we are concerned that some Governors and other office holders do not give it sufficient priority. As Governors are involved in the highest levels of decision making in the Territories, they could play a much greater role in ensuring:

- (i) better provision of information to Territory governments on the importance of the natural environment to the economy and quality of life;
- (ii) the UK Government's responsibilities for international conventions such as the CBD are implemented;
- (iii) the establishment and implementation of effective environmental governance systems on the territories (eg land planning, strategic environment assessment, environmental impact assessment etc);
- (iv) the promotion of UK conservation expertise in the Territories and support to UK funded environmental projects;
- (v) the provision of support to assist capacity-building in civil society within the environment sector;
- (vi) the encouragement of all Territories to ratify and strengthen existing multilateral environmental agreements by helping to implement them through the provision of financial and technical support; and
- (vii) all development programmes, particularly those funded by the UK Government, undergo appropriate environmental assessment before they are considered for approval.

THE APPLICATION OF INTERNATIONAL TREATIES, CONVENTIONS AND OTHER AGREEMENTS TO THE OVERSEAS TERRITORIES

7. Although the Overseas Territories are locally self-governed, the UK Government, through the FCO, retains responsibility for external affairs, including the implementation of international conventions such as the Convention on Biological Diversity, the Ramsar Convention, the Cartagena Convention, the World Heritage Convention, CITES, the Convention on Migratory Species and the Agreement on the Conservation of Albatrosses and Petrels. The UK Government has signed up to the 2010 target to halt the loss of biodiversity, which makes the Territories a high priority for conservation action as most of the UK's threatened and endemic biodiversity resides there, rather than in the "metropolitan UK". However, the current lack of resources available for conservation action in the Overseas Territories mean that the 2010 target will certainly not be met by the UK.

8. Furthermore, the UK Government has signed an Environment Charter with most of the Territories, which is a formal agreement that lists the commitments of the respective parties to support environmental management. The FCO is currently undertaking a review of Charter implementation but based on work undertaken by the UK Overseas Territories Conservation Forum<sup>18</sup> it is unlikely that all commitments are being met!

9. Although the UK Government, through the FCO, has signed up to many of the above-mentioned agreements on behalf of the Territories, it is increasingly abdicating responsibility for biodiversity conservation to DEFRA at the international level. Unlike the FCO, DEFRA does not have direct contact with the Territories so it is often not in a position to represent or support their biodiversity interests. At the same time within Territories, the FCO is delegating responsibility for biodiversity conservation and environmental management to local governments. The FCO must know that many of the local Territory governments do not have the resources to implement these commitments so this can only be viewed as hypocritical. Since the well-being and quality of life of people living on the Territories is very dependent on their natural resources, how can the UK Government insist that Territory governments comply to UK/international law over issues like child protection and the death penalty but take very little interest in the application of international environmental standards?

10. There are two natural World Heritage Sites on the Overseas Territories, Henderson Island and Gough and Inaccessible Islands, which are arguably the most important seabird breeding islands in the world. Currently the department responsible (DCMS) is spending very little or no resources on these islands because it believes they are the responsibility of the FCO. It is only through the work of RSPB and other conservation organisations that we know the biodiversity on these islands is under the serious threat of extinction<sup>19</sup> and there are no resources to reverse these threats. The UK is therefore clearly failing in its duties under the World Heritage Convention.

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<sup>18</sup> Review of Environment Charters report is available on the UKOTCF website [www.ukotcf.org](http://www.ukotcf.org)

<sup>19</sup> For example, research undertaken by RSPB has shown the endemic Tristan Albatross population on Gough is being decimated by the House Mouse and is heading for extinction.

11. The Territories struggle to meet the commitments of international conventions and the Environment Charter, because they are small, remote islands with small populations and little income. It is not possible for the Territories to access international sources of funding such as the Global Environment Facility because they are considered to be the responsibility of the UK Government. They also cannot access many EU (eg LIFE +) or UK funds (eg Lottery). They therefore cannot achieve conservation work in the manner of EU countries, nor can they achieve it in the manner of developing countries and Small Island Developing States.

12. The RSPB has calculated that a minimum of £16 million/year is required for Territories to meet their biodiversity priorities.<sup>20</sup> It is hard to see how the FCO can meet its international responsibilities under the conventions when currently it contributes only approximately £0.5 million per year to the Overseas Territories Environment Programme, a fund run jointly with the Department for International Development to support biodiversity conservation in the UK Overseas Territories. This fund has been successful but it only funds small projects (£ < 50,000/year) so can only meet a fraction of the demands required of it<sup>21</sup> and crucially has not been able to provide the long term institutional capacity which small agencies on the Overseas Territories need to make the best use of this and other funds. There is also no long-term guarantee for the fund which means it cannot be used strategically.

13. In view of the responsibility the UK retains for the Overseas Territories and their people and the importance of these Territories for their natural resources, we consider it an extraordinary dereliction of the Governments' responsibilities that in the recent PSA announcements the Overseas Territories were not seemingly taken into account.

14. If increased funding is not identified, endemic species<sup>22</sup> for which the UK is responsible will certainly become extinct and ecosystem services will continue to deteriorate in these territories. The lack of attention will undoubtedly mean that UK citizens and the UK environment will suffer and the UK Government will fail to meet a number of the international obligations to which it is signed up. It is increasingly at risk of being seen as hypocritical in urging others such as nations with rainforests etc. to take conservation action while not taking it within its own jurisdiction.

15. We believe that the FCO should demonstrate that it takes its international obligations seriously on the Territories. First, by guaranteeing the long-term continuation of a strengthened Overseas Territories Environment Programme, and, secondly by ensuring that adequate financial and human resources are available through this programme that can support ongoing capacity in the Territories and projects, some of which will be large, to protect the natural heritage in the UK's care. This must be achieved either by obtaining increased funding through other government departments such as DEFRA, DFID and DCMS or—if this is not possible—by focusing some of the existing Global Opportunity Fund resources on the territories, for which the UK Government has undisputed responsibility.

12 October 2007

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### **Submission from the Minority Rights Group International**

#### INTRODUCTION

1. This submission is submitted by Minority Rights Group International (MRG), with a view to assist the Foreign Affairs Committee of the House of Commons in its enquiry into the Governance of the Overseas Territories.

2. MRG is a non-governmental organisation working since the 1960s to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide. Our activities are focused on international advocacy, training, publishing and litigation. MRG first began its advocacy on behalf of the Chagos Islanders in 1982 through the publication of one of the first reports on the issue. MRG has since supported litigation efforts on the issue of Diego Garcia before the English Courts and the European Court of Human Rights, as well as advocacy efforts before the UN Human Rights Committee.

3. This submission will outline the UK government's obligations towards the Chagos Islanders under international law. We submit that the UK government's policies towards the Chagossians currently fall short of these international obligations.

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<sup>20</sup> The Costing Biodiversity Conservation Priorities in the UK Overseas Territories report is available on the RSPB website [www.rspb.org](http://www.rspb.org)

<sup>21</sup> The RSPB costing study has identified big projects across the Territories including the eradication of mice from Gough (minimum of £2 million pounds) and conservation of the critically endangered Blue Iguana on the Cayman Islands (£3 million pounds).

<sup>22</sup> For example St Helena. There are 49 endemic plants, several of which are represented by only a few individuals in the wild and are at risk of imminent extinction. The St Helena Olive went extinct in 2002. The bastard gumwood could also suffer the same fate because there has been no significant increase in resources for biodiversity conservation since 2002.

## KEY FACTS

4. During the 1960s, the US government entered into an agreement with the UK government to construct a military facility in the Chagos Archipelago. The UK government excised the Archipelago from the colony of Mauritius and created the British Indian Ocean Territory (BIOT). Diego Garcia was transferred to the United States and the population of the entire Archipelago was banished.<sup>23</sup>

5. Correspondence from the files of the FCO at the material time confirm that the Colonial Office and the Foreign Office were aware of the permanence of the population of the Chagos Islands, which was settled there since before the islands were ceded to Britain in 1814. Records also confirm that the permanence of the population was deliberately concealed from the UN Decolonisation Committee in an effort to avoid criticism for the UK's breach of the UN Charter's "Sacred Trust" provision under Article 73, which requires a Colonial Power to promote economic and social advancement of a non-self-governing territory.<sup>24</sup>

6. The forced deportation of the Chagos Islanders between 1965–1973, without prior consultation, consent or adequate compensation has led to their chronic impoverishment. English courts have held the exile to be unlawful and that the Chagossian people possess a public law right of abode in the Chagos Islands.

7. The UK's initial response to the 3 November 2000 Divisional Court decision in which the Court found that the people were to be "governed not removed", was to accept the Court's ruling. The Foreign Secretary of the day (Robin Cook) made a public announcement that the Government would not be appealing, underscoring also the fact that "[the government] made no attempt to conceal the gravity of what happened". Despite this acknowledgment and assurances of compliance with the judgment, the UK government did eventually appeal both this and all further English court victories.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) IS APPLICABLE TO BIOT AND TO UK ACTS AFFECTING THE CHAGOSSIAN PEOPLE

*The ICCPR is applicable to the UK overseas territory*

8. The UN Human Rights Committee (HRC) and the government of the UK have had a longstanding disagreement over the applicability of the ICCPR to the BIOT. In its written response to the concluding observations of this Committee, the UK government explained that "when, in 1976, the United Kingdom ratified the Covenant in respect of itself and certain of its Overseas Territories, it did not ratify it in respect of BIOT. It is for this reason . . . that the Covenant does not apply, and never has applied, to BIOT."<sup>25</sup> This Committee, however, has indicated that it considers the ICCPR to apply to the BIOT, and has urged the UK to "include the territory in its next periodic report."<sup>26</sup>

9. It appears that in this respect the UK was acting as though the UN Covenants contained a "territorial application" clause similar to that included in the European Convention on Human Rights.<sup>27</sup> However, the Covenants contain no such clause and their provisions are applicable to all individuals subject to the ratifying State's jurisdiction, as per article 2(1).<sup>28</sup> In this regard, a reservation would not only be incompatible with this article, but also incompatible with the "object and purpose" of the entire treaty. By virtue of article 2(1) and the HRC's General Comment 24 (on reservations), the universal applicability to all within a state party's jurisdiction is a central feature of this Covenant. To negate such a feature by reserving the right of selective application cannot but be "incompatible with the object and purpose of the treaty."

10. It is presumably in view of the above that, when questioned on its report to the UN Human Rights Committee in 2001, the UK government did not seek to invoke the declaration so as to avoid Committee scrutiny; instead, it claimed that as the Chagossian people were not in occupation of the archipelago when the ICCPR came into force, it was inapplicable to BIOT.<sup>29</sup>

<sup>23</sup> Introduction, as it appears in "Looking Beyond the Bancoult Cases: International Law and the Prospect of Resettling the Chagos Islands", (2007) 7(3) Human Rights Law Review 441–482. Oxford University Press: <<http://hrhr.oxfordjournals.org/>> > > .

<sup>24</sup> The UK government undertook the "administrative measure" to remove the entire population of the Chagos Islands to Mauritius and the Seychelles in a confidential agreed minute referenced as Para 2(a), Exchange of Notes between the UK and US Governments concerning the Availability for Defence Purposes of the islands of Diego Garcia and the remainder of the Chagos Archipelago, and the islands of Aldabra, Farquhar and Desroches constituting the British Indian Ocean Territory, 1 December 1966.

<sup>25</sup> The Queen (on the application of Louis Olivier Bancoult) v Secretary of State for Foreign and Commonwealth Affairs Rev 1 (2006) EWHC 1038 (Admin) (11 May 2006).

<sup>26</sup> Concluding Observations, ¶ 38.

<sup>27</sup> Article 56 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5 (Protocol No.11, ETS No. 155) provides: (1) Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible

<sup>28</sup> Article 2(1), ICCPR provides: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant . . ."

<sup>29</sup> Summary Record of the First Part of the 1963rd Meeting: United Kingdom, 23 October 2001, CCPR/C/SR.1963 at paras 12–4.

11. Finally, it is worth stressing that the policy considerations behind the UK government's erstwhile "quiet disregard" for BIOT's precise status further diminish the integrity of its claim of inapplicability. It is, therefore, suggested that the UK government's declaration is without legal effect and that the ICCPR applies to BIOT despite the current absence of its permanent population.<sup>30</sup>

*The ICCPR is applicable to UK acts affecting its citizens outside of UK territory*

12. Although the UK government justifies its exclusion of the BIOT from its reports to the Committee on the grounds of territorial inapplicability, the UK government also argues that the ICCPR is *practically* inapplicable to the BIOT, and therefore inapplicable to the situation of the Chagossians, because the Chagossians no longer live there.<sup>31</sup> The authors of this submission maintain that the ICCPR does in fact apply to the BIOT, but in the event that the Foreign Affairs Committee shares the government's argument of selective applicability, this submission will also discuss why that would still not relinquish the UK from its obligations to the Chagos Islanders under the ICCPR.

13. In explaining why it did not need to address the situation of the Chagos Islanders in its periodic reports to this Committee, the UK government noted "the fact that there was no resident population in BIOT meant, in the opinion of the United Kingdom, that the Covenant could have no practical relevance to the Territory."<sup>32</sup> This argument presupposes that the ICCPR applies to territory alone, and fails to consider the UK's obligations to the Chagossian people, most of whom are British citizens, as individuals. In doing so, it ignores a fundamental strand of ICCPR jurisprudence. The HRC has repeatedly held that "the beneficiaries of the rights recognized by the Covenant are individuals."<sup>33</sup> Although article 2(1) mentions state obligations to "individuals within its territory and subject to its jurisdiction,"<sup>34</sup> the Committee has made clear that this phrase does not absolve states from responsibility for violations committed outside of its territory. In General Comment 31, the HRC explains that:

State Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.<sup>35</sup>

14. In other words, the ICCPR does not apply only to individuals who are within the territory of a state party and subject to its jurisdiction, but rather to anyone within the territory of a state party or subject to its jurisdiction, including those outside of the state's borders.

15. HRC jurisprudence expands further on the individual extraterritorial application of the ICCPR in a series of cases regarding the extraterritorial kidnappings of Uruguayan citizens by agents of the Uruguayan government. In the case of *Casariago v. Uruguay*, the HRC explained that:

[T]he reference . . . to "individuals subject to its jurisdiction" does not affect the above conclusion [that the ICCPR is applicable to extraterritorial violations of the rights guaranteed therein] because the reference in that article is not the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.<sup>36</sup>

16. Similarly, "[a]rticle 2(1) . . . does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State."<sup>37</sup> In a separate case, the HRC noted that "it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory."<sup>38</sup> The HRC has thus clearly established that state acts perpetrated outside of the territory of a state party to the ICCPR against someone within the jurisdiction of that state are subject to scrutiny under the ICCPR.

17. "The relationship between the individual and the state" is the same in the case of the Chagos Islanders and the UK as it was in the Uruguayan kidnapping cases: both involve citizens subject to extraterritorial

<sup>30</sup> It may be significant that the UK government's territorial application "declaration" is not included in the list of declarations and reservations to the Covenants listed by the Office of the UN High Commissioner for Human Rights, available at: [www.ohchr.org/english/countries/ratification/4\\_1.htm](http://www.ohchr.org/english/countries/ratification/4_1.htm).

<sup>31</sup> Consideration of the Reports Submitted by State Parties under Article 40 of the International Covenant on Civil and Political Rights, Addendum, Overseas Territories of the United Kingdom of Great Britain and Northern Ireland, 9 December 1999, ¶ 87.

<sup>32</sup> *Id.*

<sup>33</sup> ICCPR, HRC, General Comment 31, Nature of the general legal obligation on states parties to the Covenant [hereinafter "General Comment 31"], ¶ 9, UN Doc. CCPR/C/21/Rev 1/Add 13 (2004).

<sup>34</sup> ICCPR, art 2(1).

<sup>35</sup> General Comment 31, ¶ 10. Emphasis added.

<sup>36</sup> ICCPR, HRC, *Casariago v Uruguay*, UN Doc Supp No 40 (A/36/40) at 185, ¶ 10.2 (29 July 1981). Emphasis added.

<sup>37</sup> *Id.*, ¶ 10.3.

<sup>38</sup> ICCPR, HRC, *Burgos v Uruguay*, UN Doc Supp No 40 (A/36/40) at 176, ¶ 12.3 (29 July 1981).

acts taken against them by their respective states. As citizens of the UK, the Chagossians are therefore within its jurisdiction, regardless of where they reside and regardless of whether the ICCPR applies to the BIOT itself. The ICCPR is therefore not irrelevant to the situation of the Chagos Islanders simply because most of them live outside of British territory.

18. Although the act of barring the Chagossians from returning to their homeland is distinct from the extraterritorial abductions at issue in the cases cited above, the Committee's holdings in those cases were not limited to kidnappings alone, but referred more broadly to extraterritorial state violations of the Covenant. The executive orders barring the Chagossians from returning home are, moreover, compatible with this Committee's definition of an act engaging the responsibility of a state. In General Comment 31, the Committee noted that "all branches of government . . . and other public or governmental authorities, at whatever level . . . are in a position to engage the responsibility of the State Party."<sup>39</sup> Although the orders "engage the responsibility of the State Party" in a form different from that of a kidnapping, their effect is the same: to subject an extra-territorial citizen to the coercive power of the state in a manner that would constitute a violation of the ICCPR if exercised within the territory of the state.

19. As UK citizens, the Chagossians fall within the jurisdiction of the UK—therefore, the ICCPR applies to the UK government's behaviour towards them, even if they are living outside of UK territory. The FCO's claim that the ICCPR has no application to a territory without a population is not only null and void in view of the above arguments. As the principle author behind the forced deportation of the Chagos Islanders, the fact that the BIOT territory is "without a population" does not absolve the UK government from its legal responsibilities towards the Chagossians. Instead, this submission argues that the UK's acts—resulting in the absence of a population on BIOT—amounts to a crime against humanity; a fundamental violation of international law which, at a minimum, warrants a full, independent and transparent investigation into the action of the British government to remove the islanders and their subsequent treatment.

#### CRIMES AGAINST HUMANITY

20. The prohibition of crimes against humanity is well established under international customary law, and this customary rule can be said to date from the Nuremberg Tribunal.

##### *Definition*

21. The concept of crimes against humanity consists of a number of practices, including "murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment, torture, rape, persecution, and other inhuman acts directed against any civilian population when committed on a widespread or systematic basis".<sup>40</sup> Crimes against humanity can be committed in times of war or in times of peace. While crimes against humanity were originally linked to war crimes, developments since Nuremberg have made it clear that no connection with an armed conflict is required.<sup>41</sup> Given this, the question is whether the forcible transfer of the Chagos islanders to Mauritius and the Seychelles by the United Kingdom which took place in the 1960s and 1970s constitutes a crime against humanity.

##### *Deportation and persecution*

22. According to Article 7 paragraph 2 (d) of the Rome Statute of the International Criminal Court the crime of "deportation or forcible transfer of population" means: "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law". Paragraph 2(g) states that "persecution" means "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity". Deportation and "persecution on political, racial or religious grounds" were both specifically mentioned in the Charter of the Nuremberg Tribunal as examples of crimes against humanity.

23. It is extensively documented that the Chagos Islanders did not leave the Archipelago by their own free will, raising a violation in light of the above provisions.

<sup>39</sup> General Comment 31, ¶ 4.

<sup>40</sup> See: Art 5 Statute of the International Tribunal for the Former Yugoslavia, Art 3 Statute of the International Tribunal for Rwanda, Art 7 Rome Statute of the International Criminal Court.

<sup>41</sup> M T Kamminga, *Lessons Learned from the Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offenses*, HRQ, Vol. 23, 2001, 940, 946.

<sup>42</sup> Art 7 paragraph 2 (a) Rome Statute—"crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".

*Attack against civilian population*

24. The Rome Statute of the International Criminal Court imposes a higher standard than found elsewhere in international law, by requiring that a crime against humanity involves an attack against the civilian population, involving a course of conduct (such as deportation) carried out pursuant to a policy.<sup>43</sup> The ICTR has nonetheless addressed the concept of “attack” in the landmark Akayesu judgment, which stated that:

The concept of “attack” may be defined as an unlawful act of the kind enumerated in Article 3(a) to (I) of the Statute, like murder, extermination, enslavement etc. An attack may also be non violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner. (Paragraph 581, emphasis added)

25. Even according to this quite stringent definition of crimes against humanity, the planned deportation of the Chagos islanders for the purposes of leasing the island to the Americans can be qualified as an attack. It was systematically planned, the documents have shown the attempts to conceal the illegality and it affected the entire population.

26. It is well established that crimes against humanity must be directed against a civilian population (as opposed to war crimes). It is clear that this would include the Chagos islanders.

*Widespread or systematic*

27. One of the distinguishing requirements of crimes against humanity is that they should be widespread or systematic. While this requirement has not always been considered necessary,<sup>44</sup> developments have confirmed that under current international law crimes must take place on a widespread or systematic basis.<sup>45</sup> There is no source that identifies a precise definition of the terms widespread or systematic under customary international law. However, these terms have been considered and applied in a numerous cases, particularly by the International Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. According to this jurisprudence a widespread attack requires a large number of victims, whereas a systematic attack suggests a common or methodical plan.<sup>46</sup> The ICTR has stated:

The concept of “widespread” may be defined as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. The concept of “systematic” may be defined as thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.<sup>47</sup>

28. By deporting the whole civilian population of the Chagos islands, the crime emerges as “widespread”. It was also clearly “systematic” as the detailed planning shows. Therefore the forcible transfer of the Chagos islanders to Mauritius or the Seychelles pursuant to the Immigration Ordinance of 1971 can be qualified as a crime against humanity under international customary law.

## THE RIGHTS OF INDIGENOUS PEOPLES UNDER INTERNATIONAL LAW

29. On September 13, 2007, The UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples, after 143 Member States (including the UK) voted in favour. This landmark declaration outlines the rights of the world’s estimated 370 million indigenous peoples. The adoption marks an important turning point in the general acceptance of indigenous peoples rights under international law.

30. The most comprehensive attempt at a definition was made in the Martinez-Cobo Report. It provided that:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves

<sup>43</sup> Art 7 paragraph 2 (a) Rome Statute—“crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.

<sup>44</sup> This requirement was not included in the Charter of the Nuremberg International Military Tribunal of 1945.

<sup>45</sup> Article 3 of the Statute of the International Tribunal for Rwanda, as well as Article 7 of the Rome Statute of the International Criminal Court require that the alleged offences be committed in the context of a widespread or systematic attack against any civilian population. Although the Statute of the Tribunal for the Former Yugoslavia contains no corresponding requirement in its Article 5, the Tribunal for the Former Yugoslavia jurisprudence confirms that the widespread or systematic criteria is what distinguishes crimes against humanity from ordinary crimes under national criminal law. (See Prosecutor v. Tadic, Trial Judgment, 7 May 1997, para 644–648).

<sup>46</sup> See Prosecutor v Tadic, Trial Judgment, 7 May 1997, para 648.

<sup>47</sup> Prosecutor v Akayesu, Trial Judgment, 2 September 1998, para 580.

distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.<sup>48</sup>

31. Numerous other definitions have since been advanced.<sup>49</sup> At least seven criteria of “indigenoussness” can be distilled from these additional formulations:

- (i) communal attachments to “place”;
- (ii) historical precedence;
- (iii) experience of severe disruption, dislocation and exploitation;
- (iv) “historical continuity”;
- (v) ongoing oppression/exclusion by dominant societal groups;
- (vi) distinct ethnic/cultural groups; and
- (vii) self-identification as indigenous peoples.<sup>50</sup>

32. It is commonly understood that most communities will not be able to satisfy all criteria; but such approaches create a sliding scale of indigenoussness for the purposes of assessment. If a given societal group can establish its status as an indigenous people it will be able to access the evolving canon of indigenous rights in international law.

#### *The concept of indigenoussness in the Chagossian context*

33. The Chagossian people manifest a strong communal attachment to their ancestral homelands.

34. First, it is important to establish the historical extent of their ancestral connection to the islands. By 1900 there were some 426 families residing in the archipelago. About 60% were of African-Malagasy origin—descendants of the original slave population—while the remaining 40% heralded from the Indian sub-continent—descendants of indentured labourers brought to the islands after emancipation. At that time, more than 75% regarded themselves as permanent inhabitants of the islands.<sup>51</sup>

35. Second, the extent of their communal attachment to the Chagos Islands must also be assessed. The Kreol word the Chagossian people most often use to describe their removal from the archipelago is “derasine” which derives from *deraciner* in French and is related to “deracinate” in English. The Derasine Report suggests that the choice of this word has two facets for the Chagossian people. It is capable of meaning “to uproot” or “to tear away from one’s native land” evidencing the Chagossian people’s deep psychological attachment to the Chagos Islands.<sup>52</sup> Further, the word can also be defined as “to eradicate”, a reference to the threat that expulsion poses to their communal survival.<sup>53</sup>

36. Exile deprived the Chagossian people of their ancestral lands and access to communal territorial resources. However, its impact goes far beyond material losses. Expulsion produced experiences of “profound cultural and landscape bereavement” that have been transmitted down the generations so that they have become ingrained in the Chagossian psyche.

37. Based on its 40 years of working with indigenous communities worldwide, MRG is of the view that the Chagossians do indeed constitute an indigenous people. The UK’s duty towards the Chagossians must therefore be upheld in line with the rights of indigenous peoples rights under international law.

<sup>48</sup> Martinez-Cobo, Study of the Problem of Discrimination Against Indigenous Populations, E/CN.4/Sub.2/1986/7/Add.4 at para 379.

<sup>49</sup> See, for example, Erica Irene Daes, Working paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples, 19 July 2000, E/CN.4/Sub.2/2000/10.

<sup>50</sup> Drawn from “Looking Beyond the Bancoult Cases: International Law and the Prospect of Resettling the Chagos Islands”, (2007) 7(3) Human Rights Law Review 441–482. Oxford University Press: <<http://hrlr.oxfordjournals.org/>> > > .

<sup>51</sup> Vine, “The Impoverishment of Displacement: Models for Documenting Human Rights Abuses and the People of Diego Garcia”, (2006) 13 Human Rights Brief 21. Cited in “Looking Beyond the Bancoult Cases”, above note.

<sup>52</sup> Vine, Wojciech Sokolowski and Harvey, “Derasine: The Expulsion and Impoverishment of the Chagossian People”, draft report, 11 April 2005 (Derasine Report) at 48–49. Cited in “Looking Beyond the Bancoult Cases”, above note.

<sup>53</sup> *Ibid.*

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*Indigenous land rights in the Chagossian context*

38. Article 26 of the UN Declaration on the Rights to Indigenous Peoples establishes the indigenous right to land in the following terms:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

39. It is commonly understood under international law that indigenous peoples' ownership of land is guaranteed irrespective of title deed. Indeed, in one of the leading international cases on this issue, *The Mayagna (Sumo) Awas Tingni v Nicaragua*,<sup>54</sup> the Inter-American Court of Human Rights stated that possession of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.<sup>55</sup>

40. Courts have addressed violations of indigenous property rights stemming from colonial seizure of land, such as when modern states rely on domestic legal title inherited from colonial authorities. There has been widespread condemnation of the acquisition of indigenous title by the colonial authorities.<sup>56</sup> National courts have recognised that the historic indigenous association with particular lands should be considered a "property" right continued long after the seizure of their lands. Such decisions have been made by the United Kingdom Privy Council as far back as 1921,<sup>57</sup> the Canadian Supreme Court<sup>58</sup> and the High Court of Australia.<sup>59</sup> In the *Richtersveld* case, the South African Constitutional Court held that the rights of a particular community survived the annexation of the land by the British Crown and could be held against the current occupiers of their land.<sup>60</sup>

41. The protection afforded to indigenous peoples under international law extends in particular to the protection of ancestral land in view of how closely their ownership of the resources on those lands is associated with the most fundamental human rights, such as the right to food, shelter, the right to exist as a people, as well as the right to life itself.<sup>61</sup> The recognition of indigenous property rights introduce a set of obligations upon States in terms of restitution and compensation, particularly when prior informed consultation was not sought from the evicted communities.

*International human rights standards relating to compensation, return and restitution*

42. The requirements of general principles of public international law and human rights standards state that if property is illegally taken by the state it must be restored, or that if property is legally taken in the public interest at least compensation must be paid. Numerous instruments confirm the right to return, restitution and compensation, including article 28 of the UN Declaration on the Rights of Indigenous Peoples, which states that:

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
  2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.
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<sup>54</sup> The Awas Tingni Case (2001), para 140(b) and 151.

<sup>55</sup> Id at para 151. Emphasis added.

<sup>56</sup> See, for example, Erica-Irene A. Daes, Special Rapporteur, Indigenous peoples and their Relationship to Land: Final working paper by the Special Rapporteur, Commission on Human Rights, UN Doc E/CN.4/Sub.2/2001/12, (2001), para 31–32. The Special Rapporteur observes that the international Community has come to see that the concept that the "discovering" colonial power may take free title to indigenous lands is illegitimate; *Alexkor Ltd v Richtersveld Community*, Constitutional Court of South Africa, CCT 19/03, (2003), in which the court recognised that the rights of the Richtersveld Community survived the annexation of their traditional land by the British Crown; and *Mabo and Others v Queensland*, High Court of Australia, 107 A.L.R. 1, (1992), in which the court rejected the principle that pre-existing rights were abolished upon colonization unless expressly recognized by the colonising state.

<sup>57</sup> *Amodu Tijani v Southern Nigeria*, United Kingdom Privy Council, 2 AC 399, (1921).

<sup>58</sup> *Calder et al v Attorney-General of British Columbia*, Supreme Court of Canada, 34 D.L.R. (3d) 145 (1973).

<sup>59</sup> *Mabo v Queensland*, High Court of Australia, 107 A.L.R. 1, (1992).

<sup>60</sup> *Alexkor Ltd v Richtersveld Community*, Constitutional Court of South Africa, CCT 19/03, (2003)

<sup>61</sup> See the case of *Yakye Axa v Paraguay*, Inter-American Court of Human Rights, 6 February 2006. This is also firmly supported by Erica-Irene Daes, former chairperson of the UN Working Group on Indigenous Populations.



43. The UN Committee on the Elimination of Racial Discrimination has adopted a similar approach, stressing indigenous peoples' rights to have any lands and territories which they were deprived from, restored to them.<sup>62</sup> Following from the earlier section on crimes against humanity, it must also be noted that restitution constitutes a key element of remedial measures envisaged under international criminal law.<sup>63</sup>

44. The UK authorities have systematically failed to provide adequate remedies to the Chagos Islanders. Compensation afforded has been grossly inadequate, and hopes of restitution have been frustrated by a deeply flawed feasibility study, carried out without consultation with any former residents of the Chagos Islands—therefore ignoring the ICCPR's emphasis on participatory self-determination. The government also put limitations on the feasibility study's terms of reference which gave editorial control to the government. This lack of transparency must be substituted with an intent to negotiate in good faith with the Chagos Islanders, with a view to arriving at suitable long-term solution.

#### *Self-Determination*

45. Self-determination is the most basic of all human rights, the foundation upon which all other human rights depend. The United Nations system is built on the concept of self-determination as expressed in the U.N. Charter.<sup>64</sup>

46. The inalienable right of self-determination stands as the very first article in the International Covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1976.<sup>65</sup>

47. The prominence of this legal principle is extremely significant. It is placed at the very beginning of both UN Covenants to underscore that all human rights—civil, political, economic, social and cultural—depend upon the effective exercise of self-determination.<sup>66</sup> The widespread international consensus regarding this right was remarkable given Cold War political and ideological divisions at the time.

#### *The former inhabitants of the Chagos Islands and their descendants constitute "a people" entitled to self-determination under article 1.*

48. Although a peoples' right to self-determination is central to the enjoyment of rights guaranteed by the ICCPR, the term "peoples" is not defined in the ICCPR, nor in the UN Charter. Yet while the definition of "peoples" is not clear, the United Nations Educational, Social and Cultural Organization ("UNESCO") has described some characteristics common to groups of individuals constituting a people. According to these standards, the Chagos Islanders do possess the characteristics typically associated with a people entitled to self-determination.

49. In 1989 UNESCO convened a meeting of jurists and scholars to clarify the concept of peoples' rights. In its final report and recommendations the group noted that it adopted the following description of a people:

- (1) A group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; (g) common economic life. (2) The group must be of a certain number which need not be large . . . but which must be more than a mere association of individuals within a State; (3) the group as a whole must have the will to be identified as a people or the consciousness of being a people . . . (4) The group must have institutions or other means of expressing its common characteristics and will for identity.<sup>67</sup>

50. The Chagos Islanders satisfy all four of the above conditions. As to the first condition, several scholars have noted that the Chagos Islanders possess common cultural and linguistic characteristics distinct from that of other peoples in Mauritius and the Seychelles.<sup>68</sup> Numbering in the thousands, and all originating from the same territory, they satisfy the requirements of characteristic two. The Chagossians, even in exile, generally self-identify as members of a distinct group, in compliance with the third characteristic. Finally,

<sup>62</sup> See CERD General Recommendation No 23 (1997).

<sup>63</sup> Article 75 (Reparations to victims) of the Rome Statute of the ICC specifically addresses restitution.

<sup>64</sup> "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"—International Covenant on Civil and Political Rights, 16 Dec 1966, G A Res 2200A, 21 UN GAOR Supp (No 16) 52, UN Doc A/6316 (1967), Article 1; International Covenant on Economic, Social and Cultural Rights, 16 Dec 1966, G A Res 2200, 21 UN GAOR Supp (No16) 49, UN Doc A/6319 (1967), Article 1.

<sup>65</sup> This interpretation has been officially confirmed by the Human Rights Committee: "the right of self-determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights"—HRC General Comments 12(21), para 1 (G.A. Official Records Doc A/39/40, pp 142–143).

<sup>66</sup> "Having in

<sup>67</sup> United Nations Economic, Social and Cultural Organization (hereinafter "UNESCO"), Meeting of Experts on Further Study of the Concept of the Rights of a People, ¶ 22, UNESCO Doc SHS-89/Conf602/7 (1990).

<sup>68</sup> See, for example, the work of Mauritian scholars H Ly-Ti-Fane and S Rajabalee, "An Account of Diego Garcia and its People," 1 J Mauritian Stud 90, 105 (1986), and the account of National Heritage Museum anthropologist Jean-Claude Mahone, quoted in Angela Kerr, "Chagos Islanders—Home at Last", Seychelles Today, 2 December 2000.

through the medium of oral history, songs, and advocacy organizations like the Chagos Refugee Group, the Chagossian people have established “institutions [and] other means for expressing its common characteristics and will for identity.”

51. The Chagossians have also been recognized as a people by the Committee on the Elimination of Racial Discrimination (CERD). On this basis, in its 2001 Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, this Committee urged “the State Party . . . to the extent still possible” to “seek to make exercise of the Ilois’ right to return to their territory practicable.”<sup>69</sup>

52. Taken together, the above facts serve to confirm the Chagos Islanders as having the characteristics typically associated with a peoples, shedding any doubt as to their status as peoples, possessing the right to self-determination.

*The UK government’s treatment of the Chagossian people violates their right to self-determination*

53. The continued exile of the Chagos Islanders by the UK government constitutes a violation of their right to self-determination. We underscore that the accepted right to which we refer is that of internal self-determination. Internal self-determination encompasses “the rights of all peoples to pursue freely their economic, social and cultural development without outside interference”, as well as “to freely determine their political status”. It does not conjure the right to secession or to pose threat to the territorial integrity of a State.

54. Participation is central to the effective exercise of the right to internal self-determination. Both the text of article 1 and its accompanying General Comment emphasize that the components of self-determination, designation of political status and the pursuit of economic, social, and cultural development, must be exercised freely by a people itself.<sup>70</sup> General Comment 12 also notes that state reports to the Committee that “confine themselves to a reference to election laws” alone have not sufficiently addressed their peoples’ rights under article 1.<sup>71</sup> This suggests active participation of a people in deciding how to freely pursue such development within the bounds of state power, as opposed to choosing between a limited set of options its government has proposed to it, or some other more passive form of resistance.

55. In the case of minority and/ or indigenous peoples, active participation is especially crucial to the enjoyment of self-determination. In its 2002 Concluding Observations on Sweden, this Committee noted its concern:

at the limited extent to which the Sami [a minority people] Parliament can have a significant role in the decision-making process on issues affecting the traditional land and economic activities of the indigenous Sami people . . . (arts. 1, 25 and 27 of the Covenant).<sup>72</sup>

56. The Committee similarly recommended the active participation of the Sami minority in managing its internal affairs in its 2004 Concluding Observations on Finland, in a paragraph that addressed both article 1 and 27: “The State party should, in conjunction with the Sami people, swiftly take decisive action to arrive at an appropriate solution of the land dispute.”<sup>73</sup> These comments on the right to internal self-determination thus include a special emphasis on state consultation as form of participation, at least in the case of minority and/ or indigenous peoples.

57. This emphasis on minority participation also appears in the CERD General Recommendation on self-determination, which emphasizes that:

[G]overnments should be sensitive towards the rights of persons of ethnic groups, particularly their right to lead lives of dignity, to preserve their culture, to share equitably in the fruits of national growth, and to play their part in the government of the country of which its members are citizens.<sup>74</sup>

58. CERD’s general recommendation on indigenous peoples as calls upon States to “ensure that members of indigenous peoples have rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent.”<sup>75</sup>

59. As an indigenous, or at the very least a minority, people, the Chagossians are thus legally entitled to not only choose how to order their economic, social, and cultural affairs, but to do so freely and actively, and in consultation with the government in the case of state action affecting their internal self-determination. In practice, they are denied the ability to meaningfully, much less freely and actively, order their affairs.

<sup>69</sup> Concluding Observations, ¶ 38. Although the Committee does not specifically use the word “people”, it does refer to a collective right of return. The only collective right under the ICCPR is the right to self-determination, and only a people possess this right. The above sentence is therefore tacit recognition of the Chagossians’ status as “a people”.

<sup>70</sup> ICCPR, art 2; General Comment 12, ¶ 2.

<sup>71</sup> General Comment 12, ¶ 3.

<sup>72</sup> ICCPR, HRC, Concluding Observations of the Human Rights Committee, Sweden, ¶ 15, UN Doc CCPR/CO/74/SWE (2002).

<sup>73</sup> ICCPR, HRC, Concluding Observations of the Human Rights Committee, Finland, ¶ 17, UN Doc CCPR/CO/82/FIN (2004). Emphasis added.

<sup>74</sup> General Recommendation 21, ¶ 5.

<sup>75</sup> CERD, General Recommendation 23, Rights of indigenous peoples, ¶ 4(d), UN Doc A/52/18, annex V at 122 (1997).

60. Decisions regarding their fate have frequently been made without public debate, and have always been made without consulting the Chagossians themselves. The Chagos Islanders are currently barred from returning home by the British Indian Ocean Territory (Constitution) Order 2004 (“the Order”). The Order declares that:

Whereas [the BIOT] was constituted and is set aside to be available for the defence purposes of the Government of the United Kingdom and the Government of the United States of America, no person has the right of abode in [the BIOT] . . . Accordingly, no person is entitled to enter or be present in the Territory.<sup>76</sup>

61. The Order takes the form of an Order in Council, a rarely used vestige of royal prerogative that gives the Queen the power to unilaterally pass laws relating to the peace, order and good governance of an overseas territory. The 2004 Order was therefore passed without any sort of public debate, and, although probably drafted by the Secretary of State for Foreign and Commonwealth Affairs,<sup>77</sup> derived its asserted legal authority exclusively from approval by an un-elected head of state, the Queen.

62. The Order has been rejected repeatedly as unlawful by UK courts; although the Government has requested permission to appeal the latest decision. The UK government has offered two arguments in support of the Order, but neither satisfies the active participation requirement for the enjoyment of self-determination.

63. The first argument is that “anything other than short-term resettlement on a purely subsistence basis would be highly precarious and would involve expensive underwriting by the UK government . . . it would be impossible for the Government to promote or even permit resettlement to take place.”<sup>78</sup> This argument is insufficient to release the government from its obligations under the ICCPR and international customary law. The determination that islands should not be resettled was made after the government conducted a deeply flawed feasibility study, as previously detailed in paragraph 47

64. The second argument is that national security interests prevent the return of the Chagossians, fails on similar grounds. Like the feasibility argument, the security determination was made without any consultation with the Chagossian people, and without considering their interests. This unilateral action runs contrary to the emphasis on participation found in ICCPR and CERD jurisprudence. The UK courts found this unilateral action problematic as well, noting that the security decision was made exclusively from the point of view of the United Kingdom and the United States, with regard for the interests of the Chagossians.<sup>79</sup> For this reason, the decision was found to be “irrational.”<sup>80</sup>

65. The lack of consideration of Chagossian interests is further demonstrated by the fact that the Order in Council banned them not only from Diego Garcia, home of the U.S. military base, but from the outlying islands located over one hundred miles away as well. Moreover, argued counsel for the Chagos Islanders in *R. v. Secretary of State*, the Chagossians are prohibited from returning home on grounds of national security, yet private yachters are permitted to sail into the territorial waters (ie within three miles) of Diego Garcia.<sup>81</sup>

66. In addition to being restricted from participating, actively or otherwise, in the decisions regarding their ability to return home, the Chagos Islanders are also prevented from freely pursuing their economic, social and cultural development. The Chagossians live today in forced exile, mostly in Mauritius, with small communities in the Seychelles and the UK as well. Because they are completely barred from living on, or even visiting, any of their ancestral homeland, they are unable to organize their economic, social, and cultural affairs the way they were before their exile. Their poverty and marginalisation in Mauritius, a result of insufficient relocation assistance and compensation from the UK government,<sup>82</sup> also limits the autonomy of their life in exile. The UK courts themselves have recognized that that this situation constitutes a violation of their right to self-determination.<sup>83</sup>

67. The Chagos Islanders are, on the orders of the UK government, currently exiled from their homeland and unable to freely determine their political status and freely pursue their economic, social and cultural development. This is a violation of their right to self-determination under the UN Covenants and wider customary international law.

68. Given the UK’s unique position as the state that displaced the Chagossians, as well as the only state that can help them to fully realize their right to self-determination, the positive obligations created by article 1 of the ICCPR compel at the very least that it allows the Chagossians to return home.

<sup>76</sup> *R. v Secretary of State for Foreign and Commonwealth Affairs*, ¶ 91.

<sup>77</sup> *Id.*, ¶ 5.

<sup>78</sup> Written statement of the Parliamentary Undersecretary for Foreign and Commonwealth Affairs, 15 June 2004, quoted in *id.*, ¶ 93.

<sup>79</sup> *Id.*, ¶ 122.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*, ¶ 103.

<sup>82</sup> That the UK government failed to adequately assist the Chagossians’ in the resettlement process has been recognized by the UK courts (*Chagos Islanders v The Attorney General*, EWHC 2222 (QB), ¶ 154 (9 October 2003)), and the need for additional compensation has been recognized by this Committee (Concluding Observations, ¶ 38).

<sup>83</sup> *R v Secretary of State for Foreign and Commonwealth Affairs*, ¶ 101.

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 CONCLUSION

69. From the outset, the UK's dealings with the Chagos Islanders have been tainted with lack of consultation that has severely undermined the Chagossians' past and present right to self-determination. Furthermore, repeated appeals to successful English Court victories, along with lack of transparency and good faith in the conduct of the feasibility study for the Islanders' return, fall short of the UK's positive obligations to secure the return of the Islanders.

70. At the root of the Chagossians' epic struggle is the UK's the persistent failure to abide by the rules of international law that underpin the principles of peace, order and good government. Though the "sacred trust" principle enshrined in Article 73 of the UN Charter may have been irrevocably breached for the Islanders, viable remedies sought by the UK government to restore and remedy some of the damage caused by the acts and omissions of the UK is not only morally imperative, but legally necessary.

71. The UK has spent immense resources in the last decade on military campaigns dedicated to the principles of democracy, freedom and human dignity. Let this be a marked opportunity for the Foreign Affairs Committee to show its counterparts on the world stage that the UK not only champions these principles abroad, but also at home.

12 October 2007

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**Letter and submission from residents of Ascension Island**

This memorandum is submitted by a group representing a cross section of Ascension Island residents. The group represents people born on island, those who have lived and worked on island for a significant number of years, those who have had and raised children on island, those who have invested in private sector businesses and former elected representatives. Its aim is to demonstrate to the Committee that during the course of the last decade, in relation to Ascension Island, the Foreign and Commonwealth Office has repeatedly failed to promote democracy, to operate in an open and transparent manner, to facilitate neither social nor economic development and to provide an environment conducive to the principals of good governance.

In the interests of brevity we have not included all written materials referred to in the main text as most are documents already in the public domain. However should the committee have need of any specific documentation then we would be happy to furnish it.

We hope that the result of this inquiry will be a strong recommendation to the FCO to promote democracy, good governance, accountability, social development and economic growth not only in areas of keen political interest but in its own Overseas Territories on behalf of British Citizens.

1. Ascension Island was run as a "Company Town" until the start of this decade. The senior managers of the main User organisations sat on various committees together with the island Administrator (paid for by the Users) and they decided on local issues, from infrastructure to policy agreements. Workers did not pay any taxes and had no representation or rights enshrined in legislation. All the island work force living in accommodation owned by their employers and "tied" to their employment—many having lived for 30–40 years + on the island on "short term contracts".

2. At the end of the nineties the Users expressed a wish to concentrate on their core businesses and to devolve island administrative powers to an alternative body. In 1999 Robin Cook published a White Paper *Partnership for Progress and Prosperity in the Overseas Territories* which seemed to offer the new way forward for Ascension Island.

3. Various reports and studies were undertaken and the views of the Ascension Island workers were sought. (Ascension into the Millenium, Portsmouth Report, Referendum) A decision was taken by the FCO and HMG to democratise Ascension Island. Taxation was to be introduced but in return elected representatives would be asked to form an Island Council and to take forward development of Ascension Island socially and economically.

4. Businesses and property were advertised as being for sale or lease and people were encouraged to invest in the private sector. A new company Ascension Island Commercial Services was formed and public meetings held to publicise and inform residents of the privatisation of former government held assets. Local residents formed and bought several of these businesses.

5. Taxation was duly introduced in April 2002 and the first Island Council elected to office in November 2002. Every single candidate who stood for election did so with a manifesto outlining the need to bring social change to Ascension Island. To allow rights of abode, land/property ownership and to create an infrastructure and environment attractive to inward investment. This was in no way believed to be wishful thinking. Indeed in his Christmas Message of 2000 the Governor of Ascension island stated "We will also be addressing the democratic deficit to ensure that St Helenians on Ascension Island are given the right of abode there, the opportunity to own businesses and a form of local government which gives the residents choice and a say in the running of their Island". This was followed by the Administrator in March 2001 who stated during a press interview that "As for the rest, we know that we are going to need Land Tenure

legislation very soon. This will give people the right to either purchase or lease property or land. We will also need legislation to provide for the right of abode on Ascension although we will have to decide how we are going to provide for the unemployed, the elderly etc.” Given that the 2 most senior representatives of both the FCO and HMG on the island were publically promoting these changes it is obvious that local workers believed them to be true and planned accordingly.

6. Having formed a Council based on the principles of self determination, rights of abode and property ownership a five year Strategic Plan was produced and presented to the then Minister for Overseas Territories, Bill Rammel when he stopped over at Ascension en route to the Falkland Islands in November 2003. Following his return to the UK his department wrote to the Council acknowledging both the visit and the Plan. It is important to highlight this event as the FCO subsequently tried to deny this Plan either existed or had been made known to the FCO and Ministers.

7. Constitutional Advisor, Michael Bradley visited the Island in September 2003 at the behest and expense of the FCO to assist in the development of immigration legislation including the granting of belonger status. Public meetings were held and were well attended. Mr Bradley drafted basic immigration policies which he sent to the Ascension Island Council, via the FCO, for further discussion and public consultation.

8. In December 2003 the Wideawake Agreement was signed at Secretary of State level allowing for civil aircraft to use Wideawake airfield. Ian Ramsay from Air Safety Support International was commissioned to advise on what upgrades would be necessary to enable commercial flights to use the airfield. The clear intent was to increase the number of civilian passengers travelling to Ascension with a view to developing a niche tourism market.

9. During an Island Council meeting held in 13 May 2004 which was attended by Ralph Jones from the FCO item 3.15 referred to the ongoing Land Adjudication process and five infill plots were identified and agreed upon to be marked and advertised for freehold sale. At a subsequent meeting on 24 September 2004 AIC agreed to purchase two houses from CSO. If as the FCO contends that all property belongs to the Crown (and by default Ascension Island Government) and given that no new laws in respect of this have been written or enacted, why would the Crown sanction AIG paying for property it already owned?

10. During 2004 the FCO granted AIG £70k (subsequently raised to £106k) to employ a Legal Adviser whose terms of reference specifically included aiding the Attorney General in drafting land tenure and immigration legislation.

11. In December 2004 the FCO hosted meetings between the Ascension Island Government Fisheries Officer, an elected Councillor and two companies it had sourced and invited to investigate the feasibility of a commercial fishery on Ascension Island. Early indications were that this was potentially a good source of income and the FCO promised £15K to initiate the process.

12. In late 2004 a new Attorney General was appointed and in January 2005 during a council meeting he produced a timetable for land tenure and right of abode. This timetable formed part of the minutes and efforts by the FCO to deny that they had been involved in this timetable are rather trite as the AG was acting on their current policy in drafting this and it was authorised by the Governor before being released to the Council.

13. At a council meeting on 30 May 2005 chaired by HE the Governor, the council was advised that he had had meetings with FCO officials in London and that these officials felt that they now had a better appreciation of the needs and aspirations of Ascension Island. In order to take this forward a summit had been arranged for September 2005 so that elected representatives and concerned residents could put forward their points of view directly to the FCO.

14. In October 2005 a new Economic Feasibility Study was commissioned by the FCO. The elected representatives were not invited to comment on the terms of reference although many other agencies were. (PQ 58744 refers). This Oxford Policy Management report was paid for by the FCO and one of the main consultants was a former FCO employee. It is unsurprising that its findings were somewhat different to those by the independent consultants who compiled the Portsmouth Report. A case of “He who pays the piper”?

15. The first council came to the end of its term and elections were held in October 2005. Once again all nominees campaigned on the issues of right of abode, property ownership, self determination and economic development. Prior to the election the Administrator asked to see all manifestoes and promised the candidates a face to face summit meeting with Lord Triesman Minister for Overseas Territories to discuss Ascension Island’s future. This would be in lieu of the promised summit that did not take place in September.

16. Only 10 days after the election a delegation of FCO and MoD officials delivered the U-turn announcement to the newly elected councillors only 1 hour before going public. There was no discussion or negotiation. The delegation had arrived on island with a prepared statement that allowed no room for manoeuvre or flexibility. All development of any kind was to cease and no rights would be conferred on any persons living and working on Ascension Island.

17. At the next Council meeting in December it was announced that FCO were no longer going to fund the Fisheries research project. They made reference to a desk study that had been completed in 1990. This study had never been made known to Councillors. Pre-council, fishing licences for Ascension waters were being sold by St Helena for over £100k per annum. Furthermore even the OPM Economic Feasibility Study referred to a possible viable economy being developed through the fishing industry.

18. There then followed a long period of non-communication. The Administrator made absolutely no attempt to meet and discuss the implications of this change in FCO policy. When Councillors requested that the promised summit with Lord Triesman be honoured so that they could make their case directly to him they were told that it was not going to happen as there was nothing to discuss.

19. Councillors became frustrated in their efforts to engage officials in debate. The Administrator remained remote and withdrawn and the only way to prompt responses to questions was to have them asked as formal Parliamentary Questions by MPs in the UK. The replies to these questions were at best often inaccurate and at times they appeared deliberately obstructive. Frequent requests from the Councillors for FCO officials to meet and hold crisis talks were denied. Instead the rhetoric from King Charles Street became quite dark, accusing the people of Ascension of being confused, and misled and of not understanding the real issues.

20. Finally in August 2006 Frank Savage (FCO OT Advisor) was engaged to meet with elected representatives to see if dialogue could be re-established. Council made him aware of the inability of the Administrator to engage with elected representatives and their frustration at the lack of interest from the FCO.

21. In November 2006, Ascension Island was represented at the OTCC and the delegate gave warning to the FCO and Lord Triesman in both public and private fora that the population of Ascension were becoming weary of their treatment at the hands of Government Officials and it was likely that the youngest democracy in the world was about to fail in its infancy. Despite protestations from FCO officials and Lord Triesman that they would do all they could to prevent this, there continued to be no real dialogue between the two sides or a willingness by the FCO to meet half way on any issue.

22. Lord Triesman was supposed to have visited Ascension Island en route to the Falklands but due to bad weather changed his flight plan and bypassed Ascension altogether. This was not the first time Ascension had been missed off an official's itinerary. During the tenure of the first Island Council, not one official government representative of any standing visited Ascension for the purpose of meeting with island representatives. Some were encouraged when using the island as a staging post en route to the Falkland Islands or St Helena to take some time to meet the council but no trips were ever arranged for the express purpose of working with the council. During the second Council's tenure it became de rigeur to send officials out shortly before they moved onto other departments, which certainly led to suspicion as to how seriously the FCO took the democratic process on Ascension Island.

23. Finally after more than 12 months of silence a group of Overseas Territories officials visited for a two day summit with Councillors. Even this was dismissive of the local representatives. A request to the delegation that if possible one of the days could be a weekend to allow for maximum attendance of councillors was flatly refused on the grounds that FCO staff do not work weekends. Then when the officials did arrive half a day was taken up by sight seeing and the first evening was an FCO only dinner at the Residency to which no local representatives were invited. In this way valuable time for discussion was lost and meetings became more charged due to the added pressure to accomplish everything in a short time. All Councillors held other full time employment and generally gave up free time to perform council duties for no remuneration. In actuality, attendance by Councillors at various seminars and Overseas Territories Councils (OTCC, Economic Development ?? for example) entailed Councillors using up personal leave entitlements and subsidising some of the costs themselves.

24. The result was the meeting was brought to a premature end when the head of the FCO delegation, Hugh Philpott, made it clear that whilst there was no intention to return Ascension to a Company Town, at least not publically, there was to be no development in any other area thus condemning the island to a state of limbo. He was dismissive of the councillors and their efforts and wanted to minimise the level at which they could operate.

25. Subsequently the majority of the Councillors (five out of six) resigned in the next few days (one had resigned a week earlier in frustration as he could not obtain leave from work to attend the meetings and was left with no way to participate). It was clear that effective representation had been nullified. The governor called a General Election but only two candidates came forward due to the whole island realising the futility of the process. There being no elected body the Governor then appointed people to form an Advisory Body. Most of the invited persons are the Senior Managers of the main User companies, a definite hark back to Company Town days. The Advisory Body meets in secret. No minutes are published and no information is released to the public as to the issues discussed or outcomes of the discussions.

26. There was no movement from either the Governor or Administrator to engage with the taxpayers for almost six months except for an announcement that a council may be considered again in 12 months time. Meanwhile the workers of Ascension were expected to be content with a dictatorship.

27. Eventually the Governor, whilst transiting from St Helena, held a public meeting on Ascension Island. However the purpose of the meeting was to allow trainers that had been on St Helena the opportunity to give a presentation on politics. There was virtually no notice given and many people on island were unaware that the meeting was taking place. The few that did go requested that the Governor take back the message to the FCO that the residents on Ascension still wanted to have a dialogue with the UK and to move on. However this could not be achieved when local officials were uncommunicative and if there is to be no flexibility in approach. The Governor agreed at the meeting that the current Advisory Body set up was not democratic.

28. The FCO's handling of Ascension Island since 2000 has been shameless and unprofessional. There has been no clarity of purpose or effective communication. The elected Council has been used to legitimise an illegitimate system that has never been a true democracy and, it seems, was never intended to be. The hypocrisy of the FCO and HMG has left the taxpayers of Ascension disenfranchised, disillusioned and disgusted with UK government tactics. It has also set the framework for future problems as more people become unsettled and leave and employers are faced with increasing recruitment problems. Also by stagnating Ascension's economy the burden to replace and improve the outdated infrastructure will increasingly fall to the workers rather than the employers or the UK yet they will have no stake in the future of the island. It is inconceivable and undeniably sad that Britain in the 21st century has allowed one of her Overseas Territories to be denied basic democratic freedoms, and taxation without representation.

29. In conclusion we ask that the following recommendations be considered. That democracy be immediately instigated on Ascension Island. Clear commitment by the FCO to facilitate democracy and to engage in meaningful and productive dialogue with the people of Ascension Island and their elected representatives, perhaps with the assistance of professional mediators if necessary.

30. A brief history of key dates is contained in appendix 1.

31. A freehold agreement is contained in appendix 2.<sup>84</sup> The owner has asked that his name being blanked at this time. Special attention should be drawn to sub-para (g) in which provision is made for future onward sale of the property indicating a clear policy of private sale of property and/or land.

#### ASCENSION ISLAND TIMELINE

May 1997	: Users pull out of Government indicating that they will concentrate on core business and no longer want to be involved with management of the island and its infrastructure.
June 1999	: White paper <i>Partnership for Progress and Prosperity in the Overseas Territories</i> published by Robin Cook.
April 1999	: HMG produces <i>Ascension Into The New Millennium—a Public Consultation Paper</i> .
July 2000	: Portsmouth Report suggests Right of Abode as viable way forward.
July 2001	: Ascension Island Commercial Services initiates the selling of businesses.
September 2001	: UK OT Environment Charter signed by Ascension representative.
July 2002	: Steering Group Formed to canvass public opinion on appropriate Government model.
April 2002	: Taxation introduced.
August 2002	: Referendum on preferred Government Model—98% in favour of Ascension model of Island Council that has fiscal control and non-voting rights for appointed members.
October 2002	: Island Council (Ascension) Ordinance Enacted, 4 October.
November 2002	: First Island Council elected.
September 2003	: Michael Bradley on island from 22 to 27 September to draft immigration and belonger status legislation.
November 2003	: Bill Rammell (Head of OT) visits the island and <i>Strategic Plan</i> presented to him (Letter of acknowledgement dated 7 April 2004).
December 2003	: Wideawake Agreement concerning the use of the Airfield by Civil Aircraft presented to Parliament.
December 2004	: FCO host meeting to gather expressions of interest for Fisheries.
January 2005	: Attorney General gives timetable for Land Tenure and Right of Abode Legislation.
October 2005	: Councillor Henry at OTTC told by Lord Triesman there will be no U-turn. (Lord Triesman had sent a letter out on 3 October 2005 re Good Governance).
October 2005	: The Oxford Policy Management (OPM) Economic Study of Ascension published, 10 October.
November 2005	: Second Island Council elected, 18 November.

<sup>84</sup> Not published.

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- November 2005 : U-turn decision by OT Minister conveyed by Tony Crombie (FCO) on 30 November.
- December 2005 : FCO refuses to fund Fisheries Research Project after tenders had been sought to undertake the desk study—conveyed at Council meeting 15 December.
- January 2006 : Lord Trieman writes to councillors stating there will be no right of abode on Ascension Island.
- January 2006 : Councillors request advice regarding funding for legal advice regarding right of abode.
- February 2006 : Open letter to Lord Triesman from Ascension Elected Members expressing their disappointment.
- April 2006 : Denise Holt responds denying all knowledge of the Strategic Plan presented to Bill Rammell.
- August 2006 : Frank Savage visit (FCO OT Advisor).
- November 2006 : Councillor Yon attends OTTC.
- February 2007 : The Ascension Island Fisheries Report (paid for by AIG) received. Recommends management of Ascension Island’s waters.
- March 2007 : Majority of councillors resign following meeting with FCO delegates headed by Hugh Philpott.
- May 2007 : Lack of nominees for new council signifies the collapse of Britain’s youngest democracy.
- June 2007 : Pre-selected residents are invited by the Governor to form the Island Advisory Group.
- September 2007 : Public meeting with UK National School of Government. Governor once again informed that Ascension Island taxpayers were unhappy with the lack of democracy and lack of any real effort by FCO to redress this.
- To Present : No contact from FCO concerning collapse of the Council and restoration of democracy.

*12 October 2007*

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#### **Submission from Benjamin Roberts, Turks and Caicos Islands**

By way of introduction I am Benjamin Roberts, born, bred, and educated in Turks & Caicos. As to my citizenship. I possess legal documents showing that on 15th September 1975 I was a British Subject: Citizen of the United Kingdom and Colonies. A decade later in 1985, unbeknownst to me, I was categorized as a British Dependent Territories Citizen. This was in the wake of your then Prime Minister, Margaret Thatcher, overhauling British Immigration and citizenship laws to ensure against a flood of your British citizens from your Chinese colony of Hong Kong, piling up on your shores, as the handover of the territory to China was approaching. Then years later your government decided to offer British citizenship to the people of Turks & Caicos. In this chronology I was first a citizen, then not a citizen, and now am being offered the “privilege” of being a citizen once again. What a joke! It is the equivalent of offering me something that was mine in the first place. No thanks. It is an insult. But I digress. Back to the matter at hand. This document is my submission to a request by your government and its Foreign and Commonwealth Office for input on how you are carrying out your responsibilities in the Overseas Territories. You want feedback on human rights issues, the application of international treaties and conventions, grading of the standards of governance and the role of the of the Governor, and feedback related to matters of regulation of the financial sector and transparency and accountability in this area, along with the relation between the TCI and your British Government. Wow! At this point I take a giant deep breath as I launch into what I have to say, because this could take a while. Here we go:

1. One of the glaring things one notices right away in Turks & Caicos is the debilitating havoc immigration is having on the Islands. They are coming from everywhere. From next door in Haiti, the Dominican Republic, Bahamas, Jamaica, and the wider region of the Eastern Caribbean and South American mainland. Some are legal, but legions are not. Just a few days ago my father and his churchgoing fellow worshippers let out from Sunday morning mass to be greeted to the spectacle of a Haitian sloop under full sail plowing into the western white sand beach of our serene island of Grand Turk, with an estimated cargo of about 200 souls. On hitting land there was a jailbreak. To date there have only been about 20 caught. And this is within weeks of a high ranking Haitian government diplomat having talks with T&C government on stemming the tide of this illegal immigration. This, and all similar immigration episodes (and there are many) is pathetic and destructive to T&C society, and I throw the matter right at the feet of the British Govt. Britain has for centuries been a major naval power. With T&C as one of your territories that international conventions require you to protect and ensure external defense and security, I would like someone to explain to me why you are unable to provide a few coastal patrols that would put an end to this



in no time, especially considering that you have naval assets a stone's throw away in the British Virgin Islands. In this matter the British are like Roman Emperor Nero, fiddling while Rome burns. For this I give you a failing grade.

2. If illegal immigration is a problem then legal immigration is just as bad. I have been informed that we now have a situation where Immigration officials can be found at the airport in Provo admitting newcomers with no entry documents, especially children, and charging those receiving them a hefty fee that never sees the Treasury doors. Imagine what a burden this is having on our school system. It is common knowledge that many government Departments, and especially that of Immigration and Customs, are multi-lane highways of corruption. This is not good if we want to have anything left for our people. Open the pages of various T&C local newspapers, and you will see in the Classified section an area titled *Belongerships*. It is a public notice section that lists those granted belongerships. In earlier times this usually took up half a page. Now, however, the paper I have in my hand as I write has two pages of such notices. Out of respect and privacy, I will omit the name of the individual, but here is how one reads:

PUBLIC NOTICE

BELONGER STATUS APPLICATION

(Section 3 (5) of the Immigration Ordinance)

“Take Notice that I, Richard Tauwhare, Governor of Turks & Caicos in exercise of the powers conferred on me by section 3(4) of the Immigration Ordinance intend to grant a certificate of Belonger Status to . . . . . of Providenciales, a national of Haiti, being satisfied that she has made an outstanding contribution to the economic and social development of the Turks & Caicos Islands. Anyone having objection to Mrs . . . . . being granted Belonger Status should submit their objections in writing to the Minister of Home Affairs & Public Safety, Government Compound, Grand Turk.” RICHARD TAUWHARE

Some observations immediately come to mind here. How is it that we have a man not indigenous to our area, who represents the interests of the Queen and Crown, doling out Belongership, a birthright of our people, at such alarming rates? Should he not be giving out British citizenships? This looks very bad. Another observation on this is that many of those granted the Belongerships, including this individual, come from economically and socially depressed parts of the world. Yet the grounds for their being granted Belongership is stated in the notice as their having “made an outstanding contribution to the economic and social development of the Turks & Caicos Islands.” How is this possible? The final two observations in this debacle is that the notice has no cutoff time for the objections to be sent, and requires that the objections be in writing. So by the time an objector sends his objections the time might have passed. Moreover, the objector might not be able to read and write, but might have grave reservations about the applicant. This state of affairs is pathetic.

Now onto another pathetic state of affairs in the same arena of immigration. Last week outside the Seven Stars Hotel development project in Providenciales was a group of Chinese migrant workers on strike. I passed by them various times. They were there from sun up to sunset in rain or shine. Literally! At one time they were standing there with our tropical sun beating down on them. On another drive-by the rain was falling and they were seen huddled under plastic and tarpaulin. What a spectacle! Reports are that they were on strike because they had not been paid for months. If that is so their human rights are being violated. But this event shows the folly of poorly thought out Immigration policies. We haul people from across the other side of the world to build and keep our tourist development going, and then they demonstrate right outside that project that is supposed to be fueling our economy for years to come. Not a good sight for the incoming tourist thrilled to spend his or her money on what we have to offer. In the wake of this, leader Mike Misick just signed a document bringing in 800 new migrant workers for another project. Who has given him and his government authorization to do this? Has the matter been debated and agreed to by the Legislature of T&C? Has impact studies been done to determine the effects said migration will have on the social, economic, education, financial, and healthcare systems of our fledgling society? In summation on the immigration matter, I will say that years ago your British Govt commissioned something called the Kairi Report, which was a blueprint of suggestions of where T&C should go in its march to progress. One conclusion was that T&C, in its development march, should be making more use of its citizens who had migrated abroad for taking up positions in skilled and semi-skilled areas. This has not been done. There is no linkage between that overseas population and the hiring agencies of the government and private enterprise. T&C citizens living abroad have for many decades not been allowed to vote, and thereby direct their attention and energies to their homeland. To qualify they must have spent 12 out of 24 months resident in the Islands, while British citizens abroad are free to vote in their elections with no such restrictions. Instead we are flooding the country with illegal immigrants, port of entry visa payoffs, government officials signing documents allowing in waves of migrants, and an overseeing authority granting Belongership privileges without rhyme or reason. This is poor performance on the part of your Government and the local T&C Government.

3. As things stand now, there is a gross lack of accountability on the part of elected leaders, appointed officials, and regular government employees. The fountain of scandals of corruption and abuse of power attest to this. In a recent incident there was an altercation between leader Mike Misick and an Opposition member, in which there was allegations of assault by Misick and his team, and illegal confiscation of property belonging to a member of the Opposition group. The Attorney General was asked by our law

enforcement authorities to rule on whether the matter called for charges being filed or being heard in court. His response amounted to the most colossal bunch of ignorance I have heard in a long time. He thought no charges were warranted because the evidence was not credible. The evidence was not credible when present at the incident was a current police officer and a former police officer. He also said that he considered charging both groups, but decided against this because the injured party would suffer unfair injustice. Are we dealing with cutting edge legal scholarship here? I am not a lawyer, but does this not mean that the truly injured party has been denied justice? Moreover, this punt the ball decision sends a clear message to elected officials, and the average citizen, but most especially the former, that you can get away with anything. There is a post in T&C govt of Complaints Commissioner. In its pure form it is potent and geared to ensure against corruption, abuse of power, and human rights violations by those in power. It has been so watered down by successive local government administrations, by the selection process, and I daresay by your Government. Had this post over the years been allowed to flourish with the powers assigned and personalities capable of making it a force to be reckoned with, we would not have these problems of political corruption and abuse prevalent today in T&C. As a case in point. I recently spoke with someone who did nothing more than send out a mass email informing and encouraging T&C Islanders to get their comments in to your Government and FCO and express themselves in any way they can. I applauded her on her civic action. However, she reported incurring the displeasure of a Government official for doing this, and in our phone contact she was cautious and careful, moving to another extension that she felt was safe to talk to me from. I was alarmed by this climate of fear of reprisal that now seems to pervade T&C. This was not the case not too long ago. For this deterioration in our society's sense of security and freedom of expression I fault past, and especially present, local governments, along with your British Government.

4. Despite bullhorn pronouncements by current T&C government officials that things are “Bigger and Better,” to “Don't Stop the Progress”, and that “Turks & Caicos is for Turks & Caicos Islanders First,” (see my local newspaper series on this very topic) the contrary is more visible. Speak with the small business man in the country. Most are doing worse now in this supposed boom than when the country was not moving very much. I spoke with a well known such businessman. He outlined quite clearly what a disastrous period his grocery store business was going through. It is quite evident. All one has to do is sit at this place of business for a little while. Where there was once a constant flow of customers in and out of the store, now there is hardly a trickle for this business, whose profits in earlier times allowed this man to send more than a few of his children away for university education. He is not alone. Other once prosperous small business people are suffering in the same fashion. This state of affairs is due to many things, but one of the main reasons is the illegal immigration and corruption that is fueling an underground economy which is taking a heavy toll on his, and other similar businesses. Hence our local government shortsighted and corrupt immigration policies, and your Emperor Nero couldn't-care-less policy of not securing our borders is transforming our once prosperous citizenry into a nation of have nots. Not a good recipe for progress and social order in Turks & Caicos.

5. In Turks & Caicos there seems to be, in a short space of time, an alarming decline in the democratic processes that ensures rights of free speech and political expression. This decline seems to be closely connected to prevalent greed, power hungry, and conflict of interest behaviour displayed by the elected officials in power. Here is a case in point. Recently, a T&C Islander with majority shares in the only TV station of note was sacked and ousted from his position. By his account this action occurred when he offered to buy the shares of his foreign partners. Now they were operating from his license. The Minister having to do with this matter came out and said that no new license would be issued, and that the station would continue operation because T&C could not afford to lose this valuable form of communication. While I do agree on the value of the station to the life of T&C, I question the first part of the statement about no new license being issued. If the man has been sacked and removed from partnership that must mean that his license, that legitimized operation of the station by requiring that the majority of the shares be locally owned, is no longer valid. Simply put, the station is operating illegally, since no new license was to be issued. Unless another T&C Islander was granted a license. I am told that the ousted T&C Islander was hardly out of the building before a niece and nephew of Mike Misick, leader of the government, was at the facility involved in day to day operations of the station. Were they granted a license for the station? I have been recently informed that the wife of the leader of government is now the actual owner of the TV station in the wake of the ousting of the T&C citizen. If any of this is true and any of these family members connected to Misick, or any of his business partners, have any financial, managerial, or ownership stake in this TV station, it should be voided promptly. Allowing such a thing would be a dangerous state of affairs. Misick, in his Ministerial duties already has the portfolio of Communications in his grab bag. To allow him, a family member, or business partner, influence in the lone private communications TV media outlet would be a gross conflict of interest, that could seriously endanger democracy by stifling freedom of speech and expression. This matter is of national importance that needs to be investigated now. One might observe that though most of the points outlined are factual on-the-ground observations, some are speculation and hearsay. The reason for this is that there is virtually no requirement of disclosure on the part of our elected and appointed officials. One day a person might be a regular citizen with a penny in his pocket, and within months in public office he or she has morphed into someone with untold wealth in priceless houses, apartments on rent, the latest model cars, owners of acres and acres of Crown Land, and children in college, not on scholarship or loans, but exclusively out of pocket. This state of affairs is crying out for a more vibrant office of Complaints Commissioner in the long run, and a Commission of Inquiry in the short run.

6. It is quite evident that there is much more to be said on this matter. This is my personal submission to your request for information. I am part of a loose knit fledgling non-governmental organization (NGO), whose paramount aim it is to advance the interest of the people of Turks & Caicos. As a group we represent no political party, though individually we have our own political sympathies. We have considered sending these and other matters for redress to the United Nations agency having to do with Decolonization. However, we welcome your request for input on issues that we consider very important to the progress of our home, and think it is long overdue. We do not wish that your government insert itself into the day to day affairs of T&C by taking such measures as suspending the Constitution for the sole purpose of hand-picking your people to oversee our Islands, as rumors are flying to the effect that such is your intention. This would be a backward step, and an indication that your Government and FCO is doing a poor job in overseeing the territory of Turks & Caicos. A serious Commission of Inquiry is in order. If the outcome of this calls for a caretaker government to be put in place our citizens need to be fully informed of it in town meetings and other fora. In this way THEY can have serious input in choosing the best, brightest, and most principled of their citizens suited to oversee matters in the interim, while we shore up institutions that guard against financial and political corruption, human rights violations, abuse of power, and conflicts of interest, while guaranteeing law and order, free speech, personal liberty, and an enhanced quality of life as we move down the road to the progress we wish for. In your request for information you wanted to know if the respondent wished to remain anonymous, and whether they wanted, and were prepared, to add oral comments to their written submission. I have no need to remain anonymous, so you can freely make available my point of view in any manner you choose. I would also like to follow up this submission with oral comments, since there is much more that I wish to say. At the present time there seems to be a significant lack of awareness by T&C Islanders on this opportunity to express their point of view in this forum. This might partly be due to their not prioritizing the need to stay informed, and partly due to various of their leaders and sympathetic news media making an effort to limit the response provided to this call for comments and opinions. That being the case I humbly request that, if at all possible, you extend the comment period to a later date to allow for more awareness on the part of the responders, which will translate into a richer catch of comments for you to draw from. Thank you, and I look forward to a response from you.

12 October 2007

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**Submission from Mr Albert A Poggio, Government of Gibraltar's United Kingdom Representative**

I write in response to the call for evidence for the Foreign Affairs Committee Inquiry into the Overseas Territories.

Although I am the Government of Gibraltar's UK Representative I would ask the Committee to note that I make this submission in a personal capacity. This is based on my twenty years experience of representing Gibraltar and in particular with its representation to political audiences—a vital role given the sovereignty dispute with Spain and the various political proposals the UK Government has made in relation to that.

The focus of my evidence is on the representation and status of the Overseas Territories in the UK and in particular recognition of that.

**1. REPRESENTATION ON REMEMBRANCE SUNDAY AT THE CENOTAPH**

Gibraltar has been of strategic value for the UK for hundreds of years. However, during World War II it played perhaps one of its most crucial roles. Despite the evacuation of its civilian population, many Gibraltarians were killed fighting with or supporting the thousands of allied forces based there on land or at sea as a last defence against Hitler. Gibraltar also played host to the Churchill/Eisenhower meeting to plan the North African landings and gave the allies not only territory but a vital strategic advantage from which to defend Malta. Indeed, many military historians have made the point that without Gibraltar, Malta would have fallen which would have, most likely, led to a very different outcome in North Africa.

The people of Gibraltar made many sacrifices during the war and they believe strongly that there should be the opportunity for Gibraltar to place a wreath at the Cenotaph in the same way that many organisations in the UK do. We appreciate that the Foreign Secretary has undertaken this task on our behalf since the war, but believe that the powers in our new Constitution, which gives almost full autonomy to the Government of Gibraltar in the area of external affairs, should be reflected in our undertaking this important and symbolic task on our own behalf.

## 2. ACCESS TO THE PALACE OF WESTMINSTER

One issue which hinders the work of the UK representatives of the Overseas Territories is the lack of automatic access to the Palace of Westminster. We recognise that passes are limited for security reasons. However, Westminster, is the sovereign Parliament for the Overseas Territories and as representatives of the Overseas Territories, I believe that UKOTA Representatives should also receive a pass. The representatives are appointed by their governments and very limited in number—therefore creating no issue for either security or in terms of numbers. Given that Westminster is the Sovereign Parliament for the Overseas Territories and members of both Houses have responsibility for speaking on Overseas Territories matters I feel that UKOTA Representatives should be treated in the same way as a UK Government Department and given automatic access to enable them to speak to Members of Parliament.

## 3. COMMONWEALTH HEADS OF GOVERNMENT MEETING (CHOGM)

The Overseas Territories play an active role in the Commonwealth and attend many international and regional meetings. It therefore seems a strange anachronism that they are represented at CHOGM by the Secretary of State for Foreign Affairs. We recognise that it is the responsibility of the Commonwealth Heads of Government to issue such invitations. However, we believe that support from the UK would lend us great weight in making our case. Many of the new Constitutions that many of the Territories have or are in discussions on give greater autonomy to locally elected Governments. It would seem to be appropriate timing to make the case for the UK to support the attendance of Overseas Territories' political leaders at CHOGM.

## 4. REPRESENTATIVES OF THE OVERSEAS TERRITORIES IN THE UK

The Representatives of the Overseas Territories play a crucial role in terms of positioning the Territories in the UK. However, their status can be uncertain and their title "Representative" does not truly describe their role. They are much more than a Representative—they are advocates for their Territories, a source of information for the British public and a point of call for citizens of the Territories in the UK. In all these ways they act as an Embassy or High Commission would. I therefore believe that they should be accorded an improved status in the UK for which the title of "Commissioner" would be more appropriate.

I hope that the Committee finds my comments useful. The UK representation of the Overseas Territories and the status of the Territories in the international arena have both gained increased status and maturity over the past few years. I believe that this should be recognised in the ways I have suggested above.

If it would assist the Committee I would be happy to be called to give oral evidence.

12 October 2007

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### Submission from Kari Boye Young, Pitcairn Island

My name is Kari Boye Young. I am a resident of Pitcairn Island in the Pacific, one of your Overseas Territories, and would like to inform you of the situation on the island, as well as ask for assistance to spread information and political awareness here. I am not a member of Council, only a private citizen, but I am concerned about the lack of initiative and involvement of the people on crucial issues.

Our community of about 50 inhabitants is at the moment in the process of acquainting ourselves with the White Paper—"partnership in progress and prosperity". Though released in 1999, it has never been the object of information, education, discussion and workshop activities on the island till a couple of months ago. Thanks to Internet research we have had confirmed that the other Overseas Territories have already spent years going through the process of deciding their political future according to UN article 73 for non-self-governing territories, by consulting with HMG, discussing and problem-solving, their Human Rights already a part of their constitution.

Pitcairn has been completely uninformed and ignorant of these matters, though on the FCO web page it says that

"In order to identify key human rights concerns and priorities and to make recommendations on the way forward, the consultants held a series of workshops and meetings throughout the territories involving politicians, officials, religious and community leaders, the private sector and the general public".

No FCO or DFID consultants ever came here to focus on anything but the criminal proceedings of Operation Unique and its aftermath. We did not know till the Pitcairn Supreme Court decision in Auckland that Pitcairn got no Human Rights, unchallenged when deputy prosecutor Christine Gordon stated this fact, stripping the defendants of their human rights, the legal counsel of their own choice, trial by a jury of peers.

In [www.publications.parliament.uk](http://www.publications.parliament.uk) we read from 29th March 2004 that

“In respect of Pitcairn, to date human rights provisions have been taken as forming part of the territory’s law. The possible application of the UK Human Rights Act to Pitcairn is currently one of the issues before the Pitcairn Supreme Court, but no decision on the matter has yet been made”.

According to the FCO website Pitcairn is the only one of your overseas territories for which you have not ratified the European Convention of Human Rights, and nobody has explained why.

In May this year the Pitcairn Commissioner, Mr Jaques, usually head of the Pitcairn Office in Auckland, New Zealand, came here to reside for three months, and announced that he and a newly returned Pitcairn woman were writing a local Human Rights charter for the island as well as a new charter/constitution. The people demanded consultation, volunteers provided information on various Human Rights charters, and in a public workshop it was decided to adopt the EHCR.

The locally written “constitution” was then presented by Mr Jaques to our Council in a closed meeting, unprecedented for a public issue (open, transparent and accountable government?) and Council referred it to a public meeting. Members of the community consulted overseas constitutional lawyers personally and were told it was “at best a collection of ideas”.. Our constitution of 1970 was not touched upon at all, the White Paper barely referred to. On the front page was the caption “Or, this may be the last generation”, which we perceived as negative and threatening.

The UN General Assembly has declared that

“It is ultimately for those people to determine freely their future political status, and in that connection we call upon the administering powers in cooperation with the territorial Governments, to facilitate education programs in the territories to foster awareness of the right to self-determination, which is also a fundamental human right. (GA/SPD/238)”

A modernised constitution would require consultation, but first of all some political awakening on our island. We would need to look at the Governor’s role, he has the legislative, the judicial and the executive power, and the right of veto to anything the Council decides, and if that is to continue, there will be no empowerment of the local Council, no steps toward self-determination. Mr Jaques suggested a new 12 member Council, all with voting rights, including the Commissioner himself, the residing Governor’s Representative and two other members appointed by the Governor. The present Council has 10 members, and only the eight elected members have voting rights.

We are not at all sure these are steps toward self-determination. It was agreed in the public meeting that none of us know enough about the issues, eg White Paper, UN regulations article 73 and related documents, the options open to us (independence, integration, free association), the possibilities and feasibilities for Pitcairn, and the consequences. Mr Jaques did not profess to be a lawyer with experience in setting up constitutions, and the community felt it could not agree to the Commissioner’s charter/constitution, without being able to collect information on all issues involved, by consulting with “outside” professionals. Our mayor in 2001 was made aware of the White Paper, called public meetings and sent letters to the Governor’s office asking for information and help to the people in the decision-making, but received no response.

Pitcairn has through all times been a very non-assertive colony/dependent territory/overseas territory, isolated from the world and from world opinions. On the few occasions when we were consulted in the past, we either agreed with the officials, realising we didn’t know enough about politics and Commonwealth relationships and our own rights, or we disagreed, especially on legislation issues, but were overruled by the Governor’s veto anyway. Pitcairners have been deeply suspicious and distrustful of the authorities ever since, and with every single family on the island involved in some way in the Pitcairn Trials 2004, four homes left struggling on without the main breadwinner, the trauma is deep indeed. Some people are not willing to “move forward” with Mr Jaques until all the imprisoned men are home with their families, and others are still too traumatised to make huge decisions for the future.

Pitcairn needs time to work through the grief and distrust,—the constitution issue ought not to be pushed. It is not Pitcairn’s fault that we have lagged behind in this process, though we realise that FCO and UN both would like us to catch up as rapidly as possible.

We need the political information and education which was promised **all** overseas territories. The UN Special Committee of 24 in 2003 presented a ten point action plan on Self-Determination, designed to be carried out in four stages, public education and dissemination of information were highlighted as critical to the process. The local colonial authorities indicated that people here do not have the capacity, if time and money and expertise was invested in bringing representatives from UK, DFID or preferably UN here to run workshops for the benefit of our political education. I do agree people here have little political experience, but that is through no fault of our own, and that fact should encourage rather than discourage the authorities to invest in political education programmes, which UK committed itself to in UN resolution 1541 of 1960 and UN resolution 2625 of 1970.

At the same seminar in 2003, Mr Osborne of FCO assured delegates that

“the UK Government would permit the UN Special Committee to carry out public education programmes in the OTs regarding the options specified under the UN Charter”.

Baroness Scotland at an Overseas Territories conference in Wilton Park declared:

“There must be full consideration and consultation across political parties, and the community as a whole, as well as with HMG . . .”

A UN press release (GA/COL/3096) from a decolonisation seminar in May 2004 reads

“In his statement, the representative for Pitcairn said the people of the Territory still did not fully understand all the possibilities or the significance of the various political futures that might be available to them. It appealed to the Committee for support and understanding”

At that time, nobody on Pitcairn had been consulted on the subject, as the Pitcairn Trials were right around the corner. We also do not know who was representing Pitcairn at the meetings of C24 and the Overseas Territories Consultative Council, neither can any of the local Council members remember hearing about these meetings, much less reading the reports. None of our people have ever been invited to attend a UN or FCO meeting/seminar, but three Pitcairners have in the past attended UN seminars on their own initiative and at their own expense.

Though we are few, and most of us not used to expressing ourselves, not even used to having an opinion, we do ask that Pitcairn too will get the help it needs, not to be forever on Budgetary Aid, but made able to understand how to manage on our own, to make decisions for ourselves.

14 October 2007

#### **Submission from the UK Overseas Territories Conservation Forum (UKOTCF)**

*The UK Overseas Territories Conservation Forum, hereafter “the Forum” or “UKOTCF”, promotes the conservation of species, habitats and ecosystem services in the UK’s Overseas Territories (UKOTs) and their contribution to the welfare of the people of the UKOTs. Its 33 member and associate member organizations include leading environmental bodies in the UK, in the UKOTs, and in the Crown Dependencies. The last named, the Channel Islands and the Isle of Man, share with the UKOTs many special features of the biodiversity and governance of small non-sovereign island territories. These include relying on HMG to represent their interests internationally and in multilateral environmental agreements (MEAs) and negotiations.*

*The Forum draws on the expertise of its members and network of specialists (mainly working in a voluntary capacity) to provide advice and encouragement to HMG, UKOT governments and non-governmental organizations, companies and other stakeholders in the rich—but often undervalued—natural heritage of the UKOTs.*

The submission first considers the relationship between governance, sustainable resource management and the long-term environmental, social and economic security of the UK Overseas Territories (Section 1). It then elaborates on specific areas of concern highlighted by the “call for evidence” (Section 2).

#### **SECTION 1: THE RELATIONSHIP BETWEEN GOVERNANCE, SUSTAINABLE RESOURCE MANAGEMENT AND ECONOMIC SECURITY IN THE UKOTs**

1. The UKOTs are mainly small fragile islands and archipelagos with a wide range of marine and terrestrial habitats and a high proportion of endemic species (more than ten times that of the British mainland). This biodiversity has a global significance and is an important local resource that underpins small, dispersed economies that are highly sensitive to external pressures.

2. Despite their vulnerability to the loss of biodiversity, the UKOTs lag behind metropolitan UK in terms of environmental protection (EC, 2006; 4.2.1), and as a result, they tend to suffer disproportionately from poorly regulated tourism, inappropriate development and unsustainable resource management. They are also particularly vulnerable to the effects of climate change and are likely to be the first indicator of its global effects (Hindmarch, 2007; p 80-81).

3. There is a growing recognition that economic security and human well being depend upon the sustainable management of biodiversity, and in turn on good governance (Smith, et al, 2003). This thinking has conditioned policy formulation throughout the European Union (EU, 2001; EC, 2006) and particularly in the UK (UKSDS, 2005), producing an increasingly effective panoply of instruments designed to protect the environment and sustain its economic potential.

4. With the exception of Gibraltar, where EU regulations apply, these measures do not fully extend to the UKOTs. This deprives them of adequate planning framework, making it difficult for biodiversity concerns to be integrated into the planning process (*sensu* Defra, 2007). Even valuable strategic initiatives such as the environment charters (Pienkowski, 2007) have faltered due to inadequate policy integration and follow-through (para 9, 15).

5. At a time when UKOTs are becoming increasingly exposed to perverse economic incentives that encourage large-scale development, particularly in the wider Caribbean, the absence of an adequate system of controls means that this development is often implemented without due strategic oversight. This militates against transparency (para 11), public involvement (para 16) and effective planning control (para 10) and contributes to changes that progressively impoverish and remove habitats and the services they provide (*sensu* POST, 2007) to traditional economic activities. They also draw down pressures for small-scale development that can evade scrutiny altogether, adding to a destructive urban creep that degrades the environment and imperils the long-term economic sustainability of the territories.

6. This lack of effective planning control has a number of related causes. These include:

- (a) The low political status of the territories is an underlying problem. UKOTs are “small, scattered sparsely populated and remote from centres of power; they hardly register politically except at times of conflict or disaster” (Hindmarch, 2007).
- (b) A confusing ambivalence over UKOT status on some issues. For example, whereas firm decisions have been made on issues relating to sexual offences (Hoffmann et al, 2006) and capital punishment, where the metropolitan UK government has effectively imposed its authority, the responsibility for environmental matters has largely been devolved to local administrations (para 10).
- (c) The outmoded systems of governance that exist in both the UK and UKOTs administrations involving muddled departmental responsibility and confusion over the role of Governors (para 15, 16).

7. These circumstances have produced policy gaps, missing budget lines, and weak and fragmentary communication links. They have also created insecurities over departmental responsibility (Hindmarch, 2007; p 82) as well as a recurring climate of uncertainty in both UK and UKOT administrations (para 10). All of which conspire to hobble policy delivery (para 9, 10, 11), compromise local initiative and frustrate the conservation efforts of NGO communities in the UK and the UKOTs (Hindmarch, 2007). These dysfunctional arrangements:

- (a) Infringe the human rights of UKOT communities by depriving them of the benefits of environmental protection, and thus the means of securing a sustainable future.
- (b) Prevent the establishment of overarching environmental and economic policies able to protect globally important habitats that are fragile and vulnerable to overuse, poor management and the uncertain effects of climate change.
- (c) Hamper the development of regional and thematic cooperation among the UKOTs and with the island territories of other European states.
- (d) Undermine the UK’s international reputation for protecting biodiversity (EC, 2006; 5.2.2).
- (e) Cast doubts on any claim the UK might have to promote “sustainable development and good world government” (EC, 2006; Para 2), particularly in the area of climate change (FCO, 2007).

#### A SUSTAINABLE FUTURE FOR THE UKOTs FOUNDED ON EFFECTIVE GOVERNANCE

8. Governance reforms might have the following elements:

- (a) Coordinate efforts of government departments at a high level in an effort to promote “joined up solutions” (UKSDS, 2005; p 9) and “good governance in overseas communities” (UKSDS, 2005; p 17). Mainstream the idea of sustainable development in the Civil Service (UKSDS, 2005; p 10). Develop a specialist unit in the FCO to oversee the implementation of environmental policy in the UKOTs and enable its staff to keep “up to date with policy” and “deliver UK priorities” (UKSDS, 2005; p 163). Link these reforms with a parallel streamlining within UKOT administrative systems.
- (b) Review arrangements for sustainable development in the UKOT along the lines of those available for the UK regions (UKSDS, 2005; p 60) with the aim of bringing the UKOTs, at least conceptually, within the ambit of the UK strategic planning framework (UKSDS, 2005; p 116).
- (c) Extend the resources of metropolitan UK and EU environmental policies and budget lines to the UKOTs and apply audit measures that ensure compliance to best practice in relation to such things as climate change (UKSDS, 2005; p 119).
- (d) Encourage the development of coherent regional spatial and economic policies in the UKOTs, together with the related systems of public involvement, planning control and enforcement.
- (e) Establish mechanisms for inter-regional cooperation (UKSDS, 2005; p 159) between UKOTs and integrate this with a wider EU approach on Community Overseas Territories as a whole (Hindmarch, 2007).

## SECTION 2: ELABORATION OF SPECIFIC AREAS OF CONCERN HIGHLIGHTED BY THE "CALL FOR EVIDENCE"

*Standards of governance in the UKOTs*

9. Environment Charters were agreed between the UK Government and 13 of the Overseas Territories in 2001. The UK Overseas Territories Conservation Forum, (with some earlier encouragement from the Governments and NGOs in UKOTs, Crown Dependencies and UK) developed over the last two years, and published, an independent analysis of progress in implementation of these (Pienkowski, 2007). The FCO indicated its anticipation of this in its supplementary evidence to the House of Commons Environmental Audit Committee this year (AC, 2007). However, the UK Government eventually felt unable to contribute information to this in respect of the delivery of its own commitments. The UK Government made no coherent attempt to monitor the performance of the territories or to review its own performance under the Charters until shortly after UKOTCF's report was published this year. Then UK Government circulated to UKOTs a request that they report on their performance and their current view of the Environment Charters. It is not known whether UK Government is undertaking also a review of the delivery of its own commitments.

10. The Foreign and Commonwealth Office (FCO) in practice treats the UKOT governments as though they are autonomous in respect of environmental conservation, without attempting to hold them to account for developmental decisions that undermine the territories' biodiversity and long-term economic viability as well as the international commitments into which UK Government enters, and is answerable for, on their behalf.

11. Too often, these decisions are taken without transparency or proper local consultation, with widespread local suspicions of corruption in the processes of land transfer, planning, approval and project management.

*The role of Governors and other office-holders appointed by or on the recommendation of the United Kingdom Government*

12. In most territories (with the notable exceptions of Bermuda and Gibraltar), Governors chair the Executive Council or Cabinet. Even where constitutionally required normally to accept the advice of the local Chief Minister and his elected colleagues, they are therefore in a unique position to monitor draft legislation and question, influence and, where appropriate, at least delay key policy decisions.

13. It follows that the FCO should ensure that Governors are fully briefed on conservation issues, require them to report on questionable developments within their territories, and encourage them to seek to influence local government policy and practice. Consistent with this, the FCO should use Governor's offices as the channel for communication with UKOT governments on environmental issues.

14. Until very recently, this channel of consultation was regular practice. There is now a regrettable tendency for the FCO to communicate mainly through UKOT representatives in London (where these exist), effectively leaving Governors and their staffs out of the loop.

*The work of the Overseas Territories Consultative Council (OTCCs)*

15. The Environment Charters were for the most part finally agreed and signed at the 2001 Overseas Territories Consultative Council. Since then, environmental issues have not had the attention they deserve at OTCCs. The FCO maintains that it is for the Chief Ministers to set the agenda, but has not hesitated to insist on discussion of other issues of higher priority for the UK Government. We believe that environmental conservation is of sufficient importance to be a standard agenda item at all OTCCs.

*Transparency and accountability in the Overseas Territories*

16. As indicated above, it is vital that there be transparent local procedures for reaching decisions that would have adverse implications for the environment. Although elected local governments are directly accountable to their electorates, the FCO should also place a clear responsibility on Governors to do whatever they can to strengthen procedures and to monitor and influence significant decisions. This is all the more so because not all UKOTs have developed a culture in which public debate is welcomed, and some UKOT (and therefore also UK) citizens are afraid to discuss matters which would be normal in domestic UK.



*The application of international treaties, conventions and other agreements to the Overseas Territories*

17. The UKOTs, rather than the British mainland, support most of the globally important biodiversity for which UK is responsible, and there are a number of international conventions reflecting this.

18. UKOTs are included in UK's ratification of such conventions, but only when the relevant UKOTs so agree. For example, all the UKOTs (except British Antarctic Territory where the Antarctic Treaty applies) are included in the Ramsar Convention on Wetlands, and most UKOTs the Bonn Convention on Migratory Species and the World Heritage Convention and the Convention on International Trade in Endangered Species.

19. UKOT sign-up to the Convention on Biological Diversity is lower than this, but most of those not yet included are moving towards inclusion in UK's ratification of this and the other conventions.

20. This lack of inclusion in international conventions mirrors the situation in other member states across the European Community, where most of the outermost regions and overseas countries and territories are "not covered by nature directives" (EC, 2006; para 4.2.1).

21. Implementing the requirements of the international conventions is central to the protection of biodiversity and thus of its economic and social functions. This reflected in the wording of the Environment Charters, because the fulfilling of these is closely linked to many of the other aspects noted throughout this submission.

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14 October 2007

## Submission from the Joint Nature Conservation Committee

### SUMMARY OF KEY POINTS

1. The biodiversity of the UK Overseas Territories is of global importance but is threatened by invasive species, climate change and the impacts of development

2. At the World Summit on Sustainable Development in 2002, governments adopted a target to achieve by 2010 a significant reduction in the current rate of loss of biological diversity. The UK has a responsibility to achieve this target within its entire territory, including its Overseas Territories. The Overseas Territories are also signatories to a number of multilateral environmental agreements.

3. If the UK is to meet its international commitments enhanced support for nature conservation in the Overseas Territories is a high priority. We make the following recommendations for achieving this:

- (i) the global importance of the Overseas Territories for biodiversity should be explicitly acknowledged in UK Government priorities;
- (ii) cross-departmental co-ordination and leadership should be improved, eg through the Inter-Departmental Ministerial Group on Biodiversity;
- (iii) increased funding for biodiversity conservation in the Overseas Territories is essential;
- (iv) a strategic approach should be adopted to nature conservation within the Overseas Territories, directing resources where they will have the greatest impact.

The Joint Nature Conservation Committee (JNCC) is the statutory adviser to Government on UK and international nature conservation, on behalf of the Council for Nature Conservation and the Countryside, the Countryside Council for Wales, Natural England and Scottish Natural Heritage. Its work contributes to maintaining and enriching biological diversity, conserving geological features and sustaining natural systems.

As part of its international responsibilities, JNCC has a locus to advise on nature conservation in the Overseas Territories. JNCC has adopted a high-level strategic objective to “promote measures that effectively protect and enhance biological and geological diversity in the UK Overseas Territories and Crown Dependencies”.

We welcome the opportunity to provide evidence to this inquiry on matters relevant to our statutory remit. Our submission is focused on the application of international environmental treaties, conventions and other agreements to the Overseas Territories.

### 1. THE IMPORTANCE OF THE UK OVERSEAS TERRITORIES FOR NATURE CONSERVATION

1.1 Despite the small size of most of the UK Overseas Territories they are of global importance for their biodiversity.

1.2 Of globally threatened species identified in the 2004 IUCN (World Conservation Union) Red List (updated in 2006), 80 critically endangered species occur in the Overseas Territories (compared to 10 in metropolitan UK), along with 73 endangered species (12 in metropolitan UK) and 158 vulnerable species (37 in metropolitan UK). Many of these species are endemic and so are found nowhere else in the world.

1.3 In addition to populations of globally threatened species, the Overseas Territories also hold regionally or globally important concentrations or assemblages of species. For example, Ascension Island supports the second largest green turtle rookery in the Atlantic; Gough Island (Tristan da Cunha) has been described as, arguably, the most important seabird island in the world; the south Atlantic Territories hold a substantial proportion of the world’s albatross populations; and the reefs of the Chagos Archipelago (British Indian Ocean Territory) are described as some of the most pristine and best protected in the Indian Ocean (and account for some 1.3% of the world resource).

1.4 The main threats to the biodiversity of the Overseas Territories are invasive species, climate change and the impacts of development.

1.5 The severity of these threats is indicated by the fact that there have been 39 recorded extinctions in the Overseas Territories, compared with only a single extinction from metropolitan UK. As noted in 1.2 above, there are significant numbers of highly threatened species in the Territories. It is likely that these figures are under-estimates, as new studies invariably report the occurrence of additional species or populations, especially amongst the less well-known taxa, such as invertebrates.

1.6 The Overseas Territories contain geological and geomorphological features, such as active volcanoes, glaciers and coral reefs, that are significant in a regional or global context, but there has been no comprehensive review of their geodiversity.

## 2. INTERNATIONAL ENVIRONMENTAL COMMITMENTS RELEVANT TO THE OVERSEAS TERRITORIES

2.1 At the World Summit on Sustainable Development in 2002, governments adopted a target to achieve by 2010 a significant reduction in the current rate of loss of biological diversity. The UK has a responsibility to achieve this target within its entire territory, including its Overseas Territories.

2.2 The Overseas Territories are signatories to a number of multilateral environmental agreements, including the Convention on Biological Diversity, the Convention on Migratory Species and the Convention on Trade in Endangered Species. Each of these agreements has associated objectives concerned with the protection of biodiversity. A list of Overseas Territories and the agreements to which they are signatories is provided at Annex 1.<sup>85</sup>

## 3. CURRENT ARRANGEMENTS FOR NATURE CONSERVATION WITHIN THE OVERSEAS TERRITORIES

3.1 The 1999 White Paper *Partnership for Progress and Prosperity: Britain and the Overseas Territories* contained a commitment to sustainable development in the Territories and to conserve, manage and protect their rich natural heritage. Part of the means to achieve this was by the drafting of Environment Charters, to be signed by the government of the UK and that of the relevant Territory, outlining the roles and responsibilities of each. To date, most of the Territories have signed an Environment Charter.

3.2 The Foreign and Commonwealth Office (FCO) has lead responsibility within UK Government for the Overseas Territories, and this is reflected in its Departmental Strategic Objective “ensuring the security and good governance of the UK’s Overseas Territories”. Several other departments, including the Department for Environment, Food and Rural Affairs (Defra), the Department for International Development (DFID) and the Ministry of Defence, have responsibilities for certain aspects of environmental protection in the Overseas Territories.

3.3 Each of the Territories is a self-governing entity and any nature conservation actions need to be undertaken with their full support and ownership of their governments.

3.4 JNCC is the statutory adviser to UK Government on nature conservation in the Overseas Territories. There is a range of relevant environmental non-governmental organisations (NGOs), based both in the UK and in the Territories themselves; the UK Overseas Territories Conservation Forum acts as an umbrella body for these NGOs. Other organisations with an interest in nature conservation in the Territories include the British Antarctic Survey, Royal Botanic Gardens Kew, and some university departments and specialists.

3.5 The primary funding mechanism for biodiversity conservation in the Overseas Territories is the Overseas Territories Environment Programme (OTEP), which is aimed at supporting the implementation of Environment Charters. It is managed and funded jointly by the FCO and DFID to the order of some £1 million annually. In the main, it supports small projects running for a period of up to three years. Applicants are typically Overseas Territory governments and NGOs, often in partnership with UK-based bodies.

## 4. RECOMMENDATIONS

4.1 If the UK is to meet its international commitments, and prevent further losses of biodiversity within its territory, enhanced support for nature conservation in the Overseas Territories is a high priority. We make the following recommendations for achieving this.

4.2 The global importance of the Overseas Territories for biodiversity should be explicitly acknowledged in UK Government priorities. For example, environmental measures should be a core component of FCO’s Departmental Strategic Objective relating to the Overseas Territories (see 3.2 above).

4.3 There needs to be better co-ordination of environmental initiatives within UK Government and also between the Overseas Territory governments. One mechanism for achieving co-ordination within UK Government is the Inter-Departmental Ministerial Group for Biodiversity (IDMGB), which comprises ministers with biodiversity responsibilities from Defra, DFID and FCO, and the chairman of JNCC. If this group is to be fully effective it needs to meet regularly and provide strong leadership and support for the Overseas Territory governments, encouraging partnerships and cross-Territory collaboration to maximise the effective use of limited resources.

4.4 The financial support provided to the Overseas Territories needs to be commensurate with the challenges that they face. Compared to the funding available in metropolitan UK to support biodiversity conservation and sustainable development more generally, funding for the Territories is much smaller in both absolute and relative terms, despite the global importance of the Territories for biodiversity. This shortfall in funding urgently needs to be addressed.

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<sup>85</sup> Ev 142.

4.5 It is important that a strategic approach is adopted to nature conservation within the Overseas Territories, directing resources where they will have the greatest impact. As a contribution towards this, the JNCC is currently drafting a report for the IDMGB, which will identify costed nature conservation priorities for the Overseas Territories.

4.6 We support the recommendations arising from two recent inquiries undertaken by the House of Commons Environmental Audit Committee (see Annex 2).<sup>86</sup>

*15 October 2007*

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<sup>86</sup> Ev 143.

**Annex 1. Overseas Territory signatories to multilateral environmental agreements**

	Anguilla	Bermuda	British Antarctic Territory	British Indian Ocean Territory	British Virgin Islands	Cayman Islands	Cyprus Sovereign Base Areas	Falkland Islands	Gibraltar	Montserrat	Pitcairn	Saint Helena (including dependencies)	South Georgia and South Sandwich Islands	Turks and Caicos
Convention on Biological Diversity					✓	✓			✓			✓		
Ramsar Convention on Wetlands	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓		✓
Convention on International Trade in Endangered Species		✓		✓	✓	✓		✓	✓	✓	✓	✓		
Convention on Migratory Species (CMS)		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
CMS Agreement on the Conservation of Albatrosses and Petrels			✓					✓					✓	
CMS EUROBATS Agreement									✓					
CMS Indian Ocean – South-East Asian Marine Turtle MOU				✓										
Cartagena Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region					✓	✓								✓
South Pacific Regional Environment Programme											✓			
London Convention on the Prevention of Marine Pollution		✓		✓	✓	✓	✓	✓		✓	✓	✓		✓
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal			✓											

SELECTED RECOMMENDATIONS FROM RECENT INQUIRIES BY THE HOUSE OF  
COMMONS ENVIRONMENTAL AUDIT COMMITTEE

THE UN MILLENNIUM ECOSYSTEM ASSESSMENT. FIRST REPORT OF SESSION 2006–07, 12 DECEMBER 2006

Paragraph 133 Considering the UKOTs lack of capacity, both financial and human, we find it distasteful that FCO and DFID stated that if UKOTs are “sufficiently committed” they should support environmental positions “from their own resources”. The continued threat of the extinction of around 240 species in the UKOTs is shameful. If the Government is to achieve the World Summit on Sustainable Development 2010 target to significantly reduce the rate of biodiversity loss within its entire territory, the Government must act decisively to prevent further loss of biodiversity in the UKOTs.

Paragraph 140 We welcome the DEFRA Minister’s recognition of the problems facing the UKOTs, and their lack of capacity to deal with the environmental challenges that they face. Given this and our international, not to mention moral, obligation to prevent biodiversity loss in the UKOTs, the Government must now move towards increased and more appropriate funding for conservation and ecosystem management there. The amount of resources required to undertake this work is miniscule in comparison to the environmental and social gains that would be expected. Such funding must be more long-term and strategic to enable the environmental capacity in the UKOTs to reach the levels required. DEFRA must be given joint responsibility for delivery of this.

TRADE, DEVELOPMENT AND THE ENVIRONMENT: THE ROLE OF THE FCO, FIFTH REPORT OF SESSION 2006–07, 15 MAY 2007

Paragraph 78 We welcome the fact that FCO and DFID have, in the short term, increased their financial support for better environmental management in the UKOTs, but we are concerned that this has not been undertaken on the basis of an analysis of need. Research by the RSPB suggests that even with this funding increase a considerable funding shortfall will remain in the UKOTs for biodiversity protection.

Paragraph 83 We are disturbed that witnesses have stressed to us that departments other than FCO and DFID do not provide the level of support to the UKOTs that is required. Although DEFRA does provide some direct and indirect support, the level of this does not fill the specialist environmental gaps that are apparent in the UKOTs. We recommend firstly that DEFRA be involved at the highest level in reviewing the Environment Charters. The Inter-Ministerial Working Group on Biodiversity should provide the focus for this review to ensure coordination between departments. It is necessary for this review to assess whether both the Government, and the governments of the UKOTs, have met their respective obligations under the Environment Charters and Multilateral Environmental Agreements. Secondly, DEFRA should be given joint responsibility towards the UKOTs. This should be reflected in an updated UK International Priority, to include environmental protection alongside security and good governance in the UKOTs. This will also have to be reflected in DEFRA’s Comprehensive Spending Review settlement. Finally, as part of the Environment Charter review, the case for larger and more routine funding must be explored. Given that the Treasury is currently conducting a spending review, it is imperative that this funding analysis feeds into, and influences, the Treasury’s ultimate decision as to spending allocations for FCO, DFID and DEFRA.

Paragraph 84 If the Government fails to address these issues it will run the risk of continued environmental decline and species extinctions in the UKOTs, ultimately causing the UK to fail in meeting its domestic and international environmental commitments. Failure to meet such commitments undermines the UK’s ability to influence the international community to take the strong action required for reversing environmental degradation in their own countries, and globally.

**Submission from Mr Barrington Williams Turks and Caicos Islands**

I wish to voice my concerns to the British Government on the current running of the dependant territory of the Turks & Caicos Islands in the British West Indies. It is deeply saddening when a country supposing to be a democratic colony of the United Kingdom of Great Britain takes delight in violating both the local and international laws. These laws have been put in place to ensure that ones individual rights are not

violated but that their rights are protected to the full extent of the law of the land and governing territories. However, this does not seem to be the case here in these “Beautiful by Nature” islands. I will list my concerns below with regards to the Government of the Turks & Caicos Islands:

- As a citizen of this country it is appalling for me to see how disgraceful the ministerial system of this present Progressive National Party whom I have supported have behaved as they pretend to be operating a lawful regime; it is an administration that is only interested in that of their immediate families and cronies.
- These “beautiful by nature” islands are now home to modern day slavery, the slaves have now become the slave masters. This is due to the fact that the expatriate communities such as the Chinese, Philippines, Mexican and other foreign nationals do not know the laws of this country, and are therefore taken advantage of. They are being paid way below the minimum wage of US\$5.00 an hour and have signed illegitimate contracts in their own native countries that are not in accordance with the Labour Ordinance 2004 of the Turks and Caicos Islands.
- There are foreign nationals that are being taken advantage of as they need to pay for their own housing (this is contrary to the Labour Ordinance 2004, Part VIII, 105 (2) It shall be the employer’s responsibility to find or provide suitable housing (proper conditions of health and comfort) for his employees who are required to obtain work permits under the Immigration Ordinance. Some of these expatriate workers are living in accommodation that is not up to standard, while others have to pay for their own accommodation. Some employees working for hotels such as Beaches Resort & Spa Turks and Caicos are not even being paid the minimum wage, not even an hourly rate, rather on a commission basis, which is contrary to the Labour Ordinance. The majority of the expatriate workers at Beaches have to pay for half of their work permits which happens to be contrary to the Labour Ordinance 2004 and the Immigration Ordinance. This law was ratified by the Supreme Court of the Turks & Caicos Island on 25 June 2007 where it was stipulated that according to the Labour Ordinance the Employer must pay for the entire work permit. Currently the International Labour Organisation, which these islands are a part, is investigating the treatment of workers on these islands.
- This current administration campaigned and assured their local indigenous race would be first with the growth and development process of the country, also that locals would be given fair opportunities to advance themselves and excel to higher height. This indeed was and still is a lie as foreign nationals are the ones who hold the key positions and there are hardly any places where locals are placed in key positions with the exception of those being paper local business partner/ shareholder of a company. Usually a stipulation of the work permit is that the person will train up a local to take over the position, however, this is generally not the case and it seems that the Labour Department turns a blind eye to this situation. It makes one wonder, do these corporate institutions have the various government departments in their pockets, so to speak.
- Intimidation and victimisation is much prevalent with this present administration; if you do not abide by this government standards such as a supporter of their party or comply with their policies then you are ill treated. It seems that if you do not support this government then when you try to get something done through the government, legitimately, there are delays, specifically such as if you are trying to get a liquor license for a restaurant and you will not bow to the appropriate minister. The premier whom I refer seems to be a “want to be” dictator like his good friend Hugo Chavez of Venezuela.

Racism is on the rise in the Turks and Caicos Islands especially on the “Private” island of Big Ambergris Cay but it is useless for one to fight this because the ministers seem to be deep in the pocket of the investors. The only hope, if one has the courage, he would take the matter before the Labour Tribunal in order to get some sort of justice.

In closing I have given a true statement with regards to the on going situation in the dependant territory of the Turks & Caicos Islands. I am optimistic that appropriate measures will be taken to stop the on going oppression and the abuse of human rights so that empowerment of the local indigenous will be taken into account with the growth and development process of these islands.

15 October 2007

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**Submitted by the FCO**

This memorandum is provided in response to an invitation from the Select Committee on Foreign Affairs to provide information on the exercise by the Foreign and Commonwealth Office of its responsibilities in relation to the Overseas Territories and the FCO’s achievements against Strategic Priority No 10, the security and good governance of the Overseas Territories.<sup>87</sup>

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<sup>87</sup> Annex A provides information on the exercise by the Ministry of Defence of its responsibilities in relation to the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus.

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## INTRODUCTION

1. The Terms of Reference given by the Select Committee on Foreign Affairs (FAC) for their inquiry on the Overseas Territories are as follows:

- Standards of governance in the Overseas Territories
- The role of Governors and other office-holders appointed by or on the recommendation of the United Kingdom Government
- The work of the Overseas Territories Consultative Council
- Transparency and accountability in the Overseas Territories
- Regulation of the financial sector in the Overseas Territories
- Procedures for amendment of the Constitutions of Overseas Territories
- The application of international treaties, conventions and other agreements to the Overseas Territories
- Human rights in the Overseas Territories
- Relations between the Overseas Territories and the United Kingdom Parliament

## OVERVIEW

2. There are 14 UK Overseas Territories (formerly known as Dependent Territories). They are Anguilla, Bermuda, the British Antarctic Territory, the British Indian Ocean Territory, the Virgin Islands (usually referred to as the “British Virgin Islands”), the Cayman Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, the Falkland Islands, Gibraltar, Montserrat, Pitcairn, St Helena and its dependencies (Ascension Island and Tristan da Cunha), South Georgia and the South Sandwich Islands and the Turks and Caicos Islands. British Antarctic Territory, British Indian Ocean Territory and South Georgia and the South Sandwich Islands (also Ascension Island) have no permanent settled populations. Facts and figures on each Overseas Territory are available on the FCO’s Country Profiles pages at [www.fco.gov.uk](http://www.fco.gov.uk).

*Location*

3. Gibraltar (to which the EC Treaty applies subject to exceptions provided for in the UK’s Act of Accession) and the Sovereign Base Areas in Cyprus (to which the EC Treaty does not apply except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the SBAs annexed to the Act of Accession of the Czech Republic and others to the EU) are the only Overseas Territories within the European Union area. Five of the Territories—Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos Islands—are located in the Caribbean. Bermuda is situated in the North Atlantic, off the east coast of the United States of America on approximately the same latitude as Charleston. The Falkland Islands, South Georgia and the South Sandwich Islands, St Helena, Tristan da Cunha and Ascension are all found in the South Atlantic. Tristan da Cunha is the most remote inhabited island in the world, some 1700 miles west of Cape Town. Pitcairn is situated in the South Pacific Ocean, 1,550 miles south-east of Tahiti. The British Indian Ocean Territory is about 1,100 miles east of Mahé, the main island of the Seychelles, in the Indian Ocean. The British Antarctic Territory comprises that sector of the Antarctic south of latitude 60° south, between longitude 20° and 80° west.

<sup>88</sup> Page 154.

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### *Population*

4. The overall population of the Overseas Territories is approximately 200,000. Bermuda has the largest population, at approximately 66,000, while Pitcairn currently only has 47 permanent inhabitants.

### *History*

5. Bermuda is the oldest Overseas Territory—it was acquired by the British in 1612. Five other Territories were acquired during the seventeenth century (Montserrat, 1632, Anguilla, 1650, Cayman Islands, 1670, British Virgin Islands, 1672 and St Helena, 1673). Three Territories, Gibraltar, which was captured in 1704 and acquired in 1713, the Falkland Islands, which was acquired in 1765, and the Turks and Caicos Islands, which was acquired in 1766, were acquired in the eighteenth century. The remaining Territories all came into British possession either in the nineteenth century (British Indian Ocean Territory, 1814, Ascension, 1815, Tristan da Cunha, 1816, Pitcairn, 1838) or early part of the twentieth century (the South Orkneys, the South Shetlands, South Georgia, the South Sandwich Islands and the territory known as Graham's Land, situated in the South Atlantic Ocean to the south of the 50th parallel of south latitude, and lying between the 20th and 80th degrees of west longitude), which were listed by a Letters Patent in 1908 and governed collectively as the Falkland Islands Dependencies. The Falkland Islands Dependencies subsequently became separate Territories—the British Antarctic Territory in 1962 and South Georgia and the South Sandwich Islands in 1985.

### *UK's Responsibility as an Administering Power*

6. Under the UN Charter (Article 73), UN members administering Territories whose peoples have not yet obtained a full measure of self-government “recognise the principle that the interests of the inhabitants of these territories are paramount and accept as a sacred trust the obligation to promote to the utmost within the system of international peace and security established by the present Charter, their well-being”. The article sets out a series of commitments, including ensuring political, economic, social and educational advancement; just treatment; protection against abuses; and developing self-government. Nowadays the UK has a wide range of specific international obligations in respect of the Overseas Territories, for whose international relations we are responsible, which sometimes cover areas of policy, eg environment, which have been delegated to Overseas Territories Ministers.

### *UK relationship with the Territories*

7. The Overseas Territories are constitutionally not part of the United Kingdom. All of them have separate Constitutions made by an Order in Council. All have Governors, except for the British Indian Ocean Territory, British Antarctic Territory and South Georgia and the South Sandwich Islands, which have Commissioners (the Commissioner of the British Indian Ocean Territory and the British Antarctic Territory is the Head of the Overseas Territories Directorate in the FCO in London. The Falklands Islands Governor is the Commissioner for South Georgia and the South Sandwich Islands). The Governor of St Helena is also Governor of its Dependencies (Ascension and Tristan da Cunha), although each has a resident Administrator. Each Governor is appointed by and represents Her Majesty The Queen. The Governor both represents Her Majesty in the Territory, and represents the Territory's interests to the UK Government.

8. The degree of self-government enjoyed by a Territory depends on its stage of constitutional development. Bermuda has almost full internal self-government, with a Premier presiding over a Cabinet, whose meetings the Governor does not attend. The situation is similar in Gibraltar where the Chief Minister heads the Council of Ministers; the Governor meets regularly with the Chief Minister but does not attend the meetings of the Council of Ministers. By contrast Ascension, Tristan da Cunha and Pitcairn have only advisory Councils, and the Governor is the law-making authority. More advanced Overseas Territories' constitutions provide for a Governor, an Executive Council (ExCo) or Cabinet, and usually a single chamber legislature known as the Legislative Council or in some Territories the House of Assembly (Bermuda is the only Overseas Territory which has two chambers). In most Territories, the Governor has special responsibility for defence, external affairs, internal security, including the police, the public service, and the administration of the courts. In Anguilla, Montserrat and TCI this extends to international financial services and in St Helena to finance and shipping. In relation to matters within their special responsibilities, Governors are usually required to consult the Chief Minister or Premier but are not bound to accept the advice of ExCo. However even in areas of special responsibility, the Governor depends on the local government to include financial provision for such services, eg the police, in the budget; and on their support to get the relevant appropriation measures through the local Legislature.

9. Most Overseas Territories' Constitutions also provide for certain reserve powers to protect the UK Government's overall responsibility for the good governance of the Overseas Territories. These include the power of Her Majesty acting through a Secretary of State to instruct the Governor in the exercise of his functions; the power to disallow Overseas Territories legislation; and the power to legislate by Prerogative Order in Council. For Bermuda, however, the UK may only legislate by Act of Parliament, or by Order in

Council under an Act of Parliament. In most Territories, the Governor also has certain reserved powers. But in most instances, these cannot be exercised unless he/she has first consulted, or received instructions from, a Secretary of State. Unless these powers are exercised, the Governor is usually bound by the advice of ExCo on matters outside his special responsibilities. In some Territories the Governor also has reserved legislative powers.

10. A review of the relationship between Britain and the Overseas Territories led to the publication of a White Paper “Partnership for Progress and Prosperity” in 1999. The White Paper has been the cornerstone for the FCO’s work on the Overseas Territories since then. A review of the White Paper policy conducted by a Foreign and Commonwealth Office official in 2003 concluded that we should maintain the existing policy while increasing our efforts on good governance.

### *Citizenship*

11. One of the 1999 White Paper’s commitments was to offer British citizenship—and so the right of abode in the UK—to those British Dependent Territories citizens who did not already enjoy it. Provision for this was included in the British Overseas Territories Act 2002 which gave British citizenship to almost all persons who held the status of British Overseas Territories citizen immediately before 21 May 2002<sup>91</sup>. This was accomplished on a non-reciprocal basis as far as the right of abode was concerned. British Dependent Territories citizenship was renamed British Overseas Territories citizenship by the 2002 Act.

### *External Relations*

12. As noted above, the Governor (or Commissioner) is responsible in each Territory for its external relations. For this reason, if any Territory government wants to enter into any binding international commitment, it is required to seek UK Government authority known as an entrustment to do so. Apart from Gibraltar (to which the EC Treaty applies subject to exceptions provided for in the UK’s Act of Accession) and the Sovereign Base Areas in Cyprus (to which the EC Treaty does not apply except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the SBAs annexed to the Act of Accession of the Czech Republic and others to the EU), none of the Territories is within the EU. With the exception of Gibraltar, Bermuda and the Sovereign Base Areas of Cyprus, the Overseas Territories’ relationship with the EU is governed by an “Overseas Association” Council Decision. This is an instrument that is negotiated every ten years between the Commission and Member States. The Territories are not involved directly, but are consulted by their “parent” Member State (ie the UK). Under the most recent 2001 Decision, some Territories have been allocated varying amounts of European Development Fund (EDF) finance to support national development programmes. All Overseas Territories covered by the Decision, and with settled populations, are eligible for EDF regional development funding; and have access to a range of community development budget lines and regional funding schemes. The Decision also contains a number of trade, customs and loan financing provisions; and provides for an annual forum to enable Chief Ministers/Premiers to meet directly with the EU Development Commissioner and other senior Commission officials.

13. In the Caribbean, Montserrat is a full member of the regional organisation, the Caribbean Community (CARICOM). Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands and the Turks and Caicos Islands are associate members. Montserrat is also a full member of the Organisation of Eastern Caribbean States (OECS), of which Anguilla and the British Virgin Islands are associate members. The Caribbean Territories are members or associate members of a number of other regional organisations.

14. Beyond this, the Overseas Territories are included in British delegations to certain international meetings where they have an interest, and certain Commonwealth meetings, eg of Commonwealth Law, Finance, and Education Ministers, Commonwealth Senior Officials and Commonwealth Health Ministers. Members of the legislatures of the Overseas Territories have long enjoyed membership of the Commonwealth Parliamentary Association on an equal footing with full Commonwealth members.

### *Territory Economies*

15. The size of the Territories’ economies, and their level of prosperity, differ significantly. The largest Overseas Territory—Bermuda—has an economy roughly the size of all the other Overseas Territories put together; and has one of the world’s highest incomes per capita—estimated at over US\$75,000. It also has the largest number of captive insurance companies in the world (annual premiums: £32 billion); and the world’s largest catastrophe re-insurance capacity (one-third of all premiums). Three other Territories—the Cayman Islands, the British Virgin Islands and Gibraltar—have GDP per capita above that of the UK

<sup>91</sup> When the British Overseas Territories Act 2002 came into force, any existing citizens of the Overseas Territories except those whose British Overseas Territories citizen status derived solely from a connection with the Cyprus Sovereign Base Areas (CSBA), automatically became British citizens. The 2002 Act additionally amended the British Nationality Act 1981 so that, for persons born or adopted on and after 21 May 2002, a connection with the Overseas Territories by birth, adoption or ancestry equates to such a connection with the United Kingdom for the purpose of acquiring British citizenship. Anyone acquiring British overseas territories citizenship through registration or naturalisation on and after that date can apply to be registered as a British citizen at the Secretary of State’s discretion.

(although because of the narrow economic base and the questionable data used, GDP figures for the Territories are sometimes misleading). In contrast, Montserrat, St Helena and Pitcairn are in receipt of budgetary aid from DFID. Some of the Overseas Territories are leading global players in specific offshore financial sectors—Bermuda in insurance, the Cayman Islands in financial services (especially banking and hedge funds); and the British Virgin Islands in licensing international business companies (IBCs). Gibraltar is also increasing its share of this market. There are other important activities in specific Overseas Territories, eg fishing licences in the Falklands and South Georgia, shipping, financial services and tourism in Gibraltar, etc.

16. While the economies of many of the Overseas Territories have improved in recent years they are largely based on the twin pillars of international finance and tourism, both of which are excessively vulnerable to external factors. Most Overseas Territories have searched for a third pillar to guarantee greater stability but largely without success. In Anguilla, the Cayman Islands, Pitcairn and the Turks and Caicos Islands, there is no income tax (Bermuda and BVI have a payroll tax). Customs/import duties are an important source of revenue for most Territories. In those with significant financial centres, company fees and licences play a major role. In the Falklands and South Georgia the majority of revenue is derived from fishing licence fees.

17. The Overseas Territories do not make any direct contribution to the British Exchequer, except in some cases a contribution towards the cost of the Governor and his staff and the operation of Government House. The level of this contribution varies from Territory to Territory.

#### *Contingent Liabilities*

18. Given the UK's responsibilities, there exists a continuing exposure to potential liabilities resulting from actions of the Overseas Territories. Some of the UK's contingent liabilities have a legal basis, eg in the case of treaties applying to the Overseas Territories such as the European Convention on Human Rights, which applies to most Overseas Territories. The UK is also responsible for ensuring that Gibraltar implements any EC legislation which is applicable to it. In the event that Gibraltar fails to implement, the UK could be subject to infraction proceedings by the Commission. But even in the absence of legal liability, if the resources of the Governments of the Territories' were insufficient, the UK might find itself politically, or morally, obliged to pick up the bill for any Overseas Territory that had incurred liabilities it could not itself meet.

19. Against this background, in the last two decades the UK has spent sums running into billions of pounds on defending the Falkland Islands. It has also provided £250m in development assistance to Montserrat since the volcano crisis in 1995/96, plus ongoing UK programme funding of £15m per year. A major problem with a key sector of the local economy (eg tourism, financial services) could lead to its stagnation or even collapse, and calls for HMG support. Other liabilities could result from the offshore financial sector and costs arising from criminal activity. Although the UK Government is careful to avoid incurring legal liability, it would face moral pressure in the event that an Overseas Territory became unable to service its own debt.

20. To mitigate the risk of excessive Overseas Territory borrowing creating liabilities for the UK, we have introduced Borrowing Guidelines for those Overseas Territories that wish to undertake borrowing. The guidelines define three ratios, which together specify a prudential framework for Overseas Territory Government and Government-guaranteed borrowing. The ratios impose maximum limits for the total volume of outstanding debt and the annual cost of debt-service, and a minimum level for Government reserves. If all three ratios are not met, further Overseas Territory borrowing will not ordinarily be approved by the UK Government. Separate (pre-existing) arrangements apply for Bermuda and Gibraltar.

21. Contingent liabilities in the Overseas Territories were the subject of a National Audit Office report in 1997. Another NAO inquiry on contingent liabilities has been undertaken in 2007 and a report will be presented to the Public Accounts Committee towards the end of the year.

#### *Disaster/Crisis*

22. Contingent liabilities could also be incurred as a result of natural and man-made disasters and terrorist incidents. The Overseas Territories, especially those in the Caribbean, are particularly prone to the former. The primary threat is from the annual hurricane season. Cayman, for example, suffered \$3.5 billion of infrastructure damage following Hurricane Ivan in September 2004, which was met largely from Cayman's own financial resources. But other potential disasters range from earthquakes (eg British Virgin Islands) to volcanic eruptions (eg Montserrat) and tidal waves. Insurance could be expected to cover some, but by no means all, of the losses in the event of such disasters. Global climate change and the expected rise in sea levels will have an adverse impact in the British Indian Ocean Territory and the Caribbean. A rise in sea level could also affect adversely the lower reaches of Gibraltar, particularly the isthmus between the Rock and mainland Spain, on which the airport is situated.

23. The heavy dependence of many Overseas Territories on tourism means they are vulnerable to non-natural disasters, such as on- and offshore fires, explosions, collisions, pollution, air accidents, ferry or cruise line accidents, oil tanker spills etc; and generally to potential problems linked to aviation and maritime safety and security. There is also the potential vulnerability of tourist targets to terrorist attacks.

#### *Sovereignty Disputes*

24. Although there are some outstanding issues over territorial and maritime boundaries of some of the Overseas Territories, the majority is not subject to serious dispute. The chief exceptions are the two territories of the Falkland Islands and South Georgia and the South Sandwich Islands, both of which are subject to Argentine sovereignty claims; and Gibraltar, over which Spain maintains a sovereignty claim.

25. The UK has no doubt about its sovereignty over both the Falkland Islands and South Georgia and the South Sandwich Islands. The UK made the first territorial claim to part of Antarctica in 1908 by Letters Patent: and has maintained a permanent presence in the British Antarctic Territory since 1943. But most of British Antarctic Territory itself is counter-claimed by either Chile or Argentina. To establish a mechanism that would defuse escalating disputes over sovereignty (by the 1950s five-sixths of the Antarctic continent was claimed by seven states—Britain, Argentina, Australia, Chile, France, New Zealand and Norway), claimant and non-claimant states negotiated the Antarctic Treaty, which was adopted in 1959 and entered into force in 1961. Its objectives are: to keep Antarctica demilitarised; to establish it as a nuclear-free zone; to ensure that it is used for peaceful purposes only; to promote international scientific co-operation in Antarctica; and to set aside disputes over territorial sovereignty.

26. Sovereignty is also an ongoing issue for Gibraltar, where Spain recognises British sovereignty over the Rock, but not over the isthmus, waters surrounding the Rock (with the exception of the port), or adjoining the isthmus, or airspace over the entire Territory. The UK supports the right or principle of self-determination, but this must be exercised in accordance with the UN Charter and with other treaty obligations. In Gibraltar's case this includes the 1713 Treaty of Utrecht, whereby sovereignty over the Rock was ceded to Britain, but the Treaty provides that, were the UK to relinquish sovereignty, the right of first refusal would be given to Spain. Thus independence would only be an option with Spanish consent. The UK has repeatedly made it clear, however, that it will not enter into any arrangements under which the people of Gibraltar would pass under the sovereignty of another state, against their freely and democratically agreed wishes. Furthermore the UK has made it clear it will not enter into a process of sovereignty negotiations with which Gibraltar is not content.

27. In addition, after the British Indian Ocean Territory was created in 1965 and set aside for defence use by treaty with the United States, the UK gave Mauritius an undertaking in 1980 to cede the Chagos Islands to Mauritius when they were no longer required for defence purposes (subject to the requirements of international law). However, since 1980, successive Mauritian governments have asserted a sovereignty claim to the islands, arguing that they were detached illegally from Mauritius before that country's independence. The UK has consistently rejected these claims, but repeated the undertaking to Mauritius given in 1980.

#### *Environment*

28. The Overseas Territories are environmentally very rich and varied:

- The British Indian Ocean Territory contains the Great Chagos bank, one of the world's largest atolls;
- There are more than 200 endemic plant species in the Overseas Territories. Most occur on St Helena (46);
- The Overseas Territories in the South Atlantic provide important breeding grounds for many species of birds, including albatrosses, frigate birds and penguins;
- Henderson Island, in the Pitcairn Group, is the Pacific's best large raised coral atoll.
- The British Antarctic Territory is also highly significant as a global laboratory. Scientists from the British Antarctic Survey discovered the ozone hole there in 1985, so triggering international concerns about the effects of atmospheric pollution. The Antarctic's pristine environment is a critical barometer of the world's climate health. Monitoring change in Antarctica allows us to predict possible changes in global conditions, eg if the West Antarctic ice sheet melted, the sea level world-wide would rise six metres, wipe out some countries, including some of the Overseas Territories, and cause major flooding elsewhere in the world.

#### STANDARDS OF GOVERNANCE IN THE OVERSEAS TERRITORIES

29. Good governance is part of the partnership between the UK and its Overseas Territories set out in the 1999 White Paper, which highlighted the importance of providing governance of a high quality. We continually underline the importance of good governance

30. The UK Government proposed at the 2005 Overseas Territories Consultative Council (OTCC) that all the territories should endorse a paper setting out agreed principles. This was discussed again at the 2006 OTCC where agreement was reached and the document was published on the FCO's website and in the territories.

31. The extent to which the UK can and should use its powers effectively to maintain standards of governance in the Overseas Territories has to be considered against the aim of ensuring that territory governments themselves should be given the maximum possible accountability and responsibility for their actions. This is especially true in areas which have been devolved to the governments concerned. Auditors General and Ombudsmen are usually appointed by the Governor and we work to ensure that their independence is maintained and they are not subject to undue political pressure.

#### THE ROLE OF GOVERNORS AND OTHER OFFICE-HOLDERS APPOINTED BY, OR ON THE RECOMMENDATION OF, THE UNITED KINGDOM GOVERNMENT

32. Responsibility for the security and good government of the Overseas Territories falls to the Secretary of State. Responsibility within the Territory rests with the Governor who is appointed by HM The Queen on the advice of the Secretary of State. The term "Governor" is a general term used administratively and covers the Governors, Commissioners and Administrators described in paragraph 7 above. The Governor of the Falkland Islands is also the Commissioner for South Georgia and the South Sandwich Islands.

33. Each Governor is responsible to the Secretary of State and, through him, to The Queen and the UK government, for the security and proper governance of the Territory (an Administrator's line of responsibility runs through his/her Governor).

34. Specific duties are laid on the Governor by the Constitution and legislation of the Territory itself and by the Secretary of State's instructions. These vary from Territory to Territory, but those allocated by the Constitution usually include defence, internal security, foreign affairs, the administration of the courts, and the public service, and—in some Overseas Territories—international financial services. Security is generally taken to include overall responsibility for the Police and Prison Services, planning for natural disasters, and the increasingly important areas of air and maritime safety and security.

35. Given the Secretary of State's responsibility, the Governor needs to be actively involved in a range of issues, for example human rights, the environment, drugs and international crime, which impact directly on the UK and its obligations, and with wider issues of good governance, financial integrity in the public sector, and sustainable economic development.

36. The majority of Overseas Territories have a directly elected legislature (Legislative Council (LegCo), Legislative Assembly (LA), House of Assembly, or Parliament) on the lines of the Westminster Parliament. Executive authority in most Territories is shared between the Governor and the Executive Council (ExCo) (known in some Territories as Cabinet). Bermuda and Gibraltar apart, the Governor chairs ExCo.

37. Although the responsibilities are extensive, the Governor's powers are constrained by the need for the Territory's Government to make suitable financial provision, including for those responsibilities specifically allocated to the Governor under the Constitution. The Governor therefore has to work very closely with the elected Government often relying on powers of persuasion rather than any specific executive authority. The powers to refuse to assent to (and thus to veto) legislation can in most Territories only be exercised with the consent of the Secretary of State and can be used only in the most exceptional circumstances.

38. The role of the Governor has frequently been discussed at the Overseas Territories Consultative Councils over the years and Chief Ministers and equivalents have sought to scale down the already narrow powers vested in the Governor. A document describing the UK relationship with the Overseas Territories, and in particular the role of the Governor, was distributed at the 2003 OTCC. An updated version was circulated to Chief Ministers with a letter from the FCO Minister for the Overseas Territories in June 2007.

#### THE WORK OF THE OVERSEAS TERRITORIES CONSULTATIVE COUNCIL

39. The Overseas Territories Consultative Council was established in 1999 as a forum for discussion of key policy issues with heads of territory governments. The Council meets once a year in London. The meeting is chaired by the FCO Minister who has specific responsibilities for Overseas Territory issues, with other UK Government Ministers and senior officials participating during relevant sessions on the agenda. The 2006 OTCC (the eighth) included sessions on aviation and maritime security, good governance and ethics, human rights, a criminal justice strategy, climate change and combating international corruption.

40. Governors of the Overseas Territories attended the 2003 and 2006 OTCCs but their participation was not welcomed by all the Chief Ministers, who wanted the Council to be kept as a political forum for elected representatives. Lord Triesman wrote to Chief Ministers in April 2007 suggesting that the 2007 OTCC

should include one day for political talks and one day for discussions on operational issues to which Governors would be invited. Given the Governors' responsibilities, outlined above, a meeting on operational issues without the active participation of both Chief Ministers and Governors would not be effective.

#### TRANSPARENCY AND ACCOUNTABILITY IN THE OVERSEAS TERRITORIES

41. The Foreign and Commonwealth Office is responsible for promoting good governance in the Overseas Territories which includes ensuring the transparency of decisions by the executive and legislature in line with rules and regulations, and the accountability of government to the public and the legislature. It is relevant in all areas of government eg provision of services, award of contracts, allocation of benefits; and in the financial sector in particular.

42. As noted above in the section on the role of the Governor, most Territories have a directly elected legislature and the Governor has some clearly defined executive responsibilities. Most Territories' Constitutions also include a form of parliamentary scrutiny, including a key role of a Committee of Public Accounts. However, formal scrutiny is generally infrequent and in most Overseas Territories, significantly less comprehensive or effective than in the UK. The main limiting factors are that:

- Most legislatures are too small to provide enough “back-bench” members to staff scrutiny committees, besides the essential Ministerial posts.
- Members of Committees drawn from governing parties can be concerned not to appear disloyal to their government, which can prevent the achievement of Committee quora and the production of agreed reports. Politicisation of Committee proceedings is often perceived where Public Accounts Committees are chaired by Leaders of the Opposition, or where politically sensitive topics are chosen, and where the distinction between ministerial policy and administration by officials is blurred or not well understood.
- Expertise and awareness of how to conduct Scrutiny Committee proceedings can be low.
- Not all Territories have a Committee of Public Accounts or similar scrutiny body, and some that do meet only in private.
- There is little investigative journalism in most Overseas Territories and the local media can be reluctant to expose Government weaknesses for fear of retribution.

43. The Governor and the public service in the Overseas Territories therefore have an important role to play in ensuring that appropriate checks and balances are maintained. The Good Governance principle agreed at the 2006 OTCC includes acknowledgement that decisions by both the executive and legislature should be taken (and be seen to be taken) and implemented in line with defined rules and regulations. It also means that (subject to limited exceptions) information must be freely available and directly accessible to those who will be affected by such decisions and their implementation. The principle also requires the provision of an appropriate level of information, in an easily understandable form, by government and the public service to the public, and media.

44. The FCO works to ensure that Government institutions and the legislature in the Overseas Territories, as well as the private sector and civil society organisations, are accountable to the public and, where appropriate, to their institutional stakeholders. Governors have a role to play to encourage accountability and to bolster the wider civil society.

#### REGULATION OF THE FINANCIAL SECTOR IN THE OVERSEAS TERRITORIES

45. The UK Government remains committed to promoting greater transparency and co-operation in global regulation and expects the Overseas Territories to fully comply with international norms on the exchange of information. All financial centres, whether onshore or offshore, should match up to the highest standards of financial regulation and provide effective co-operation with international counterparts; this promotes greater confidence in the jurisdiction and will ensure the long-term viability of the Overseas Territories' finance sector.

46. It is critical that, in the current global financial climate, Overseas Territories deal decisively with impediments to international co-operation, poor implementation of standards and have effective safeguards against the threats of money laundering and terrorist financing.

47. The 2000 KPMG reviews (see paragraph 52) (which were part-funded by the Overseas Territories) showed considerable leadership by Overseas Territories on financial issues. Since then, all the Overseas Territories have been subject to independent international evaluations and have played a major role in regional anti-money laundering bodies. Good progress has been made on financial regulation in some Overseas Territories, but in others a lot more is needed to deliver the standards that the Overseas Territories all say they agree to, particularly relating to the effective implementation and enforcement of laws. Overseas Territories have shown their commitment to high standards but the limited availability of expensive resources is a factor which explains why some Overseas Territories may struggle to keep legislation and the application of regulations up to the latest international standards.

48. Good regulation supports the aspirations of the Overseas Territories to provide quality financial services in an international market place, provided international standards are maintained. This is in the best interests of Overseas Territories, because good regulation is good for business.

49. The UK Government supports this agenda and we work with key stakeholders to bring practical support and technical assistance when opportunities arise. But we will always seek to ensure that the great opportunities of global financial markets are not abused or undermined. The UK looks to Overseas Territories to respond proactively and quickly to outstanding recommendations on financial regulation—just as we do for all other financial centres.

*Background—UK interests in Overseas Territories' financial services*

50. All the Caribbean Overseas Territories, Bermuda and Gibraltar have established offshore financial centres to varying degrees. Bermuda commands one third of the world's reinsurance business; Cayman is the world's fifth biggest banking centre and hosts 80% of the global hedge fund market and BVI dominates the global market for international business companies.

51. UK Government interest in this business stems from its objectives of:

- Maintaining financial stability—The more significant offshore financial centres may act as a link through which shocks to the financial system are transmitted internationally.
- Supporting international standards—The UK has a leading role in a number of international institutions (eg the Financial Action Task Force—the international standard setter on money laundering) aimed at enhancing the quality of global financial standards.
- Managing the reputational risk, and the risk of contingent liabilities to the UK. All Overseas Territories' economies are significantly reliant upon revenue from financial services business and a substantial downturn in this sector, for whatever reason, could result in pressure on the British Government to provide direct economic aid.

52. The 1999 White Paper stated that Overseas Territories should match current international standards, and identified a number of broad improvements where progress was needed. In order to determine the precise requirements for each Overseas Territory, a formal review ('the KPMG review') was launched to assess each jurisdiction in turn. Since the KPMG review, the IMF has introduced a surveillance programme covering all offshore financial centres which has echoed the KPMG recommendations and has made some additional ones of its own. There is also significant international pressure for poorly regulated offshore financial centres to be the subject of international countermeasures.

53. Our goal is for all Overseas Territories to fully implement international standards of regulation and supervision. Standards and regulatory capacity in some Overseas Territories in some areas are as good as anywhere else in the world. But in some areas we have continued concerns; and we are working closely with the Governments of the Territories to improve them. Because international regulation and best practice is continually evolving, even the better performing (and richer) Overseas Territories, have a number of international recommendations awaiting action.

54. We need to recognise that there is significant international pressure to limit the role of the Overseas Territories in providing international financial services. The Overseas Territories are often expected to apply higher standards of regulation than some OECD countries. If the pressure were to succeed to the point where the economies of the main Overseas Territories providing these services were to be adversely affected, there are few options for replacing lost Government revenue in other sectors. The UK Government's position is to require, as far as possible, that Overseas Territories meet the highest levels of regulation while supporting the Territories in the area of international finance.

PROCEDURES FOR AMENDMENT OF THE CONSTITUTIONS OF OVERSEAS TERRITORIES

*Legal and parliamentary background*

55. The Constitution of each Overseas Territory is set out in an Order in Council made under statutory powers or in exercise of the Royal Prerogative. The Orders in Council contain the current Constitutions of the Overseas Territories. The relevant statutory powers, and the Territories to which they relate, are the following—

- British Settlements Acts 1887 and 1945: Ascension Island; British Antarctic Territory; Falkland Islands; Pitcairn; South Georgia and South Sandwich Islands; Tristan da Cunha
- West Indies Act 1962, sections 5 and 7: Cayman Islands; Montserrat; Turks and Caicos Islands; Virgin Islands
- Bermuda Constitution Act 1967, section 1: Bermuda
- Anguilla Act 1980, section 1(2): Anguilla
- St Helena Act 1833 (formerly entitled Government of India Act 1833), section 112: St Helena

- Cyprus Act 1960, section 2(1): Sovereign Base Areas of Akrotiri and Dhekelia
- Royal Prerogative: British Indian Ocean Territory; Gibraltar

56. Except for the Anguilla Act and the Cyprus Act, the required parliamentary procedure under each of the statutes listed above is that the Order in Council must be laid before both Houses of Parliament after being made. Orders in Council made in exercise of the Royal Prerogative are not subject to any parliamentary procedure. Nor are Orders in Council made under section 1(2) of the Anguilla Act 1980 and section 2(1) of the Cyprus Act 1960.

57. By exchanges of letters dated 18 June 2002 and 12 July 2002, and 23 October 2002 and 14 November 2002, between the then Chairman of the Foreign Affairs Committee, Donald Anderson MP, and the then Secretary of State for Foreign and Commonwealth Affairs, Jack Straw MP, it was agreed that constitutional Orders in Council relating to the Overseas Territories would be sent in draft to the Committee, if possible no later than 28 days before being submitted to Her Majesty in Council, subject to the qualifications set out in those letters.

#### *Constitutional changes short of independence*

58. Changes to the Constitution of an Overseas Territory short of independence are effected by Order in Council in exercise of the powers described in paragraph 55 above. These can take the form either of amendments to the existing Constitution or the revocation of the existing Constitution and its replacement by a new Constitution.

59. The 1999 White Paper, “Partnership for Progress and Prosperity, Britain and the Overseas Territories”, stated at paragraph 2.7: “The Overseas Territories believe that their constitutions need to be kept up to date and where necessary modernised. Each Overseas Territory is unique and needs a constitutional framework to suit its own circumstances. Suggestions from Overseas Territory governments for specific proposals for constitutional change will be considered carefully.” This marked a major shift from previous practice where the process of constitutional review and change had been driven by the UK Government, often through a constitutional commission appointed by it.

60. In several Territories, a local constitutional review commission has carried out a process of public education and consultation leading to the publication of a report with recommendations for change. In Gibraltar and the Falkland Islands, this task was carried out by a committee of the local legislature. These reports have then been debated locally, and have led to discussions between the Territory concerned and the FCO. New Constitutions have been agreed for Gibraltar, the Turks and Caicos Islands, and the British Virgin Islands. The process is less advanced in other Territories. ANNEX B describes developments in those Territories where constitutional review is or has been active.

#### *Constitutional change—Independence*

61. Paragraph 2.1 of the 1999 White Paper states: “Britain’s policy towards the Overseas Territories rests on the basis that it is the citizens of each territory who determine whether they wish to stay linked to Britain or not. We have no intention of imposing independence against the will of the peoples concerned. But the established policy of successive British governments has been to give every help and encouragement to those territories which wished to proceed to independence, where it is an option.”

62. Since the White Paper no Overseas Territory has opted for independence. FCO Ministers have indicated that their presumption is that the route to independence would be by referendum, but a final decision in any Territory would be taken on a case-by-case basis in the light of the circumstances at the time.

63. With the exception of Anguilla, an Act of Parliament would be required to grant independence to an Overseas Territory. In the case of Anguilla, an Order in Council under section 1(3) of the Anguilla Act 1980 would suffice. Such an Order in Council would require to be approved in draft by resolution of each House of Parliament.

64. In accordance with past practice, the independence arrangements for an Overseas Territory, including its Constitution upon independence, would be discussed and agreed with the UK Government at a constitutional conference. A period of between one and two years from the decision to move to independence has usually been required to make the necessary preparations and arrangements, including the necessary legislation.

#### THE APPLICATION OF INTERNATIONAL TREATIES, CONVENTIONS AND OTHER INTERNATIONAL AGREEMENTS TO THE OVERSEAS TERRITORIES

65. Unless expressly authorised to do so by HMG in the UK (see paragraph 67), Overseas Territories do not have the authority to become party to treaties in their own right, therefore the UK must extend treaties to the Overseas Territories. This is normally done at the time of the UK’s ratification, or at some later date. Whitehall Departments have standing instructions that they should consider whether a treaty should be extended to the Overseas Territories at an early stage in the Department’s deliberations and it is important that the Territories are fully consulted. The Overseas Territories must then be allowed a proper length of



time to consider the implications of having any treaty extended to them. Guidelines on the consultation process were circulated to Whitehall Departments in May 2006. The guidance is available at [www.fco.gov.uk/treaty](http://www.fco.gov.uk/treaty).

66. Consultation with the Overseas Territories regarding extension of a Treaty is a matter of good policy and administration. Where applicable, the views of Overseas Territories may also be required to formulate the UK negotiating position on a Treaty. The UK is responsible under international law for the due performance of treaty obligations undertaken in respect of the Overseas Territories. The UK must make sure not only that an Overseas Territory is willing to accept particular treaty obligations, but also that those obligations can be fulfilled by the Overseas Territory. If they cannot, the UK bears ultimate responsibility.

67. Territories will sometimes want to negotiate and conclude an agreement with a sovereign state or an international organisation where there is no existing UK treaty or similar instrument. In the UK treaty making is part of the Royal Prerogative in matters of foreign affairs. The Crown's representative in an Overseas Territory is the Governor. It is, accordingly, for the Crown to confer upon the Governor the necessary capacity to conclude a treaty. In practice this means that, on the authority of the Secretary of State for Foreign and Commonwealth Affairs, the Governor is formally entrusted with the power to conclude the treaty in question for his Territory. This is generally known as giving the Governor an "entrustment". Nowadays however entrustments are sometimes given directly to the Government of a Territory to negotiate and conclude a Treaty. It is possible for an entrustment to be general, covering all treaties within certain categories. But it is more usual for an entrustment to relate to a particular treaty. An entrustment should be sought by an Overseas Territory prior to commencing the negotiation of an international agreement.

68. Bermuda and BVI have a "standing entrustment" which allows them to negotiate agreements in specified areas. Bermuda, Gibraltar and the Caribbean Overseas Territories have standing entrustments to negotiate tax information exchange agreements. The principles behind "standing entrustments" are the same as those for the much more common treaty-specific entrustments. Where a standing entrustment exists the Territories must keep the UK Government informed of negotiations in individual agreements and the UK has the right to refuse to allow an Overseas Territory to sign an agreement to which the UK objects.

#### HUMAN RIGHTS IN THE OVERSEAS TERRITORIES

69. Although the promotion of human rights in the Overseas Territories is principally a matter of domestic policy, and "local ownership", it also falls within the Governor's overall responsibility for promoting good governance. Furthermore, the UK Government has responsibility for ensuring that the Overseas Territories fulfil their obligations arising from international human rights Conventions which have been extended to them (see table at Annex C).<sup>92</sup> If the Overseas Territories are not fulfilling their obligations under these conventions, it is the UK, as the State Party, which will ultimately be found to be in breach of them. It is an FCO objective to extend all the key human rights Conventions to all the populated territories. A few core international human rights conventions have still to be extended to some of the Overseas Territories.

70. The establishment and maintenance of high standards of observance of human rights is a key 1999 White Paper objective. The aim is that the Territories should abide by the same basic standards of human rights, openness and good government that people in the United Kingdom expect of their Government. Where a Territory has accepted the right of individual petition under the European Convention on Human Rights, people in the Territory are able to bring a case to Strasbourg, having exhausted their domestic remedies where they think that their rights are being violated.

71. Different cultural traditions in the Territories have led to conflict with London in the past. For example, the refusal by the Caribbean Territories to decriminalise homosexual acts between consenting adults in private, contrary to the European Convention on Human Rights, forced the UK to legislate by Order in Council in December 2000. The death penalty for murder was abolished by Order in Council in the Caribbean Territories in 1991, also because the Territories refused to legislate themselves.

72. Governors, where necessary, remind Overseas Territory Governments of the need to address any areas of human rights where deficiencies have been identified. Human rights have been on the agenda for discussion at recent Overseas Territories Consultative Councils. The FCO and DFID are working together in particular areas of concern, including protection of children, to improve the situation where problems occur. DFID will run a Human Rights programme in the Overseas Territories over a 3-4 year period beginning in 2007/8. It will have a budget of about £1 million.

73. It is UK Government's policy to encourage the inclusion in the Constitution of the Territory of comprehensive fundamental (human) rights provisions. The FCO has provided a model human rights chapter to assist all the Territories with this for the purpose of their constitutional reviews. The British Virgin Islands have for the first time a fundamental rights chapter in their Constitution, which means individuals now have the possibility to bring a case to the local courts if they think that their human rights are being violated.

<sup>92</sup> Ev 162.

74. The Cayman Islands has set up a human rights Commission which is very active and has encouraged the Government to take human rights issues seriously, for example they are considering the human rights implications of the removal of prisoners, deportations, mandatory life sentences etc. The Turks & Caicos Islands is setting up a human rights commission to hear issues from the public, and it will consider the implementation of the various human rights Conventions.

75. Under the core UN human rights Conventions, State Parties are required to submit periodic reports to the UN review bodies which monitor compliance with these Conventions. These reports cover the Territories to which the instruments apply and the UK.

#### RELATIONS BETWEEN THE OVERSEAS TERRITORIES AND THE UNITED KINGDOM PARLIAMENT

76. The 1999 Overseas Territories White Paper considered the Territories' constitutional relationship with the UK. The White Paper detailed a new, modern relationship between Britain and the Overseas Territories based on four fundamental principles: self determination; mutual obligations and responsibilities; freedom for the Territories to run their own affairs to the greatest degree possible; and a firm commitment from the UK to help the territories develop economically and assist them in emergencies. Some UK Overseas Territories would like greater UK Parliamentary interest in, and support for, the Overseas Territories. But they want to retain their own Constitutions and decision-making powers. The interests of Overseas Territories' voters are quite different to those of British voters, and are more appropriately served by their own territory legislatures in accordance with their respective constitutions.

77. The Wakeham Commission (on Lords Reform) looked at the question of giving peerages to two or three people who would represent the interests of the Overseas Territories. The Commission did this partly at the behest of the Government, who were responding to a recommendation from the HoC FAC that Gibraltar should be represented in the reformed second chamber. Wakeham concluded "We see no case at present for any of the Overseas Territories to be formally represented or given a voice in the second chamber." They did then go on to say that individuals from the Territories might be offered membership on a personal basis "in the light of the closer ties that may develop". But such membership would be on the basis of the contribution they might make to the House of Lords, not because they would be asked to represent a geographical area.

78. The UK has already put in place processes to enable Territories to make their voices heard in Westminster. To improve links between the UK and the Territories, the White Paper led to the appointment, for the first time, of a Minister with specific responsibility for the Overseas Territories. It also set up the Overseas Territories Consultative Council, which meets annually, and provides a forum for structured political discussion between Overseas Territory governments and the UK government.

79. The All Party Parliamentary Groups for the Overseas Territories and the Commonwealth Parliamentary Association also provide mechanisms for direct contact between Members of Parliament and elected members of the legislatures of the Overseas Territories. The CPA meetings occasionally take place in the Overseas Territories themselves.

80. Anguilla, British Virgin Islands, Cayman Islands, Falklands, Gibraltar, Montserrat, St Helena and Turks & Caicos Islands maintain offices or representatives in the UK, one of whose functions is to develop links to Members of Parliament. A number of these Overseas Territories have helped to organise formal Committees of MPs to take an interest in their affairs.

#### Annex A

#### THE SOVEREIGN BASE AREAS OF AKROTIRI AND DHEKELIA

##### *Location*

1. The Sovereign Base Areas (SBAs) of Akrotiri and Dhekelia have an area of 98 square miles (3%) within the Island of Cyprus. The remainder of the island is the territory of the Republic of Cyprus (RoC) although since the Turkish intervention in 1974, the northern part of the island has been controlled by the Turkish Cypriots and Turkey. Cyprus is divided by a UN Patrolled Buffer Zone known as the Green Line. The Western Sovereign Base Area (WSBA), which includes the garrison of Episkopi and RAF Akrotiri, is geographically separate from the Eastern Sovereign Base Area (ESBA), which includes the garrison of Dhekelia. The northern boundary of the ESBA also forms a boundary with the north and is effectively an external boundary of the EU, which the Sovereign Base Area Administration (SBAA) must protect.

##### *History*

2. The SBAs comprise those parts of the former British colony of Cyprus retained by the United Kingdom on creation of the independent Republic of Cyprus. The Island as a whole had formerly been under British Administration since 1878 and a British Crown Colony since 1925. The SBAs were retained solely for military purposes.

3. Cyprus acceded to the European Union in 2004; attempts to unite the island prior to EU accession had not been successful therefore Cyprus entered the EU as a divided Island with the EU *acquis* suspended in the north. UK Ministers decided that upon Cyprus's accession to the EU, the SBAs should remain outside the EU.

#### STATUS

4. SBAs have the status of a British Overseas Territory, Her Majesty's sovereignty and jurisdiction over the Areas having been retained under section 2 Cyprus Act 1960.

#### CONSTITUTIONAL ASPECTS OF THE SBA

5. The Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960<sup>93</sup> (made under section 2 Cyprus Act 1960), as amended by The Sovereign Base Areas of Akrotiri and Dhekelia (Amendment) Order in Council 1966<sup>94</sup> provides for the office of Administrator who is empowered to make laws for the peace, order and good government of the Areas, together with powers, in Her Majesty's name, and on Her behalf, to constitute offices for the SBAs. The Administrator is required to discharge his functions in accordance with such Instructions as may from time to time be given to him by Her Majesty through the Secretary of State for Defence. Such Instructions were issued as The Sovereign Base Areas of Akrotiri and Dhekelia Royal Instructions 1960,<sup>95</sup> which provided rules for the enactment of laws, and the creation of the Administrator's Advisory Board.

#### RELATIONSHIP WITH THE UK

6. The Administrator, as the head of the SBAA and as Her Majesty's representative, enjoys the legislative and executive powers broadly equivalent to those exercisable by a Governor. As the SBAs are retained for military purposes the Administrator reports to, and receives instructions from, Her Majesty through the Secretary of State for Defence. The Foreign and Commonwealth Office, with its responsibility for bilateral relations with the Government of Cyprus, works very closely with the MOD on issues likely to have an impact on those relations.

#### GOVERNANCE

7. The UK Government made a declaration regarding the administration of the SBAs in an Exchange of Notes at the time of the creation of the SBA and the RoC (commonly known as "Appendix O"). Although not legally binding the declaration sets out the main policy and objectives of the UK government in the administration of the SBAs. The SBAA continues to be guided by this declaration.

8. The SBAs are administered in a manner that requires maximum co-operation with the authorities and people of the RoC. The guiding principle is that the administration of the SBAs should follow as far as possible the laws, practices, procedures and style of government of the RoC without conceding sovereignty so that Cypriots living within the SBAs are not disadvantaged in comparison with their compatriots in the RoC. The Administration exercises only those functions of State which are necessary for maintaining Sovereignty—such as legislation and the maintenance of the judiciary, police and customs. Other functions are routinely delegated to, and performed by, officials of the RoC for example in areas such as agriculture, social services, education and the administration of antiquities. Over 10,000 RoC citizens live within the SBAs.

9. The Administrator is required by the Secretary of State for Defence to seek advice from the Administrator's Advisory Board on major policy or legal matters, particularly those affecting the RoC. The composition of this board is set in accordance with standing instructions from the Secretary of State for Defence. The board also meets in an augmented mode to serve as the Police Authority for the SBAs. Her Majesty's Inspectorate of Constabulary (HMIC) attend this Board. The SBA Police are inspected on a regular basis by HMIC to give assurance to the Administrator on the role, structure and effectiveness of the SBA Police.

10. A Protocol governing the obligations of the UK to apply certain provisions of EU law to the Areas was attached to the RoC Treaty of Accession. These provisions relate to customs, aspects of common commercial policy, taxation, agriculture and fisheries. The UK also gave undertakings about the handling of social security and external border controls. The Protocol is supported by a Memorandum of Understanding with the RoC on the responsibility for implementing the Protocol.

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<sup>93</sup> The Sovereign Bases Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1369/1960)

<sup>94</sup> The Sovereign Base Areas of Akrotiri and Dhekelia (Amendment) Order in Council 1966 (SI 1415/1966)

<sup>95</sup> Published in the Appendix to SI 1960, Part III at pp4213-4214

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#### ROLE OF THE ADMINISTRATOR AND OTHER OFFICE HOLDERS

11. The Administrator is responsible for the good administration and government of the SBAs. The 1960 Order in Council stipulates that the Administrator shall be a serving officer of Her Majesty's Forces. The appointment is held by the Officer Commanding British Forces Cyprus, (BFC). The common principal objective of the Administrator of the SBAs and Commander BFC is "to maintain a stable environment in the SBAs in order to allow the strategic assets and Forward Mounting Base to operate unimpeded".

12. The SBAA provides civil administration in the SBAs covering similar interests to any civil government, but many of its functions, particularly for the 10,000 plus Cypriot inhabitants of the SBA, are carried out by Republican officials, on behalf of the Administration, under delegated powers.

13. The Administrator delegates day to day responsibility for the Administration to the Chief Officer of the SBAs, who is a Ministry of Defence Senior Civil Servant. The Administration is supported by the Attorney General and Legal Advisor, a legally qualified member of the Senior Civil Service, the Chief Constable of the SBA Police and the Fiscal Officer.

#### TRANSPARENCY OF GOVERNMENT AND ACCOUNTABILITY

14. The essentially military nature of the SBA is illustrated by the absence of a directly elected legislature and the vesting in the office of Administrator of all legislative and executive functions. There are no committees to undertake formal scrutiny of legislative or executive functions by the Administrator. The Administrator and other office holders within the SBA play an important role in ensuring that appropriate checks and balances are maintained.

15. The Administrator is empowered to "make laws for the peace, order and good government of the SBAs"<sup>96</sup> and is mindful of the declaration made under Appendix O that the laws applicable to the Cypriot population of the SBAs will be as far as possible the same as the laws of the RoC. It applies to legislation which the RoC has enacted, including those arising from membership of the EU and as a result of being signatory to the European Convention on Human Rights.

16. The Administrator is required by the Secretary of State for Defence to forward draft Ordinances of any major character, particularly those with political implications to the Ministry of Defence prior to issue (and to the British High Commissioner in the RoC).

17. All Ordinances and Public Instruments enacted by the Administrator are published in the SBA Gazette, which is copied to the Ministry of Defence so as to provide an opportunity for the power of disallowance to be exercised.

18. SBA Ordinances and Public Instruments enacted since 2004 are publicly available on the SBA website at [www.sbaa.mod.uk](http://www.sbaa.mod.uk). and arrangements are in hand for legislation which pre-dates 2004 (hitherto only available in deteriorating hard copy form) to become available via the Internet.

19. The SBA has its own legal system, including a two-tier court system (with limited rights of appeal to the Judicial Committee of the Privy Council). The actions of the Administration are amenable to challenge through the courts.

20. The Human Rights Ordinance 2004 which was brought into force on 1st May 2005, makes it unlawful for a public authority (including therefore the SBA Administration) to act in a way which is incompatible with a Convention right. It also requires that, so far as possible, legislation of the SBAs must be read and given effect in a way, which is compatible with the Convention rights. It enables any individual who claims that their rights under the Convention have been violated to bring proceedings in the SBA Court and to seek redress.

21. The remedy of judicial review is available to those aggrieved by the actions of the Administration, broadly in accordance with the principles applied in relation to judicial review in England and Wales.

#### ACTIVITIES OF POTENTIAL POLITICAL SENSITIVITY

22. The Administrator is required by the Secretary of State for Defence to consult with him before undertaking any activity that would deviate from the basic principles in the declaration made under Appendix O.

#### POPULATION

23. The population of the SBAs includes approximately 7,800 Service personnel, civil servants and dependants living mainly in the Garrison and Station areas and over 10,000 Cypriots. The Cypriots living in the Areas are recognised residents of the SBAs but are EU and RoC citizens. They vote in the respective RoC and EU elections. There are a number of communities that extend into both the SBAs and the RoC; Cypriots who reside in the SBA part of the community are treated in accordance with the Communities Law of the RoC.

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<sup>96</sup> Article 4 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960

#### EXTERNAL RELATIONS

24. As military bases, the SBAs do not have external relations in the normal sense, but formal discussion with the Government of Cyprus over the SBAs is conducted as bilateral business between the UK and Cyprus, through the British High Commission in Nicosia and the Cypriot Ministry of Foreign Affairs. Day-to-day matters are dealt with directly between the Cypriot and SBA authorities.

#### ECONOMIC ASPECTS OF THE SBA

25. The SBAs use the currency and financial control mechanisms of the RoC and will use the Euro as local currency when Cyprus adopts the Euro on 1st Jan 2008.

26. Although legally a separate Government entity, the SBAA is funded by the Ministry of Defence. The Annual Operating Budget is approximately £11.5M. The SBAA generate revenue of approximately £300K. In addition to this the SBAA collect monies on behalf of the RoC, which are returned every quarter. It would be impossible to give an accurate figure of the monies returned to the RoC as this comprises of the income tax on earnings of dependants and Sutlers<sup>97</sup> and taxes and imports paid by Cypriots living and working in the Areas.

#### REGULATION OF THE FINANCIAL SECTOR

27. The SBAs use the currency and financial control mechanisms of the RoC. Appendix O delegates a number of administrative functions to the RoC. Regulation of the Financial sector falls into this category.

#### SOVEREIGNTY DISPUTES

28. The Government of the RoC acknowledges the UK's sovereignty over the SBAs, although it believes that the UK's sovereignty is "limited" because the Areas were retained solely for military purposes. The UK position is that the SBAs have all the attributes of fully sovereign territory. This difference of opinion does not prevent good day-to-day co-operation with the RoC over the operation of the SBAs.

#### ENVIRONMENT

29. The SBAs are environmentally rich. The SBAA strives to manage the environment in accordance with international environmental conventions. The following have been extended to the SBAs:

- Bern Convention on the Conservation of European Wildlife and Natural Habitats,
- Ramsar Convention on Wetlands of International Importance,
- Bonn Convention on the Conservation of Migratory Species of Wild Animals,
- Paris Convention of UNESCO on the Protection of the World Cultural and Natural Heritage, and
- London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter.

30. Though not formally subject to EU environmental directives, the SBAA also manages the environment in accordance with the precepts following EU Directives:

- Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora<sup>98</sup>
- Council Directive 79/409/EEC on the Conservation of Wild Birds<sup>99</sup>

#### HUMAN RIGHTS

31. With effect from 1st May 2004 the Government of the United Kingdom declared the extension of the European Convention on Human Rights to the SBAs. It further declared that it accepted the competence of the European Court of Human Rights to receive petitions from individuals as set out in Article 34 to the Convention. The Convention was given further domestic effect in the SBAs through the enactment of the Human Rights Ordinance 2004. This law was brought into force on 1st May 2005.

32. The main body of the ECHR was extended in its entirety. The First Protocol was not extended to the SBAs because it includes an undertaking to hold free elections. The Administrator of the SBAs is appointed by the Secretary of State for Defence, there are no elections for the post of Administrator of the SBAs and nor can there be. It would only have been possible to extend the First Protocol if it were permitted to make

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<sup>97</sup> The definition of Sutlers in the Treaty of Establishment is: persons, not being nationals of the RoC nor ordinarily resident therein who are licensed by the UK authorities to accompany their land, sea and air armed services in the Island of Cyprus in order to perform services for members of those services.

<sup>98</sup> The SBA Protection and Management of Nature and Wildlife Ordinance is in draft and will mirror the RoC implementation of this Directive.

<sup>99</sup> The SBA Protection and Management of Game and Wild Birds Ordinance mirrors ROC implementation of the Directive.

a reservation in respect of Article 3. Article 57(1) of the convention states that reservations of a general character shall not be permitted. The Protection of Property Ordinance 2004 and the Right to Education Ordinance 2005 were enacted in order to provide domestic equivalents to the Convention rights set out in Articles 1 and 2 to the First Protocol.

33. The UK has not acceded to Protocols Four, Seven or Twelve so these Protocols cannot be extended to the SBAs.

15 October 2007

**Annex B**

### **Constitutional Review Developments**

#### ANGUILLA

A Constitutional and Electoral Reform Committee was appointed in 2002, but failed to complete its work. A new Constitutional and Electoral Reform Commission was established in 2005 under the chairmanship of retired judge Mr Don Mitchell CBE QC, and it published a comprehensive report in August 2006. The report has since been under consideration by members of the Anguilla House of Assembly and by the public in Anguilla. A first round of discussion with the FCO was due to take place in July 2007, but this was postponed at the request of the Chief Minister of Anguilla to allow for further public consultation.

#### BERMUDA

No constitutional review commission has been appointed in Bermuda. But at the request of the Government of Bermuda a cross-party Constituency Boundaries Commission was established in 2001 to make recommendations on the number and boundaries of single-member constituencies to replace the previous system of dual-member constituencies. Following the Commission's report, the Constitution of Bermuda was amended in 2003 to provide for 40 single member constituencies for elections to the Bermuda House of Assembly.

#### BRITISH INDIAN OCEAN TERRITORY

In 2004 a new Constitution was provided by the British Indian Ocean Territory (Constitution) Order 2004. The reasons for this were explained to the House of Commons by Mr Bill Rammell MP, then FCO Minister of State, as follows (Hansard 15 June 2004 Columns 33WS and 34WS):

“... anything other than short-term resettlement on a purely subsistence basis would be highly precarious and would involve expensive underwriting by the UK Government for an open-ended period/probably permanently. Accordingly, the Government consider that there would be no purpose in commissioning any further study into the feasibility of resettlement; and that it would be impossible for the Government to promote or even permit resettlement to take place. After long and careful consideration, we have therefore decided to legislate to prevent it.

“Equally, restoration of full immigration control over the entire territory is necessary to ensure and maintain the availability and effective use of the territory for defence purposes, for which it was in fact constituted and set aside in accordance with the UK's treaty obligations entered into almost 40 years ago. Especially in the light of recent developments in the international security climate since the November 2000 judgement, this is a factor to which due weight has had to be given.

“It was for these reasons that on 10 June 2004 Her Majesty made two Orders in Council, the combined effect of which is to restore full immigration control over all the islands of the British Indian Ocean Territory. These controls extend to all persons, including members of the Chagossian community.

“The first of these two orders replaces the existing constitution of the territory and makes clear, as a principle of the constitution, that no person has the right of abode in the territory or has unrestricted access to any part of it. The second order replaces the existing immigration ordinance of the territory and contains the detailed provisions giving effect to that principle and setting out the necessary immigration controls...”

The validity of certain provisions of this Order has been successfully challenged in the English courts. The Government is currently awaiting the result of its application to the House of Lords seeking leave to appeal.

#### BRITISH VIRGIN ISLANDS (BVI)

A local Constitutional Reform Commission (CRC), chaired by Mr Gerry Farara QC, presented a comprehensive report in April 2005 after wide public consultation.

Three rounds of negotiations were held between FCO and BVI delegations from March 2006, taking as its basis for work the 116 recommendations of the CRC. In February 2007 the fourth round of talks was successfully concluded in London, under the chairmanship of Lord Triesman. A new Constitution was agreed in draft, and after further public consultation it was debated and approved by the BVI Legislative Council.

The draft Constitution was sent to the Foreign Affairs Committee on 28 April 2007.

The new Constitution came into force on 15 June 2007.

#### CAYMAN ISLANDS

A local Constitutional Review Commission, chaired by Mr Benson Ebanks OBE JP, reported in March 2002, including a draft new Constitution. Principles for a new Constitution were agreed at talks in December 2002 between FCO and Cayman Islands representatives. In February 2003 a draft Constitution based on this agreement was sent to the Cayman Islands and published there. The draft Constitution includes a chapter on human rights, agreed with the Caymanian representatives. One of the changes proposed at the Caymanians' request was to move from multi-member constituencies electing 15 members to 17 single member constituencies. An Electoral Boundary Commission was established by Order in Council and reported in September 2003.

In late 2003, the then CIG proposed a series of changes to the position it had agreed at the December 2002 discussions. Talks were due to take place in February 2004 to try to resolve the new issues raised by the CIG, including their decision to propose postponing to 2008 the move to single-member constituencies in all the multi-member electoral districts except George Town. But the CIG cancelled the talks saying it had more important issues to deal with in the run up to the November 2004 general election. Following Hurricane Ivan, the general election was postponed until May 2005, at which there was a change of government. Informal talks were held between the new CIG and the FCO in March 2006 with a view to restarting the constitutional review process. The CIG is still reviewing its position and preparing for further local public consultation.

#### FALKLAND ISLANDS

After wide public consultation, a Select Committee of the Falkland Islands Legislative Council published a report in May 2007 making a number of recommendations for constitutional change.

#### GIBRALTAR

A Select Committee of the Gibraltar House of Assembly published a report, which included a draft new Constitution, in January 2002. Following three rounds of discussion between Gibraltar and FCO delegations, a new Constitution was agreed in draft in March 2006. The draft new Constitution was then published in Gibraltar, and was approved by a referendum in Gibraltar in November 2006.

The draft Constitution was sent to the Foreign Affairs Committee on 30 October 2006.

The new Constitution came into force on 2 January 2007.

#### MONTSERRAT

Montserrat's Constitutional Review Commission, under the chairmanship of the former Speaker, Professor Sir Howard Fergus, produced its report in March 2003 after widespread consultation in Montserrat and amongst the Montserratian community overseas.

After informal talks with FCO officials in October 2003, the first round of formal negotiations eventually took place in September 2005, following which a first draft of a new Constitution was prepared and formed the basis of work for the second round in March 2006. After Legislative Council elections in the summer of 2006 a third round was held in October 2006 with the new team of Councillors, followed by a fourth round in May 2007. A large measure of agreement has been reached, but some difficult issues remain to be resolved.

#### ST HELENA, ASCENSION AND TRISTAN DA CUNHA

In early 2003, advised by Mrs Alison Quentin-Baxter QSO, a New Zealand barrister and constitutional adviser funded by the Commonwealth Secretariat, the elected Legislative Councillors of St Helena made proposals for a new Constitution that would introduce a ministerial system of government in St Helena. These proposals were discussed with the FCO in April 2003, and the principles for a new Constitution were in due course agreed. Consultations were also held with the Island Council on Ascension. A new

Constitution was drafted and was published in St Helena, with a view to wide public consultation. In May 2005 a consultative poll was held in St Helena in which voters were asked whether they approved the introduction of ministerial government. The result of the poll was negative. The draft Constitution has therefore not been proceeded with. Consideration is being given to the desirability of constitutional changes that would not involve ministerial government.

#### TURKS AND CAICOS ISLANDS (TCI)

A local Constitutional Review Body, chaired by Mr Daniel Malcolm, presented its report in September 2002.

Three rounds of negotiations were held between FCO and TCI delegations in June and December 2004 and October 2005. Agreement was reached at the final round on the principles for a new Constitution, which was then drafted and published in the Islands. Following further public consultation in the Islands the Legislative Council then debated and approved the new Constitution.

The draft Constitution was sent to the Foreign Affairs Committee on 5 June 2006.

The new Constitution came into force on 9 August 2006.



**UN Human Rights Conventions: Ratification Table.**

<u>Treaty</u>	UK	Ang	Ber	BVI	Cay	Gib	Fal	Mo	StH	Pit	TCI
ICCPR	•		•	•	•	•	•	•	•	•	•
ICESCR	•		•	•	•	•	•	•	•	•	•
European Convention on Human Rights	•	•	•	•	•	•	•	•	•		•
CAT	•	•	•	•	•	•	•	•	•	•	•
CRC	•	•	•	•	•		•	•	•	•	•
CEDAW	•			•			•				•
CERD	•	•	•	•	•	•	•	•	•	•	•
Convention on Political Rights of Women	•	•	•	•	•	•	•	•	•	•	•
Convention on Prevention and Punishment of Genocide	•		•	•		•	•		•	•	•
Convention on Reduction of Statelessness	•	•	•	•	•	•	•	•	•		•
Convention on Status of Statelessness	•	•	•	•	•		•	•	•		•
ILO Convention No. 105 Abolition of Forced Labour	•	•	•	•	•	•	•	•	•		•
ILO Convention No. 87 Freedom of Assn. and Right to Organise	•	•	•	•	•	•	•	•	•		•
ILO Convention No. 98 Organise and Collective Bargaining	•	•	•	•	•	•	•	•	•		•
ILO Convention No. 29 Forced Labour	•	•	•	•	•	•	•	•	•		•
ILO Convention No. 100 Equal Remuneration	•					•					
ILO Convention No. 138 Minimum Age (UK ratified 2000)	•										
Convention on Consent to Marriage, Minimum Age and Registration	•	•	•	•	•	•	•	•	•	•	•
ILO Convention No. 97 Migration for Employment	•	•	•	•				•			
Geneva Conventions I, II, III IV (1949)	•	•	•	•	•	•	•	•	•	•	•
European Convention for Prevention of Torture or Degrading Treatment	•					•					
UNESCO Convention Against Discrimination in Education	•	•		•	•	•	•	•	•		•
Convention on Abolition of Slavery	•	•	•	•	•	•	•	•	•		•
ILO Convention No.182 Worst Forms of Child Labour (UK ratified 2000)	•										
ECHR Protocol No. 1 (Possessions/Education/Elections)	•		•	•	•	•		•	•		•
European Convention for the Prevention of Torture Protocol 1.	•					•					
European Convention for the Prevention of Torture Protocol 2.	•					•					

**Submission from Sonia P E Grant, Bermuda**

## INTRODUCTION

1. Since the age of 16, I have been on the periphery of Bermudian politics.
2. In early spring 1968, I was a registration clerk for the Parliamentary Registrar, in the registration of all eligible Bermudian voters under the implementation of universal adult suffrage.
3. Upon completion of the registration exercise, I went to work in late spring and for the duration of the summer of 1968, for a parliamentarian, Gilbert Outerbridge Darrell, MCP, as Members of Parliament were then known.

4. Since that time I qualified as a teacher in England in 1974 and as a Barrister-at-law in England in 1985, and have practised law—probate, wills and estates and real property in most of its forms; and ecclesiastical—in Bermuda since March 1986.

5. I have served as a presiding officer in elections and by-elections throughout Bermuda in the latter half of the seventies, 1983, and the latter half of the eighties and up to 1993. In fact in 1993, the Returning Officer that I worked with at an election recommended me to the Cabinet Office to be appointed as a Justice of The Peace. I was sent the application form, but never completed it.

6. In my capacity as Registrar of the Synod of The Anglican Church of Bermuda and The Bishop's Court, a position I was invited to fill in early 1995, I was privileged to preside over the election of the first Bermudian Bishop of The Anglican Church in Bermuda, The Right Reverend Ewen Ratteray, and was a part of his historic Consecration and Enthronement Service held on Sunday 19 May 1996, in Bermuda, and attended by The Archbishop of Canterbury.

7. In September 1995 or thereabout, I, along with two others, was invited by His Excellency the Governor, Lord Waddington, to serve as a Commissioner on a Commission of Inquiry with the following terms of reference:

*“To inquire into the circumstances and events which occurred on Tuesday, 15 August, 1995 which led to the postponement of the Referendum on Independence to the 16 August and to make any recommendations arising therefrom”.*

8. As a result of the 1995 Commission's work, amendments to The Parliamentary Act 1978 were promulgated, but those amendments were not brought to bear on Municipalities Act 1923 which governs the Corporation of Hamilton. [See paragraph 13 post].

9. In 1993, with the backing of the Business and Professional Women's Association, and the unwavering support of two of its members in particular, the then Dr Marjorie Bean [who later on became Dame Marjorie Bean] and Dolores Darrell, the then President of The Association, I was privileged to win a bye-election for the seat of Common Councillor, thereby becoming the first female Member of the Corporation of Hamilton in its 200 year old history. I had defeated Sutherland Madeiros, the only other candidate.

10. I served as a Councillor of The Corporation of Hamilton from 1993 to October 2003, when I became Senior Alderman and Deputy Mayor and a Justice of the Peace by virtue of my Office, until 20 April 2006.

11. From 1993 to October 2003, there were only two Mayoral elections, with the positions of Alderman and Common Councillor always being uncontested.

#### THE CORPORATION OF HAMILTON

12. The Corporation of Hamilton is one of two Bermudian Municipalities, the other being the Corporation of St. George. As alluded to in paragraph 9 herein, the Corporation of Hamilton was formed in 1793.

13. Under Municipalities Act 1923 as amended, the Corporation of Hamilton derives its authority.

14. I would be bold to say that, in my humble opinion, it is a result of the existence of the Corporation of Hamilton, with its taxing provisions, that Bermuda is what it is today, and furthermore, that it is the existence of the Corporation of Hamilton that sets Bermuda ahead of other overseas territories as a tremendously successful jurisdiction.

15. For a country the size of Bermuda, it is by virtue of The Corporation of Hamilton, that there exists a sophisticated infrastructure in Hamilton of asphalted roads, decent sidewalks and gutters, underground fibre optics and other cabling, docks, water supply, garbage collection, sewerage treatment, electricity, CCTV cameras, telecommunications, office blocks and a growing number of high-rise condominiums.

16. The City of Hamilton is no doubt a tremendous success story, in most regards.

17. The City of Hamilton, however, is not a success story when it comes to Human Rights and in particular how it conducts its Elections, which are not free and fair, and in keeping with international conventions.

#### GOOD GOVERNANCE AND HUMAN RIGHTS

18. Since the ratification of The European Convention on Human Rights and its five protocols by the United Kingdom Government on behalf of the Government of Bermuda, an Overseas Territory of The United Kingdom, The Corporation of Hamilton, which is a legislating body, has a franchise, pursuant to Part 1 of First Schedule to Municipalities Act 1923, which is in breach of Article 3 of Protocol 1 The European Convention of Human Rights and Fundamental Freedoms because the elections are not free and fair as the franchise is not based on universal adult suffrage.

19. There are a number of people in Bermuda who share my concern.

20. Even though I lost my legal action, initiated in the Supreme Court of Bermuda against the winner of the 26 October 2007 election, The Right Worshipful Sutherland Madeiros, Mayor of Hamilton; the Returning Officer and the Registering Officer; the Mayoral election held by The Corporation of Hamilton on Thursday 26 October 2007 was an absolute disgrace, with the rule of law being tossed out the window.

21. My lawsuit Number 357 of 2006 in the Civil Jurisdiction of The Supreme Court of Bermuda was premised on what was the correct interpretation of paragraph 9 sub-paragraph 4 (b) Part 2 of First Schedule to Municipalities Act 1923.

22. I had been a Member of the Corporation of Hamilton until 20 April 2006, when I was nominated to run for the Office of Mayor. There were two other candidates, the incumbent Mayor and one of the other two Alderman, Jay Bluck, who subsequently won the election by 22 votes, the same number of votes that the incumbent Mayor, The Right Worshipful Lawson Mapp, received.

23. Notwithstanding its illegal franchise, there was nothing untoward about the election of 20 April 2006, save for the fact that despite the Corporation of Hamilton Members instructing the Secretary of The Corporation of Hamilton to hire two Returning Officers, only one was hired, Mr John Cooper JP, a fellow Member of The Bermuda Bar. According to the Secretary of The Corporation of Hamilton, she told those of us present at a regular Tuesday meeting of the Corporation in mid-April 2006, that Mr John Cooper, the Returning Officer, did not wish another Returning Office appointed, because he could do the job by himself.

24. By early August 2006, The Right Worshipful Mr Jay Bluck, Mayor of Hamilton died, thereby resulting in the need for a by-election for the office of Mayor, Notice of which was given for 26 October 2006.

25. Hitherto, in all the elections of the Corporation of Hamilton the position had been taken by the Registering Officer of The Corporation of Hamilton, the Secretary of the Corporation of Hamilton, that once the Notice of Election was published, there would be no changes to the Voters' Register.

26. This too, had been the position of the Returning Officer, Mr John Cooper JP, who in March 2006 had stated this salient fact in his advisory circular to all candidates running for office with the Corporation of Hamilton in the 27 April 2006 election.

27. Suffice it say, that with respect to the election of 26 October 2006, the position changed. On the afternoon prior to the 26 October 2006 election, threats were made by the Returning Officer to the Registering Officer on the telephone, that unless the Registering Officer had changed the names of nominees of companies which had submitted applications for the change of names, after the publication of the Notice of The Mayoral Election, he, the Returning Officer would go ahead and issue ballott papers to those individuals who attended at City Hall to vote, even though their names did not appear on the Voters List.

28. The Registering Officer did make changes to the Voters' List at 1.00 am or thereabout on Election morning, 26 October 2006.

29. When I requested of the Registering Officer a list of the names, after she casually mentioned to me on election morning that she had changed the names of various nominees of companies on the Voters List, she then failed to provide me with a list of names that had been added in a timely manner, and not until 9.15 pm after the election had ended and the votes counted, when I requested again the revised voters list.

30. I never knew of the threats the Returning Officer had made against the Registering Officer until after I filed my Petition in The Supreme Court of Bermuda, and same was reported in the press, when various individuals, including Members of The Corporation of Hamilton, told me of the threats.

31. There is a tremendous amount more that can be said about the Mayoral election of 26 October 2006 and how the electoral rights of the constituents of the City of Hamilton and the rule of law were trampled, but the basis of this submission is to draw the Committee's attention to the lack of good governance emanating from the Corporation of Hamilton and its continual undermining of the human rights of its constituents in the context of its elections.

32. I am willing to give oral evidence.

*15 October 2007*

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#### **Submission from Mr John Styles, President, Chamber of Commerce, St Helena Island**

The Chamber of Commerce submits the following examples of poor governance in the overseas territory of St. Helena Island.

1. Currently the Governor's reserved powers give him control over all financial matters. As most matters requiring a decision involve finance this gives the Governor control over most of the activities of the St Helena Government. Consequently most decisions are not taken democratically.

2. Those Legislative Council Members who are not Members of Government are, effectively, disfranchised from the decision making process. This is because the various Committees consist of two Executive Council Members (Government) and two non Government Legislative Council Members with

one of the Executive Council Members having a casting vote. Consequently a number of democratically elected Councillors ultimately have no power to make decisions. This process has been introduced within the last two years. Previously, Legislative Council Members were in the majority.

3. The process for appointing individuals to the various Boards on the Island is that the Governor makes the appointments. This, in itself is not the problem. The problem is that these paid vacancies are not openly advertised with the appropriate skills and experience of potential applicants being taken into account. It is simply who the Governor want to appoint.

4. Most Executive Council (Government) discussions are unnecessarily held in secrecy and are not open to the public, which simply promotes the current distrust of Government. This goes against the principles openness and transparency.

We do not believe that democracy exists on St Helena and the lack of such will mitigate against future investment on the Island and continue to damage private sector development.

15 October 2007

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### Submission from Mr Peter Tatchell

My submission to the Foreign Affairs Committee concerns the state of human rights in the British Overseas Territory of Gibraltar.

It is based on an eight-day fact-finding visit to Gibraltar, from 26 September to 3 October 2007, at the invitation of local human rights campaigners.

During this visit I met with the leaders of the main political parties—Joe Bossano of the Gibraltar Socialist Labour Party, Joseph Garcia of the Liberals and Keith Azopardi of the Progressive Democrats. I was due to meet the leader of the Gibraltar Social Democrats and Chief Minister, Peter Caruana, but he imposed unreasonable conditions on our meeting, so I declined. I did, however, meet individual members of the GSD.

In addition, I met with representatives from a wide range of human rights, community groups and non-governmental organisations.

- (i) After having consulted with a wide cross-section of Gibraltarian society, it is my conclusion that Gibraltar fails a number of UK and EU human rights standards.
- (ii) It is also my conclusion that many victims of human rights abuses lack effective, swift mechanisms for the redress of these abuses.
- (iii) It is my further conclusion that some victims of human rights abuses are silenced by a prevailing atmosphere of intimidation and fear. I heard mention of the climate of fear, and the fear of retribution, many times during my visit.
- (iv) Some Gibraltarians told me of instances of official discrimination, harassment and injustice they had experienced after they had made complaints against the government or state officials. Others told me they were unwilling to make official complaints or go on the public record regarding the human rights violations they had suffered. They said they were afraid of retribution from government agencies. This included fear of losing—or being denied access to—jobs, housing, welfare benefits, medical treatment, student places and educational awards and grants. I heard of instances where complainants and protesters had suffered one or more of these deprivations.
- (v) The British government has ultimate responsibility for the protection of human rights in Gibraltar. As a matter of urgency, the Foreign Office should establish an oversight mechanism to monitor human rights abuses and recommend remedies—to ensure Gibraltar's compliance with British and EU human rights standards.

The main findings from my visit are as follows:

#### 1. A DRIFT TO AUTOCRACY

Concern was expressed by many local people at the way the Chief Minister has also taken for himself the important Ministries of Finance and Justice. This is an unhealthy concentration of power in the hands of one man, which goes against the British tradition of separation of powers and of checks and balances.

The suspension of the Chief Justice, Derek Schofield, combined with the Chief Minister's assumption of the Justice Minister post, raises questions concerning the independence of the judiciary and the proper separation of powers between the judiciary and the executive.

I also heard repeated critical allegations regarding the operation of industrial tribunals and their failure to provide swift, fair rulings to appellants—including the fact some claimants have great difficulty in funding their cases. Everyone should be entitled to equal access to justice, according to local campaign groups.

## 2. MOROCCAN COMMUNITY—VISA AND RESIDENCE RIGHTS DIFFICULTIES

Members of the Moroccan community raised a number of issues, including parent's difficulties in obtaining visas for their children to visit Gibraltar during the summer holidays. Visa applications are, they say, frequently ignored or delayed until after the period requested.

Great distress and disadvantage is caused by the denial of permanent residence rights to Moroccans who have lived and worked in Gibraltar for 25 years or more; compounded by some people reporting that applications by eligible persons are mislaid or ignored.

Moreover, the 25-year residence requirement for eligibility for permanent residence rights is unreasonably long and is many times in excess of the British and EU residence periods for permanent residence rights.

Moroccans also complain about the unfairness of the English-proficiency requirement for permanent residence, given that the government has failed to provide English language training to enable applicants to fulfil this requirement. In other words, the government stipulates a requirement but fails to give the applicants the means to fulfil that requirement. Moreover, the standard of English proficiency required of Moroccan residence applicants is higher than that possessed by some Gibraltar citizens.

## 3. BUENA VISTA HOSTEL FOR MOROCCAN WORKERS

I spoke to members of the Moroccan community who regularly visit the Gibraltar government's hostel for Moroccan workers, Buena Vista. They say it is unfit for human habitation; alleging it is decaying, cramped, dirty, infested, badly maintained and with poor amenities. They describe it as Third World housing in a first world country; arguing that the accommodation standards are not much better than those in run-down parts of Lagos and New Delhi. The unsanitary conditions are, they say, in breach of Gibraltar and EU environmental health standards—a violation of the Buena Vista residents' human rights.

Photos of the squalid conditions inside the hostel can be viewed here:  
<http://humanrightsgib.blogspot.com/>

These photos had to be taken and obtained surreptitiously. Anyone caught taking or distributing these photos is likely to suffer unofficial official retribution, I was told. It is not that the photographer would have committed any offence, but that the government of Gibraltar would have been embarrassed and would have found ways to “get back” at the persons who took and distributed the photos—more evidence of the climate of fear that many Gibraltarians spoke to me about.

The Buena Vista hostel accommodates about 250 single Moroccan men, with the oldest resident having lived and worked in Gibraltar for around 35 years.

These are the allegations being made by Moroccans at the Buena Vista hostel:

- The rooms are tiny and cramped—a mere 2.5m by 2m.
- Half the showers and toilets are broken and unusable.
- Sections of tiling have fallen off the walls in the bathrooms.
- The bare, rough concrete floors in the toilets and showers are unhygienic.
- Damp and mould affect many of the walls and ceilings.
- Half the rings on the kitchen cookers do not work.
- Only one sink per 13 residents, for washing plates and utensils.
- No heating in winter.
- Laundry facilities are non-existent.
- Much of the premises are infested with cockroaches.
- The hostel is poorly facilitated and supervised, with no adequate maintenance and repairs service.

The government's failure to remedy the slum housing at Buena Vista is a dereliction of its duties and responsibilities.

## 4. DISABLED RIGHTS AND MENTAL HEALTH ISSUES

Disabled groups expressed concern that the government provides no walking stick or Braille training for the blind or visually impaired; and that the government has promised to build an urgently needed modern Psychiatric Hospital, but has failed to do so; leaving the territory with unsatisfactory psychiatric facilities.

Disabled people have limited legal protection against discrimination. To remedy this failing, local groups say that legislation similar to Britain's Disability Discrimination Act is a priority. It would help safeguard the rights and welfare of disabled Gibraltarians.

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## 5. ABUSES AT THE DR GIRALDI HOME

A number of past and present employees, senior social services staff and parents of patients, have made serious allegations of physical and sexual abuse at Gibraltar's Dr Giraldi Home for disabled children and adults. According to parents of Dr Giraldi residents, these allegations have never been properly investigated or rectified.

The allegations, concerning past and present conditions at Dr Giraldi, include allegations of: insufficient health and safety procedures, poor controls on access to medication, severe understaffing, few employees specifically trained in disability issues or in dealing with challenging behaviour, a substandard fire alarm system, serious medication errors, missing class A drugs, residents left at night unattended, broken wheelchairs, patients'/respite users' personal money unaccounted for, and alleged sexual abuse.

These allegations grave enough to merit a thorough-going independent public inquiry, to sort fact from fiction. Disabled organisations are shocked that no public inquiry has taken place, despite these allegations having been first made three years ago.

## 6. SEXUAL ORIENTATION DISCRIMINATION

Gay human rights organisations expressed concern that they had been systematically shunned by the government. The territory's unequal age of consent for gay men (18 not 16) is illegal under rulings by the European Court of Human Rights.

Also unlawful under the European Convention on Human Rights are the discriminatory homophobic criminal offences of "buggery", "attempted buggery" and "gross indecency". Gay organisations urge the scrapping of these anti-gay laws to ensure that the criminal law does not discriminate on the grounds of sexual orientation.

Gibraltar offers no legal recognition to same-sex partners. In the view of local gay rights groups, equality and fairness requires that Gibraltar should legislate some form of legal rights for lesbian and gay couples—perhaps modelled on the UK's Civil Partnership Act 2003.

Eligibility for affordable housing schemes has been extended to unmarried heterosexual partners but not to unmarried same-sex partners. Local gay campaigners question: How can this differential treatment be justified?

In the absence of legal protection against discrimination in the provision of goods and services, restaurateurs, hoteliers and shop owners are entitled to refuse to serve a gay or lesbian person. The government of Gibraltar has already eliminated such discrimination on the grounds of race and ethnicity. It should likewise protect its gay and lesbian citizens from such discrimination, argue human rights groups.

Seven years after its establishment, Gibraltar Gay Rights reports that it is one of the very few community organisations that receives no government funding or premises, despite providing a valuable social and community service.

## 7. EQUAL OPPORTUNITIES COMMISSION

The creation of the EOC is a welcome first step, but human rights organisations point out that its terms of reference have never been made public. Moreover, the remit of the EOC is narrowly defined to cover only race equality. Local equality groups say it should be extended to combat all discrimination, including discrimination based on gender, age, sexual orientation, disability and religion or belief, along the lines of the remit of the UK's new Commission for Equality and Human Rights.

## 8. CONCLUSION

From my extensive discussions with Gibraltarians from all walks of life, it is apparent that there is a serious human rights deficit in the territory, and that it falls short of the human rights standards expected in the UK and most of Europe. I sense that the mood of the public in Gibraltar favours equality and human rights, but that legislative action is being thwarted by the government.

Gibraltar is a British Overseas Territory, for which the British government and Foreign Office have responsibility. I would urge the British authorities to meet that responsibility by ensuring Gibraltar's compliance with EU regulations and European human rights law.

15 October 2007

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### Submission from Alpha Gibbs, Turks and Caicos Islands

#### 1. THE ROLE OF GOVERNORS AND OTHER OFFICE-HOLDERS APPOINTED BY OR ON THE RECOMMENDATION OF THE UNITED KINGDOM GOVERNMENT

A significant portion of the role of the Governor in the Turks and Caicos Islands is articulated in section 33 of the TCI constitution, captioned Governor's Special Responsibilities; among these responsibilities are:

- (a) Defense;
- (b) External affairs; and
- (c) Internal security-including the Police Force.

In the three categories enumerated above my observations suggest that service to the TCI is deficient and falls far below a basic level of competency for the functions enumerated.

#### A—Defense

- (i) Our borders are open and vulnerable to encroachment by illegal immigrants, at their whim and fancy, without significant probability of interdiction by TCI patrol vessels. Hundreds of Haitian nationals are smuggled into TCI weekly and our only cognizance of the events arises upon the landing of the crafts and the discharge of their human cargo. There exists no effective early warning system or process of interception prior to the illegal's taking refuge in the woodlands and coastal coves or being integrated into an overwhelmingly large and fast growing illegal alien population.
- (ii) On May 4, 2007 the world became aware that an overcrowded sloop originating from Haiti was sunk in the TCI and some 61 Haitian nationals lost their lives. The TCI maritime patrol grossly inadequate response was further compounded with a thoughtless press release which coarsely placed the blame of the event on the organizers of the expedition.
- (iii) Despite lip service to the acquisition and utilization of an air patrol fleet of helicopters for use in aerial boarder and coastal patrols, the illegal immigrants continue to arrive. During the week of October 1st 2007 it is reported that five vessels disgorged their illegal human cargo into TCI; 200 illegals on Grand Turk and hundreds more into Providenciales, and possibly untold numbers onto the remote shores of the larger islands and certainly onto the uninhabited islands and cays.
- (iv) Current estimates are that in excess of 400 illegal immigrants arrive monthly. This violation of our territorial limits compounded with the misguided and excessive grants of belongingship status to whoever applies creates a serious threat to the socio-economic structure and long-term stability of the TCI. When one contrasts the TCI illegal immigrant experience with the action which the UK government took in 1981 with its Nationality Act of the same year it becomes questionable as to the care and concern afforded to the issues affecting the Territories relative even to the same issues faced by the UK. I am flabbergasted as to why the lessons learned from the UK experiences are not willingly and freely shared with its Territories as and when they are confronted with similar problems.
- (v) The issue of illegal Haitian immigrants in TCI is well documented in the House of Commons *Hansard* Written Answers Reports, as numerous members seek answers on this abysmal affair. In May of 1995 one Mr Foulkes inquired of the Secretary of State as to an estimate of the number of refugees from Haiti in the TCI; the response from one Mr. Baldry was that an estimated 8,000 such refugees existed, of whom 1,500 held work permits. Similar inquiries were made by Dr Tonge on April 9, 2003. Despite this treasure trove of documented concern on illegal immigration in TCI, the FCO and the TCI Governor have not yet devised a strategy to deal with this problem. Furthermore given the twelve year time lapse between the estimates of 1995 and now, one can reasonably arrive at the horrific conclusion that the refugee/illegal immigrant problem and the attendant threats to safety and health have certainly tripled since that time.
- (vi) Our Governor, our elected officials and the FCO are all failing us with respect to border patrol and its attendant illegal immigration and refugee fallout.

#### B—External Affairs

With close and continuous observation of TCI governmental activities I have not become aware of our Governor's interaction with our neighbours on collaborative efforts to contain illegal immigration or any other effort of cooperative endeavours, which could possibly help to develop and advance our pursuit of good governance and improved wellbeing of our citizenry.

C—*Internal security-including the Police Force*

The Governor of the TCI is responsible for the Police Force and as an extension the internal security of the territory. The documented cases of unsolved capital crimes and missing persons continue to escalate and accumulated from year to year without the benefit of successful police investigation and the related effective prosecution. Newspaper accounts from within TCI as well as police reports could attest to this assertion. Major crimes go unpunished as the perpetrators are not brought to justice.

2. TRANSPARENCY AND ACCOUNTABILITY IN THE OVERSEAS TERRITORIES

- (i) Section 94 and section 98 of the Turks and Caicos Constitution addresses the issue of Grants of Land, etc. and Registration of Interests respectively, nonetheless documented or perceived compliance with the intent of these constitutional articles seems entirely absent.
- (ii) There appears to be a total lack of an objective documented and publicly known process and or criteria for the disposition of crown land. Crown land seems to be treated as a spoil of political victory and sold indiscriminately without full accounting. Moreover extreme incidences of conflicts of interest seem to arise in both the allocation of crown land under government leases and its final disposition to a cash buyer. This conflict arises as it is reported that ministers of government with significant interest in real estate entities simply make grants of land to constituents who have not even made an application for such a grant of land. The targeted constituent is then invited to accept the grant with the understanding that the minister will sell the land for the constituent and provide the constituent with a fair share of the proceeds. An examination of crown land conveyances can quickly prove or disprove this assertion. It should be possible to examine a register of applications for crown land and determine their final resolution relative to an objective standard, unfortunately it appears that such a register or standard does not exist.
- (iii) The register of interest is not a document whose existence is known to the public the same applies to the Registrar of Interest who is equally unknown. The full execution of this office would provide the public some information on the compromising and conflicting dealings of their elected and appointed officials.
- (iv) The Registrar of Interest section currently exempts the Governor from compliance. This exemption of the Governor is a disservice to the people of the Turks and Caicos Islands. One cannot logically rationalize that a governor is above reproach, as in our own experience our governors have also demonstrated the very human proclivity to be seduced by the lure of easy wealth.
- (v) We have witnessed in Turks and Caicos the tendency of the FCO and the Privy Council to impose upon us laws which debase our moral standards, one such law was the “homosexuality” Order in Council of 2000. Why has not the FCO and the Privy Council with similar vigor, not developed and recommend laws which would help to curb corruption and develop ordinances which would make it a crime to bribe a public official and likewise make it a crime for a public official to accept a bribe or kickback.
- (vi) The singular institution in TCI which has some responsibility for oversight has been neutered to the point of being ineffective. The office of which I write is the Complaints Commissioner. The numbers of public officials who are exempt from the authority of the Complaints Commissioner are so numerous that the office by design cannot serve the best interest of the people of the Turks and Caicos. The regulations under the Complaints Commissioner must be modified to allow the office to execute its functions fully and completely. Neither the governor nor the chief of police should be exempt from the oversight of this office.
- (vii) Transparency and accountability in Turks and Caicos needs to be established and maintained through an effective use of public forums, public hearings and an effective place of administrative redress for issues and concerns which may arise from time to time. With its absence of enforcement and or prosecutorial powers and its narrow scope, the current configuration of the Office of the Complaints Commissioner does not meet the public’s need. The regulation under which it operates is in dire need of reform.

3. PROCEDURES FOR AMENDMENT OF CONSTITUENCIES OF OVERSEAS TERRITORIES

The current piecemeal approach to modifying our constitution is ineffective. Insufficient public input, limited discussion time and opportunity for meaningful contribution results in a mediocre document which must be modified with high frequency. An example of such a mediocre document is the TCI constitution of 2006 wherein the substantive changes were simply changes in official titles and the substitution of the Chief Secretary’ position with that of the Deputy Governor. The document fails to address the need for absentee balloting—a benefit which all citizens of the UK enjoy—meanwhile Turks and Caicos Islanders must reside in the Territory for a period of 12 months of the last 24 prior to an election in order to qualify as an elector. This inconvenience is not the circumstance for citizens of the UK. Why is it that the FCO has not made a recommendation for the removal of this adverse clause in the TCI constitution?



#### 4. RELATIONS BETWEEN THE OVERSEAS TERRITORIES AND THE UNITED KINGDOM PARLIAMENT

Each Overseas Territory should be permitted to elect at least one member to the UK Parliament so as to provide visibility to the issues which affect the lives of the citizens within the Territory as well as a training mechanism in the “Westminster” two party system of government. The need for this representation is evident in the infrequent and ineffective oversight of the FCO and the disparity which exist between the progressive laws of the UK with respect to transparency and accountability; voter registration and absentee balloting and that which is permitted to exist within the Territories. The need for a bilateral relationship at the parliamentary level exists as there appears to be a gross misunderstanding of the two party system and its functionality in a fledgling democracy.

15 October 2007

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##### **Submission from Mr Albert Jackson, Cayman Islands**

Thank you so very much for you having an inquiry into The Overseas Territories. It was long over due. Hopefully we will all learn just how bad bureaucracies become when they have no oversight. The Brown government has sprung into Action and is focusing on things that can make a difference in people’s lives. What a great way to hit the ground running in full stride.

The Cayman Islands can not move forward without our basic Human Rights and that’s one person one vote And equal protection of the laws. This is not happening because the two political parties are against it for different reasons. The People’s Progressive Movement (PPM) is afraid to put in effect the Boundary Commission Electoral Commission Report of 2003 because the at large voting system works well for them so way tinker with success? The United Democratic Party (UDP) wants the at large system because it works just fine for the leader of that party. If you don’t support him for leader then you have very little chance of getting elected even being in that party. The UDP leader doesn’t want constituency elections because he loses control of West Bay and he wants to control Gorge Town.

No one is more afraid of the unknown then politicians and both parties are very happy with the at large voting system that is a clear violation of the ONE PERSON ONE VOTE AND EQUAL PROTECTION OF THE LAWS. TWO FUNDAMENTAL HUMAN RIGHTS GAUREENTEES BY THE United NATIONS and the crown.

The FCO allowed the PPM to have the next election in 2009 when it should have been in 2008. The FCO favors the PPM because the Leader of the UDP would say terrible things to the Governor when he was in power making him weep in the legislative assembly. This same leader told him that he would have to vacate the Beach property. It’s worth around \$45million CI. Just this alone tells me that the UDP leader is crass and short in the graces of protocol. What did the Overseas Territories do to make sure he did not retain power? I don’t know but just from the their reaction to my FOI request tells me that they favor this sitting government big time. Your very experienced people that know what to do to get the Cayman Citizens One Person One vote and equal protection of the laws in this next election.

Thank you for all your support.

15 October 2007

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##### **Submission from Dr Allen Vincatassin, Leader, British Indian Ocean Territory People’s Party**

I led the Diego Garcian Community and other Chagos Islanders to the UK to start a new life, when we were granted the right of abode in the UK under the British Overseas Territories Act 2002.

I came with 19 of my compatriots despite the FCO saying that we needed to fend for ourselves, as the rule was clear, no state benefit on arrival. I had to defy the rules because the Government failed to make exceptional circumstances rules in our case. People from Monserrat and the Irish can claim benefit from day one of their arrival in the UK.

We remained at the airport for three days and nights and the Government made no move to accommodate us. There was no provision. We remained stranded at the airport.

On the third day, West Sussex County Council decided to temporarily accommodate us in a hotel under the National Assistance Act 1948. I started to learn the system and help my community members find jobs, open bank accounts, register with a GP etc. Then I supported and encouraged a group of 50 in March 2003 and I continue to learn, helping them find their way and settle here.

I planned it because the government was refusing to allow us to return to Chagos. I thought it was the only good way to change the lives of these people out of acute poverty in Mauritius.

We had to wait six months to get jobseekers allowance for us to stand on our feet. We were living on £30 a week given to us by Social Services.

Now we are waiting for a judgement from the Court of Appeal as we want exemption from the Residency Test and we are saying that there has been discrimination plus failure of provision by the Government as they knew that we had been evicted in the past to make way for the military base.

15 October 2007

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### Submission from BioDiplomacy

#### INTRODUCTORY NOTE

BioDiplomacy is a diplomatic/environmental consultancy established by Iain Orr in 2002, after retiring from the UK Diplomatic Service. His career had a strong China focus, including a secondment to the Hong Kong Government 1978–81 as deputy political adviser, when Hong Kong was still a dependent territory. In his final job in the FCO he worked on environmental issues and was responsible for implementing parts of the 1999 White Paper on the overseas territories, including negotiating the 2001 environment charters between HMG and the overseas territories. His island interests include being a director of the Global Islands Network, a member of the International Small Islands Studies Association and serving as a council member of the UK Overseas Territories Conservation Forum.

#### SUMMARY

The submission argues that many other departments besides the FCO have responsibilities for the overseas territories and that it is worth considering whether a review is needed of how the overseas territories are dealt with in Whitehall. Detailed evidence is provided of deficiencies in the governance of the territories, especially HMG's failure to protect their globally important biodiversity. Governance of the territories would also be improved by greater transparency and accountability, including appropriate freedom of information legislation.

#### OVERVIEW

1. Problems over governance of the overseas territories flow from differences between how those who live in them see their relationship with the UK and how UK ministers and officials regard the territories. Broadly, the territories do not wish to change their status as UK overseas territories. They expect to run their own affairs themselves—with minimal interference by HMG—while being able to call on HMG for support in areas where their status or their limited resources make that necessary. HMG is more ambivalent. It treats the overseas territories as being mostly of peripheral interest (rather like the Crown Dependencies), but recognizes their potential to cause embarrassment to ministers, and to be the source of unwelcome contingent liabilities. On issues where there is public interest in the UK, Whitehall usually likes to have the final say. On local governance issues that attract no attention from public or parliament in the UK, the usual inclination in Whitehall is not to get involved. Generally, ministers and Whitehall officials see the territories as liabilities, not assets.

2. These perspectives are shaped by the location and origins of the territories. Most are far from the metropolitan UK. They came under UK sovereignty as a result of being captured, ceded or discovered during the centuries of overseas expansion by England and then the United Kingdom. The origins of the people vary from territory to territory: descendants of those present when they came under UK sovereignty, colonisers from the UK or elsewhere, descendants of imported slaves, or temporary residents engaged with the economies of the territories, many of whom later became permanent residents. Up until the 1950s they were generally governed as colonies, with resident governors and their staff appointed by the Colonial Office and working with local representatives. There was also a significant UK military presence in territories with strategic importance.

3. Then came the era of decolonisation. Most territories moved to independence. Some were left over, all with small populations (except for Hong Kong). A 1971 paper on Micro-States noted: "As far as UK policy on these little remaining dependent territories is concerned, Sir Colin Crowe spoke to the General Assembly in October, 1968, in the following terms: 'It is not the intention of the United Kingdom Government to delay independence for those that want it; nor to impose it on those who do not want it. Our guiding principle must be the wishes of the peoples concerned. The choice is theirs . . . If at any time in the future [those who prefer to retain their links with the UK] decide to change their views, they are fully entitled to do so'".<sup>1</sup>

4. That remained the orthodoxy when HMG's last White Paper on the territories was presented to the House of Commons on 17 March 1999: *Partnership for Progress and Prosperity—Britain and the Overseas Territories*. When introducing it the then Secretary of State for Foreign and Commonwealth Affairs (Robin Cook) said:

“It is a striking measure of the degree to which the dependent territories value that partnership that none of their Governments expressed any desire during the review for independence. They all want to preserve the constitutional link with the United Kingdom, which has provided all of them with security, and most of them with a high level of prosperity”.

5. These statements give the misleading impression that the policy of successive UK governments had been shaped only by respect for the wishes of the inhabitants of the territories. Historically, that is not so. HMG tried to push several reluctant overseas territories towards independence or into relationships with neighbouring states.<sup>2</sup> Nor was it in the least striking that in 1999 none of the remaining territories expressed a desire for independence. For most this was not a realistic economic option.

6. HMG has still to recognise that colonial models of governance are no longer appropriate. Why should the Foreign Secretary appoint governors and other officials? The territories are not foreign.<sup>3</sup> Why in the matter of the Chagossians who were illegally exiled from their homeland should the FCO be pleading to the House of Lords that in order to govern the territories effectively it needs to be able to use Orders in Council subject to neither parliamentary debate nor judicial review?<sup>4</sup>

7. The FAC's questions provide a good framework for examining these issues, subject to one overriding qualification: the questions need to be asked of HMG as a whole, not just of the FCO. For that reason, this submission suggests one additional topic for the FAC to address: standards of governance of the territories in Whitehall.

#### *Standards of governance in the Overseas Territories*

8. There are two immediate aspects: standards of governance in matters wholly within the competence of locally elected or appointed governments (in which the governor often has a key role as chair of the executive and/ or legislative council), and areas where the UK wishes to provide guidance, often because of international commitments on the part of the UK. The priority areas highlighted by Robin Cook in 1999 were: international standards in financial regulations, human rights, and the environment (where he proposed to “develop an environment charter between the United Kingdom and our overseas territories”). Broadly these are areas where ministers are responsible for upholding internationally agreed standards and consider themselves answerable to Parliament, to the international community; and to the inhabitants of the territories. How the standards HMG wishes to see are achieved and maintained depends on leadership as well as legislation, and is best dealt with under the section on the role of Governors.

9. Since 1999 at least one area should be added—Freedom of Information (FoI). The UK's FoI Act 2000 is fundamental to good governance. Appropriate legislation is desirable in all the territories. It was disappointing the UK FoI Act was disapplied to St Helena in 2005, against the wishes of many Saints. Although local legislation to take its place was promised, there is still no sign of consultation on the content or of a timetable for introducing such legislation. It is particularly needed because of HMG's commitment to the air access project. That will produce major changes on the island and for Saints elsewhere. Public engagement in key decisions would be greatly helped by improving the transparency and accountability with which the project is implemented. The FAC may wish to look at the introduction or application of FoI legislation in all the territories. Legislation in some territories (eg the Cayman Islands) may provide a good model for others.

#### *Standards of governance of the Overseas Territories in Whitehall (additional topic)*

10. The issues that need to be addressed here concern how well different parts of government work together; as well as some specific examples of poor governance. However, there is an underlying issue—the tendency to see the territories as burdens (actual or potential) rather than as assets.

11. What assets do the territories provide for the UK? First, their people. The numbers are small. They live mostly on remote islands, where size and distance provide social and economic challenges different from those in the metropolitan UK. Some face environmental hazards: hurricanes, volcanoes, water shortages, infertile soils, and the ozone hole. The overwhelming majority are loyal to the UK; the institutions that govern them owe much to Britain, modified in ways that reflect local circumstances; they are part of Britain's heritage, as Britain is part of theirs.<sup>5</sup>

12. Second is geographical position. The UK has global interests and some territories have great value as strategically placed assets. These can be exploited for the benefit of the UK (taking into account the wishes and needs of local communities) and shared with allies, such as the Americans. Their full value is often dormant. Without Ascension and the support of those living on the island, the Falklands War would probably not have been fought, far less won. Geographical position underlies the reports in September 2007 that HMG is thinking of making claims to extensive continental shelf areas around some of the South Atlantic territories.<sup>6</sup> The UK should already be doing far more to ensure that the territories' existing and

often extensive Exclusive Economic Zones (see Annex A)<sup>100</sup> are better managed and their marine resources protected against illegal, unreported and unregulated (IUU) fishing. This is a serious problem in several territories. Furthermore, marine science and technology are in their comparative infancy but growing fast, partly because of the importance of the oceans for climate change. As one of the world's leading economies the UK is better placed than anyone else to give a lead through better understanding and management of the marine environment of the territories. It is hard to understand why it is only in British Antarctic Territory that the UK has funded long-term research with a direct bearing on climate change.

13. There is a tendency in Whitehall for overseas territories issues to be treated as a matter for the FCO as the "lead Department". In fact the Department for International Development (DfID) has a major statutory responsibility for the territories under the International Development Act 2002.<sup>7</sup> In budgetary terms, DfID is responsible for far more direct expenditure in the territories than the FCO. As well as current budgetary support for Montserrat and St Helena there will also be the costs of the St Helena Air Access project, on which no official estimated costs for construction and for maintenance of the service have yet been provided to the public in St Helena or the UK.

14. The environment provides striking examples of lack of joined-up government. The 1999 White Paper recognised the importance of the biodiversity of the territories and said (Chapter 8, paragraph 16) that "the Government will provide additional assistance through DfID to support poorer Overseas Territories in addressing global environmental concerns. This is in part a reflection that such Overseas Territories, unlike independent developing country states, are not eligible for funding from the Global Environment Facility." It took until 2003 for even that limited commitment to be honoured. Part of the reason may be that DfID's central policy commitment is to the reduction of global poverty and environmental issues are seen (wrongly) as being peripheral to that concern. But in any case, even though good governance of the territories has nothing to do with global poverty it is part of DfID's remit. So, it was even more disappointing that the Environmental Audit Committee's report in 2006 on *Trade Development and the Environment: the Role of DfID*, made no mention of the territories.

15. However, a far more worrying indication of HMG's lack of engagement with good environmental governance of the territories was shown in the government's response to the Environmental Audit Committee's 2006 report on the UN Millennium Ecosystem Assessment. That report did not pull its punches:

"Considering the UKOTs lack of capacity, both financial and human, we find it distasteful that FCO and DFID stated that if UKOTs are 'sufficiently committed' they should support environmental positions 'from their own resources'. The continued threat of the extinction of around 240 species in the UKOTs is shameful. If the Government is to achieve the World Summit on Sustainable Development 2010 target to significantly reduce the rate of biodiversity loss within its entire territory, the Government must act decisively to prevent further loss of biodiversity in the UKOTs". (Paragraph 32)

16. The government's reply to this point started with a sentence that was breathtaking in its complacency and lack of consistency.

"The responsibility for environment management has been devolved to the Overseas Territories governments".

This, despite the fact that the 1999 White Paper had highlighted the global importance of the biodiversity of the territories and indicated that environment charters would be agreed with them, with commitments not just by the territories but also by HMG. These charters were negotiated in 2001 and their importance was highlighted in the FCO's oral evidence given to the EAC on 21 February 2007:

"[Mr Wightman—FCO director for global and economic issues] . . . as was pointed out in the last FCO White Paper, responsibility for the Overseas Territories is a cross-government responsibility so the FCO has a role in this as well as Defra and DfID, and the Environmental Charters provide the basis on which government departments here, individually and collectively, can work in co-operation with the governments of Overseas Territories on implementation".

17. Yet when the UK Overseas Territories Conservation Forum was asked by the FCO to prepare a detailed assessment of progress under the Environment Charters, it had to report that the FCO had said that "although it had no problem in principle with the indicators, HMG did not have the resources to report on the implementation of its own commitments". (See <http://www.ukotcf.org/charters/progress.htm>). That is itself a telling indicator of how low a priority HMG attaches to good environmental governance of the territories.

18. Yet, two recent assessments show how urgently the work is needed. In April 2007 the RSPB commissioned a report on *Costing Biodiversity Priorities in the UK Overseas Territories*. That identified and costed priorities for each territory in the period 2007–08 to 2011–12 and summarised the annual costs for this work. The annual total for all the territories was just over £16 million. That compares with the current FCO/DfID Overseas Territories Environment Programme (OTEP) of roughly £1 million per year and the estimate by Defra that Darwin Initiative projects (which are bid for competitively, with no priority given to the overseas territories) in the past 15 years have funded some £1.5 million of biodiversity work in the

<sup>100</sup> Ev 179.

territories (ie around £100,000 per year for all territories combined). The OTEP funding has been invaluable; and its modest level is understandable given that biodiversity is peripheral to the core responsibilities of FCO and DfID. However, supporting biodiversity is a major Defra responsibility and it leads on most international environmental agreements and negotiations, such as the Convention on Biological Diversity (CBD). Accordingly, the FAC may wish to ask the Minister for Biodiversity to say how Defra proposes that ministers and senior Defra officials work more closely with the territories on environmental governance.

19. A second assessment that carries great international authority in identifying global biodiversity priorities is the IUCN Red List of Threatened Species™. The 2007 Red List, published in September (see [www.iucnredlist.org](http://www.iucnredlist.org)) helpfully lists separately for the metropolitan UK and for individual overseas territories animals and plants at three levels of threat: critically endangered (“an extremely high risk of extinction in the wild”), endangered (“very high risk”) or vulnerable (“high risk”). The UK on its own comes low down the IUCN country list with only 51 entries. However the UK has a long tradition of valuing biodiversity, from before Gilbert White to young conservationists who are already picking up the baton from Sir David Attenborough. That is why in Britain the government, conservation scientists and conservation NGOs have a commendably high profile in global work to meet the millennium development goal of slowing the rate of loss of global biodiversity. However, the IUCN report provides a sharp reminder to the UK of the threatened biodiversity in its own overseas territories. The 2007 Red List shows that—added together—there are 322 listings for threatened species in the territories. That puts the UKOTs at 19th on a global list, just behind South Africa (see Annex B).<sup>101</sup> And while South Africa has overall more threatened species, the UKOTs have 78 critically endangered listings, compared with 58 for South Africa. Without better governance by HMG, it is likely that some of the next species to become extinct will be from St Helena, or Tristan da Cunha, or the Falklands, or Montserrat, or Bermuda, or the British Virgin Islands etc. Admittedly, it is difficult to get to the remotest territories: but it would be evidence of HMG’s intention to take its commitments under the environment charters seriously if the Minister for Biodiversity and senior Defra officials were to visit one or two of the territories in 2008.

20. Two further points show how irresponsible it is for HMG to talk glibly about management of the environment being devolved to the governments of the territories. First, the biodiversity of two territories is of such importance that many responsible scientists believe they should be managed as if they were World Heritage sites: British Indian Ocean Territory (BIOT) and South Georgia and the South Sandwich Islands (SGSSI).<sup>8</sup> Neither has at present a settled resident population, so they are governed directly by HMG. The RSPB’s report estimates the annual conservation needs of these two territories as £7.6 million, or 45% of the priority conservation needs in all the territories. This high proportion reflects the expense of work in such remote areas with no local community. However, HMG needs to accept that exercising sovereignty over such strategically important areas (in one case, enabling the UK to provide extremely valuable defence facilities to the USA) carries with it responsibilities for the good governance of their environment. In these two territories there is no one to whom that can be devolved.

21. Secondly, consider the five territories with the smallest populations (figures from the FCO website): Pitcairn (47), Tristan (275), Ascension (1,000), Falklands (2,913), St Helena (4,000). The RSPB estimates their combined annual conservation needs at £2.5 million (16% of the total). How can that responsibility be devolved to territories with a land area of 12,606 sq kms, EEZs totalling 2.9 million sq kms and a total population of 8,235?—ie slightly more than Cromer (7,749) and slightly less than Skye (9,232). These territories alone have 123 threatened listings in the 2007 Red List (more than Ethiopia—108 or Cambodia—113). Tackling these threats often means preparing and implementing species and habitat biodiversity action plans, as a matter of urgency. The FAC might ask the Chancellor of the Exchequer how much funding he has provided to Defra and the devolved administrations to support biodiversity action plans in the UK. For the UKOTs there are overlaps between departmental responsibilities. Therefore, in the interests of joined-up government, a panel of ministers (Treasury, Defra, MOD, DfID and DCMS; as well as the FCO) might be asked three simple questions:

- (a) What work should be undertaken in the next five years to make sure that loss of biodiversity in the UKOTs does not undermine the UK’s international commitments on global biodiversity?
- (b) How should responsibilities (and costs) be shared between HMG and the governments of the territories, especially those on grant-in-aid?
- (c) How should HMG’s responsibilities (and costs) be shared between different departments in the UK?

These questions need to be addressed to all these ministers collectively. Even then, be prepared to see Whitehall officials forming a circle for the classic “Yes, Minister” game of pass-the-parcel: each player’s aim being not to be left holding the can of worms labelled “overseas territories” when the music stops.

<sup>101</sup> Ev 179.

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*The role of governors and other office-holders appointed by or on the recommendation of the United Kingdom Government*

22. Governors (and administrators) of overseas territories have a role that cannot easily be defined, since the circumstances and constitutions of each territory differ; as do the contentious issues—in each territory and for HMG in its relationships with each territory. Whether resident or not (eg the Governor of Pitcairn and the Governor of St Helena and Dependencies in respect of the Dependencies of Ascension and Tristan da Cunha) key aspects of the job are:

- First, in most territories (but not Bermuda) the governor’s most important regular role is to chair the executive council or cabinet (as well as many formal and informal meetings of other key groups involving the governor’s reserved powers). In cabinet, where the governor is normally constitutionally required to accept the advice of others around the table, a key objective, where necessary, is to persuade.
- Second, one of the governor’s most important functions is to make a wide range of public appointments, often first chairing relevant selection boards.
- Third, the governor has a vital role in representing the territory’s interests to HMG, and as necessary defending them. That is a far wider function than the traditional diplomatic one of an ambassador explaining the policies and actions of the government of a foreign country. The territories are not foreign countries. Governors often have to advise officials and ministers that while they have legal powers (exercised through the governor) and levers (eg DfID budgets) that they do not have over foreign countries, those in London are often inclined to apply templates about “how territories ought to function” that fail to take into account the social and political realities of that specific territory.
- Fourth, the governor has to explain HMG’s policies to the elected politicians, local officials and the public of the territory.
- Fifth, the governor has the important non-political role of providing the local equivalent of Head of State (as the representative of The Queen, not of the party in power at Westminster). That is high profile (and sometimes sensitive, given the high profile that local chief ministers also need to maintain), time-consuming and works best when governors (and their spouses) have a genuine commitment to local causes of which they are often ex-officio patrons.
- Sixth (and hardest), governors have to remain sane and healthy in a society with which they may be unfamiliar and where support from day-to-day friendships may be lacking or compromised by their official position.
- Seventh, governors have to balance their personal interests (career, retirement options, hobbies) against their responsibilities.

23. Against that background, consider one recent dilemma. In 2001–02 the Governor of St Helena and Dependencies and the resident Administrator of Ascension were required by HMG to promote to residents of Ascension a huge move to normal civil society, involving, *inter alia*, the introduction of income tax, an elected Island Council, and legislation providing for right of abode and a local property register. In late 2005 these same officials, appointed by the FCO, were required to explain that London had changed its mind; and to say that unspecified, undiscussed and uncosted contingent liabilities (had they not been considered before?) made it impossible for HMG to proceed with either a right of abode or a local property register. In pursuance of this U-turn the administrator was also expected to apply an interpretation of local residential arrangements that prevented members of the same family from living in the same house.

24. What does that do for the credibility of the Governor and Administrator (or, for that matter, of HMG)? In this case the record of both officials and ministers is of lack of consultation, lack of transparency, lack of accountability. That led to the resignation in disgust at their treatment by HMG of the majority of the elected island councillors.

25. There is an interesting parallel with the Crown Dependencies, whose Lieutenant-Governors fill many (not all) of the roles of Governors in the overseas territories. However, their background is usually different, often recently retired from senior military positions. A case can be made for career diplomats being best placed to govern overseas territories. But questions should also be asked:

- What role should the territory have in approving an appointment?
- Is a diplomat with a career (or size of pension) dependent on appraisals by line managers in the FCO during the posting best placed to defend the interests of the territory with departments in London (not just the FCO)?
- Is someone seen as an emissary of the FCO best placed to persuade local politicians over sensitive local issues where HMG cannot (or prefers not to) rely on Orders in Council that do not have the support of the territory’s elected government?
- What background will best equip a Governor to tackle (if they arise) corruption or incompetence in locally elected governments in areas not directly controlled by HMG (and thus tricky for involvement by HMG ministers)?

26. Such questions open up issues that are perhaps beyond the immediate remit of this inquiry. One is this. Governance issues concerning the overseas territories have a considerable overlap with those for the Crown Dependencies and the devolved administrations. The UK has eclectic constitutional arrangements: residents of the overseas territories and of the Crown Dependencies do not pay taxes to HMG nor have they representatives in Parliament; residents of the devolved administrations have much of their lives controlled by their locally elected politicians—but with funding that comes from the Treasury; on international agreements of any sort the overseas territories, the Crown Dependencies and the devolved administrations all depend on Westminster ministers and their departments to represent their interests (and to consult them). Should these three areas be brought together? (Further comments on this are in paragraphs 30–34 below on international agreements).

#### *The work of the Overseas Territories Consultative Council*

27. The work of the Overseas Territories Consultative Council (OTCC) deserves to be more widely publicised in the territories and in the UK. As far as possible, papers that are tabled for discussion should be made available on websites. More effort should be made to enable members of the OTCC to meet politicians, officials, organizations and individuals with a close involvement with the territories, especially as there are relatively limited opportunities for such direct contact with elected representatives of the territories.

#### *Transparency and accountability in the Overseas Territories*

28. As indicated above, freedom of information legislation is essential institutional underpinning for transparency and accountability. This needs to be matched by greater transparency and accountability in how Whitehall departments deal with the territories. Several other select committees and the National Audit Office have important roles in monitoring this area of good governance.

#### *Regulation of the financial sector in the Overseas Territories*

29. Others are better equipped to provide evidence on this topic.

#### *The application of international treaties, conventions and other agreements to the Overseas Territories*

30. It used to be the practice that international treaties signed by the UK were automatically applied to all UK territories to which they appeared applicable. With greater national accountability about meeting international commitments and with quite onerous reporting obligations under many agreements, the general practice now is that each territory is consulted about whether the UK's ratification of a treaty should be extended to cover that territory. There are, however, some practical problems that Whitehall often does not manage to address effectively.

31. First, on complex international agreements it is often easy for the lead department in London to forget about the territories. Sometimes, indeed, there may be nothing that affects any of them significantly. However even the process of consulting territories (with small and over-stretched departments and lack of specialists) can be burdensome to them. Often officials in London rely on the FCO to be their link to the territories but do this either once the text has been negotiated or late in the negotiating process. That makes it far harder for the UK negotiators to take on board the interests and wishes of the territories. On some issues, the interests of the territories may be far from identical with those of HMG. That was the case for trade negotiations when Hong Kong was still a dependent territory; and to a considerable extent remains so now that Hong Kong is a Special Administrative Region of the People's Republic of China. Several overseas territories approach matters concerning international financial regulations from a different perspective from HMG because different interests are at stake.

32. Second, in some international negotiations and conferences of the parties there are good news stories to be celebrated about the territories and participation in the UK delegation can thus have advantages for the UK and for the territory. This does happen, but not as often as it might.

33. Third, even when the UK's ratification of an international treaty has not yet been extended to any or all of the territories, the UK is often answerable politically to parliament and to the international community for how the matters addressed by the treaty are handled in the territories. To take an example that reflects the comments above about the importance of biodiversity in the overseas territories, the CBD has not yet been extended to nine of the territories. Often there are valid reasons: the territory wishes first to have in place adequate legislation so that it can fully meet the commitments involved in the convention being extended to it. But that surely does not mean that HMG should be less willing to support biodiversity work in the Falklands, or South Georgia or Bermuda, or Pitcairn (to which the CBD has not yet been extended) than in St Helena or the Cayman Islands (where it has)? For an extinction in any of the territories, it will be no defence for HMG to say "Ah, but the CBD had not been extended to cover the territory where that bird used to exist".

34. The question of advance consultations and participation in international negotiations on subjects requiring local implementation of international commitments undertaken by HMG is not just one for the overseas territories. It applies also to the devolved administrations and the Crown Dependencies. Perhaps more consideration should be given to ways in which central government departments in the UK can be encouraged to consult and provide appropriate guidance for all these sub-national levels of government. Might the Department of Justice have a co-ordinating role?

#### *Human rights in the Overseas Territories*

35. There are three issues (apart from freedom of information) that the committee should address. On all of them documentation is readily available elsewhere so the treatment here is cursory.

36. First, the case of the Chagossians, exiled from British Indian Ocean Territory. Quite apart from the current legal issues, the FAC might consider drawing lessons about the 2000 High Court judgement, which was accepted by the government, about the readiness of the FCO to place a low priority on the human rights of powerless islanders who get in its way. The FCO's later arguments to the Appeal Court had considerable impact in other territories. Comments were made as far away as St Helena and the Cayman Islands that it was disturbing to learn that there were those in London who believed they had the power to exile the entire population of a territory simply by citing the royal prerogative. There are villages in many of the territories where a framed picture of The Queen is proudly displayed in every parlour.

37. Second, Ascension and the government's wish to deny those on the island the possibility of moving to a normal civil society. The FAC may well need to probe hard to find the true reasons (and whether they stand up to scrutiny) for such a change of direction. It is as if HMG, having failed to convince the courts that it was unjust to ignore the human rights of the Chagossians, decided that Ascension was another potential Diego Garcia. The reward for the loyalty of the islanders during the Falklands war is to be turned back into a company store and treated as expendable migrant workers. That is not a model of good governance for the 21st century.

38. Third, more attention needs to be paid to the human rights of migrant labour in the UKOTs. The economies of several territories seem to be relying increasingly on construction projects. For low income tax economies, the duties paid on imported materials provide a welcome source of government revenue. One issue is environmental: will poorly controlled development damage the natural ecosystems essential the long-term health of the territories? However, when such development relies heavily on cheap imported labour there are also dangers of human rights abuses.

#### CONCLUSION

39. There are three recommendations that the committee might consider making: to colleagues in other select committees, to the government and to all bodies in the UK and in the overseas territories who value the many links—personal and organizational as well as constitutional—between the territories and the UK:

- (1) To remind them that the territories are not foreign (nor owned by the FCO); and to invite them to consider whether there might be more suitable departmental arrangements for handling issues concerning the territories and the appointment of governors and other officials whose appointments are not the sole responsibility of the elected governments of the territories.
- (2) To suggest that HMG considers, together with the governments of all the territories, what steps should be taken to improve freedom of information legislation and its effective implementation, in the territories and in the UK.
- (3) To ask HMG as a matter of urgency to prepare an interdepartmental strategy (in consultation with the governments of the territories) on how work relating to the territories can help HMG better meet its international environmental commitments.

*Iain Orr*

#### REFERENCES

- <sup>1</sup> Sir Leslie Glass *Micro-States* 26pp typed and bound paper of 19 March 1971 in FCO Library Ref LRL 2/4 (1971). Sir Leslie was Deputy UK Permanent Representative to the United Nations 1967–71. He spoke at the conference on Micro-States “unofficially in a personal capacity rather than as the representative of my government”.
- <sup>2</sup> Examples include the Cayman Islands, Anguilla, the Falklands, Gibraltar—and probably more—as well as the Seychelles and several of the smaller Caribbean island colonies.
- <sup>3</sup> Nor are they independent members of the Commonwealth, though many of their institutions do have valuable links with Commonwealth institutions such as the Commonwealth Parliamentary Association.
- <sup>4</sup> The FCO has indicated that the reason for petitioning the House of Lords to review the Appeal Court's judgement of 23 May 2007 was because the judgment raised issues of constitutional law of general public importance that would adversely affect the effective governance of all British Overseas Territories. That



appears to mean is that the FCO considers that Orders in Council used to create legislation in any UK overseas territory should not be open to judicial review. As the Appeal Court said (Mr Justice Sedley, paragraph 36 of the judgement):

“This case, correspondingly, concerns not a sovereign act of the Crown but a potentially justiciable act of executive government. Were we to hold otherwise we would be creating an area of ministerial action free both of Parliamentary control and of judicial oversight, defined moreover not by subject-matter but simply by the mode of enactment. The implications of such a situation for both democracy and the rule of law do not need to be spelt out”. (Underlining added)

The conclusion of his judgement made even clearer that this example of poor governance by HMG concerning an overseas territory stemmed from reliance by the FCO on approaches to law and governance that remain deeply colonial.

“The unannounced withdrawal of the Chagossians’ right of return by the two Orders in Council in 2004 has been defended in court not on the ground of an ineluctable change of circumstance and policy but on the ground that, by using Orders in Council, ministers could do with impunity something which was known to be unlawful when done by Ordinance . . . Notwithstanding the great latitude which the prerogative power of colonial governance enjoys, I consider the material Orders to have been unlawfully made, because both their content and the circumstances of their enactment constitute an abuse of power on the part of executive government”.

Appeal Court Judgement of 23 May 2007, paragraph 78 (Lord Justice Sedley)

For those attending the Appeal Court hearings, it was an extraordinary to hear how much legal importance the FCO attached to its ability to use antiquated colonial powers, despite the political lip-service to a non-colonial relationship in the 1999 White Paper.

- <sup>5</sup> Some examples of the shared heritage that is less well known in the UK than it should be, partly because Ministers and officials fail to understand their importance and generally give little support (eg by encouraging funds like the National Lottery to support projects in the territories):

The role of the overseas territories as part of the slave trade and then as part of suppressing it. It is disappointing that a government which is basing the success of the air access project on St Helena on increased tourism made so little effort to explain the role of St Helena in suppressing the West African slave trade during the 2007 events in the UK (and in the overseas territories, especially in the Caribbean and Bermuda).

Three world heritage sites:

Henderson Island—the raised coral atoll that is part of the Pitcairn group.

Gough and Inaccessible Islands—treasures of biodiversity that are part of the Tristan group.

The Historic Town of St George in Bermuda—the site of the first parliament in the New World.

The marine heritage, especially of historic wrecks, throughout the territories.

The Georgian Heritage of Jamestown, the capital of St Helena.

- <sup>6</sup> Owen Bowcott *The new British empire? UK plans to annex south Atlantic*, Guardian 22 September 2007.

- <sup>7</sup> The second of the four clauses defining DFID’s statutory responsibilities (International Development Act, 2002) is:

(2) British Overseas Territories

The Secretary of State may also provide any person or body with development assistance in a case where the requirement of section 1(1) is not met, if the assistance is provided in relation to one or more of the territories for the time being mentioned in Schedule 6 to the British Nationality Act 1981 (c. 61) (British overseas territories).

[Note: This clause has the effect of removing poverty as a criterion for providing assistance to the UKOTs (as does the third defining clause, which enables DFID to provide disaster relief without regard to a country’s poverty). DFID thus has the right to provide support for the welfare of the UKOTs and to promote their sustainable development, defined as “any development that is, in the opinion of the Secretary of State, prudent having regard to the likelihood of its generating lasting benefits for the population of the country or countries in relation to which it is provided”. This also means that DFID rather than FCO has the budget to support these policy objectives.]

- <sup>8</sup> So far HMG has not been ready to propose them for the UK’s tentative list of new sites or to discuss them within UNESCO’s World Heritage Committee because of anticipated objections from Mauritius and Argentina.

## Annexes

A—UK OVERSEAS TERRITORIES (UKOTs): EXCLUSIVE ECONOMIC ZONES (EEZs) BY KMS<sup>2</sup>

Anguilla	91,053	
Ascension	443,844	
Bermuda	449,300	
British Antarctic Territory (BAT)		Not applicable
British Indian Ocean Territory (BIOT)	636,600	
British Virgin Islands (BVI)	80,701	
Cayman Islands	123,469	
Falkland Islands	453,245	
Gibraltar		Not applicable
Montserrat	8,247	
Pitcairn Islands	837,221	
St Helena	446,616	
South Georgia and South Sandwich Islands (SGSSI)	1,408,127	
Tristan da Cunha	749,612	
Turks and Caicos Islands (TCI)	148,930	
SUB-TOTAL for UK OTs	5,875,965	
Channel Islands	6,517	
Isle of Man		Not applicable
UNITED KINGDOM	764,071	
TOTAL: UK + OTs + Channels Islands	6,646,553	

The source for the EEZ figures is the Sea Around Us Project (website [www.seaaroundus.org](http://www.seaaroundus.org)). On the Home Page click on “COUNTRIES’ EEZ”. The new page now has a drop down menu from which the name of each country or territory can be selected. Note that in some cases the digitised map of the area covered by the EEZ indicates by colouring if the EEZ is disputed/undemarcated. The authority for the size of each EEZ is not given; however, the overall figures seem broadly right, given the amount of open ocean around many UKOTs. (If anyone has more accurate EEZ figures, please let me know.) The overall figures are a reminder that in any discussions concerning the roles of EEZs globally, the EEZ areas in the OTs are over seven times greater than the UK’s home EEZ.

In a speech of 21 March 2001 FCO Minister of State, John Battle MP, used the figure of 8 million km<sup>2</sup> for the area of the combined EEZs of the UKOTs. It is not clear how his or the Sea Around Us calculations were made. However, the main point is the order of magnitude. With its territories, the UK has huge assets (and duties) in the oceanic 7/10ths of the planet. Evidence is mounting fast that largely anthropogenic processes, including melting polar icecaps, rising sea levels, pollution, the spread by ballast water of marine alien invasives and the damage by deep-sea trawlers to marine ecosystems (including the rich biodiversity around seamounts) are degrading oceanic ecosystems and the ecosystem services they provide.

## B—THREATENED SPECIES IN THE OVERSEAS TERRITORIES

It is often said that Europe is responsible for only a small part of the world’s biodiversity. IUCN’s 2007 Red List of threatened animals and plants tells a different story . . . hidden in the fine print. The national listings do not include all the threatened species in the scattered biodiversity hotspots from St Helena to New Caledonia for which the UK and France remain responsible. It makes good geographical sense for IUCN to list these sub-national territories separately, but the sovereign responsibility for the good governance of all their territories—metropolitan or overseas—lies with the UK and France. They are the states that have undertaken the commitments to protect global biodiversity under the CBD and many other environmental treaties.

Now, recalculate the totals to reflect their national responsibilities by adding the listings for France’s overseas departments and territories (619) and for the UK’s overseas territories (322) and their true rankings emerge: France at 7 (just ahead of Brazil), the UK at 19 (just below South Africa). Indeed, combine French and UK listings to see just how much clout the EU’s two permanent members of the UN Security Council exercise on global biodiversity: third (1116), just behind the USA.

## THREATENED SPECIES 2007: TOP 20 COUNTRIES

<i>Total Rank</i>	<i>Country</i>	<i>(CR + EN + VU)</i>	<i>Critically Endangered</i>
1	Ecuador	2178	320
2	USA	1179	293
3	Malaysia	911	223
4	Indonesia	850	159

<i>Total Rank</i>	<i>Country</i>	<i>(CR + EN + VU)</i>	<i>Critically Endangered</i>
5	Mexico	840	181
6	China	797	121
7	FRANCE	743	142
8	Brazil	725	106
9	Australia	623	65
10	Colombia	604	105
11	India	560	89
12	Madagascar	542	99
13	Tanzania	539	54
14=	Cameroon	512	94
14=	Peru	512	44
16	Philippines	466	92
17	Sri Lanka	457	137
18	South Africa	396	58
19	UNITED KINGDOM	373	87
20	Panama	315	45

Statistical note. While IUCN's listings by country or territory are of individual species, if different countries or territories are grouped together (Caribbean island states, West Africa, UK Overseas Territories), the total is of listings, not of species. Unless endemic—as many species are in UK and French island territories—the same critically endangered species may be present in more than one country or territory. However, the good management of a globally threatened species usually requires conservation measures by governments and others in each separate territory where it is found. This is especially important for migratory species.

15 October 2007

#### Submission from Mr Andrew Bell

Having founded St Helena's own shipping link to the World in 1977, I seek to draw your Committee's attention to the successive bad deals that have been done by the Department For International Development (DFID) since August 2001. In the matter of transport links this is a vital area over which the Foreign and Commonwealth Office (FCO) should have exercised its strategic thinking—so noticeably absent from the other extravagant department.

#### 1. SHIPPING

1.1 At the specific direction of the then Secretary of State at DFID in December 1999, Curnow Shipping Limited (CSL), which had run the shipping service since August 1977 and had been entrusted with the management of a £32 million grant-in-aid passenger cargo ship was, at her direction, excluded from tendering for the 4th Contract to run from August 2001.

1.2 The 2001–06 shipping link management contract was awarded to the Andrew Weir Group of London who, at the time, were a much larger shipping company than it was within the next three years: they had drastically shrunk.

1.3 As with CSL, Andrew Wier Shipping was answerable to St Helena Line UK, a branch of Crown Agents who with their hired-in shipping consultant, have fulfilled this role since 1992 and never been required to tender for the job.

1.4 In 2005 the control of St Helena Line was nominally repatriated to the Government of St Helena, in Jamestown, on the Island but an indolent Governor has left control with Crown Agents who have, in turn, never competed competitively for the contract to undertake the task. Concurrently the standard of the shipping service deteriorates, the net subsidy met by the grant-in-aid budget, has increased to as much as £3.5 million per year and the condition of St Helena Government's debt free asset goes "back to wind" and even attracts the attention of the Marine & Coastguard Agency's inspection regime (at Portland, Dorset, October 2007).

1.5 With no wholly owned ships of their own Andrew Weir Shipping have farmed out the manning of this Government owned ship to a third party based in a tax haven.

1.6 Between 2001 and to date Andrew Weir Shipping have trained no cadet officers for St Helena in stark contrast to the 20 persons (plus) by the previous managers.

1.7.1 In 2005 ahead of the anticipated tender for the 2006 Shipping Contract, the largest ship management company in the world (which included the management of 48 passenger ships) expressed an interest in bidding.

1.7.2 Despite this St Helena Line UK/Crown Agents shipping consultant advised the Governor of St Helena that “there was no one interested in quoting”: this recommendation became widely known and was incorrect.

1.7.3 In September 2006, after some initial reluctance on the part of St Helena Line UK/Crown Agents, it was revealed that Andrew Weir Shipping’s contract to run the Shipping Service had been extended until the Airport had been built on the Island.

1.7.4 The 2006—undated contract had never been competed for. Is it value for money? Has a good and competitively priced deal been done ?

1.8 In 2007 the National Audit Office stated that they had no powers to audit or question the fact that St Helena Line UK/Crown Agents had never been required to openly bid for their Government contract that they have held for the previous 15 years : truly a milch cow with its own ringed fence.

## 2. TRANSPORT CONSULTANCY

Since 2000 two London based consultancies, both of who regularly feature in the pages of *Private Eye*—namely WS Atkins and High-Point Rendall, have been used by DFID on behalf of the Government of St Helena: neither are shipping specialists. Such as has been made public their reports reveal few strategic recommendations.

## 3. THE AIRPORT PROJECT

3.1 Building a conventional Airport for 3,900 people in the South Atlantic is the 21st Century version of the Great East Africa Groundnuts Scheme of the mid 20th Century.

3.2 After DFID presiding over one false start of tenders to construct the Airport (2006) another is now underweigh. It is only in the second attempt that a massive spending on the Island’s infrastructure (power supplies, water resources, waste disposal, roads, housing for construction workers, and external transport links) are being assessed. This isn’t like extending Luton Airport; this is in the middle of the Equatorial South Atlantic.

3.3 “We don’t need an airport: we’ve got one on Ascension Island” so said Governor John Massingham (1981–84).

3.4.1 There is an alternative to spending beyond £1 billion to build a conventional airport for St Helena plus an open ended subsidy to pay an airline to fly to it.

3.4.2 Your Committee needs to question the current *status quo* of the Airport Project and ask whether a civil aviation development that involves the Bell/Augusta Aerospace Company’s B609 Tiltrotor (and its variant, the 22-passenger Model 620) could be used.

3.4.3 The B609 is a proved aircraft with a Vertical Take-off and Landing (VTOL) capability. It is seen as a successor to commercial helicopters with confirmed orders from operators serving the North Sea offshore oil industry. The difference for them is enhanced productivity of a fast (275 knots ) pressurised flight (up to 25,000 ft) and a range of 1,000 miles.

3.4.4 In place of an Airport of indefinite cost on St Helena’s Prosperous Bay Plain, all that would be needed for a B609 providing St Helena’s civil airlink to Ascension Island would be a patch of tarmac half the size of a football pitch. This could be located at New Ground, on the Northern side of the Island : this leeward side from the tradewind is never subject to reduced visibility (which is a problem at the proposed Airport) The approach to New Ground is straight in from the direction of Ascension, 707 miles away. Facilities at New Ground need only be minimal: a modest passenger terminal: navigational aids: a road tanker providing re-fuelling: safety and emergency back-up.

3.5 A project utilizing the B609 would have a pay-back aspect for Anglo-US relations.

In matters of Shipping, Transport Consultancy and the Airport (as currently conceived) St Helena has been ill-served.

Your Committee’s deliberations can be re-direct a course to cost effective progress.

15 October 2007

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**Submission from Mr Andrew Tyrie MP, Chairman, All Party Parliamentary Group  
on Extraordinary Rendition**

I am writing about Diego Garcia in my role as Chairman of the All Party Parliamentary Group on Extraordinary Rendition.

I welcome the Committee's inquiry into the Overseas Territories. The British Indian Ocean Territory (BIOT) is one such territory, of which Diego Garcia is the largest island. I note that your stated aims include transparency and accountability in the Overseas Territories; the application of international treaties, conventions and other agreements to the Overseas Territories; and human rights in the Overseas Territories.

THE ALL PARTY PARLIAMENTARY GROUP ON RENDITION

1. The All Party Parliamentary Group on Extraordinary Rendition was formed in December 2005. Since we began, we have collected a considerable amount of information on many aspects of the practice, and our work has been referred to in numerous reports, both in the UK and internationally. I enclose a Legal Opinion by Professor James Crawford, and a briefing paper by the New York University Centre for Human Rights and Global Justice, which may be of use to your Committee.

2. The existence of a rendition and secret detention programme operated by the US is no longer in dispute. On 5 December 2005 US Secretary of State Condoleezza Rice stated: "[f]or decades, the United States and other countries have used "renditions" to transport terrorist suspects from the country where they were captured to their home country or to other countries where they can be questioned, held, or brought to justice".<sup>102</sup> President George Bush confirmed that this programme involved secret detention on 6 September 2006: "[m]any specifics of this program, including where these detainees have been held and the details of their confinement, cannot be divulged".<sup>103</sup> It is clear that in the course of this programme many detainees have faced a real risk of torture, or of cruel, inhuman and degrading treatment, prohibited under international law.

DIEGO GARCIA

3. There have been repeated allegations that the US has used the British territory of Diego Garcia in its rendition programme. These allegations are based on statements made by former US armed forces personnel, from numerous NGO reports,<sup>104</sup> and from the reports of international organisations. The Council of Europe report of 7 June 2007, "Secret detentions and illegal transfers of detainees involving Council of Europe member states" (Second Report), concluded:

70. There are two more specific locations to be considered as "black sites" and about which we have received information sufficiently serious to demand further investigation; we are however not in a position to carry out adequate analysis in order to reach definitive conclusions in this report. First we have received concurring confirmations that United States agencies have used the island territory of Diego Garcia, which is the international legal responsibility of the United Kingdom, in the "processing" of high-value detainees. It is true that the UK Government has readily accepted "assurances" from US authorities to the contrary, without ever independently or transparently inquiring into the allegations itself, or accounting to the public in a sufficiently thorough manner.<sup>105</sup>

4. In 2004 US Principal Deputy Assistant Secretary of Defense for Public Affairs Lawrence DiRita was asked if there were secret detention facilities on Diego Garcia. "I don't know. I simply don't know" he replied.<sup>106</sup> Retired United States General Barry McCaffrey has twice stated that the US Government is holding detainees at Diego Garcia, most recently in December 2006.<sup>107</sup>

5. There have also been two specific allegations made regarding the use of Diego Garcia in the US rendition programme. The first is based on the landing at Diego Garcia of a plane linked to so-called "rendition circuits", N379P, on 13 September 2002.<sup>108</sup> This plane has also been connected to the renditions of British residents Jamil el-Banna, Bisher al-Rawi, and British national Martin Mubanga.<sup>109</sup> The second surrounds reports that ships in or near to the territorial waters of Diego Garcia have been used to hold detainees, or otherwise facilitate the rendition programme.

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<sup>102</sup> <http://www.state.gov/secretary/rm/2005/57602.htm>

<sup>103</sup> <http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>

<sup>104</sup> <http://web.amnesty.org/library/index/engpol300032006>;

<http://www.hrw.org/campaigns/migrants/docs/eu-counter-terrorism.pdf>

<sup>105</sup> Council of Europe Committee on Legal Affairs and Human Rights, "Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report", 7 June 2007, para 70. [http://assembly.coe.int/CommitteeDocs/2007/EMarty\\_20070608\\_NoEmbargo.pdf](http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf)

<sup>106</sup> <http://web.amnesty.org/library/index/engramr511772005>

<sup>107</sup> [http://www.reprive.org.uk/Council\\_of\\_Europe\\_Report\\_Diego\\_Garcia\\_08.06.07.htm](http://www.reprive.org.uk/Council_of_Europe_Report_Diego_Garcia_08.06.07.htm)

<sup>108</sup> Source: Reprive flight logs.

<sup>109</sup> <http://www.timesonline.co.uk/tol/news/uk/article609162.ece>

## US ASSURANCES

6. The Government has repeatedly relied on US assurances on this issue, demonstrated in answers to Written Questions on this issue on 26 October 2006: Column 2076W, by Dr Kim Howells MP:

The US authorities have repeatedly given us assurances that no detainees, prisoners of war or any other persons in this category are being held on Diego Garcia, or have at any time passed in transit through Diego Garcia or its territorial waters or airspace. This was most recently confirmed during the 2006 US/UK Political Military Talks held in London on 17 and 18 October.<sup>110</sup>

7. This reliance on US assurances was most recently confirmed by the Foreign Office in a Written Answer on 11 October 2007,<sup>111</sup> and by the then Prime Minister in a letter of 26 March 2007 to the Intelligence and Security Committee, quoted in its Report into Rendition<sup>112</sup>.

8. US assurances are not enough to satisfy the UK's international legal obligations however, which arise independently of those of the US. There is a duty to investigate allegations of torture. The Legal Opinion of Professor James Crawford, commissioned and published by the APPG, makes this clear:

The duty to investigate arises where a prima facie case exists that the Convention has been breached. Credible information suggesting that foreign nationals are being transported by officials of another State, via the United Kingdom, to detention facilities for interrogation under torture, would imply a breach of the Convention and must be investigated.<sup>113</sup>

9. The Intelligence and Security Committee found "a lack of regard, on the part of the U.S., for UK concerns".<sup>114</sup> The Committee continued:

"the U.S. will take whatever action it deems necessary, within U.S. law, to protect its national security from those it considers to pose a serious threat. Although the U.S. may take note of UK protests and concerns, this does not appear materially to affect its strategy on rendition".<sup>115</sup>

10. Clearly, the UK Government's reliance on US assurances on this matter is unsatisfactory, and addresses neither UK obligations in international law, nor the lack of regard by the US for explicit UK policy. It is apparent from the 11 October 2007 Written Answer that the Government has not sought to verify these assurances independently.<sup>116</sup>

## SUGGESTED ACTION BY THE FOREIGN AFFAIRS COMMITTEE

11. It would be of immense help if the Committee could use its investigative powers to try and establish whether the US military facility on Diego Garcia has ever been used, or is being used, to facilitate the renditions or the transport of high value detainees. Specifically:

- have any detainees been rendered through Diego Garcia;
- have any planes refuelled at Diego Garcia, on the way to or from transporting a detainee who has been the subject of a 'rendition';
- have any planes passed through the airspace of Diego Garcia, on the way to or from transporting a detainee who has been the subject of a "rendition";
- have any detainees been held onboard ships in or close to the territorial waters of Diego Garcia;
- have the military facilities on Diego Garcia been used to facilitate the US rendition programme in any way;
- have the military facilities on Diego Garcia been used to facilitate the US High Value Terrorist Detainee Programme in any way?

12. Should the Committee determine that the answer to any of these questions is "yes" it would also be important for the Committee to establish the extent of the UK Government knowledge of, and complicity in, the relevant acts.

13. Whatever the answer to any of the questions above it would be immensely helpful if the Committee could establish:

- what investigations the UK Government has carried out to verify US assurances in this matter, and;
- what safeguards are in place to ensure the UK adheres to its international obligations relating to this issue, independent of the assurances provided by the US Government.

<sup>110</sup> <http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm061026/text/61026w0014.htm#0610272000007>

<sup>111</sup> <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm071011/text/71011w0006.htm#07101133000060>

<sup>112</sup> Intelligence and Security Committee Report into Rendition, 25 July 2007, Para 197, <http://www.cabinetoffice.gov.uk/intelligence/>

<sup>113</sup> James Crawford & Kylie Evans, "OPINION: Extraordinary rendition of terrorist suspects through the United Kingdom", 9 December 2005, para 22. Available at [www.extraordinaryrendition.org](http://www.extraordinaryrendition.org)

<sup>114</sup> Intelligence and Security Committee Report into Rendition, 25 July 2007, Para V, <http://www.cabinetoffice.gov.uk/intelligence/>

<sup>115</sup> Intelligence and Security Committee Report into Rendition, 25 July 2007, Para Y, <http://www.cabinetoffice.gov.uk/intelligence/>

<sup>116</sup> <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm071011/text/71011w0006.htm#07101133000060>

14. I recognize the difficulties your Committee has encountered in investigating rendition in the past. Other investigations have had similar problems. The European Parliament's Temporary Committee on the Alleged Use of European Countries by the CIA for the Transportation and Illegal Detention of Prisoners "[d]eplore[d] the manner in which the UK Government, as represented by its Minister for Europe, cooperated with the Temporary Committee".<sup>117</sup>

15. Your Committee has made a number of important recommendations in past investigations. In the Committee's Third Report of the 2006–07 session you recommended that the Government seek from the US a confirmation of whether aircraft used in rendition operations have called at airfields in the United Kingdom or in the Overseas Territories en route to or from a rendition, and that it make a clear statement of its policy on this practice.<sup>118</sup> The Government refused.<sup>119</sup>

16. As you know, other organisations and Committees have also investigated and reported on rendition in the last year, including the Intelligence and Security Committee, the Council of Europe, and the European Parliament. The Intelligence and Security Committee concluded that the UK may have been complicit in at least two renditions. Other organisations have come to similar conclusions. All have investigated allegations of UK complicity in the US rendition programme and the inadequacy of relying on US assurances for the purposes of meeting the UK's international law obligations. Bearing these findings in mind it is now particularly important that Parliament establishes whether, and if so, to what extent Diego Garcia has played a role in rendition.

I am placing this letter in the public domain.

15 October 2007

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**Submission by George Elliot Harre, Chief Justice of the Cayman Islands 1993–98 and  
Puisne Judge 1988–93**

This submission and the supporting documents address matters concerning the relationship between the judiciary and other arms of government, both in the Cayman Islands and London. Although I retired in 1998 they are not simply a matter of history, as the documents which I now send as appendices will show.

These appendices are as follows<sup>120</sup>:

1. An aide memoire in five parts, recording correspondence between 1989 and 2004 with brief indications, where necessary, of the thrust of individual documents. Full copies of exchanges since 2004 have been added
2. Observations by me by way of a revision in April 2005 of a document produced by me in September 2002.
3. A letter dated 1 February 1999 from the late Secretary of State to the Rt Hon Virginia Bottomley with my comment on it made at the time. I would now like to expand on that by saying that I think it quite wrong for a contract officer working in the executive arm of government, whatever his previous history, to be commissioned, acting alone, to produce a report on the judiciary. It gives the appearance of bias, and I believe that the report produced showed actual bias. Its disparaging comment on the judges is completely at variance with a wealth of recorded and attributable political, professional and press opinion.

I regret that this submission has to relate to a matter so personal to me. It does, however raise wider issues which, I respectfully submit, fall within the terms of reference of the enquiry by the Committee on standards of governance in the Overseas Territories.

Having sought by reference to the historical record to throw light on some problems, I feel an obligation to propose a possible way of alleviating them. It is that the affairs of Her Majesty's Judges in the Overseas Territories should fall under the responsibilities of the Minister of Justice and Lord Chancellor, by analogy with the position in England. The concerns of the judiciary are distinct from those of other arms of Government, whether in London or in the Territory in which they serve. Interlocutors of the same professional background and sympathies as the judiciary and with the necessary influence elsewhere, are important safeguards against the development of the kind of confrontational situation which is an ever present danger where personalities clash in a small jurisdiction. Governors nowadays are able to talk with their diplomatic colleagues in London. Legislators in Cayman and London have good channels of communication. I cannot speak for today but in my time there was a sense of isolation when the inevitable tensions developed. Of course there is an abundance of international organisations ready to step into the fray but I have always preferred quieter solutions than that.

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<sup>117</sup> Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, "REPORT on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners" (2006/2200(INI), 30.1.2007, para 67, <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2007-0020&language=EN&MODE=XML>

<sup>118</sup> <http://pubs1.tso.parliament.uk/pa/cm200607/cmselect/cmfaif/269/269.pdf>

<sup>119</sup> <http://www.fco.gov.uk/Files/kfile/CM%207127.pdf>

<sup>120</sup> Not printed.

I shall keep this submission brief, but I am willing, if asked, to appear before the Committee to answer any questions arising from them and to share my impressions generally.

#### GOVERNANCE

The problem inherent in the Governor's dual role in representing Her Majesty's Government in the territories while at the same time representing the interests of those territories to London can only be minimised within the concept of "qualified nationality" rather than overcome. They have been exacerbated, however, by a power given by the legislature of the Cayman Islands on the application by a Governor made through the Attorney General to make delegated legislation concerning the financial provisions relating to the judiciary. The proposition that this was a means of removing control of the judiciary from political or executive interference was an illusion. The legislature could repeal the primary legislation and no statutory head of expenditure was created for the necessary funds. This unusual procedure purported to be an implementation of a constitutional amendment which came into force in February 1994. Eleven years, and the terms of office of three Governors came to an end before the delegated legislation was signed by the fourth, days before his departure. The same period also saw the departure of two Attorneys General, one in sudden and dramatic circumstances. There was a successful bid for power between elections as well, through the formation of a new political party. Within days, the new executive had repudiated a fundamental term of the retirement package which I had just agreed. This memorandum is not the place to go further into the personal consequences for me and my family as a result of these constantly moving goalposts and unreasonable delays, but I do say that there has been a breach of established international standards which reflects badly on the British as well as the local administration.

#### JUDICIAL APPOINTMENTS PROCEDURES

There is great variety in the procedures even in the former British colonies in the Caribbean, with yet more for historical reasons in the Channel Islands and the Isle of Man. Gibraltar has current problems all her own. I think it unlikely that the procedures in these territories would prejudice the appointment of independent and impartial judges. One cannot remove the political element, and in the end it will rest with Her Majesty's Government in relation to those judges who sit beneath the Lion and the Unicorn rather than the arms of the local government. I have a sentimental attachment to that concept, having witnessed the removal of the Royal symbol in Fiji, surrounded by weeping local staff. Nevertheless, I would like to emphasise the element of transparency which, I must acknowledge, was singularly absent in relation to my own appointment as Chief Justice. It is particularly important in a small jurisdiction where suspicion of an outsider may exist, and may also serve to assuage feelings of disappointment in any other member of a small bench who was also a candidate for the post.

#### THE OFFICE OF ATTORNEY GENERAL

The arrival of a formal political party system in the Cayman Islands has magnified a problem which has always existed in relation to an Attorney General who is a civil servant and continues in office notwithstanding a change of Government. He is a member of Cabinet and the Legislative Assembly and the principal legal adviser to the Government. He is also sometimes used as adviser to the Governor. Under the new draft Constitution the power to make appointments to the office of Attorney General is vested in the Governor, acting after consultation with the Chief Minister. That same Chief Minister could be the Leader of the Opposition upon a change of Government. In that event the new administration would inherit as its principal legal adviser an individual who:

- (a) was appointed after consultation with its principal opponent;
- (b) advised, and was party to, previous Cabinet decisions; and
- (c) may, as a member of the Legislative Assembly, be called upon to explain his involvement in measures to overthrow those decisions.

Surely that situation should be professionally intolerable to any legal adviser as well as to the other parties involved. Conflicts of interest abound.

An Attorney General should vacate office on a change of Government. I can see no alternative.

15 October 2007



## Submission from the Government of the Cayman Islands

### INTRODUCTION

1. This submission is made by the Government of the Cayman Islands further to an announcement dated 5 July 2007<sup>121</sup> by the Foreign Affairs Committee (the Committee). This announcement outlined plans for an inquiry (the Inquiry) into the exercise by the Foreign and Commonwealth Office (FCO) of its responsibilities in relation to the Overseas Territories and the FCO's achievements against its Strategic Priority No 10, being the security and good governance of the Overseas Territories.

2. The written evidence contained herein responds to each of the stated areas of focus of the Inquiry. It is hoped that this information will assist the Committee in its deliberations by providing an understanding of the Cayman Islands' substantial investments in good governance and associated standards of practice.

3. The written evidence is produced under the authority of the Leader of Government Business and the Cabinet Office. Contributors include:

- The Cabinet Office.
- The Constitutional Review Secretariat.
- The Portfolio of Finance & Economics.
- The Attorney General's Chambers.
- The Human Rights Committee.
- The Cayman Islands Government Representative in the United Kingdom.

4. The Cayman Islands appreciates the opportunity to make this submission and would like to reserve our position in respect of the ability to provide additional or supplementary oral evidence on the matters set out in the written evidence.

### EXECUTIVE SUMMARY

5. The Cayman Islands submission is presented in nine sections and covers each of the headings referred to in the Inquiry. A summary of key points and any recommendations from each section is provided below.

#### *Section One—Standards of governance*

6. The Cayman Islands governance framework has the traditional three basic constituent elements: the executive, the legislature and the judiciary and the separation of powers principle pertains.

7. The current administration has made a specific, express commitment to good governance. This is reflected most recently in the passage of the Freedom of Information Law, 2007 and in the tabling of comprehensive anti-corruption legislation designed to give domestic effect to the UN Convention against Corruption and the OECD Convention on the Bribery of Foreign Public Officials.

8. The Cayman Islands' ranking for 2006 under the World Bank Institute (WBI) governance indicators (at the 95% reliability level) is in the 50th–75th percentile for voice and accountability; the 90th–100th percentile for political stability, and the 75th–90th percentile for government effectiveness, regulatory quality, rule of law and control of corruption.

#### *Section Two—The role of the Governor and other office-holders appointed by or on the recommendation of the United Kingdom Government*

9. It is the desire of the Cayman Islands Government, in the context of the constitutional review process, to negotiate with the United Kingdom a rebalancing of the Governor's role so that the exercise of constitutional powers and special responsibilities are more inclusive of the elected representatives of the Islands.

#### *Section Three—The work of the Overseas Territories Consultative Council*

10. Attendance at OTCC meetings is costly and time-consuming for OT ministers generally. To improve the value of the forum and capitalise on its potential, the Cayman Islands recommends that:

- (a) more/alternative opportunities be afforded for bilateral meetings with UK ministers on topics of special interest to individual OTs;
- (b) a more collegial approach to OT development concerns be adopted;
- (c) the OTCC, with UK assistance, seek to clarify the definition of its associate membership in international organizations; and

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<sup>121</sup> PN 31 (06–07).

- (d) UK ministers, the FCO and OT ministers provide feedback on subjects covered at OTCC meetings that require additional coverage at subsequent OTCC meetings, in advance of such meetings.

11. It is further suggested that there be more frequent high-level ministerial visits by the UK to the Overseas Territories. The Cayman Islands would recommend at least one such visit per year.

#### *Section Four—Transparency and accountability*

12. Over the past several years, the government has brought to fruition two major initiatives, driven by the objective of increasing transparency and accountability in government operations. These initiatives are reflected in the Public Management and Finance Law (PMFL), first enacted in 2001, the successor to the Public Finance and Audit Law, and the Public Service Management Law, (PSML) enacted in 2005. Running complementary to this is the governing party's manifesto, in which the commitment to transparency and accountability is an explicit and implicit theme.

13. The PMFL and the subsidiary Financial Regulations set the standards for government budgeting, financial management and associated reporting to the legislature. While some elements of implementation are still in the transitional phase, the Law is a comprehensive and demanding piece of legislation that enables the Cayman Islands fiscal system to correlate strongly with the *IMF Code of Good Practices on Fiscal Transparency* (2007).

14. The PMFL establishes statutory principles of responsible financial management. There has been full compliance with the principles of responsible financial management for each of the periods ended 30 June 2005, 30 June 2006 and 30 June 2007.

15. The accountability framework for the civil service was significantly overhauled with the advent of the PSML. All civil servants are required to execute performance agreements that specify the outputs that they are responsible for delivering and to comply with a statutory code of conduct.

#### *Section Five—Regulation of the financial sector*

16. Stability, integrity and quality are important to Cayman as a global provider of financial services. The government fully associates itself with the statement in the 1999 White Paper that, “[i]n the long run, it is the quality jurisdictions that will prosper best. There must be no weak links which can help to undermine the international financial system”. As concluded by *The Economist*, “well-run jurisdictions of all sorts, whether nominally on- or offshore, are good for the global financial system”.

17. The Cayman Islands Monetary Authority (CIMA) was established in 1996 as the successor to the line government department of Financial Services Supervision. It is the primary financial services regulator and enjoys full operational independence, being responsible for all licensing, supervision and enforcement activity. Key features of the regulatory regime include:

- *Observance of recognized and relevant international standards*—Basel Core Principles for Effective Banking Supervision, International Association of Insurance Supervisors (IAIA) Core Principles; International Organisation of Securities Commissions (IOSCO) core principles, and the Financial Action Task Force 40 recommendations on money laundering and nine special recommendations on terrorist financing (FATF 40 + 9).
- *Application of statutory “fit and proper” criteria to market participants*—at entry and as an ongoing activity, CIMA performs due diligence on all directors, major shareholders, and senior officers of licensees.
- *International cooperation*—The Authority has a statutory obligation to provide assistance to overseas counterparts.

18. The Cayman Islands is fully committed to supporting global efforts to fight financial crime and has progressively reinforced the international cooperation regime to deliver on this commitment, through statutory law enforcement and regulatory gateways. These gateways, by design, are not inhibited by Cayman's confidentiality regime.

19. The Cayman Islands has undergone three anti-money laundering/counter financing of terrorism (AML/CFT) peer evaluations by the Caribbean Financial Action Task Force (CFATF): in 1995, 2002 and 2007 (report not yet published) in addition to external evaluations on standards of financial regulation (including AML/CFT standards) by KPMG (2000) and the IMF (report published in 2005). These evaluations confirm Cayman's commitment to and implementation of regulatory and AML/CFT standards and in general provide a useful third-party “health-check”.

20. In a number of respects, the anti-money laundering regime in the Cayman Islands outpaced international standards, for example, in the breadth of activity coverage (“gatekeepers” providing trust, company and other services and real estate transaction were in scope before this was the international standard); in the undertaking of retrospective due diligence on all clients existing prior to the implementation in 2000 of upgraded AML legislation; the breadth of the statutory obligation to report suspicious activity under the AML legislation; and the immobilization of bearer shares.

21. The Cayman Islands considers that there is scope to develop the following in cooperation with the UK Government:

- in the context of achieved standards, greater public recognition of the UK for same and support for commensurate EU recognition (formal and otherwise); and
- ensuring that the international standard setters adhere to level playing field principles (equity, fair competition, transparency and non-discrimination).

*Section Six—Procedure for amendment of the constitution*

22. The Cayman Islands is currently engaged in a constitutional modernization exercise, re-launched in February 2007. To facilitate this national exercise, a Constitutional Review Secretariat (CRS) was established in March 2007 under the Cabinet Office. The function of the CRS is to facilitate a national consensus on areas of constitutional reform upon which the Cayman Islands Government may negotiate a new constitution for the Islands with the UK Government.

23. Guidance on the procedures to be followed in amending the Cayman Islands Constitution Order may be found in the FCO 1999 White Paper, Partnership for Progress and Prosperity and the constitutional checklist issued by the Governor's office in 2001. The constitutional modernization initiative is designed to accord with the guidance provided in the White Paper and the checklist. The initiative is structured in four phases. The first three phases are expected to occur over a period of 24 months, starting 1 March 2007, although there is no fixed end date.

24. As noted in section one, one of the objectives in the review process is a rebalancing of the Governor's role so that the exercise of constitutional powers and special responsibilities are more inclusive of the elected representatives of the Islands. It is also anticipated that a significant outcome of the review process will be the promulgation of a Bill of Rights for the Islands that will be compatible with the rights contained in the European Convention.

*Section Seven—The application of international treaties, conventions and other agreements*

25. There are a good number of conventions applicable to the Cayman Islands, in the areas of the environment, maritime and aviation matters; telecommunications and postal union; crime; human rights; and others. The Cayman Islands submits periodic reports to highlight its compliance with its international obligations and to identify areas in which further action may be required.

26. Both from an innate disposition and recognition of UK Government expectations, the Cayman Islands takes its international obligations seriously. In fact, in critical areas, Cayman has moved to enact domestic legislation in advance of treaty extension, examples of this being domestic legislation to give effect to the 2000 UN Convention against Transnational Organised Crime (the Palermo Convention) and to the 1999 UN International Convention on the Suppression of the Financing of Terrorism, both of which, together with the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), the Cayman Islands considers vital to upholding its obligations as a significant international financial services centre. The Cayman Islands has requested extension of both the former treaties, for which requests are still pending with the FCO.

27. With respect to the implementation of the mechanisms required to satisfy these important international treaties and conventions, the FCO has offered useful technical assistance and guidance on protocol and procedure.

28. The Office of the Attorney General recently established a Treaties and Conventions Unit and has dedicated a crown counsel to deal with, *inter alia*, all human rights matters within Chambers and to work closely with the FCO for the compilation of periodic reports and monitoring compliance with international obligations.

*Section Eight—Human rights*

29. Although the Cayman Islands is one of the few jurisdictions in the world that does not currently enshrine at least some human rights in its constitution, the long existence of representative government in the Cayman Islands (since 1831), along with a free and independent media, and a legal system which recognises individual liberty as one of its key features, all serve to demonstrate how Caymanian society embodies the ideals of human rights, notwithstanding the absence of fundamental rights in the constitution.

30. There is clear and consistent historical evidence of the Cayman Islands' respect for and protection of fundamental human rights. However, it is recognised that it is necessary that such fundamental rights be enshrined in the Constitution of the Cayman Islands, and the Human Rights Committee (HRC) has made this one of its primary goals. The creation of the HRC in 2003, a non-aligned body committed to impartiality and objectivity, and the ratification of its terms of reference in January 2006 have provided further impetus for the promotion and protection of human rights throughout the Cayman Islands. Although not a formal remedy, the HRC is able to receive and seek remedies to complaints. The HRC is an active contributor to the constitutional modernization process currently underway in the Cayman Islands.

31. The domestic arrangements for the protection of human rights are supplemented by a number of major international human rights treaties, some of which have extended to the Cayman Islands for many years. Whilst these international human rights may be persuasive in local courts, they are not directly enforceable unless or until they are incorporated into domestic law.

32. The annexes to this section<sup>122</sup> set out the applicability of international human rights treaties in the Cayman Islands' courts and provide a summary of final case reports decided by the HRC.

#### *Section Nine—Relations between the Cayman Islands and the United Kingdom Parliament*

33. The existing routes for building relations between the Cayman Islands and the United Kingdom Parliament are the All Party Parliamentary Group (APPG) for the Cayman Islands; the UK Overseas Territories APPG; the UK Overseas Territories Association; visits to the Cayman Islands by UK parliamentarians with support from the Cayman Islands Government and the Commonwealth Parliamentary Association; and interaction between individual parliamentarians and the Cayman Islands Government Representative in the UK. The Cayman Islands Government has extended an invitation to the APPG to send a delegation to the Cayman Islands in July of 2008, and plans are currently underway for this visit.

#### SECTION ONE—STANDARDS OF GOVERNANCE

34. The Cayman Islands governance framework has the traditional three basic constituent elements: the executive, the legislature and the judiciary (see organization chart<sup>123</sup>) and the separation of powers principle pertains.

35. The executive powers are vested in the Governor and Cabinet, with the chief minister equivalent in the Cayman Islands' context being the Leader of Government Business (LoGB). The Cabinet is composed of the Governor as president plus three official members and five elected ministers (including the LoGB). The official members (the chief secretary, the attorney general and the financial secretary) are appointed by the Governor in accordance with Her Majesty's instructions and have seats in the Legislative Assembly. The five ministers of Cabinet are voted into office by the 15 elected members of the Legislative Assembly, in quadrennial general elections. Each member of Cabinet is allocated a portfolio of responsibilities by the Governor. All members and ministers of Cabinet are bound by the principle of collective responsibility unless the Governor has given prior approval to act otherwise.

36. There is an independent civil service, headed by the chief secretary under delegated authority from the Governor. Each ministry (or portfolio, in the case of the official members) is supported by a Chief Officer, a senior civil servant who serves as principal policy advisor and executive.

37. The business of government is executed by a combination of line government departments and statutory bodies. The operations of both types of entity are governed by the Public Management and Finance Law (PMFL) and the Public Service Management Law (PSML). The PMFL establishes standards for financial management and reporting obligations<sup>124</sup> and the PSML establishes, *inter alia*, standards of conduct for the public service.<sup>125</sup>

38. The Auditor General and the Complaints Commissioner are independently founded and report to the legislature. The Office of the Complaints Commissioner (OCC) was created in July 2004 pursuant to the Complaints Commissioner Law, 2003. The Commissioner is an ombudsman, and the Law confers him with the same powers as the Grand Court in respect to the attendance and examination of witnesses and the production of documents. The remit of the Office is “*to investigate in a fair and independent manner complaints against government to ascertain whether injustice has been caused by improper, unreasonable or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law*”.<sup>126</sup>

39. The current administration has made a specific, express commitment to good governance. This is reflected most recently in the passage of the Freedom of Information Law, 2007 and in the tabling of comprehensive anti-corruption legislation designed to give domestic effect to the UN Convention against Corruption and the OECD Convention on the Bribery of Foreign Public Officials.<sup>127</sup>

<sup>122</sup> Not printed, as publicly available.

<sup>123</sup> Not printed, as publicly available.

<sup>124</sup> For instance, all entities are required to enter into formal performance and/or ownership agreements with cabinet as part of the annual budget process, which capture the agreed outputs to be provided to cabinet for the fiscal year and agreed performance in relation to capital investment, risk management, financial ratios etc.

<sup>125</sup> See public servant's code of conduct in the annex to this section. (Not printed as publicly available).

<sup>126</sup> Office of the Complaints Commissioner website—[www.occ.gov.ky](http://www.occ.gov.ky).

<sup>127</sup> All forms of official corruption are currently offences under the Penal Code.

40. The Cayman Islands' ranking for 2006 under the World Bank Institute (WBI) governance indicators (at the 95% reliability level) is provided below<sup>128</sup>. The WBI ranks the Cayman Islands in the 50th–75th percentile for voice and accountability; the 90th–100th percentile for political stability, and the 75th–90th percentile for government effectiveness, regulatory quality, rule of law and control of corruption.<sup>129</sup>

SECTION TWO—THE ROLE OF THE GOVERNOR AND OTHER OFFICE-HOLDERS APPOINTED BY OR ON THE RECOMMENDATION OF THE UNITED KINGDOM GOVERNMENT

41. *The Cayman Islands (Constitution) Order, 1972* is the main document which establishes the role of the Governor. Constitutionally, the primary role of the Governor is to administer the Government of the Cayman Islands on behalf of Her Majesty.

42. The Governor retains substantial control over the executive and legislative arms of the Government. His powers include presiding over Cabinet and setting the Cabinet agenda, summoning Cabinet members and reserving the right not to consult with Cabinet on matters concerning the administration of Government.

43. Although the Governor is no longer the presiding officer of the Legislative Assembly,<sup>130</sup> he continues to be responsible for assent to, or disallowance of, laws, and for proroguing or dissolving the Assembly or recalling the Assembly in cases of emergency.

44. The Governor is also constitutionally vested with reserved powers. These powers allow the Governor if he finds it expedient, to propose bills and declare them to have effect if they are in the interest of public order, public faith or good government or to secure detailed control of the finance of the Islands as a result of the receipt of financial assistance from Her Majesty's Exchequer in the UK for the purpose of balancing the annual budget.

45. Separate and apart from exercising his constitutional powers, the Governor is also vested with special responsibilities that may not be reassigned or delegated to ministers. These special responsibilities include defence, external affairs, internal security, the police and the employment to persons to the public service or high public office. At present, Cabinet views on these issues are not sought nor is Cabinet consulted in relation to any of these matters.

46. The majority party within the Government is in favour of the Government as a whole having greater autonomy over domestic issues than that currently enjoyed. Therefore, pursuant to the commitment of the FCO to engage overseas territories towards ensuring good government and sustainable political development,<sup>131</sup> in February 2007, the Leader of Government Business announced that the constitutional reform process would be re-started for the Cayman Islands.<sup>132</sup>

47. In the context of the constitutional modernization process, it is the desire of the Cayman Islands Government to negotiate with the United Kingdom a rebalancing of the Governor's role so that the exercise of constitutional powers and special responsibilities are more inclusive of the elected representatives of the Islands.

SECTION THREE—THE WORK OF THE OVERSEAS TERRITORIES CONSULTATIVE COUNCIL

48. The United Kingdom Overseas Territories Consultative Council (OTCC) is a traditional forum for exchange between Cayman Islands ministers and UK ministers. The OTCC is hosted at the Foreign and Commonwealth Office in the fourth quarter of the year. Costs of attending the annual event are borne by Overseas Territories (OTs) Governments. In addition to being costly, meetings are time-consuming and can take a week out of ministers' schedules. Despite this, actual contact time with UK ministers and the opportunity for in-depth dialogue afforded by the OTCC is limited.

49. In 2004 and 2007 the Cayman Islands Leader of Government Business hosted a meeting of Caribbean OT Heads of Government, for pre-OTCC discussions. In general the meetings between OT Ministers/Heads of Government are very productive, not only from the standpoint of planning for the OTCC, but for sharing approaches and in some cases tangible products and services. The pre-OTCC meeting results in agreement on important items, which are conveyed to London for inclusion into the UK OTCC agenda. The Foreign and Commonwealth Office largely decides what items are ultimately included on the OTCC agenda.

50. Based on past experience, it is recommended that more time be allocated to certain subjects as well as more/alternative opportunities for bilateral meetings with UK ministers on topics of special interest to individual OTs. Additionally, a more collegial approach to development concerns should be promoted, and

<sup>128</sup> Not printed, as publicly available.

<sup>129</sup> Under the WBI methodology, percentile rank indicates the percentage of countries worldwide that rate below the selected country. Higher percentile values indicate better governance ratings. Please refer to [www.worldbank.org/wbi/governance](http://www.worldbank.org/wbi/governance) for complete information on the WBI governance indicators.

<sup>130</sup> There is a Speaker of the House who so presides, currently one of the elected members of the Legislative Assembly.

<sup>131</sup> Partnership for Progress and Prosperity, Britain and the Overseas Territories, March 1999.

<sup>132</sup> Constitutional Modernization, Government Information Services press briefing, February 16, 2007; see further in section six.

the OTCC with UK assistance should seek to clarify the definition of associate membership in international organizations. It is also important for UK ministers, the FCO and OT ministers to provide feedback on subjects that need further coverage in advance of the following OTCC meeting.

51. Regular high-level ministerial visits to the Overseas Territories would also be beneficial. The Cayman Islands would welcome at least one visit per year by a UK minister.

#### SECTION FOUR—TRANSPARENCY AND ACCOUNTABILITY

52. Over the past several years, the government has brought to fruition two major initiatives, driven by the objective of increasing transparency and accountability in government operations. These initiatives are reflected in the Public Management and Finance Law (PMFL), first enacted in 2001, the successor to the Public Finance and Audit Law, and the Public Service Management Law, (PSML) enacted in 2005. Running complementary to this is the governing party's manifesto, in which the commitment to transparency and accountability is an explicit and implicit theme.

53. The Cayman Islands Government has to date essentially remained financially independent from the UK exchequer. The PMFL and the subsidiary Financial Regulations set the standards for government budgeting, financial management and associated reporting to the legislature. While some elements of implementation are still in the transitional phase, the Law is a comprehensive and demanding piece of legislation that enables the Cayman Islands fiscal system to correlate strongly with the *IMF Code of Good Practices on Fiscal Transparency (2007)*. In summary, the code calls for:

- Clarity of roles and responsibilities:
  - Distinguishing of the government sector from the rest of the public sector and from the rest of the economy, and clear, disclosed policy and management roles within the public sector.
  - Clear and open legal, regulatory and administrative framework for fiscal management.
- Open budget processes:
  - Established timetable and well-defined macroeconomic and fiscal policy objectives for budget preparation.
  - Clear procedures for budget execution, monitoring and reporting.
- Public availability of information:
  - Provision to the public of comprehensive information on past, current and projected fiscal activity and on major fiscal risks.
  - Presentation of fiscal information in a way that facilitates policy analysis and promotes accountability.
  - Commitment to the timely publication of fiscal information.
- Assurances of integrity:
  - Fiscal data to meet accepted data quality standards.
  - Effective internal oversight and safeguards for fiscal activity.
  - External scrutiny of fiscal information.

54. The PMFL provided the underpinning for the move from cash to accrual accounting and for budgeting on an output basis. It sets out in detail the government budgeting process and deadlines; the appropriation functions of the Legislative Assembly; the powers and duties of Cabinet, the Financial Secretary and the Portfolio of Finance & Economics, Ministries and Portfolios, and Statutory Authorities and Government Companies; accountability framework (performance and ownership agreements); and reporting requirements; and provides for the independence, powers and duties and accountability arrangements for the Auditor General. It also expressly preserves the independence of the Governor and the constitutional independence of the Attorney General, the judiciary and the office of the complaints commissioner.

55. The PMFL establishes statutory principles of responsible financial management, including borrowing limits, maintenance of positive balances for revenue and assets, debt ratios; level of cash reserves, and prudent management of financial risks.

56. There has been full compliance with the principles of responsible financial management for each of the periods ended 30 June 2005, 30 June 2006 and 30 June 2007 (see table below). Government recognizes that a major part of the Cayman Islands' economic success has been due to prudent economic management. The Government remains committed to the principles of responsible financial management and understands that this underpins investor confidence.

<i>Principles of responsible Financial Management</i>	<i>Degree of Compliance</i>
<b>Operating surplus should be positive</b> (operating surplus equals core government operating revenue minus core government operating expenses)	<b>Compliant in all years</b> 2004–05 ..... \$91.0 million* 2005–06 ..... \$77.9 million* 2006–07 ..... \$68.3 million*
<b>Net worth should be positive</b> (net worth equals core government assets minus core government liabilities)	<b>Compliant in all years</b> 2004–05 ..... \$545.0 million* 2005–06 ..... \$442.8 million* 2006–07 ..... \$545.6 million*
<b>Net worth should be positive</b> (Net worth equals core government assets minus core government liabilities)	<b>Compliant in all years</b> 2004–05 ..... 4.8% 2005–06 ..... 5.4% 2006–07 ..... 4.6%
<b>Net Debt should be no more than 80% of core government revenue</b> (Net debt equals outstanding balance of core government debt plus outstanding balance of self financing loans plus weighted outstanding balance of public authorities guaranteed debt minus core government liquid assets)	<b>Compliant in all years</b> 2004–05 ..... 105 days 2005–06 ..... 95 days 2006–07 ..... 93 days
<b>Cash Reserves should be no less than estimated executive expenses for:</b> <b>1. 30 days 2004–05</b> <b>2. 45 days 2005–06</b> <b>3. 60 days 2006–07</b> (Cash reserves equal core government cash and other liquid assets)	<b>Compliant in all years</b> 2004–05 ..... 105 days 2005–06 ..... 95 days 2006–07 ..... 93 days
<b>Financial risks should be managed prudently so as to minimise risk</b>	<b>Compliant in all years</b> — Insurance cover exists for key assets and major potential liabilities — Hurricane preparedness strategy in place

*Figures in Cayman Islands dollars—CI\$1.00 equals £0.585*

57. The Law requires the annual budget to be based on an advance strategic policy statement that is presented to the legislature for approval and is thereafter a public document. In fact, all budget documentation is public and the proceedings of the legislature's finance committee are publicly broadcast by radio. The Law also requires that within a specified period of a general election, a pre-election economic and financial update including specified information be gazetted by the Financial Secretary.

58. The Auditor General reports directly to the full legislature and to the legislature's public accounts committee. There is a central tenders committee chaired by the Portfolio of Finance & Economics that award of contracts valued at \$250,000 or over; amounts below that threshold are to be dealt with by internal departmental tender committee.

59. The accountability framework for the civil service was significantly overhauled with the advent of the PSML. All civil servants are required to execute performance agreements that specify the outputs that they are responsible for delivering and to comply with a statutory code of conduct.

60. The Law also allows for the Governor, by instruction from the Secretary of State under the constitution, to delegate employment powers to the head of the civil service (the chief secretary) and to chief officers of ministries/portfolios. This has been done, with the objective of improving personnel management by decentralization. The Civil Service Appeals Commission is a quasi-judicial body appointed under the PSML charged with hearing appeals from civil servants about personnel-related decisions of chief officers of civil service entities. In terms of other aspects that promote transparency and accountability, these include:

- A regular programme of press briefings by Cabinet ministers.
- The adoption of a Freedom of Information Law, to come into effect in 2008.
- An independent Office of the Complaints Commissioner (OCC) (see section one).
- The establishment of a Civil Service College, in partnership with the University College of the Cayman Islands, to promote high levels of public sector performance in support of good governance.

## SECTION FIVE—REGULATION OF THE FINANCIAL SECTOR

61. While the financial services chapter of Cayman’s history dates back 40 years, the seeds of it were sown as early as the 1700s: two important legacies of history remain from that era—English common law and tax neutrality.<sup>133</sup> The Cayman Islands has always been an open, free market, economy, and from the 1960s onwards, successfully invested its “historic capital” to the benefit of the financial services sector.

62. In the space of 40 years, the Cayman Islands has established itself as a mature, sophisticated international financial services centre, providing institutionally-focused, specialised services to a global client base. Cayman’s main industry sectors include banking, investment funds, captive insurance, companies and partnerships, trusts, structured finance, vessel and aircraft registration and the Cayman Islands Stock Exchange, and has significant market share in a number of these areas. The sector currently accounts for approximately 30% of GDP and 21% of the labour force. Many of the market participants are branches or subsidiaries of established international institutions.<sup>134</sup>

63. The Cayman Islands’ competitive strength in global financial services lies in its ability to provide an effective and cost-efficient tax neutral platform for international capital flows. Cayman offers a “one-stop-shop” for clients, supported by an excellent professional infrastructure in an environment of economic and political stability.

64. Stability, integrity and quality are important to Cayman as a global provider of financial services. The government fully associates itself with the statement in the 1999 White Paper that “[i]n the long run, it is the quality jurisdictions that will prosper best. There must be no weak links which can help to undermine the international financial system”.<sup>135</sup> As concluded by *The Economist*, “well-run jurisdictions of all sorts, whether nominally on- or offshore, are good for the global financial system”.<sup>136</sup>

65. Thus, the Cayman Islands, in concert with the other Caribbean OTs and Bermuda, fully supported the FCO’s initiative in the wake of the White Paper for an independent review (conducted by KPMG in 1999–2000) of financial regulation in the six territories and continues to share the FCO’s commitment to maintaining appropriate standards, out of regard for both the UK Government’s reputation and our own.

*General approach to regulation of the financial services industry*

66. It has been decidedly Cayman’s experience that adherence to recognised and relevant international standards—not absence of regulation—fuels sustainable growth of the sector. Like the City of London, we put a premium on promoting commercial certainty for clients around the world.

67. The government takes a principled and pragmatic approach to maintaining Cayman’s position as a leading financial services center. In terms of principle, the “operating manual” is based on adherence to relevant international standards; respect for the rule of law, due process and the right to privacy; progressive reinforcement of Cayman’s international cooperation channels; and constructive engagement on international issues affecting the provision of cross-border financial services, based on a level playing field.

68. The pragmatic angle on these principles is that they promote commercial certainty and control reputation risk for global clients. The Cayman Islands fully understands and accepts that in operating a financial services centre involves serious obligations, such as doing our part in the fight against international financial crime—recognizing that these obligations are not static due to evolution of international standards and the business itself.

*The Cayman Islands Monetary Authority*

69. Approximately 25% of the licensing/registration revenue collected is re-invested into the Authority’s operations, equating to CI\$15 million in the 2006–07 fiscal year, demonstrating the importance with which the Authority’s functions are regarded. Key features of the regulatory regime include:

- *Observance of recognized and relevant international standards*—Basel, IAIS and IOSCO core principles; FATF 40 + 9.
- *Application of statutory “fit and proper” criteria*<sup>137</sup> to market participants—at entry and as an ongoing activity, CIMA performs due diligence on all directors, major shareholders, and senior officers of licensees.
- *International cooperation*—The Authority has a statutory obligation to provide assistance to overseas counterparts. From 2000 to 2006, 633 requests were handled, with assistance provided in approximately 98% of cases. While not a prerequisite to the provision of assistance, CIMA has memoranda of understanding and similar arrangements providing for mutual cooperation with

<sup>133</sup> Cayman has never had a system of direct taxation and instead employs an indirect, consumption-based taxation system.

<sup>134</sup> This is particularly the case in the banking sector; and all such banks are required to obtain approval of their home regulator for their Cayman operations, as well as confirmation of consolidated supervision arrangements.

<sup>135</sup> *Partnership for Progress and Prosperity—Britain and the Overseas Territories*, p 23.

<sup>136</sup> Survey on Offshore Financial Centres, *The Economist*, 24 February 2007.

<sup>137</sup> This requires regard to a) honesty, integrity and reputation, b) competence and capability, and c) financial soundness.



10 overseas regulatory authorities (in Jersey, Canada, Brazil, the U.S., Isle of Man, Bermuda, Jamaica, Panama; and a multilateral MOU with 8 Caribbean regulators); and others are in negotiation.

70. The IMF assessment of financial regulation in the Cayman Islands published in 2005 found as follows:

- *Overall*—“ . . . [A]n extensive program of legislative, rule and guideline development has introduced an increasingly effective system of regulation, both formalizing earlier practices, and introducing enhanced procedures”.
- *Banking*<sup>138</sup>—“The laws, rules and statements of guidance governing prudential supervision are up-to-date and generally meet international standards. The licensing process for new entrants is sound and comprehensive. Off-site monitoring and on-site inspection are well-developed and integrated . . .”
- *Insurance*<sup>139</sup>—“The measures and policies in place for insurance supervision are sound . . .”
- *Securities*<sup>140</sup>—“In broad terms, the supervisory regime reflects those of developed countries . . . A sound legal, taxation and accounting system appears to be in place . . . Regulation in accordance with the IOSCO Principles is well-implemented except in the mutual funds area”.<sup>141</sup>

71. Since the assessment, CIMA in cooperation with government as necessary has made significant strides in addressing the IMF recommendations. The full IMF report can be accessed from [www.imf.org](http://www.imf.org).

#### CIMA MEMBERSHIPS IN REGULATORY AND STANDARD-SETTING BODIES

- Offshore Group of Banking Supervisors (OGBS)
- Caribbean Group of Banking Supervisors (CGBS)
- Association of Supervisors of Banks of the Americas (ASBA)
- International Association of Insurance Supervisors (IAIS)
- Offshore Group of Insurance Supervisors (OGIS)

#### INTERNATIONAL STANDARDS OBSERVED

- Financial Action Task Force 40 Recommendations on Money Laundering and IX Special Recommendations on Terrorist Financing.
- Basel Core Principles for Effective Banking Supervision.
- Trust and Company Service Providers Working Group Statement of Best Practice (OGBS).
- Core Principles of Insurance Regulation (IAIS).
- Core Principles for Securities Regulation (IOSCO).

#### *The Cayman Islands commitment to the global fight against financial crime*

72. While it is generally acknowledged as impossible to completely prevent financial crime, the Cayman Islands has put a compensatory strong focus on being able to deal with it effectively when it is found. The Cayman Islands adheres to international anti-money laundering and combating the financing of terrorism (AML/CFT) standards and as noted above, applies statutory requirements for fitness and probity to the full range of financial services sector participants covered by the regulatory regime. This coverage is broad, and encompasses sectors not commonly regulated in many jurisdictions, such as trust service providers, fund administration, company service providers and money transmitters. The AML regime also covers all investment funds under the Mutual Funds Law, including hedge funds.

<sup>138</sup> The IMF assessed Cayman’s banking supervision as “compliant” or “largely compliant” with all 30 recommendations included in the 25 Basel Core Principles for Effective Banking Supervision.

<sup>139</sup> Of the 17 IAIS Core Principles, the IMF assessed 11 as “observed” or “largely observed” and 6 as “materially non-observed”. The latter assessments were based on either a lack of staff to implement [Insurance Division was only at 60% strength at the time of the assessment] or a lack of documentation of rules or practices.

<sup>140</sup> Of the 30 IOSCO Principles, the IMF assessed securities regulation as “implemented” or “broadly implemented” for 17 principles, “partly implemented” for 8 and “not implemented” for 1, with 4 “not applicable”.

<sup>141</sup> The exception largely relates to a) absence of certain provisions relating to public funds, which the report acknowledges do not make up the majority of Cayman funds, and since addressed and b) supervisory provisions that the assessors consider should be in the Mutual Funds Law itself, instead of in the Monetary Authority Law.

73. The Cayman Islands is fully committed to supporting global efforts to fight financial crime and has progressively reinforced the international cooperation regime to deliver on this commitment, through statutory law enforcement and regulatory gateways. These gateways, by design, are not inhibited by Cayman's confidentiality regime.<sup>142</sup>

74. For example, since the Mutual Legal Assistance Treaty (MLAT) with the U.S. came into effect in 1990, the two governments have cooperated in some 230 requests for assistance under the Treaty, resulting in successful law enforcement actions. Assets seized under such actions have been both shared by the U.S. and the Cayman Islands under an asset-sharing agreement as well as returned to the U.S. for restitution to victims of fraud and other crimes.

75. For countries other than the U.S. (although the U.S. is covered as well under this legislation), the Criminal Justice (International Cooperation) Law (CJICL) provides for comprehensive mutual legal assistance to be given in the context of a broad range of criminal offences. The purposes for which mutual legal assistance is available are also broad, and include executing searches and seizures; providing information and items of evidence; identifying or tracing proceeds, property, instruments or such other things for the purposes of evidence; immobilising criminally obtained assets; and assisting in proceedings related to forfeiture and restitution.<sup>143</sup> Assistance is available, including at the investigative stage, to all 146 Vienna Convention countries. The CJICL also contains "ship riding" powers.

76. Further, there are a number of treaties that allow for extradition between the Cayman Islands and a wide range of countries. Extradition is available for any offence that would be regarded as a serious crime carrying punishment of more than one year either in the Cayman Islands or in the requesting state. The European Convention on Extradition has applied to the Cayman Islands since 1996.

77. With the support of the FCO, the Cayman Islands was the first regionally, and among the first worldwide, to criminalise the laundering of the proceeds of all serious crimes, with the 1996 Proceeds of Criminal Conduct Law (PCCL), extending such legislation beyond the ambit of drug-money laundering.

78. As required by international standards, the Cayman Islands has criminalized money laundering in accordance with the UN Vienna (1988) and Palermo (2000) Conventions (via the PCCL and the Misuse of Drugs Law) and terrorist financing in accordance with the UN International Convention on the Suppression of the Financing of Terrorism (1999), via the Terrorism Law, 2003 (in addition to various prior Orders in Council promulgated by the UK on behalf of its OTs, pursuant to UN S/RES 1373 and S/RES 1267.

"Efforts to achieve compliance with international standards have been top priority in the Cayman Islands . . . and there is an intense awareness of anti money-laundering and combating of financing of terrorism in the business community. The Cayman Islands authorities have devoted substantial attention and resources to improving the country's anti money-laundering, legal and institutional framework . . . An extensive program of legislative, rule and guideline development has introduced an increasingly effective system of regulation, both formalising earlier practices and introducing enhanced procedures"—International Monetary Fund Report on Supervision of Financial Services in the Cayman Islands (2005)

79. The Money Laundering Regulations under the PCCL apply comprehensive statutory AML/CFT obligations on relevant financial business in relation to customer due diligence measures, recordkeeping, systems of internal control and suspicious activity reporting; and training. With the recent addition of dealers in precious metals and stones, the activity coverage complies with the FATF 40 + 9. CIMA has also issued comprehensive Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands, enforceable industry guidance on the interpretation and application of the Money Laundering Regulations.

80. The Cayman Islands is a founding member of the Caribbean Financial Action Task Force (CFATF), established in 1990, and has undergone three peer evaluations by that body (1995, 2002 and 2007 [report not yet published]) in addition to external evaluations on standards of financial regulation (including AML/CFT standards) by KPMG (2000; AML only, as predated FATF CFT recommendations) and the IMF (2003, report published in 2005). These evaluations confirm Cayman's commitment to and implementation of regulatory and AML/CFT standards and in general provide a useful third-party "health-check", as constant vigilance and regular review of measures is required to combat financial crime.<sup>144</sup> In fact, as part of the self-assessment exercise in relation to the 2007 CFATF AML/CFT evaluation, in addition to making

<sup>142</sup> The Confidential Relationships (Preservation) Law codifies Tournier. On the international cooperation elements under the various international standards, the IMF assessment found the Cayman Islands "compliant" or "largely compliant" (Basel Core Principles); the standards "implemented" and "partly implemented" (IOSCO Principles) and "largely observed" (IAIS Principles); and "compliant" or "largely compliant" (FATF Recommendations).

<sup>143</sup> Immobilising criminally obtained assets and assisting in proceedings related to forfeiture and restitution are not in Vienna Convention, but were included in the CJICL for completeness.

<sup>144</sup> On AML/CFT standards, the IMF assessed the Cayman Islands as "compliant" or "largely compliant" for all FATF recommendations rated, with the exception of FATF 17 and FATF 20, which were rated as "materially non-compliant." FATF 17 related to tipping off—the assessors found that the tipping off offence under the Misuse of Drugs Law only related to restraint and production orders, and not SARs. FATF 20 related to the application of home AML/CFT rules to domestic branches and subsidiaries located abroad; the assessors acknowledge that there are few of these. What was then FATF 17 is being addressed in upcoming amendments to the PCCL; FATF 20 has been addressed in the Guidance Notes, as recommended.

dealers in precious metal/stones subject to the AML/CFT regime, Cayman undertook a number of upgrades, including introducing cash courier requirements to comply with FATF SR IX and statutory wire transfer requirements (based on the EU Regulation) to comply with FATF SR VII.

81. In a number of respects, the anti-money laundering regime in the Cayman Islands outpaced international standards, for example, in the breadth of activity coverage (“gatekeepers” providing trust, company and other services and real estate transaction were in scope before this was the international standard); in the undertaking of retrospective due diligence on all clients existing prior to the implementation in 2000 of upgraded AML legislation; the breadth of the statutory obligation to report suspicious activity under the AML legislation; and the immobilization of bearer shares.

82. The Cayman Islands’ AML/CFT enforcement regime operates through a partnership of institutions and authorities, including CIMA, the Financial Reporting Authority (a member of the Egmont Group since 2001),<sup>145</sup> the Financial Crime Unit of the Royal Cayman Islands Police, the MLAT Central Authority, Customs, the Portfolio of Finance & Economics and the Attorney General’s Chambers. The Cayman Islands has also established an Anti-Money Laundering Steering Group, a statutory body charged with policy and implementation oversight in relation to the AML/CFT regime.

*Additional areas of international cooperation—tax information assistance*

83. The Cayman Islands signed a tax information exchange agreement with the U.S. in 2001 and it is in force. The Cayman Islands established the Tax Information Authority which operates under a statutory framework for dealing with requests made under any international agreements entered into that provide for sharing information on tax matters. This includes the legislation passed in 2005 pursuant to bilateral agreements with EU member states following the EU Savings Directive.

84. The Cayman Islands has been an active participant in the Organisation for Economic Development and Cooperation (OECD) Global Forum on Taxation, having been one of the first non-OECD jurisdictions to adopt (in 2000) the principles of transparency and exchange of information on tax matters, based on a level playing field.

85. The Cayman Islands considers that there is scope to develop the following in cooperation with the UK Government:

- in the context of achieved standards, greater public recognition of the UK for same and support for commensurate EU recognition (formal and otherwise); and
- ensuring that the international standard setters adhere to level playing field principles (equity, fair competition, transparency and non-discrimination).

SECTION SIX—PROCEDURES FOR AMENDMENT OF THE CONSTITUTION

86. The Cayman Islands is currently engaged in a constitutional modernization exercise, re-launched in February 2007. To facilitate this national exercise, a Constitutional Review Secretariat (CRS) was established in March 2007 under the Cabinet Office.<sup>146</sup> The Director of the CRS is a senior crown counsel seconded from the Attorney General’s Chambers. The services of an eminent constitutional advisor have also been retained. The function of the CRS is to facilitate a national consensus on areas of constitutional reform upon which the Cayman Islands Government may negotiate a new constitution for the Islands with the UK Government.

87. Guidance on the procedures to be followed in amending the Cayman Islands Constitution Order may be found in the FCO 1999 White Paper, Partnership for Progress and Prosperity and the constitutional checklist issued by the Governor’s office in 2001. The information contained therein explains generally the expected benchmarks to be met by OTs in any constitutional review exercise.

88. The 1999 White Paper summarizes the obligations and expectations to be considered by overseas territories when reviewing their constitutions, including:

- measures promoting more transparent and accountable government;
- improvements to the composition of legislatures and their operation;
- improving the effectiveness, efficiency, accountability and impartiality of the public service;
- the role of Overseas Territory Ministers and Executive Councils and their exercise of collective responsibility for government policy and decisions;
- respect for the rule of law and the constitution;
- the promotion of representative and participative government;
- freedom of speech and information;

<sup>145</sup> The PCCL enables the Financial Reporting Authority to pass suspicious activity reports (SARs) to foreign counterparts in order to report the possible commission of an offence, initiate a criminal investigation respecting the matter disclosed, or assist with any investigation or criminal proceedings. During the 2005–06 reporting period, the FRA onwardly disclosed SARs to 26 countries.

<sup>146</sup> The CRS website is [www.constitution.gov.ky](http://www.constitution.gov.ky).

- the provision of high standards of justice; and
- adoption of modern standards of respect for human rights.

89. Likewise, the 2001 constitutional checklist echoes the above elements and is based on the concept of a participatory constitutional reform process. Specific checklist items include that:

- any changes to the constitution should have the support of the majority of the population and that there should be evidence of that support;
- there should be extensive public consultation on the issues; and
- there should be a debate in the Legislature, in which the suggested changes are approved by motion.

90. The Foreign and Commonwealth Office has also recently confirmed to the Cayman Islands Government that the position it has taken with other Overseas Territories that recently completed constitutional reviews is that the process is one of discussion and agreement. This means that the status quo will remain until everything is acceptable to both the Cayman Islands and the United Kingdom.

91. The position of the United Kingdom Government is that the Cayman Islands would be under an obligation to demonstrate to the United Kingdom Government that the constitutional changes sought have the support of the people of the Islands. An accepted minimum level of acceptance may be demonstrated through the endorsement of the recommendations by the Cayman Islands Legislative Assembly.

92. The Cayman Islands Government's constitutional modernization initiative is designed to accord with the guidance provided in the White Paper and the checklist. The initiative is structured in four phases. The first three phases are expected to occur over a period of 24 months, starting 1 March 2007, although there is no fixed end date. The CRS has a website<sup>147</sup> with resources, events and information to facilitate public engagement in the process. The phases are as follows:

#### PHASE 1—RESEARCH

- Identify viable areas of constitutional reform.
- Publication and distribution of a public discussion paper.

#### PHASE 2—CONSULTATION

- Public education on constitutional issues raised in public discussion paper.
- Public consultation period.

#### PHASE 3—REFERENDUM

- National referendum on constitutional reform.

#### PHASE 4—NEGOTIATION

- Negotiations between the Cayman Islands and the United Kingdom for modernization of the Cayman Islands Constitution.

93. Phase 1 is approaching its end, and the Public Discussion Paper will be published in the next few months. As noted in section one, one of the objectives in the review process is a rebalancing of the Governor's role so that the exercise of constitutional powers and special responsibilities are more inclusive of the elected representatives of the Islands. It is also anticipated that a significant outcome of the review process will be the promulgation of a Bill of Rights for the Islands that will be compatible with the rights contained in the European Convention.

#### SECTION SEVEN—APPLICATION OF INTERNATIONAL TREATIES, CONVENTIONS AND OTHER AGREEMENTS

94. Due to the constitutional status of the Cayman Islands as an Overseas Territory, international treaties or conventions generally apply by extension thereof to the Islands by the United Kingdom. Current practice is that extension is at the request of the Cayman Islands, with the UK requiring to be satisfied that domestic legislation has been enacted to give effect to, and ensure compliance with, any obligation arising thereunder.

95. There are a good number of conventions applicable to the Cayman Islands, in the areas of the environment, shipping and air transport; telecommunications and postal union; crime; human rights; and others. The Cayman Islands submits periodic reports to highlight its compliance with its international obligations and to identify areas in which further action may be required.

<sup>147</sup> www.constitution.gov.ky.

96. Both from an innate disposition and recognition of UK Government expectations, the Cayman Islands takes its international obligations seriously. In fact, in critical areas Cayman has moved to enact domestic legislation in advance of treaty extension, examples of this being domestic legislation to give effect to the 2000 UN Convention against Transnational Organised Crime (the Palermo Convention) and to the 1999 UN International Convention on the Suppression of the Financing of Terrorism, both of which, together with the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), the Cayman Islands considers vital to upholding its obligations as a significant international financial services centre. The Cayman Islands has requested extension of both the former treaties, which requests are still pending with the FCO.

97. With respect to the implementation of mechanisms to satisfy the requirements of treaties and conventions, the FCO continues to play an integral role by offering technical and other assistance and guidance as to the steps that can be taken to achieve this objective. Quite recently, for example, the Human Rights, Democracy and Governance Group of the FCO offered to share its knowledge of the UK's experience in implementing mechanisms for the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) to enable the Cayman Islands to take the necessary measures to give full effect to the Protocol within the existing statutory framework.

98. The Office of the Attorney General recently established a Treaties and Conventions Unit and has dedicated a crown counsel to deal with, *inter alia*, all human rights matters within Chambers and to work closely with the FCO for the compilation of periodic reports and monitoring compliance with international obligations.

99. In relation to human rights, which is dealt with in detail in section 8, the existing constitution of the Cayman Islands does not contain a Bill of Rights, and there is no comparable legislation to the UK Human Rights Act 1998. However, notwithstanding this, human rights and related issues have gained widespread prominence and recognition at diverse levels within the Islands.

100. Human rights matters are ventilated before the local courts even in the absence of a Bill of Rights or human rights legislation. In recent cases, for example, legislation (such as that setting out mandatory minimum sentences for certain offences) has been challenged on the basis of a possible human rights violation. In another case, the right to religious freedom has been subjected to the scrutiny of both the Grand Court and Court of Appeal. In addition, the vires of the actions of public authorities and the enforcement of civil liberties are all issues which have been raised in both the civil and criminal courts. It is therefore clear that the local courts are mindful of the importance of human rights and their duty to enforce them within the ambit of the existing laws of the Islands.

101. The ongoing efforts of the Cayman Islands to develop and protect human rights have been consistently supported by the FCO. Such support has included identifying training in various aspects of human rights, providing invaluable advice on issues which have arisen in the Islands, whether in legislation or policy or, as in a recent case, the manner in which EU law is to be applied to the Overseas Territories.

## SECTION EIGHT—HUMAN RIGHTS

102. As the national institution vested with competence to promote and protect human rights in the Cayman Islands, the Cayman Islands Human Rights Committee (HRC) is best placed to provide an independent and impartial appraisal of the status of human rights in the Cayman Islands.

103. Whilst the Cayman Islands is one of the few jurisdictions in the world that does not enshrine at least some human rights in its constitution—a fundamental fact that the HRC is actively seeking to alter—this does not mean that human rights are alien to the Cayman Islands.

104. The long existence of representative government in the Cayman Islands (established in 1831), along with a free and independent media, and a legal system which recognises individual liberty as one of its key features, all serve to demonstrate how Caymanian society embodies the ideals of human rights in spite of the absence of fundamental rights in the constitution.

105. The principles that underpin human rights are in fact evident throughout the history of the Cayman Islands and remain to this day among the core values upheld by the people of Cayman. As is characteristic in any progressive democratic society, citizens of the Cayman Islands expect the rights to association and expression; to liberty and privacy; to religious freedom and a fair trial; and perhaps most fundamental of all, the right to life itself.

106. Notwithstanding the important historical landmarks for human rights in the Cayman Islands, the fact is that there is still much room for improving the protection of these rights. With the current constitutional arrangements, where so much is dependent upon the responsiveness of the democratically elected legislature and the receptiveness of the independent judiciary, there are times when human rights remain vulnerable. In times of emergency or when a particular fear or prejudice emerges, there are relatively few constitutional restraints on the will of the Legislative Assembly; and in such circumstances, the courts are obliged to follow the law, even if it is adopted in breach of human rights.

107. It is therefore necessary to enshrine the realisation of human rights in the Constitution of the Cayman Islands, and the HRC has made this one of its primary goals. The HRC is an active contributor to the constitutional modernisation process currently underway in the Cayman Islands.

108. The domestic arrangements for the protection of human rights are supplemented by a number of major international human rights treaties, some of which have extended to the Cayman Islands for many years. Whilst these international human rights may be persuasive in local courts, they are not directly enforceable unless or until they are incorporated into domestic law.<sup>148</sup> The following international human rights treaties have been extended to the Cayman Islands:

- International Covenant on Civil and Political Rights.
- International Covenant on Economic, Social and Cultural Rights.
- International Convention on the Elimination of All Forms of Racial Discrimination.
- Convention on the Rights of the Child.
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Convention Relating to the Status of Refugees.
- European Convention for the Protection of Human Rights and Fundamental Freedoms.

109. Particularly noteworthy by its absence from the above list is the Convention on the Elimination of All Forms of Discrimination Against Women. The Caymanian authorities have indicated that they would like the United Kingdom to extend this important treaty; but Her Majesty's Government has apparently indicated that this would first require domestic legislation to give full effect to the full range of guarantees identified in this Convention.

110. The re-extension to the Cayman Islands, in early 2006, of the right of individual petition to the European Court of Human Rights is a significant addition to the range of remedies available to people in the Cayman Islands, although even this does not empower local judges to enforce the human rights contained in that Convention.

111. The creation of the HRC in 2003 and the ratification of its terms of reference<sup>149</sup> in January 2006 have provided further impetus for the promotion and protection of human rights throughout the Cayman Islands.

112. The HRC is a non-aligned body committed to impartiality and objectivity and although not a formal remedy, the HRC is able to receive and seek remedies to complaints. In absence of constitutional protection, the HRC therefore provides an important local opportunity for the resolution of issues where human rights are under threat.

113. There are currently 14 members of the HRC, with more than two-thirds of the membership drawn from the private sector. Although the HRC was appointed by Cabinet, its members are not accountable to Cabinet. The independence and the impartiality of the HRC is expressly preserved in its terms of reference, which Cabinet has accepted. All Members of the HRC, including the civil servants, voluntarily serve in their personal capacities. HRC members do not represent any particular interests or organisation and are entirely free to adopt positions that are contrary to governmental policy.

114. One of the HRC's primary functions is to facilitate education on human rights, to which end the HRC has recently embarked upon a two-month public awareness campaign, supported by the FCO's Overseas Territories Fund.<sup>150</sup>

115. In an effort to offset a relatively widely held perception that human rights conflict with certain aspects of local tradition and culture and thus an external imposition, the Campaign was specifically designed to highlight human rights in a local historical context. Landmark events were therefore focused on, such as the successful fight in 1957 for women's suffrage, which demonstrate how Caymanian individuals and groups have acted to protect and promote their human rights.

116. The campaign has also successfully publicized the HRC. This is evidenced by the significant increase in correspondence received by the HRC following the commencement of the campaign. Previously, the HRC was receiving notice of, on average, 1.3 new human rights concerns per month. However, an average of 4.5 new concerns per month have been brought to the attention of the HRC since the campaign began. Whilst many of these claims are not ultimately substantiated, there is undoubtedly now a greater awareness of the HRC and its work.

117. In addition, the HRC has also produced a series of reports and commentaries that draw attention to specific human rights issues. This work generated by the HRC may take various forms:

- Contributions to International Reports.
- Commentaries on local legislation (both prospective and existing).

<sup>148</sup> For a detailed analysis of the applicability of international human rights in the Cayman Islands' courts, see Annex 1 of this section (not printed).

<sup>149</sup> The HRC's full terms of reference are available at [www.humanrights.ky](http://www.humanrights.ky).

<sup>150</sup> The print and television versions of the six executions of the campaign's theme can be viewed at [www.humanrights.ky](http://www.humanrights.ky).

- Final Case Reports.
- Other commentaries.

#### *Contributions to International Reports*

118. In its 2006 contribution to the Cayman Islands Report for the United Nations *Convention on the Rights of the Child*, the HRC made a number of observations as to how the rights of the child could be improved in the Cayman Islands. These included *inter alia*:

- (a) The enactment of domestic legislation to protect children's rights. Whilst there is already some legislation enacted in the Cayman Islands, this is not currently in force. Furthermore, the HRC identified that the existing legislation may well require amendment and supplement in order for it to fully comply with the Convention on the Rights of the Child.
- (b) A number of deficiencies in the criminal justice system as it relates to the rights of the child. In order to remedy these deficiencies, amendments were proposed to the Bail Law 2006, the Firearms Law 2006 and the Penal Code 2006.
- (c) The improvement of juvenile detention facilities, particularly to ensure that they provide for education and rehabilitation.
- (d) The provision of education and training opportunities to refugee children.
- (e) The adoption of a national action plan to promote the rights of the child.<sup>151</sup>

119. Thus far, in the intervening year, none of these recommendations have been acted upon. The HRC still therefore considers that arrangements in the Cayman Islands do not fulfill all of the obligations contained in the Convention on the Rights of the Child.

#### *Commentaries on Local Legislation*

120. The HRC has had the opportunity to comment on forthcoming legislative proposals in respect of their compatibility with internationally recognised human rights. This is an important function, which enhances the credibility of the HRC and will, it is hoped, make a positive contribution to the sensitivity that future legislation displays towards human rights. To date, the HRC has published commentaries on:

- The Drug Court Bill 2006.
- The Alternative Sentencing Bill 2006.<sup>152</sup>

121. In its commentaries, the HRC stressed that it was generally supportive of both the Drug Court Bill and the Alternative Sentencing Bill. It was recognised that both pieces of legislation were innovative and would require a departure from the traditional approach to criminal justice. However, it was also noted that one must be careful to ensure that these innovations in their quest for laudable goals do not compromise human rights in any way.

#### *Final Case Reports*

122. The HRC can be accessed in three different ways:

- an individual or group of individuals can directly petition the HRC by writing to the Committee;
  - an individual or group of individuals can address a petition in writing to a Member of the HRC, who may then formally lodge the petition with the Committee; or
  - a Member of the HRC can petition the Committee of his or her own volition, by bringing an individual issue or a matter of general concern, in writing, to the attention of the Committee.
- Following the acceptance of a petition, it is formally registered as a complaint and assigned a case number. Registration does not necessarily indicate that a complaint will ultimately be upheld. Rather, it signifies that the HRC believes that there is a concern that merits further inquiry. In the course of its inquiry, if the parties are amenable, the HRC can operate as a mediator in an effort to broker an amicable settlement between the parties. This settlement must, however, comply with the generally accepted interpretation of the right or rights at issue.

123. If the facts of the complaint, as provided, give rise to a clear breach of any of the rights contained in the international treaties that have been extended to the Cayman Islands, the full HRC itself can adjudicate upon the complaint and publish its findings in a Final Report. The HRC has completed a number of significant final reports, all of which can be found on its website [www.humanrights.ky](http://www.humanrights.ky) (see annex of this section for a summary of reports).

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<sup>151</sup> The HRC's full Report for the Convention on the Rights of the Child can be accessed at [www.humanrights.ky](http://www.humanrights.ky).

<sup>152</sup> These commentaries can be read in full at [www.humanrights.ky](http://www.humanrights.ky).

### *Other Commentaries*

124. The HRC has recently returned to the theme of education and human rights, with the publication of a report on human rights education in the Cayman Islands. The report defines what is encompassed by the concept of human rights education, identifies the many positive benefits that such education will provide to Caymanian society and discusses the importance of integrating human rights education across the entire curriculum as opposed to one subject area. The report establishes the appropriate methodology for the delivery of human rights education and recognises that while human rights are in a sense international, they should be connected to the experiences of people in Cayman and should be culturally sensitive. The full report is available at [www.humanrights.ky](http://www.humanrights.ky).

### *Human Rights Issues under review*

125. The HRC is presently engaged in a number of investigations on a variety of human rights concerns in the Cayman Islands. These include, *inter alia*:

- The adequacy of the operation of various domestic law so as to prevent a situation of slavery, forced or compulsory labour, or servitude arising.
- Immigration Law and the right to family life.
- The detention of juveniles.
- The detention of mentally ill persons.
- Delay in the criminal justice system.
- The extent of the State's responsibility to protect children from abuse.

### *Constitutional Modernization and Human Rights*

126. The last, and perhaps most far-reaching, topic that the HRC is working on is the modernization of the constitution of the Cayman Islands. To this end, the HRC has met with representatives of the FCO to discuss options and has established a Working Group to assist with public education and articulating the HRC's perspective on the ensuing debate.

127. The HRC believes that the promotion and protection of human rights in the Cayman Islands would be best served by the inclusion of a chapter on fundamental rights and freedoms in its constitution. This is not a novel idea. The Report of the Constitutional Commissioners in 1991 concluded that, "*there was almost a unanimous request for Fundamental Rights and Freedoms . . . to be included in the Constitution*" and similarly, just over 10 years later, in 2002, the Report of Cayman's own Constitutional Modernization Review Commissioners found that the inclusion of a Bill of Rights in the constitution was the issue that attracted the most widespread support in the review process.

128. The HRC is of the view that human rights are a central component of any modern constitution and that the constitution should not only identify which particular rights are recognized, but importantly, it should furthermore provide a mechanism through which individuals can enforce these rights. Part of this mechanism ought to include the formal recognition of the national body responsible for the promotion and protection of human rights in the constitution itself. The HRC is also reviewing the possible content of the Chapter of Fundamental Rights in any prospective constitution to assess whether a more expansive and contemporary approach to human rights can be embodied, which exceeds the confines of the civil and political rights orientated model of the European Convention on Human Rights that has been exported to most of the United Kingdom's former and existing territories.

129. Although the constitutional arrangements in the Cayman Islands generally recognise the importance of human rights, the extensive work of the HRC has highlighted that there are a number of areas where significant improvements could be made. The HRC believes that it is ideally placed to assist in making these improvements a reality. This is clearly an important agenda for the HRC, and to this end the HRC is therefore actively assisting the Constitutional Review Secretariat in its work to advance the modernization of the constitution.

## SECTION NINE—RELATIONS BETWEEN THE CAYMAN ISLANDS AND THE UNITED KINGDOM PARLIAMENT

130. The Cayman Islands has maintained a staffed office in London since 1982, and it is primarily through this office that Cayman's relationship with the UK Parliament has been developed. The office was headed until 2000 by Mr Thomas Russell CMG, CBE who is a former Governor of the Cayman Islands. As of August 2000, the Cayman Islands Government Representative in the United Kingdom (UK Representative) has been Mrs Jennifer Dilbert MBE, a long term Caymanian civil servant.

131. The UK Representative is the organising officer for the All Party Parliamentary Group for the Cayman Islands (APPG), which is the main forum for contact and discussion with members of parliament, and action on behalf of the Cayman Islands. The Chair of the APPG is Lord Davies of Coity. It is an active



group, with meetings held regularly throughout the year. The London Office provides members of the APPG with monthly updates on current issues in the Cayman Islands, and the UK Representative also maintains contact with individual members to address questions or issues as they arise.

132. Visits to the Cayman Islands by UK parliamentarians are encouraged and three such visits have taken place since 2000, two under the auspices of the Commonwealth Parliamentary Association (UK Branch) and one which was sponsored in full by the Cayman Islands Government. The Cayman Islands Government has extended an invitation to the APPG to send a further delegation to Cayman in July of 2008, and plans are currently being made for this visit. All of these visits have proved very successful in informing and engaging members of parliament. It is considered that the APPG has committed members and is a valuable resource for Cayman.

133. Outside of the APPG, the UK Representative is proactive in engaging members of parliament who table questions or express an interest in the Cayman Islands or the Overseas Territories as a whole, particularly in the area of financial services. The UK Representative is competent in this area, having previously been Head of Financial Services supervision in Cayman. She also has experience in the private sector as she headed the Cayman operations of Deutsche Bank for a period.

134. The UK Representative is a member of the United Kingdom Overseas Territories Association (UKOTA) as well as the Overseas Territories APPG, both of which afford further interaction with the UK parliament, particularly on issues which affect all OTs.<sup>153</sup>

135. The UK Representative regularly attends party conferences, which provide opportunities to meet new MPs and interact with existing contacts in parliament. The facilities and programmes provided at the conferences for overseas governments are normally good, including daily briefings and invitations to various sessions and receptions which allow the Representative to meet Government ministers and other key parliamentarians.

136. Good relations exist between the UK Representative's office and the Overseas Territories Department (OTD) at the FCO. The Desk Officer is very helpful in providing assistance, information and advice on matters such as immigration, passports and visas which may be brought to the London office by Caymanians in the UK. The London office maintains a good relationship with the Protocol Office within the FCO and the UK Representative is afforded many opportunities within the Diplomatic Corps in London to represent the Cayman Islands and this is appreciated. Some exceptions to this are being brought to the attention of the Committee by UKOTA.

137. Cayman's relationship with the EU is assisted by the Co-ordinator, EU/Overseas Countries and Territories within in the Policy and Co-ordination Unit of the OTD. The UK Representative works closely with the Co-ordinator and this has proved very helpful in dealings with the EU, specifically through the Overseas Countries and Territories Association of the EU.

138. The Cayman Islands is a member of the CPA (UK Branch) and both the London office and the local branch of the CPA enjoy an excellent and close relationship with the CPA. The 32nd CPA Regional Conference of the Caribbean, the Americas and the Atlantic Region was held in the Cayman Islands in June 2007.

*16 October 2007*

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**Submission from John Simkiss, Ascension Island**

I am writing to suggest that the committee look into the Ascension Island Council's mass resignation over their mistreatment by the F&CO regarding the right of abode after being subject to direct taxation.

There are other UK military installations on Overseas Territories such as Gibraltar which live quite comfortably with a small and docile resident population.

I don't know if anyone on Ascension has submitted relevant written testimony. But if they have not already, please contact me, and I will put you in touch with the right people on Ascension.

I applaud your review of the F&CO's work in general and their deceitful misbehavior in dealing with residents on Ascension.

*18 October 2007*

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<sup>153</sup> See separate evidence from UKOTA.

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### Submission from Reprieve

#### ENFORCED DISAPPEARANCE, ILLEGAL INTERSTATE TRANSFER, AND OTHER HUMAN RIGHTS ABUSES INVOLVING THE UK OVERSEAS TERRITORIES

##### EXECUTIVE SUMMARY

- *Reprieve's* submission to the Foreign Affairs Select Committee highlights the use of UK Overseas Territory to support illegal interstate transfer, enforced disappearance and torture in the context of the “war on terror”.

##### *Diego Garcia—Background*

- There have been repeated, credible and concurrent claims that Diego Garcia has played a major role in the US system of renditions and secret detention.
- General McCaffrey has twice stated that “terrorist suspects” are held on the island and the Council of Europe (June 2007) spoke of receiving: “Concurring confirmations that United States agencies have used the island territory of Diego Garcia, which is the international legal responsibility of the United Kingdom, in the ‘processing’ of high-value detainees”.

##### *New Information*

- An order, made by the Commissioner for the Territory of BIOT in December 2001 “*declared certain specified premises in Diego Garcia to be a prison*”. This occurred at the same time that secret prisons were being modified and built in places such as Poland and Romania after secret NATO agreements were made post 9/11.
- *Reprieve* formally claims that at least three “ghost prisoners”—Khalid Sheikh Mohammed, Abu Zubaydah and Hambali—have been subject to torture, cruel, inhuman and degrading treatment, and prolonged incommunicado detention on or with the material support of resources from British Indian Ocean Territory at Diego Garcia.<sup>154</sup>
- *Reprieve* names amphibious assault ships the USS Bataan and the USNS Stockham as being possible sites of “floating prisons” serviced from Diego Garcia. The UK government is therefore implicated in any events on board those ships.
- *Reprieve* submits that the UK government is potentially systematically complicit in the most serious crimes against humanity: of enforced disappearance, torture and prolonged incommunicado detention.
- *Reprieve* submits that the UK has repeatedly failed to investigate these credible allegations, relying on vague US “assurances” that rendition and imprisonment have not taken place in or around Diego Garcia.
- *Reprieve* submits that the UK’s failure to conduct a prompt, independent and effective inquiry into these claims is a further clear breach of its duties under international and domestic law.
- *Reprieve* submits that the UK government is under a clear duty to effect a prompt, impartial and effective inquiry into the allegations contained within our submission to the FASC.

##### *Turks and Caicos*

- *Reprieve* documents rendition flight logs including 23 stopovers of rendition planes in the Turks and Caicos, en-route to or from known multiple sites of US extrajudicial detention. In almost half of documented flight circuits, aircraft stopping in Turks and Caicos were shuttling between Guantanamo Bay and other known sites of secret detention.
- Turks and Caicos may have been used as a luxury “rest and recovery” spot and planning hub for agents en route to or from illegal rendition operations or Guantanamo Bay.
- *Reprieve* details at least four occasions in which Turks and Caicos appears to have been used as a “staging post” within renditions missions.
- Aircraft stopping at Turks and Caicos include N379P (N8068V), otherwise known as the “Guantanamo Bay Express”, N313P, N85VM and N829MG. These planes have been linked to the renditions to torture of numerous individuals, including British residents Binyam Mohamed, Bisher Al-Rawi and Jamil El-Banna.

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<sup>154</sup> *Assenov and Others V Bulgaria* ECtHR, Judgement 28 October 1998; *Aksoy v Turkey* ECtHR, Judgement 18 December 1996; *Kurt v Turkey* ECtHR, Judgement of 8 July 1999; *Akdeniz and Others V Turkey*, ECtHR, Judgement 31 May 2001.

- Over 30 individuals associated with at least two of the planes regularly visiting Turks and Caicos have been indicted in Germany and Italy for their role in the renditions of Khaled El-Masri and Abu Omar. Interpol arrest warrants have been issued for these agents.

*Reprieve* calls on UK government to fulfil its obligations under international and domestic law, and commence a prompt and effective inquiry into the role of Turks and Caicos for rendition operations.

*Reprieve* is a UK charity fighting for the lives of people facing the death penalty and human rights violations in the context of the “war on terror”. The organisation was founded by Clive Stafford Smith in 1999. All *Reprieve’s* work is framed by an international human rights perspective.

#### NOTE ON SUBMISSION

*Reprieve’s* submission to the Foreign Affairs Select Committee’s inquiry into the Overseas Territories focuses on the protection of human rights in Diego Garcia and Turks and Caicos.

#### OVERVIEW OF THE RENDITIONS “SYSTEM”

Of late, the term “rendition” has been used to describe the kidnapping and transportation of terrorist suspects by the US and their allies, without legal procedure, for indefinite detention, interrogation and torture.

“Post 9/11” rendition involves at least the following three elements:

- (i) Apprehension—This can be *ad-hoc*, ie involving no semblance of a legal process, or it can resemble a legal process.
- (ii) Transfer—This can be entirely *ad-hoc* and without process, for example on a CIA plane, or it can involve elements of process, for example a “deportation” without the victim being given the chance to adequately challenge his transfer.
- (iii) End point—This is normally some form of incommunicado or semi-incommunicado US detention, proxy detention by a third-party state, or some form of joint detention.

“Rendition” and “secret detention” together amount to the crime against humanity of “enforced disappearance”,<sup>155</sup> and usually involve other serious abuses of rights, for example torture and inhuman and degrading treatment, prolonged incommunicado detention and absence of access to due process.

President George W Bush admitted in September 2006 that the CIA operated a secret network of “black sites” in which terrorist suspects were held and subjected to what he described as “alternative procedures”.<sup>156</sup> According to the United States Congress, up to 14,000 people may have been victims of rendition and secret detention since 2001.<sup>157</sup>

On 6 September 2006, President George Bush announced that “The secret prisons are now empty.”

This is not the case: in the past six months alone, *Reprieve* and other human rights organisations have uncovered over 200 new cases of rendition and secret detention.<sup>158</sup>

<sup>155</sup> According to the UN Human Rights Committee:

“The practice of enforced disappearance of persons infringes upon an entire range of human rights embodied in the Universal Declaration of Human Rights and set out in both International Covenants on Human Rights as well as in other major international human rights instruments”.

<http://www.unhcr.ch/html/menu6/2/fs6.htm#rig>

<sup>156</sup> 06.09.06 Transcript of a Background Briefing by a Senior Administration Official and a Senior Intelligence Official on the Transfer of CIA Detainees to the Department of Defence’s Guantanamo Bay Detention Facility, The White House Conference Centre Briefing Room.

<sup>157</sup> *Congressional Quarterly*, August 2006.

<sup>158</sup> See “Off the Record”, a recent report by *Reprieve* and leading human rights groups documenting “ghost prisoners” known to have been in US custody but who have since “disappeared”.

<http://www.reprieve.org.uk/documents/OFFTHERECORDFINAL.pdf>

<sup>159</sup> As part of the militarization of the island beginning in the late 1960s and continuing until the present day, the local Chagos islanders were expelled from the archipelago. After a lengthy court battle, on May 23 2007 the UK Court of Appeal held that the Chagossians have the right to return to any island in the archipelago *except* Diego Garcia.

<sup>160</sup> In the early 1960s, the US and the UK entered negotiations for the use of Diego Garcia as a joint military facility, finalised in December 1966 with the entry into force of the Exchange of Notes between the UK and US. The Exchange of Notes has effect until 30 December 2036, unless either Government elects to terminate and end the agreement in 2016.7.

<sup>161</sup> See Appendix 1 for details of the Exchange of Note.

## DIEGO GARCIA

## BACKGROUND

Diego Garcia is the largest and only inhabited island in the Chagos Archipelago, in the Indian Ocean. After Mauritian independence in March 1968, the Archipelago was retained as a UK Colony and renamed the British Indian Ocean Territory (BIOT).<sup>162</sup>

The island of Diego Garcia is home to a military base operated for the “joint defence purposes” of the US and the UK,<sup>163</sup> and was used as a major military staging post in the invasions of Afghanistan and Iraq. The relationship between the UK and US with regard to Diego Garcia is governed by a series of agreements known as the “Exchange of Notes”.<sup>164</sup>

Diego Garcia has been the subject of repeated, credible and concurrent claims that the island has played a major role in the US system of renditions and secret detention.<sup>165</sup>

The UK government is therefore potentially systematically complicit in the most serious crimes against humanity of disappearance, torture and prolonged incommunicado detention. The UK’s failure to conduct a prompt, independent and effective inquiry into these claims is a further clear breach of its duties under international and domestic law.<sup>166</sup>

This submission brings together the information currently available to researchers, and points to further questions to be answered. This submission constitutes sufficient notice to the UK government that it must conduct an independent and effective inquiry into these serious allegations.<sup>167</sup>

## SUMMARY OF AVAILABLE EVIDENCE

## I. Publicly available statements by officials and institutions, expressly linking Diego Garcia to the U.S. Secret Detention Programme

US Military General Barry McCaffrey has now stated twice on US National Public Radio that Diego Garcia has been used by the United States to hold prisoners in the “War on Terror”:

- (i) In an interview with Deborah Norville for MSNBC Tonight on 6 May 2004 General McCaffrey, a retired United States Army General, stated:
- “We’re probably holding around 3,000 people, you know, Bagram Air Field, Diego Garcia, Guantanamo, 16 camps throughout Iraq”.<sup>168</sup>

<sup>162</sup> As part of the militarization of the island beginning in the late 1960s and continuing until the present day, the local Chagos islanders were expelled from the archipelago. After a lengthy court battle, on May 23 2007 the UK Court of Appeal held that the Chagossians have the right to return to any island in the archipelago *except* Diego Garcia.

<sup>163</sup> In the early 1960s, the US and the UK entered negotiations for the use of Diego Garcia as a joint military facility, finalised in December 1966 with the entry into force of the Exchange of Notes between the UK and US. The Exchange of Notes has effect until 30 December 2036, unless either Government elects to terminate and end the agreement in 2016.7.

<sup>164</sup> See Appendix 1 for details of the Exchange of Notes.

<sup>165</sup> Including: British Territory Must Not Be Used for Torture Letter to Prime Minister Tony Blair from Human Rights Watch, December 28, 2002 [www.hrw.org/press/2002/12/uk1230ltr.html](http://www.hrw.org/press/2002/12/uk1230ltr.html)

Letter to Jack Straw, From Peter Carter QC, Bar Human Rights Committee, 19 November 2003

<http://www.barhumanrights.org.uk/pdfs/Jack%20Straw%20DG.pdf>

Ending secret detentions, Human Rights First, June 2004

[http://www.humanrightsfirst.org/us\\_law/PDF/EndingSecretDetentions\\_web.pdf](http://www.humanrightsfirst.org/us_law/PDF/EndingSecretDetentions_web.pdf)

“Rendition” and secret detention: A global system of human rights violations, Amnesty International, 1 January 2006 <http://web.amnesty.org/library/index/engpol300032006>

Council of Europe Report: Reprieve Calls for Immediate Investigation of Secret Prison on British Island of Diego Garcia Reprieve, 8 June 2007,

[http://www.reprieve.org.uk/Council\\_of\\_Europe\\_Report\\_Diego\\_Garcia\\_08.06.07.htm](http://www.reprieve.org.uk/Council_of_Europe_Report_Diego_Garcia_08.06.07.htm)

U.S. Decries Abuse but Defends Interrogations, “Stress and Duress” Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities, By Dana Priest and Barton Gellman, Washington Post, December 26, 2002

<http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A37943-2002Dec25>

The Terrorist Talks, By Simon Elegant/Kuala Lumpur—Time, Monday, 13 October 2003 “Records shows Diego Garcia linked to alleged torture flights”, Richard Norton-Taylor, Guardian, 4 January 2007 <http://www.guardian.co.uk/uk—news/story/0,,1982192,00.html>

“UK Provided base for rendition flights, says European inquiry” Independent, Robert Verkaick, 9 June 2007 <http://news.independent.co.uk/europe/article2636183.ece>

Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report Committee on Legal Affairs and Human Rights, Council of Europe, 7 June 2007

[http://www.bernan.com/images/PDF/EMarty\\_20070608\\_NoEmbargo.pdf](http://www.bernan.com/images/PDF/EMarty_20070608_NoEmbargo.pdf)

<http://www.time.com/time/magazine/article/0,9171,1005867,00.html>

US Suspected of Keeping Secret Prisoners on Warships: UN Official, Agence France-Presse Wednesday 29 June 2005

[http://www.truthout.org/docs\\_2005/062905Z.shtml](http://www.truthout.org/docs_2005/062905Z.shtml)

Go to Original “Our dirty little torture secret”, Stephen Grey, Sunday Times, 22 October 2006

<http://www.timesonline.co.uk/article/0,,2092-2415275.html>

“Guantanamo transcripts paint portraits of detainees, but much remains cloudy”, Andrew Selsky, Associated Press, 15 April 2006 <http://www.ap.org/FOI/foi—031506c.html>

<sup>166</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Arts 12 and 13, 26 June 1987.

<sup>167</sup> Meeting the minimum standards set out in statute and case-law, and outlined further below.

<sup>168</sup> 21488-21509 04/05/07 MSNBC “Deborah Norville Tonight for May 6” at 21493

<http://www.msnbc.msn.com/id/4924989>

- (ii) On 5 December 2006, General McCaffrey again referred to Diego Garcia in interview with Robert Siegel on NPR, when speaking about suspected terrorists, saying:

“They’re behind bars, they’re dead, they’re apprehended. We’ve get them on Diego Garcia, in Bagram Airfield, in Guantanamo”.<sup>169</sup>

Senator Dick Marty, Rapporteur for the Council of Europe’s investigation into illegal inter-state transfers involving Council of Europe member states, has made strong statements regarding allegations of rendition involving Diego Garcia, and the related obligations of the UK government to investigate the matter.

- (iii) The Council of Europe’s June 2007 report stated:

“We have received concurring confirmations that United States agencies have used the island territory of Diego Garcia, which is the international legal responsibility of the United Kingdom, in the ‘processing’ of high-value detainees. It is true that the UK Government has readily accepted ‘assurances’ from US authorities to the contrary, without ever independently or transparently inquiring into the allegations itself, or accounting to the public in a sufficiently thorough manner”.<sup>170</sup>

## II. Prisoners credibly reported to have been held on Diego Garcia

As well as statements alleging that Diego Garcia forms a crucial part of the US global “renditions system”, there have been numerous allegations and reports that specific prisoners have been held on the island.

Those prisoners credibly<sup>171</sup> alleged to have been held on Diego Garcia are:

- (i) Hambali aka Riduan Isamuddin;<sup>172</sup>
- (ii) Abu Zubaydah; and<sup>173</sup>
- (iii) Khalid Shaikh Mohammed.<sup>174</sup>

All three of these men are now being held as “high value detainees” (HVDs) in Guantanamo Bay.<sup>175</sup> It has been admitted by the US government that prisoners in its HVD programme have been subjected to “enhanced interrogation techniques,” including water-boarding, sleep deprivation, and sensory deprivation, in the context of prolonged incommunicado detention.<sup>176</sup> The US government argues that these and similar techniques do not amount to torture on their interpretation of US obligations under international law. The significant operational difference for the US and the UK in relation to enforceable definitions of torture for each state was expressed by Justice Collins in the UK High Court:

“Unfortunately, it appears that the United States has a somewhat different view as to what constitutes torture in this country and to what is applied by Strasbourg under the European Convention on Human Rights, and I suspect to what is applied by the international body in relation to the Convention Against Torture”.<sup>177</sup>

The Council of Europe has described “enhanced interrogation techniques” as “essentially a euphemism for some kind of torture”,<sup>178</sup> and it is clear that under the various instruments binding the UK in this respect, the interrogation regime admitted by the US as having been applied to the above prisoners, would amount to torture or cruel, inhuman and degrading treatment for the purposes of interpreting UK responsibility for events at Diego Garcia.

<sup>169</sup> 06.12.05 McCaffrey on NPR.

<sup>170</sup> Council of Europe Report June 2008, (p 17, pt 70).

<sup>171</sup> By “credibly”, we mean that each of these prisoners is reported, by more than one source and including an inter-governmental organisation as well as either or both media and NGO reports, to have been held on Diego Garcia. In addition the US has admitted to holding at least eight prisoners, including John Walker Lindh onboard USS Bataan., which is believed to have been operating in the vicinity of Diego Garcia at some point. See: <http://www.globalsecurity.org/military/library/news/2002/01/mil-020116-usia01.htm>

<sup>172</sup> 12049-12066 *Ending Secret Detentions* Report by Human Rights First, June 2004 [http://www.humanrightsfirst.org/us\\_law/PDF/EndingSecretDetentions—web.pdf](http://www.humanrightsfirst.org/us_law/PDF/EndingSecretDetentions—web.pdf), accessed 26/4/07

<sup>173</sup> 12067-12071 Knox, Paul, *War on terror ignites battle over course of U.S. justice*, The Globe and Mail, 5/9/02, <http://foi.missouri.edu/terrorandcivillib/waronterror.html> accessed: 26/4/07.

<sup>174</sup> 12072-12073 Selsky, Andrew, *Guantanamo transcripts paint portraits of detainees, but much remains cloudy*, Associated Press, 3/4/06, <http://www.globalsecurity.org/org/news/2006/060403-gtmo-transcripts.htm>, accessed 26/4/07

<sup>175</sup> 06.09.06 Transcript of: BACKGROUND BRIEFING BY A SENIOR ADMINISTRATION OFFICIAL AND A SENIOR INTELLIGENCE OFFICIAL ON THE TRANSFER OF CIA DETAINEES TO THE DEPARTMENT OF DEFENSE’S GUANTANAMO BAY DETENTION FACILITY; The White House Conference Center Briefing Room; 06.09.07 Detainee Biographies from the Office of the Director of National Intelligence.

<sup>176</sup> 05.11.18 “CIA’s Harsh Interrogation Techniques Described”, Brian Ross and Richard Esposito, ABC News; 05.11.19 “CIA Reveals Enhanced Interrogation Techniques Used in Secret Jails Abroad” Brian Ross and Richar Esposito, The Huffington Post.

<sup>177</sup> Per Mr Justice Collins in *Al-Rawi V UK* (Preliminary hearings 16 February 2006) para 4 of transcript.

<sup>178</sup> 7 June 2007, Council of Europe Parliamentary Assembly Committee on Legal Affairs; Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report; Rapporteur: Mr Dick Marty, Switzerland, ALDE; introductory remarks at para 2.

As recently as October 2007, former US president Jimmy Carter stated that:

“The United States tortures people in violation of international law . . . I don’t think it, I know it”.<sup>179</sup>

#### *Possible detention facilities on and around Diego Garcia*

Allegations of detention involving Diego Garcia have focused on the possibility that prisoners have been held in conditions including: a facility on the island, on ships moored within the three-mile territorial waters limit and on ships serviced/supported or commanded from the island base that may be operating outside of the three-mile territorial limit.

##### (i) Prison facilities on the island of Diego Garcia

There is a prison on Diego Garcia. It is both documented and admitted that construction work has taken place in relation to prison facilities on the island, the last construction work believed to have been ordered in December 2001 (see below).

In 1984, the US General Accounting Office undertook a review on construction work carried out by several private contractors on Diego Garcia between 1981 and 1984. The GAO Report to the Secretary of Defense<sup>180</sup> lists the following two items:

- “Detention facility” (completed three months late, December 1983).
- “Internal security/dog kennel” (also built in 1983, though not by any contractor but by “Naval Construction Force”).

Jack Straw, responding to a question from Sir Menzies Campbell on 21 June 2004 regarding “what facilities exist on Diego Garcia for holding human beings against their will” stated that:

“In exercise of powers conferred on him by the Prisons Ordinance 1981 of the British Indian Ocean Territory, the Commissioner for the Territory has declared certain specified premises in Diego Garcia to be a prison. This was done by orders made in February 1986 (which replaced an earlier order made in July 1982), July 1993 and December 2001”.<sup>181</sup>

In December 2001, in the context of NATO Status of Forces Agreements for the support of the US in its war in Afghanistan, the US was negotiating secret multilateral and bilateral agreements with NATO member states for support in its fledgling system of interstate transfers for the interrogation of terror suspects.<sup>182</sup> At this time, Poland and Romania too were also “modifying” existing prison facilities on military bases that were to be leased to the United States. Repeated and persistent allegations from numerous quarters centre for over two years have centred on the claims that these countries hosted sites that were used by the US to hold prisoners in the “high value detainee programme”.<sup>183</sup>

##### (ii) Amphibious assault ships

Prisoners may have been held on one of the many U.S amphibious assault ships in the waters surrounding Diego Garcia. In June 2005 the UN’s special rapporteur on terrorism spoke of “very, very serious” allegations that the United States is secretly detaining terrorism suspects in various locations around the world, notably aboard prison ships in the Indian Ocean region.<sup>184</sup>

It is possible that the UK government believes itself absolved from responsibility for events on boats or other vehicles moored or otherwise operating outside the three-mile territorial limit of BIOT jurisdiction surrounding Diego Garcia. This is not the case—the UK is clearly obliged in law to investigate allegations regarding vessels moored outside the three-mile limit, if those vessels were commanded from or otherwise supported by, the island of Diego Garcia.<sup>185</sup>

Ships believed by Reprieve to particularly require further investigation are:

<sup>179</sup> 07.10.10 *Carter says U.S. tortures prisoners*, CNN: <http://www.cnn.com/2007/POLITICS/10/10/carter.torture/>

<sup>180</sup> GAO/NSIAD-84-62, dated 23 May 1984 is available on-line under <http://archive.gao.gov/d5t1/124211.pdf>

<sup>181</sup> Hansard, Column 1222W, 21 June 2004.

<sup>182</sup> 7 June 2007, Council of Europe Parliamentary Assembly Committee on Legal Affairs; Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report; Rapporteur: Mr Dick Marty, Switzerland, ALDE; at Para 84–105.

<sup>183</sup> 7 June 2007, Council of Europe Parliamentary Assembly Committee on Legal Affairs; Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report; Rapporteur: Mr Dick Marty, Switzerland, ALDE; at paras 112–122.

<sup>184</sup> <http://news.bbc.co.uk/2/hi/americas/4632087.stm>

<sup>185</sup> 03. 11.19 Letter to the Rt. Hon. Jack Straw MP, Secretary of State for Commonwealth Affairs, from Peter Carter QC, Chair, Bar Human Rights Committee to former Foreign Secretary Jack Straw MP, pointing out that there is a three mile territorial limit of BIOT jurisdiction around Diego Garcia, but that the UK would still be obliged to investigate allegations regarding such vessels.

*The USS Bataan*

The USS Bataan is known to have been used as a floating prison, and to have been in the Indian Ocean near Diego Garcia at some point. Sheikh al-Libi is amongst those believed to have been held at one point on the amphibious assault ship the USS Bataan.<sup>186</sup> A prisoner released from Guantanamo described another prisoner’s account of his detention on an amphibious assault ship to a Reprieve researcher:

“One of my fellow prisoners in Guantanamo was at sea on an American ship with about 50 others before coming to Guantanamo . . . he was in the cage next to me. He told me that there were about 50 other people on the ship. They were all closed off in the bottom of the ship. The prisoner commented to me that it was like something you see on television. The people detained on the ship were beaten even more severely than in Guantanamo”.

*The USNS Stockham*

The USNS Stockham was deployed to Diego Garcia in July 2001 and has since been used in support of the “war on terror”.

Figure 1 USNS Stockham en route to Diego Garcia<sup>187</sup>

Vice Adm Brewer, commander of Military Sealift Command (MSC) from August 2001, to his retirement in early 2006, described the ship as follows:

“That ship is off doing some real good stuff that we can’t talk about”.

Between March and July 2004 MSC modified the USNS Stockham with additional capabilities to support the “global war on terrorism”, including a 54-foot flight deck, a commercial-type aviation fuel system, a medical module, communications upgrades and watercraft.<sup>188</sup>

*Other ships*

Other ships stationed at or near to Diego Garcia which warrant investigation with regard to possible secret detention facilities, include:

- |                           |                              |
|---------------------------|------------------------------|
| — USNS Watson             | — MV Pvt Franklin J Phillips |
| — USNS Watkins            | — USNS Red Cloud             |
| — USNS Sisler             | — USNS Soderman              |
| — USNS Charlton           | — USNS Dahl                  |
| — USNS Pomeroy            | — MV CPL Louis J Hauge Jr    |
| — MV PFC William B Baugh  | — MV PFC James Anderson Jr   |
| — MV 1st Lt Alex Bonnyman | — USS Peleliu                |

III. *Suspicious flights*

The UK government must make public all military, state and civilian aircraft records involving Diego Garcia. One example of a suspicious flight is that of known rendition plane N379P, which landed in Diego Garcia on 13 September 2002. It was next logged in Rabat, close to Temara detention centre, a well-known destination for extraordinary rendition. N379P visited the alleged detention sites in Poland and Romania on numerous occasions, and is believed to have been used for the renditions of Reprieve client Binyam Mohamed, and other prisoners including Khalid El-Masri, Ahmed Agiza and Mohammed Al-Zeri. The company providing logistical support for N379P in these operations—a subsidiary of Boeing called Jeppesen Dataplan—is the subject of litigation in the U.S. by ACLU, Reprieve, and New York University Centre for Global Justice. The Council of Europe alleges in its June 2007 report that Jeppesen systematically covered up the true routes of rendition planes, including, specifically, some routes of N379P.

<sup>186</sup> The United States’ “Disappeared” The CIA’s Long-Term “Ghost Detainees”, Human Rights Watch Briefing, October 2004, at <http://www.hrw.org/backgrounder/usa/us1004/7.htm>

<sup>187</sup> USNS Gunnery Sgt. Fred W. Stockham is the second of three Maritime Prepositioning Force (Enhanced) ships to deliver to MSC. Here is an aerial view of the stern ramp as the ship rounds the Cape of Good Hope in Africa on her way to Diego Garcia in the Indian Ocean. <http://www.msc.navy.mil/annualreport/2001/pm3.htm>

<sup>188</sup> See Global Security for further information. <http://www.globalsecurity.org/military/systems/ship/afsb.htm>

## Duty to Inspect Aircraft

*Reprive* submits that the UK is under a positive duty to inspect all civilian, military and state aircraft landing at Diego Garcia, transiting through Diego Garcia or through BIOT aircraft, or landing on or transiting through any boats connected in any way to Diego Garcia.<sup>189</sup>

Note that the 1976 Exchange of Notes, between the U.K Government and the U.S Government requires that the UK keep these records, stating in paragraph 3 that:

*“The US Commanding Officer and the Officer in Charge of the United Kingdom Service element shall inform each other of intended movements of ships and aircraft”.*

## UK GOVERNMENT RESPONSES AND REponsibility

Since 2004, the UK government has issued repeated denials and claims to lack of knowledge, repeatedly referring to US “assurances” that no prisoners have been held on or passed through Diego Garcia. For example in June 2004, Jack Straw stated:

“The United States authorities have repeatedly assured us that no detainees have at any time passed in transit through Diego Garcia or its territorial waters or have disembarked there and that the allegations to that effect are totally without foundation. The Government are satisfied that their assurances are correct”.<sup>190</sup>

In its inquiry into UK involvement in renditions of July 2007, the UK Intelligence and Security Committee exclusively referred to assurances by the US government, simply stating:

“ . . . the U.S. has given firm assurances that at no time have there been any detainees on Diego Garcia. Neither have they transited through the territorial seas or airspace surrounding Diego Garcia. These assurances were last given during talks between U.S. and UK officials in October 2006”.<sup>191</sup>

Given the extent of credible evidence now available, including admissions by the US Administration itself, it is not a contentious claim that the US does engage in a policy of rendition and incommunicado detention.<sup>192</sup> Neither is it equivocal that prisoners have been subjected by the US and their proxy gaolers to treatment that is illegal under the regimes binding the UK and Europe.<sup>193</sup> These facts, combined with credible evidence and persisting claims that BIOT territory is deeply implicated in the US renditions system, mean that relying on assurances from the US government in this context is not sufficient for the UK to discharge its duty to investigate torture or credible allegations of torture. The Intelligence and Security Committee Inquiry of July 2007 is therefore insufficient to meet the standard required for investigations in the context of Diego Garcia.

This is especially the case given that since 2004, US Defence Department officials themselves have claimed not to know whether prisoners have been held on or near Diego Garcia: At a Defence Department Operational Update Briefing on 14 July 2004, Principal Deputy Assistant Secretary of Defence Laurence Di Rita stated in response to the question of whether there are detainees at Diego Garcia:

“I don’t know. I simply don’t know.”<sup>194</sup>

In light of the mounting evidence and long absence of a sufficient official investigation into the allegations of UK involvement in extrajudicial transfer, kidnapping, disappearance and torture at Diego Garcia, the UK is now under a clear legal duty to conduct an effective and independent official investigation into the above allegations that named individuals have been held for torture on or near or directly involving BIOT territory at Diego Garcia.<sup>195</sup>

<sup>189</sup> Exchange of Notes between the UK and US in relation to BIOT; Convention on International Civil Aviation, Article 4; read with CAT art 12 and 13 and/or ECHR art 5; consistent with interpretation of Venice Commission: European Commission for Democracy Through Law (Venice Commission)—the Council of Europe’s constitutional advisory body, *Opinion on the International Legal Obligations of Council of Europe Member States In Respect of Secret Detention Facilities and Interstate Transport of Prisoner, 17 March*: ([http://www.venice.coe.int/docs/2006/CDL-AD\(2006\)009-e.asp?PrintVersion=True&L=E](http://www.venice.coe.int/docs/2006/CDL-AD(2006)009-e.asp?PrintVersion=True&L=E));

<sup>190</sup> House of Commons Hansard text *21 Jun 2004 : Column 1222W*  
[http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040621/text/40621w13.htm#40621w13.html\\_wqn9](http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo040621/text/40621w13.htm#40621w13.html_wqn9)

<sup>191</sup> July 2007; Intelligence and Security Committee—Rendition—para 197  
[http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/intelligence/20070725—isf\\_final.pdf](http://www.cabinetoffice.gov.uk/upload/assets/www.cabinetoffice.gov.uk/publications/intelligence/20070725—isf_final.pdf)

<sup>192</sup> 06.09.06 Transcript of President Bush’s Speech, available at: *President Discusses Creation of Military Commissions to Try Suspected Terrorists*;  
<http://www.whitehouse.gov/news/releases/2006/09/20060906-3.html>

<sup>193</sup> See for example: 07.10.04 *Secret U.S. Endorsement of Severe Interrogations*, Scott Shane, David Johnston & James Risen, NY TIMES, at A1; and 07.10.04 *Congress Seeks Justice Dept. Documents on Interrogation*, Scott Shane & David Johnston, NY TIMES.

<sup>194</sup> Available at [www.globalsecurity.org/military/library/news/2004/mil-040714-dod01.htm](http://www.globalsecurity.org/military/library/news/2004/mil-040714-dod01.htm)

<sup>195</sup> If the ECHR applies, then see *Ribitsch v Austria*, ECtHR, Judgement 4 December 1995; *Aksoy v Turkey*, ECtHR, Judgement 18 December 1996; In any case, a wider duty also exists under the Convention Against Torture, requiring state party signatories to the Convention to of their own initiative carry out investigations of torture, even if there has been no formal complaint (see Arts 12 and 13 of the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment).



Specifically, the UK must:

- Investigate *Reprive's* formal claims that a prison facility for an unknown number of prisoners has and may still exist on Diego Garcia, and on boats near and/or connected to Diego Garcia, with implied (even if tacit) support from the UK government.
- Investigate *Reprive's* formal claims that Khalid Sheikh Mohammed, Abu Zubaydah and Hambali have been subject to torture, cruel, inhuman and degrading treatment, and prolonged incommunicado detention on or with the material support of resources from British Indian Ocean Territory at Diego Garcia.<sup>196</sup>

That investigation must be:

- Effective and independent;<sup>197</sup>
- Capable of leading to the identification and punishment of those responsible;<sup>198</sup>

And:

- Include the taking of witness statements;<sup>199</sup>
- Include the gathering of forensic evidence.<sup>200</sup>

#### RECOMMENDATIONS FOR IMMEDIATE ACTION BY THE FASC

- Interview General Barry McCaffrey and Vice Adm David L Brewer III with regard to the use of Diego Garcia and ships connected to Diego Garcia, for the imprisonment and or transit of suspected terrorists.
- Interview Senator Dick Marty of the Council of Europe, regarding his statements on the use of Diego Garcia for the “processing of “high value detainees”.
- Seek access to, or some way other way of adequately interviewing, Guantanamo Bay prisoners Hambali, Abu Zubaydah and Khalid Sheikh Mohammed to clarify the facts of their alleged detention on or near Diego Garcia.
- Seek clarification from the US and any other relevant governments as to the location, activities and purpose since September 2001, of all amphibious assault ships named in this submission, in particular the USS Peleliu, the USS Bataan and the USNS Stockham.
- Seek clarification from the US and any other relevant governments as to whether the USS Peleliu, the USS Bataan, the USNS Stockham and any other amphibious assault ship named in this submission with a connection to Diego Garcia, has at any time been used for the purposes of holding or transiting detainees, and if so, then ascertain who was held, when were they held, and in what conditions they were held in.
- Seek clarification from the UK government regarding the nature and full details of the “modifications made to detention facilities” in December 2001, and the reason for such modifications.
- Seek clarification from the UK government as to why it was necessary to refurbish a prison facility on Diego Garcia in December 2001, when the UK government has otherwise submitted to the United Nations Committee for Human Rights that the island is uninhabited for the purposes of the International Convention on Civil and Political Rights.
- Ensure that the UK government fulfils its obligations under the International Convention on Civil and Political Rights (ICCPR), and submits a detailed report to the UN Human Rights Committee in relation to its fulfilment or not of its duties under the ICCPR, by the end of 2007.
- Obtain and make public all bilateral and other agreements made between the UK and the US and any other government, in particular those made under the cover of the NATO Status of Forces Agreement framework, regarding the use of the UK overseas territories including BIOT, for any purposes involving terrorist suspects.

<sup>196</sup> *Assenov and Others V Bulgaria* ECtHR, Judgement 28 October 1998; *Aksoy v Turkey* ECtHR, Judgement 18 December 1996; *Kurt v Turkey* ECtHR, Judgement of 8 July 1999; *Akdeniz and Others V Turkey*, ECtHR, Judgement 31 May 2001.

<sup>197</sup> *Assenov and Others V Bulgaria* ECtHR, Judgement 28 October 1998; *Aksoy v Turkey* ECtHR, Judgement 18 December 1996; *Kurt v Turkey* ECtHR, Judgement of 8 July 1999; *Akdeniz and Others V Turkey*, ECtHR, Judgement 31 May 2001.

<sup>198</sup> *Ribitsch v Austria*, ECtHR, Judgement 4 December 1995; *Aksoy v Turkey*, ECtHR, Judgement 18 December 1996; In addition, there is a persuasive judgement of the Inter-American Court of Human Rights, which found that the failure to amount an investigation can be a violation of the right to be protected against torture and inhuman treatment (*Velasquez Rodriguez Case*, Judgement 29 July 1988, Inter-Am. Ct HR Series C, No 4).

<sup>199</sup> *Ribitsch v Austria*, ECtHR, Judgement 4 December 1995; *Aksoy v Turkey*, ECtHR, Judgement 18 December 1996.

<sup>200</sup> *Ribitsch v Austria*, ECtHR, Judgement 4 December 1995; *Aksoy v Turkey*, ECtHR, Judgement 18 December 1996.

- 
- Obtain and make public satisfactory answers and records<sup>201</sup> from the UK government, without recourse to reliance on “assurances” from the US government, in relation to the following:
    - Communications<sup>202</sup> between the U.K. and any foreign government relating to the apprehension, transfer, detention and interrogation of persons to, through or in any part of British Indian Ocean Territory (BIOT), covering the period from September 11 2001 to the present.
    - Records and communications internal to the U.K. government and agencies relating to the apprehension, transfer, detention<sup>203</sup> and interrogation of persons to, through or in any part of British Indian Ocean Territory (BIOT), covering the period from September 11 2001 to the present.
    - The transfer or reception of intelligence by one or more U.K. agencies or government officials<sup>204</sup> to or from one or more foreign agencies or officials,<sup>205</sup> in connection with the apprehension or detention or transfer of a person detained or apprehended in, or transferred through, BIOT territory.
    - The transfer or reception of intelligence internally between U.K. agencies and/or government officials, in connection with the apprehension or detention or transfer of a person detained or apprehended in, or transferred through, BIOT territory.
    - Any records relating to any communication/s or agreement/s made between the U.K. and any foreign government or agency regarding the possible or actual use of any part of BIOT, including islands other than Diego Garcia and any U.K. territorial waters and any boats registered in any jurisdiction and located in any U.K. territorial waters, and any planes passing through that territory or its airspace, for the purpose of detaining people.
    - Any records relating to any internal communication/s or agreement/s made between any U.K. government departments or agencies regarding the possible or actual use of any part of BIOT, including islands other than Diego Garcia and any U.K. territorial waters and any boats registered in any jurisdiction and located in any U.K. territorial waters, and any planes passing through that territory or its airspace, for the purpose of detaining people.
    - Any records relating to any communication/s or agreement/s made between the U.K. and any foreign government, regarding one or more foreign government agencies having control, direction, or administration of a subdivision, portion, or “cell” of a place of detention in BIOT territory, including islands other than Diego Garcia and any U.K. territorial waters and any boats registered in any jurisdiction and located in any U.K. territorial waters.
    - Any records relating to any internal communication/s or agreement/s made between any U.K. government departments or agencies, regarding one or more foreign government agencies having control, direction, or administration of a subdivision, portion, or “cell” of a place of detention in BIOT territory, including islands other than Diego Garcia and any U.K. territorial waters and any boats registered in any jurisdiction and located in any U.K. territorial waters.
    - Any records relating to any communication/s between or agreement/s made between the U.K. and any foreign government regarding the use of any part of BIOT, including islands other than Diego Garcia and any U.K. territorial waters and any boats registered in any jurisdiction and located in any U.K. territorial waters, for the construction of any detention facility on that territory or the entry to BIOT waters of any vessel hosting a detention facility or the entry to or passing through territory or airspace of any aircraft hosting a detention facility.
    - Any records relating to any internal communication/s between or agreement/s made between any U.K. government departments or agencies regarding the use of any part of BIOT, including islands other than Diego Garcia and any U.K. territorial waters and any boats registered in any jurisdiction and located in any U.K. territorial waters, for the construction
- 

<sup>201</sup> The term “records” includes all reports, statements, examinations, memoranda, correspondence (including electronic mail) designs, maps, photographs, microfilms, computer tapes or disks, rules, regulations, codes, handbooks, manuals, maps or guidelines.

<sup>202</sup> The term “communication” means the giving, receiving, transmitting, or exchanging of information, including, but not limited to, any and all written, printed, telephonic, electronic, and in-person conversations by and with any person, and/or talk, gestures, or documents which memorialize or refer to any communications.

<sup>203</sup> The term “detainee” means any person deprived of their liberty by one or more individuals or agencies who is prevented by any means from leaving the place in which he or she is being held. The term “detention” means depriving any person of their liberty such that they are prevented by any means from leaving the place in which they are held. The term “place of detention” means any place or facility in which a detainee is kept, regardless of whether it is officially recognised as a place of detention.

<sup>204</sup> The term “U.K. government official” includes any U.K. government employee, and any person providing service to any agency of the United States government on a contractual basis, regardless of his or her ability to speak or make decisions on behalf of the U.K. government.

<sup>205</sup> The term “foreign government official” includes any foreign government employee, and any person providing service to any agency of a foreign government on a contractual basis, regardless of his or her ability to speak or make decisions on behalf of that foreign government.

of any detention facility on that territory or the entry to BIOT waters of any vessel hosting a detention facility or the entry to or passing through territory or airspace of any aircraft hosting a detention facility.

- Any records relating to any communication/s between or agreement/s made between the U.K. and any foreign government regarding the use of any part of BIOT, including islands other than Diego Garcia and any U.K. territorial waters and any boats registered in any jurisdiction and located in any U.K. territorial waters, for the adaptation of any existing site (including any vessel located in, or otherwise supported from, BIOT) on that territory for use as a detention facility.
- Any records relating to any internal communication/s between or agreement/s made between any U.K. government departments or agencies regarding the use of any part of BIOT, including islands other than Diego Garcia and any U.K. territorial waters and any boats registered in any jurisdiction and located in any U.K. territorial waters, for the adaptation of any existing site (including any vessel located in, or otherwise supported from, BIOT) on that territory for use as a detention facility.

#### TURKS AND CAICOS

The Turks and Caicos are a British Overseas Territory consisting of two groups of tropical islands in the West Indies.

*Reprieve* has documented numerous stopovers of rendition planes in the Turks and Caicos, en-route to or from known sites of US extrajudicial detention, particularly Guantanamo Bay.

*Reprieve* submits that the UK government is now under a clear duty to investigate any possible complicity in rendition and torture—unwitting or not—of the UK government in allowing its territory to be used for refuelling or other purposes in the course of a rendition operation, and to act to prevent any complicity in the future.

The UK government is also under a duty to monitor all suspicious flights and retain and make available full passenger and other records of those flights, for distribution to international law enforcement agencies including the Interpol database of false and stolen passports. The UK government must fully co-operate with the authorities of other sovereign states, including Germany and Italy, to ensure the prompt arrest of any individuals entering its territory, who are subject to an Interpol arrest warrant for their involvement in kidnap and illegal rendition.

#### SUMMARY OF AVAILABLE EVIDENCE

##### *Stopovers en-route to or from Guantanamo Bay*

*Reprieve* has documented a high number of suspicious stopovers in the Turks and Caicos, between 2001-2005, including 23 stopovers by four well-known rendition planes which were en route to or from Guantanamo Bay and other locations associated with extraordinary rendition.<sup>206</sup>

Associated aircraft include tail-numbers N379P (N8068V), otherwise known as the “Guantanamo Bay Express,” N313P, N85VM and N829MG.

Each of these planes has been associated with numerous renditions, and over thirty individuals associated with at least two of the planes have been indicted in Germany and Italy for their role in the renditions of Khaled El-Masri and Abu Omar.<sup>207</sup>

N379P (N8068V) was used for the renditions of British residents and *Reprieve* clients Binyam Mohamed, Bisher Al-Rawi and Jamil El-Banna, Italian citizen Abu Elkassim Britel, Yemeni citizen Mohammed Bashmillah, and Egyptian citizens Mohammed Al-Zeri and Ahmed Agiza from Sweden to Egypt.<sup>208</sup>

N313P was used for the rendition of Binyam Mohamed from Morocco to Afghanistan, and German citizen Khaled El-Masri from Macedonia to Afghanistan.<sup>209</sup> This plane has made numerous suspicious stopovers in Eastern Europe, and is alleged by Human Rights Watch to have been used for the transfer of “high value detainees” from Afghanistan to Poland in 2003.<sup>210</sup>

<sup>206</sup> For further information, see Appendix 3.

<sup>207</sup> 07.01.31 *Germany Issues CIA Arrest Orders*, BBC News Online; 05.12.13 *CIA abduction claims “credible”*, BBC News Online.

<sup>208</sup> *Al-Zeri v Sweden*, Un Human Rights Committee 88th Session, Communication Number 1416/2005, 6 November 2006; *Binyam Mohamed, Abou Elkassim Britel, Ahmed Agiza, Bisher Al-Rawi, Mohammed Bashmilla, v Jeppesen Dataplan Inc.* in the United States District of Northern California, Civil Action number CO72778.

<sup>209</sup> 07.06.07 Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights; *Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states*, first report, at 3.9.

<sup>210</sup> 07.06.07 Council of Europe Committee on Legal Affairs and Human Rights; *Secret detentions and illegal transfers of detainees involving Council of Europe member states: Second report* at 183.

Eight individuals believed to crew this plane, and associated with the rendition of German citizen Khaled El-Masri from Macedonia to Afghanistan have been indicted by a German prosecutor, and Interpol warrants issued for their arrest.<sup>211</sup> It is incumbent upon the British authorities to ensure that these individuals are arrested should they enter the British territory of Turks and Caicos, and that they do not enter UK territory with impunity.

N829MG was used for the rendition of Canadian citizen Maher Arar to Syria via Jordan. Maher Arar has been awarded considerable damages by the Canadian courts,<sup>212</sup> but his kidnappers have still not been brought to justice.<sup>213</sup> The British authorities should seek clarification from the United States and Canada as to the names of these individuals, and ensure that should they enter the Turks and Caicos, they are detained for questioning on their role in the kidnap and transfer to torture of Maher Arar.

N85VM is the most frequent visitor to the Turks and Caicos, appearing in almost half of documented rendition circuits. N85VM was used for the rendition of Abu Omar from Ramstein to Cairo.<sup>214</sup> Over 20 individuals have been convicted in absentia in an Italian court, for their involvement in the rendition of Abu Omar.<sup>215</sup> Interpol arrest warrants have been issued for these men.<sup>216</sup> It is incumbent upon the British authorities to ensure that they are arrested should they enter the British territory of Turks and Caicos, and to ensure that they may not enter UK territory with impunity.

It is probable that these planes were directly involved in many more rendition operations than the above.

Given the nature of the flight circuits involving Turks and Caicos, the facts of associated rendition operations may directly implicate the UK, and certainly invoke a duty to take adequate action to prevent this occurring again.

#### *Case-studies*

*Reprieve* has documented other suspicious flight circuits involving the Turks and Caicos, including the case-studies below:

##### Suspicious flight circuit 1

On 6 March 2004, N8068V (formerly known as N379P), took off from Washington Dulles, flying via Shannon to Djibouti, then onto Kabul, Rabat and Guantanamo Bay before arriving at Providenciales, Turks and Caicos on 12 March 2004. Djibouti, Kabul and Rabat are all locations heavily and credibly associated with rendition and secret detention, and Guantanamo Bay was at that time the site of both a US military detention centre and a secret CIA facility.<sup>217</sup> *Reprieve* believes that this may have been the rendition flight for “high level” Guantanamo prisoner Goulad Hassan Dourad, being taken from Djibouti to Kabul.<sup>218</sup>

##### Suspicious flight circuit 2

Flight logs indicate that on 26 December 2003, N313P flew from Washington to Guantanamo Bay via Providenciales, Turks and Caicos, arriving in Guantanamo Bay on 27 December 2003. The plane left Guantanamo Bay the following day for the military airport of Sale/Rabat, an airport known to service the notorious Tamara detention centre in Morocco. After stops in other locations associated with secret detention such as Jordan and Pakistan, the plane returned to Washington via Shannon. In 2003, prisoners in Guantanamo Bay were regularly being transferred out of Guantanamo Bay to locations around the world with no records or judicial oversight of their transfer. The character of this rendition circuit combined with

<sup>211</sup> 07.01.31 *Germany Issues CIA Arrest Orders*, BBC News Online.

<sup>212</sup> Report of the Events Relating to Maher Arar: Analysis and Recommendations Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

<sup>213</sup> 04.01.23 Canadian sues US over deportation BBC News Online.

<sup>214</sup> For further information on each of the above planes, please see Appendix X—X.

<sup>215</sup> 05.12.13 CIA abduction claims “credible”, BBC News Online, Italian court issues arrest warrant for CIA agents, Telegraph, 24 December 2005,

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2005/12/24/wcia24.xml>

<sup>216</sup> See NY Times 26 June 2005

<http://www.nytimes.com/2005/06/26/international/europe/26milan.html?pagewanted=print>

<sup>217</sup> See for example 07.06.07 Council of Europe Committee on Legal Affairs and Human Rights; Secret detentions and illegal transfers of detainees involving Council of Europe member states: First report, for an analysis of the roles of Kabul and Rabat in the “global renditions spiders web”. Regarding Djibouti, Yemeni citizen Muhammad al-Assad was arrested on 26 December 2003 in Dar es Salaam, Tanzania. He was taken to Djibouti where he was held for around two weeks, and interrogated by English-speaking westerners who told him they were from the F.B.I. See 06.04.05 Below the radar: Secret flights to torture and “disappearance”, Amnesty International, 5at 1.7

<http://web.amnesty.org/library/Index/ENGAMR510512006>; for information about the CIA facility at Guantanamo Bay, see 04.12.17 At Guantanamo, a Prison Within a Prison, Dana Priest and Scott Higham, Washington Post,

<http://www.washingtonpost.com/wp-dyn/articles/A5918-2004Dec16.html>

<sup>218</sup> 20419-20490 AI “USA: Justice at last or more of the same? Detentions and trials after Hamdan v Rumsfeld” at 20467; and 25053-25066 06/09/07 “Detainee biographies from the office of the director of national intelligence”: According to his detainee biography, “Following Goulad’s arrest, AIAI terrorists on 19 March 2004 tried unsuccessfully to kidnap a German aid worker and murdered a Kenyan contract employee in Hargeysa”.

the history of the plane and the context described, gives rise to a presumption that this plane was engaged in a complex rendition operation when it stopped in Turks and Caicos, and the British government must fully investigate the matter.<sup>219</sup>

### Suspicious flight 3

On 20 September 2003, N313P left Washington Dulles for Szczytno Szymany in Poland. Szczytno is the airport that serviced the detention facility of Stare Kierkuty, where “high value detainees” such as Khalid Sheikh Mohammed were allegedly being held during that period.<sup>220</sup> The plane was next logged in Kabul on 22 September 2003, flying via Sale military airport in Morocco to Guantanamo and arriving there on 24 September 2004. At that time, over twenty CIA ghost detention facilities are believed to have been operating in Kabul, and Sale airport in Morocco is known to service the notorious Temara detention facility, located between Casablanca and Rabat. On 25 September N313P flew back to Dulles via Providenciales. The character of this rendition circuit combined with the history of the plane and the context described, gives rise to a presumption that this plane was en-route home from a complex rendition operation<sup>221</sup> when it stopped in Turks and Caicos, and the British government must fully investigate the matter.

### Further suspicious flights

Flight logs indicate that rendition planes regularly stopped at Turks and Caicos for three to four days in the midst of rendition operations, often before returning to Guantanamo Bay or Washington Dulles. Examples include N85VM leaving Guantanamo Bay on 4 January 2004, and returning to Guantanamo four days later, on 9 January 2004. It has already been well-documented in the media that Palma de Mallorca in Spain was used for “R ‘n’ R” destination for rendition crews after conducting rendition operations, and as a location where logistical meetings could take place in relation to specific operations.<sup>222</sup> A Spanish judicial inquiry is currently investigating this matter. The pattern of stops in the Turks and Caicos suggest that these islands may also have been used for, among other purposes, “recuperation” and for hosting logistical meetings. The UK government must act to clarify the purpose and content of all stops of these planes in the Turks and Caicos, and act to ensure that the Turks and Caicos are not used to service or otherwise support rendition, incommunicado detention and torture.

### RECOMMENDATIONS FOR IMMEDIATE ACTION BY THE FASC

- Ensure that the UK government fulfils its obligations under international and domestic law, and commences a prompt and effective inquiry into the role of Turks and Caicos for rendition operations.<sup>223</sup>
- Seek clarification from the UK government on all flights documented in this submission, and any relevant agreements or communications made between the UK and foreign government/s, and relevant communications between UK government agencies.
- Ensure that the British government takes effective measures to ensure that all suspicious flights, in particular those en-route to or from Guantanamo Bay, are searched, and/or their operators must guarantee that these planes are not being used and will not be used at any point for purposes involving breaches of human rights, including transferring and/or detaining an individual against their will.
- Ensure that the British government takes effective measures to comply with its obligations under numerous international treaties and to respect the sovereignty of other states, by ensuring and that all passenger manifests are made available to international law enforcement agencies, in particular Interpol.

<sup>219</sup> For further information as to the “anatomy of a rendition” and an analysis of the components of a “rendition circuit”, please see 06.06.07 Council of Europe Committee on Legal Affairs and Human Rights; Secret detentions and illegal transfers of detainees involving Council of Europe member states: First report at 2.3.

<sup>220</sup> 06.06.07 Council of Europe Committee on Legal Affairs and Human Rights; Secret detentions and illegal transfers of detainees involving Council of Europe member states: First report; 07.06.07 Council of Europe Committee on Legal Affairs and Human Rights; Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report; and media reports too numerous to cite.

<sup>221</sup> See for example 06.06.07 Council of Europe Committee on Legal Affairs and Human Rights; Secret detentions and illegal transfers of detainees involving Council of Europe member states: First report at 2.5.

<sup>222</sup> For an explanation of the different elements in the global renditions network, see For further information as to the “anatomy of a rendition” and an analysis of the components of a “rendition circuit”, please see 06.06.07 Council of Europe Committee on Legal Affairs and Human Rights; Secret detentions and illegal transfers of detainees involving Council of Europe member states: First report at 2.3. For reports of the role of Palma de Mallorca, see 06.11.15 Andrew Manreas, *La investigación halla en los vuelos de la CIA decenas de ocupantes con estatus diplomático*, in *El País*, Palma de Mallorca, 15 November 2005.

Matias Valles, journalist with *Diario de Mallorca* also testified before the European Parliament Temporary Committee *Testimony* on 20 April 2006. Valles researched 42 names he had obtained from the records of a hotel in Mallorca where the passengers of the N313P plane stayed. Many proved to be “false identities”, seemingly created using the names of characters from Hollywood movies such as *Bladerunner* and *Alien*.

<sup>223</sup> The legal obligation to investigate has been explored above in the parts of the submission relating to Diego Garcia. Reprieve submits that the same duty to investigate, and the same standards of investigation are required from the UK, in relation to the function of Turks and Caicos in the US rendition system.

- Ensure that the British government co-operates with the German, Italian and Canadian governments, by appraising the authorities in Turks and Caicos of the names—both false and real—of those individuals indicted by the German and Italian courts for their role in the renditions of Abu Omar and Khaled El-Masri, and those individuals implicated in the rendition of Canadian citizen Maher Arar.

18 October 2007

## APPENDIX 1

### THE EXCHANGE OF NOTES

In the early 1960s, the US and the UK entered negotiations for the use of Diego Garcia as a joint military facility.<sup>224</sup> The US-UK negotiations were finalised in December 1966 with the entry into force of the *Exchange of Notes Between the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America Concerning the Availability of Certain Indian Ocean Islands for Defence Purposes (Exchange of Notes 1966)*.<sup>225</sup> The *Exchange of Notes 1966* provides that the islands of the Chagos Archipelago shall be available to both Governments for defence purposes<sup>226</sup> and available to the US without charge.<sup>227</sup>

“Defence purposes” was understood to require that the islands would be uninhabited.<sup>228</sup> The *Exchange of Notes 1966* expressly contemplates that the islands “shall remain available to meet the possible defence needs of the two Governments for an indefinitely long period” and provides that the agreement will initially last 50 years.<sup>229</sup>

In 1972, the US and UK Governments entered a second agreement, which approved the US construction of a limited naval communications facility.<sup>230</sup> Further, it provided that access to Diego Garcia would be restricted to US and UK defence forces, Government authorities, contractor personnel and scientific parties.<sup>231</sup> Significantly, it forbade access to any other person without prior consultation between the two Governments.<sup>232</sup>

A third agreement was concluded in 1976, which replaces the *Exchange of Notes 1972*, and accords the US the right to develop the limited naval communications facility into a “support facility”.<sup>233</sup> The *Exchange of Notes 1976* retains the restrictions on access provisions of the *Exchange of Notes 1972*.<sup>234</sup>

Before the *Exchange of Notes 1966* was signed, the UK facilitated the establishment of the base by separating the Chagos Archipelago from the Colony of Mauritius. The separation was prompted by the concern that an independent Mauritius with sovereignty over the Archipelago might disallow, or interfere

<sup>224</sup> *Chagos Islanders v The Attorney General, Her Majesty's British Indian Ocean Territory Commissioner* [2003] EWHC 2222 (QB) (unreported, 9 October 2003), per Ouseley J, ¶14; “The Chagos Islands: A sordid tale” *BBC News* (3 November, 2000) at <http://news.bbc.co.uk>; *The Economist* (11–17 November 2000) Vol 357, No 8196, 37. Other examples of US use of foreign islands for military purposes include: Virgin Islands; American Samoa; Guam; Marshall Islands; Ediberto Rom—n “Membership Denied: An Outsider's Story of Subordination and Subjugation under US Colonialism” in Berta Esperanza Hernández-Truyol (ed) (2002) *Moral Imperialism: A Critical Anthology*, New York University Press: New York, 276–279.

<sup>225</sup> “United Kingdom of Great Britain and Northern Ireland: Availability of Certain Indian Ocean Islands for Defense Purposes: Agreement Effected by Exchange of Notes” (signed and entered into force 30 December 1966) 18 *United States Treaty Series* 28. An exchange of notes has the juridical effect of a treaty and is binding at international law: John Westlake (1910) *International Law; Part 1: Peace*, University Press: Cambridge, 292; Pearce Higgins (ed) (1924) *A Treatise on International Law by William Edward Hall (8th ed)*, Clarendon Press: Oxford, 384; JL Weinstein, “Exchange of Notes” (1952) 29 *British Yearbook of International Law* 205, 216, 223–226; Georg Schwarzenberger (1967) *A Manual of International Law (5th ed)*, Stevens & Sons: London, 154; DP O’Connell (1970) *International Law: Volume One (2nd ed)*, Stevens & Sons: London, 201. An exchange of notes was treated as a binding agreement in *Fisheries Jurisdiction Case (Federal Republic of Germany v Iceland) (Jurisdiction)* (1973) *ICJ Reports* 49. An exchange of letters was treated as a binding agreement in *Case Concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal) (Judgment)* (1991) *ICJ Reports* 53.

<sup>226</sup> Article 2, *Exchange of Notes 1966*, above note 17.

<sup>227</sup> Article 4, *Exchange of Notes 1966*, above note 17. There have been various allegations that the UK was “bribed”, either by a lump sum payment or a bargain on a Polaris Missile System (see: Jawatkar (1982), 17, above note 6; “Diego Garcia” *United Trades and Labour Council*, at <http://www.utlc.org.au/Resources/International/diegogarcia.htm>; “Diego Garcia: Exiles Still Barred” *CBS News: 60 Minutes* (13 June 2003), at <http://www.cbsnews.com/stories/2003/06/12/60minutes/main558378.shtml>). However, the UK Government denies this: UK Hansard, Commons Written Answers, 11 March 2003, Column 158W (Mike O’Brien, Secretary of State for Foreign and Commonwealth Affairs).

<sup>228</sup> *Chagos Islanders* (2003), per Ouseley J, 15, 288, 293, above note 15.

<sup>229</sup> Article 11, *Exchange of Notes 1966*, above note 17.

<sup>230</sup> Article 1(a), “Exchange of Notes Dated 24 October 1972 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America Concerning a Limited United States Communications Facility on Diego Garcia” (signed and entered into force 24 October 1972) 23 *United States Treaty Series* 3087 (*Exchange of Notes 1972*).

<sup>231</sup> Article 3(a), *Exchange of Notes 1972*, above note 25.

<sup>232</sup> Article 3(a), *Exchange of Notes 1972*, above note 25.

<sup>233</sup> Article 1(a), Article 21, “United Kingdom of Great Britain and Northern Ireland: Naval Support Facility on Diego Garcia: Agreement Effected by Exchange of Notes” (signed and entered into force 25 February 1976) 27 *United States Treaty Series* 315 (*Exchange of Notes 1976*). A fourth agreement was concluded in 1982, which addressed various environmental concerns in the Archipelago but did not otherwise alter the obligations of the Parties: “Supplemental Arrangement Relating to the Agreement of February 25, 1976” (signed and entered into force 13 December 1982) 34 *United States Treaty Series* 4553 (*Exchange of Notes 1982*). The *Exchange of Notes 1966*, 1972, 1976 and 1982 will together be referred to as “*Exchange of Notes*”.

<sup>234</sup> Article 4(a), *Exchange of Notes 1976*, above note 28.

with, the proposed military activities.<sup>235</sup> Mauritius was granted independence on 12 March 1968, while the Archipelago was retained as a UK Colony and renamed the British Indian Ocean Territory (BIOT) by the BIOT Order (1965) (UK).<sup>236</sup> The BIOT Order granted the Commissioner of the Territory the power to make laws for the peace, order and good government of the Territory.<sup>237</sup> This power was used to pass the BIOT Immigration Ordinance (1971) (UK), which made it unlawful for any person to enter or remain in the Territory without a permit, and gave the Commissioner power to direct any person who was unlawfully present to be permanently removed from the Territory.<sup>238</sup> The purported effect of the BIOT Immigration Ordinance was to give domestic authority to the UK to compulsorily expel the Chagossian population from the Archipelago and forbid their return.

## APPENDIX 2

## FLIGHT LOG OF N379P ENTERING DIEGO GARCIA

<i>Serial No</i>	<i>Date</i>	<i>Dept Airport (ADEP)</i>	<i>ADEP place</i>	<i>Dest Airport (ADES)</i>	<i>ADES place</i>	<i>Date time —take off</i>	<i>Date time —landing</i>
N379P	11/9/2002	JNX	JOHNSTON COUNTY AIRP	IAD	WASHINGTON DULLES	x	x
N379P	11/9/2002	IAD	WASHINGTON DULLES	LGAV	VENIZELOS	x	x
N379P	12/09/2002	KIAD	WASHINGTON	LGAV	ATHINAI	12, 00:16	09:05
N379P	13/09/2002	LGAV	ATHINAI	FJDG	DIEGO GARCIA	13, 08:12	17:14
N379P	14/09/2002	GMME	RABAT/SALE	LPPR	PORTO	14, 21:40	22:57
N379P	15/09/2002	HECA	CAIRO	GMME	RABAT/SALE	15, 15:17	20:10
N379P	17/09/2002	LPPR	PORTO	OAKB	KABUL	17, 04:47	12:02
N379P	17/09/2002	OAKB	KABUL	OJAI	AMMAN	17, 13:45	18:37
N379P	17/09/2002	OJAI	AMMAN/ QUEEN ALIA	GMME	RABAT/SALE	17, 18:23	01:22
N379P	18/9/2002	GMME	RABAT/SALE	EINN	SHANNON	x	x
N379P	19/09/2002	EINN	SHANNON	KIAD	WASHINGTON	19, 10:01	15:57

## APPENDIX 3

## FLIGHT CIRCUITS RELATING TO TURKS AND CAICOS

<i>ID</i>	<i>Date</i>	<i>Dep Code</i>	<i>Dep Airport</i>	<i>Arriv Code</i>	<i>Arriv Airport</i>	<i>Date Take Off</i>	<i>Date Arrive</i>
N8068V	6/3/2004	IAD	DULLES	EINN	SHANNON	3/6/04 6:27 PM	3/7/04 12:08 AM
N8068V	7/3/2004	EINN	SHANNON	HDAM	AMBOULI/MILITARY	07, 01:15	08:18
N8068V	8/3/2004	HDAM	AMBOULI/MILITARY	OAKB	KABUL INTL	08, 19:15	01:40
N8068V	11/03/2004	GMME	RABAT	MUGM	GUANTANAMO	11, 22:03	06:15
N8068V	12/3/2004	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	3/12/04 7:44 AM	3/12/04 8:17 AM
N8068V	13/3/2004	MBPV	PROVIDENCIALES	IAD	WASHINGTON DULLES	3/13/04 2:54 PM	3/13/04 5:33 PM
N85VM	26/11/2003	FRG	REPUBLIC	MBPV	PROVIDENCIALES	11/26/03 2:29 PM	11/26/03 5:32 PM
N85VM	29/11/2003	MBPV	PROVIDENCIALES	FRG	REPUBLIC	11/29/03 10:23 PM	11/30/03 1:14 AM
N85VM	3/12/2003	SFB	ORLANDO SANFORD INTL	MUGM	GUANTANAMO	12/3/03 4:25 PM	12/3/03 6:10 PM
N85VM	3/12/2003	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	12/3/03 6:49 PM	12/3/03 7:23 PM
N85VM	4/12/2003	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	12/4/03 3:20 PM	12/4/03 4:06 PM
N85VM	4/12/2003	MUGM	GUANTANAMO	SFB	ORLANDO SANFORD INTL	12/4/03 5:29 PM	12/4/03 7:22 PM
N85VM	15/12/2003	IAD	WASHINGTON DULLES	EINN	SHANNON	12/15/03 9:03 PM	12/16/03 3:12 AM
N85VM	5/1/2004	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	1/5/04 1:31 PM	1/5/04 4:26 PM

<sup>235</sup> *Chagos Islanders* (2003), per Ouseley J, ¶15, above note 15.

<sup>236</sup> Section 3, *British Indian Ocean Territory Order* (1965) (UK). Also see: “Banishment Order on British Citizens Invalid” *The Times* (10 November 2000), at <http://www.thetimes.co.uk>; “Diego Garcia History”, at <http://www.nctsdg.navy.mil/history.html>; “Diego Garcia”, at <http://www.globalsecurity.org/military/facility/diego-garcia.htm>.

<sup>237</sup> Section 11(1), *British Indian Ocean Territory Order* (1965) (UK).

<sup>238</sup> Sections 5, 9, 10, *British Indian Ocean Territory Immigration Ordinance* (1971) (UK).

<i>ID</i>	<i>Date</i>	<i>Dep Code</i>	<i>Dep Airport</i>	<i>Arriv Code</i>	<i>Arriv Airport</i>	<i>Date Take Off</i>	<i>Date Arrive</i>
N85VM	5/1/2004	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	1/5/04 5:03 PM	1/5/04 5:42 PM
N85VM	9/1/2004	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	1/9/04 3:26 PM	1/9/04 4:10 PM
N85VM	9/1/2004	MUGM	GUANTANAMO	IAD	WASHINGTON DULLES	1/9/04 5:36 PM	1/9/04 8:31 PM
N85VM	14/1/2004	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	1/14/04 12:55 PM	1/14/04 3:54 PM
N85VM	15/1/2004	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	1/15/04 4:21 PM	1/15/04 5:02 PM
N85VM	15/1/2004	MUGM	GUANTANAMO	IAD	WASHINGTON DULLES	1/15/04 7:53 PM	1/15/04 11:01 PM
N85VM	9/2/2004	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	2/9/04 12:52 PM	2/9/04 4:02 PM
N85VM	9/2/2004	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	2/9/04 4:40 PM	2/9/04 5:19 PM
N85VM	13/2/2004	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	2/13/04 3:29 PM	2/13/04 4:13 PM
N85VM	13/2/2004	MUGM	GUANTANAMO	IAD	WASHINGTON DULLES	2/13/04 4:59 PM	2/13/04 7:44 PM
N85VM	11/3/2004	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	3/11/04 4:30 PM	3/11/04 7:32 PM
N85VM	11/3/2004	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	3/11/04 8:01 PM	3/11/04 8:42 PM
N85VM	12/3/2004	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	3/12/04 12:34 PM	3/12/04 1:17 PM
N85VM	12/3/2004	MUGM	GUANTANAMO	IAD	WASHINGTON DULLES	3/12/04 1:55 PM	3/12/04 4:43 PM
N829MG	17/3/2001	MCO	ORLANDO INTL	MBPV	PROVIDENCIALES	3/17/01 3:04 PM	3/17/01 4:34 PM
N829MG	17/3/2001	MBPV	PROVIDENCIALES	FXE	EXECUTIVE AIRPORT	3/17/01 5:46 PM	3/17/01 7:14 PM
N829MG	29/3/2001	FXE	EXECUTIVE AIRPORT	MWCR	OWEN ROBERTS INTL	3/29/01 6:49 PM	3/29/01 8:59 PM
N829MG	30/3/2001	MWCR	OWEN ROBERTS INTL	MYNN	NASSAU INTL	3/31/01 12:24 AM	3/31/01 12:45 AM
N829MG	31/3/2001	MYNN	NASSAU INTL	FLL	HOLLYWOOD INTL	3/31/01 1:50 AM	3/31/01 2:33 AM
N829MG	7/7/2002	FXE	EXECUTIVE AIRPORT	MBPV	PROVIDENCIALES	7/7/02 11:11 PM	7/8/02 12:33 AM
N829MG	8/7/2002	MBPV	PROVIDENCIALES	FLL	HOLLYWOOD INTL	7/8/02 1:00 AM	7/8/02 2:23 AM
N829MG	25/12/2003	FXE	EXECUTIVE AIRPORT	CYUL	PIERRE-ELLIOTT- TRUDEAU	12/25/03 2:15 PM	12/25/03 5:03 PM
N829MG	25/12/2003	CYUL	PIERRE-ELLIOTT- TRUDEAU	TLPC	VIGIE	12/25/03 6:33 PM	12/25/03 11:21 PM
N829MG	26/12/2003	MBPV	PROVIDENCIALES	FXE	EXECUTIVE AIRPORT	12/26/03 8:07 PM	12/26/03 9:42 PM
N829MG	26/12/2003	TLPC	HEWANORRA WESTCHESTER COUNTY	HPN	WESTCHESTER COUNTY	12/26/03 10:15 AM	12/26/03 2:54 PM
N829MG	26/12/2003	HPN	WESTCHESTER COUNTY	MBPV	PROVIDENCIALES	12/26/03 4:34 PM	12/26/03 7:32 PM
N829MG	27/11/2003	MYNN	NASSAU INTL	FLL	HOLLYWOOD INTL	11/27/03 4:45 AM	11/27/03 5:17 AM
N829MG	29/11/2003	TNCM	PRINCESS JULIANA INTL	FXE	EXECUTIVE AIRPORT	11/29/03 7:12 PM	11/29/03 9:54 PM
N829MG	29/11/2003	FXE	EXECUTIVE AIRPORT	TNCM	PRINCESS JULIANA INTL	11/29/03 3:36 PM	11/29/03 6:00 PM
N829MG	15/12/2003	FXE	EXECUTIVE AIRPORT	MBPV	PROVIDENCIALES	12/15/03 1:36 PM	12/15/03 2:49 PM
N829MG	18/12/2003	MUGM	GUANTANAMO	FLL	HOLLYWOOD INTL	12/18/03 9:10 PM	12/18/03 10:52 PM
N829MG	18/12/2003	FLL	HOLLYWOOD INTL	MUGM	GUANTANAMO	12/18/03 6:53 PM	12/18/03 8:28 PM
N829MG	25/12/2003	FXE	EXECUTIVE AIRPORT	CYUL	PIERRE-ELLIOTT- TRUDEAU	12/25/03 2:15 PM	12/25/03 5:03 PM
N829MG	25/12/2003	CYUL	PIERRE-ELLIOTT- TRUDEAU	TLPC	VIGIE	12/25/03 6:33 PM	12/25/03 11:21 PM
N829MG	26/12/2003	MBPV	PROVIDENCIALES	FXE	EXECUTIVE AIRPORT	12/26/03 8:07 PM	12/26/03 9:42 PM
N829MG	26/12/2003	TLPC	HEWANORRA	HPN	WESTCHESTER COUNTY	12/26/03 10:15 AM	12/26/03 2:54 PM



## Ev 218 Foreign Affairs Committee: Evidence

<i>ID</i>	<i>Date</i>	<i>Dep Code</i>	<i>Dep Airport</i>	<i>Arriv Code</i>	<i>Arriv Airport</i>	<i>Date Take Off</i>	<i>Date Arrive</i>
N829MG	26/12/2003	HPN	WESTCHESTER COUNTY	MBPV	PROVIDENCIALES	12/26/03 4:34 PM	12/26/03 7:32 PM
N829MG	27/12/2003	IAD	WASHINGTON DULLES	TXKF	BERMUDA NAVAL AIR STATION, KINDLEY FIELD—MIL	12/27/03 9:42 PM	12/27/03 11:26 PM
N313P	26/12/2003	IAD	WASHINGTON DULLES	MBPV	PROVIDENCIALES	12/26/03 6:19 PM	12/26/03 8:56 PM
N313P	27/12/2003	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	12/27/03 10:31 PM	12/27/03 11:15 PM
N313P	28/12/2003	MUGM	GUANTANAMO	GMME	SALE/MILITARY	12/28/03 1:31 AM	12/28/03 9:13 AM
N313P	28/12/2003	GMME	SALE/MILITARY	OJAM	AMMAN/MARKA		
N313P	28/12/2003	OJAM	AMMAN/MARKA	OPRN	ISLAMABAD	28, 19:15	23:43
N313P	29/12/2003	OJAM	AMMAN/MARKA	OPRN	ISLAMABAD		
N313P	30/12/2003	OMDB	DUBAI INTL	EINN	SHANNON	12/30/03 6:35 AM	12/30/03 2:02 PM
N313P	30/12/2003	EINN	SHANNON	IAD	WASHINGTON DULLES	12/30/03 2:40 PM	12/30/03 11:09 PM
N8068V	9/4/2004	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	4/9/04 10:57 AM	4/9/04 1:48 PM
N8068V	9/4/2004	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	4/9/04 2:32 PM	4/9/04 3:22 PM
N8068V	9/4/2004	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	4/9/04 6:25 PM	4/9/04 7:11 PM
N8068V	9/4/2004	MBPV	PROVIDENCIALES	JAX	JACKSONVILLE INTL	4/9/04 9:27 PM	4/9/04 11:42 PM
N8068V	10/4/2004	JAX	JACKSONVILLE INTL	IAD	WASHINGTON DULLES		
N85VM	20/11/2002	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	11/20/02 2:03 PM	11/20/02 5:16 PM
N85VM	20/11/2002	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	11/20/02 7:08 PM	11/20/02 7:39 PM
N85VM	20/11/2002	MBPV	PROVIDENCIALES	IAD	WASHINGTON DULLES	11/20/02 11:28 PM	11/21/02 2:14 AM
N85VM	21/11/2002	IAD	WASHINGTON DULLES	EINN	SHANNON	11/21/02 8:17 PM	11/22/02 1:57 AM
N85VM	22/11/2002	EINN	SHANNON	OMDB	DUBAI/INTL	22, 02:30	10:02
N85VM	25/11/2002	OAKB	KABUL	EGPH	EDINBURGH	25, 11:04	19:44
N85VM	25/11/2002	EGPH	EDINBURGH	IAD	WASHINGTON DULLES	11/25/02 8:40 PM	11/26/02 4:06 AM
N313P	26/10/2004	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	10/26/04 4:49 PM	10/26/04 7:29 PM
N313P	26/10/2004	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	10/26/04 8:24 PM	10/26/04 8:51 PM
N313P	28/10/2004	MBPV	PROVIDENCIALES	ILM	WILMINGTON INTL	10/28/04 2:57 PM	10/28/04 5:06 PM
N313P	20/9/2003	IAD	WASHINGTON DULLES	LKPR	RUZYNE—PRIV	9/20/03 10:03 PM	9/21/03 6:16 AM
N313P	21/9/2003	LKPR	RUZYNE—PRIV	UTTT	YUZHNY		
N313P	22/9/2003	OAKB	KABUL INTL/MIL	GMME	SALE/MILITARY		
N313P	22/9/2003	GMME	SALE/MILITARY	MUGM	GUANTANAMO	9/23/03 12:26 AM	9/23/03 5:13 AM
N313P	24/9/2003	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	9/24/03 7:46 AM	9/24/03 8:39 AM
N313P	25/9/2003	MBPV	PROVIDENCIALES	IAD	WASHINGTON DULLES	9/25/03 1:00 PM	9/25/03 3:47 PM
N313P	13/11/2003	KIAD	WASHINGTON FRANKFURT MAIN	EDDF	FRANKFURT MAIN		
N313P	14/11/2003	EDDF	FRANKFURT MAIN	UUEE	MOSKVA/SHEREMETYEVO		
N313P	14/11/2003	UUEE	MOSKVA/SHEREMETYEVO	EDDF	FRANKFURT MAIN		
N313P	17/11/2003	EDDF	FRANKFURT MAIN	ORBI	BAGHDAD INTERNATIONAL		
N313P	19/11/2003	OMAA	ABU DHABI INTL	GMME	RABAT		
N313P	19/11/2003	GMME	RABAT	EDDF	FRANKFURT MAIN		
N313P	21/11/2003	EDDF	FRANKFURT MAIN	OAKB	KABUL		
N313P	21/11/2003	OAKB	KABUL	GMME	RABAT		

ID	Date	Dep Code	Dep Airport	Arriv Code	Arriv Airport	Date Take Off	Date Arrive
N313P	21/11/2003	GMME	RABAT	MUGM	GUANTANAMO		
313P	22/11/2003	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES		
N313P	23/11/2003	MBPV	PROVIDENCIALES	IAD	WASHINGTON DULLES		
N85VM	31/1/2003	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	1/31/03 1:28 PM	1/31/03 4:30 PM
N85VM	31/1/2003	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	1/31/03 5:18 PM	1/31/03 6:37 PM
N85VM	2/2/2003	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	2/2/03 12:49 PM	2/2/03 1:34 PM
N85VM	2/2/2003	MUGM	GUANTANAMO	IAD	WASHINGTON DULLES	2/2/03 2:22 PM	2/2/03 5:23 PM
N85VM	2/4/2003	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	4/2/03 12:54 PM	4/2/03 3:56 PM
N85VM	2/4/2003	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	4/2/03 4:25 PM	4/2/03 5:51 PM
N85VM	3/4/2003	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	4/3/03 7:08 PM	4/3/03 7:52 PM
N85VM	3/4/2003	MUGM	GUANTANAMO	IAD	WASHINGTON DULLES	4/3/03 9:20 PM	4/4/03 12:25 AM
N85VM	5/5/2003	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	5/5/03 12:17 PM	5/5/03 3:20 PM
N85VM	5/5/2003	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	5/5/03 4:32 PM	5/5/03 5:20 PM
N85VM	10/5/2003	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	5/10/03 2:00 PM	5/10/03 2:39 PM
N85VM	10/5/2003	MUGM	GUANTANAMO	IAD	WASHINGTON DULLES	5/10/03 3:34 PM	5/10/03 6:36 PM
N85VM	2/7/2003	IAD	WASHINGTON DULLES	MUGM	GUANTANAMO	/03 11:56 AM	/03 2:56 PM
N85VM	2/7/2003	MUGM	GUANTANAMO	MBPV	PROVIDENCIALES	7/2/03 3:54 PM	7/2/03 4:18 PM
N85VM	3/7/2003	MBPV	PROVIDENCIALES	MUGM	GUANTANAMO	7/3/03 4:49 PM	7/3/03 5:32 PM
N85VM	3/7/2003	MUGM	GUANTANAMO	IAD	WASHINGTON DULLES	7/3/03 7:18 PM	7/3/03 9:58 PM

#### Submission from Mr Cyril Leo, Member of the Ascension Island Advisory Group

With reference to the Foreign Affairs Committee's press notice on the 5 July 2007, with details on a new enquiry relating to the Overseas Territories, please can I submit the following evidence for the Committee's consideration.

I have been employed on Ascension since July 1968. I am married with three children; our three sons, recruited on Ascension, serve in the British Armed Forces. One of our sons has already served twice in Iraq; he is due to return there for further duty. One of our children has been informed that he must prepare for duty in Afghanistan. Each time our sons return home to Ascension they are required to pay an entry fee. This ridiculous policy is just one indication of the FCO's overpowering stand towards the people of Ascension; the Administrator reinforces the policy by declaring that "no-one can be seen as belonging to the island". Human rights and freedoms, and real development for progress on Ascension, is constantly opposed by the FCO; there is an obsessive determination to block off all avenues that FCO officials suspect could ultimately lead to any form of permanent settlement on Ascension. This FCO approach simply ignores the fundamental needs and wishes of the taxpayers of Ascension, and seriously undermines the UK Government's 1999 White Paper, *Britain and the Overseas Territories*, in which it states:

*"The people of the Overseas Territories must exercise the greatest possible control over their own lives. We are proud that our Overseas Territories are beacons of democracy. We applaud their achievements, and want them to have the autonomy they need to continue to flourish."*

I am currently employed on Ascension as a transmitter technician with VT Communications. Over many years I was a member of the Administrator's Forum. On 16 November 2005 I was democratically elected to serve on the Island Council.

As the peoples' elected representatives strived for democratic principles and meaningful progress and development on Ascension, the FCO consistently opposed their efforts in the name of Her Majesty's Government. The endless exploitation and manipulation of elected members forced a mass resignation from councillors, and democracy on Ascension, still in its weakest stage, was dismantled. The Island Council was dissolved on 2 April 2007. The disturbing political climate and uncertainty that had been created by the FCO made it very difficult for members of the electorate to be willing to stand for new elections. This despondent

response from the residents of Ascension to consistent FCO dominance in local affairs is understandable, and it will remain so unless there is a willingness by the FCO to stop imposing unnecessary restrictions and limitations within policies that affects the people of Ascension. As the UK Government prides itself on democratic principles by advocating liberty and freedoms for humanity from high world stages, it should also ensure that the FCO makes an honourable commitment to the development of democracy and freedoms for progress for the residents of Ascension Island.

On 4 May 2007 I was invited by the Governor to serve on the Ascension Island Advisory Group. In serving on the AIAG, albeit an undemocratic process with many limitations, I believe it allows me to continue questioning and focusing attention on some of the issues that concerns the taxpayers of Ascension. My prime concern is that the new Governor, without further delay, should set a date for new elections and permit the taxpayers' to have democratically elected representation. Our incomes are taxed, and there is no justification for taxation without representation on Ascension.

The UK Government is against the development of right of abode and property ownership on Ascension because of contingent liability concerns that could impact the British taxpayer. In keeping with the 1999 White Paper—Partnership for Progress and Prosperity—Britain and the Overseas Territories, I would appreciate if the Foreign Affairs Committee recommend that the UK Government ensures that the FCO is constructive in dealing with the residents of Ascension, allows democracy on Ascension to resume and mature, and encourages elected representatives to bring about development for real progress with the aim of lowering, and eventually removing, the UK Government's contingent liability concerns.

19 October 2007

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### **Submission from the British Virgin Islands (BVI) Government**

#### **1. INTRODUCTION**

1.1 The BVI Government understands that the focus of the Inquiry is the exercise by the Foreign and Commonwealth Office (FCO) of its responsibilities in relation to the Overseas Territories and the FCO's achievements against its Strategic Priority No 10, the security and good governance of the Overseas Territories.

1.2 We agree with the Committee that to obtain a good understanding of this, it is vital that the views of the Overseas Territory Governments and their representatives are taken into account and we welcome the opportunity to give the BVI perspective.

1.3 To assist the Committee our comments and recommendations follow the order given in the press release announcing the Inquiry.

#### **2. ABOUT THE BVI**

2.1 Sixty miles east of Puerto Rico in the heart of the Caribbean, the British Virgin Islands (BVI) are a tropical group of Islands. The principal islands of Tortola and Virgin Gorda are where most of the territory's 25,000 inhabitants live with the rest scattered around a number of smaller Islands. Road Town is the administrative and economic capital.

2.2 Politically stable with a great measure of self-governing the BVI maintains a fully democratic system based around an elected Premier. The BVI recently adopted a new Constitution which has allowed for significant constitutional advancement and, among other developments, clearly defines the role of the Governor and ensures a role for the BVI Government in all issues which might directly impact upon the Territory or its population. This includes the establishment of a National Security Council to advise on internal security and a degree of enabling power for the BVI Government to undertake external affairs on its own behalf. The current Premier is the Hon Ralph T O'Neal of the Virgin Islands Party. The Leader of the Opposition is Hon Dr D Orlando Smith of the National Democratic Party. The House of Assembly has 13 directly elected members and a Speaker. Elections are constitutionally due every four years. BVI Law is based on the British Legal System and English Common Law. The court system is made up of a Magistrates Court, a High Court and a Court of Appeal of the Eastern Caribbean Supreme Court with final appeal to the Privy Council in England.

2.3 The BVI has a thriving economy with low levels of unemployment. This originates from its successful management of the twin pillars of its economy: tourism and financial services.

2.4 In both tourism and financial services the BVI has undertaken pioneering work. In tourism, close attention has been paid to ensuring that high quality, sustainable tourism is supported and the infrastructure which has been developed to support tourism is well maintained. In financial services, the BVI is widely regarded as operating a robust regulatory regime a fact recognized by international organizations including the Financial Action Task Force (FATF) and the IMF. The financial services sector grew significantly following the 1984 passage of the International Business Company (IBC) Act. Nevertheless, since then it

has broadened in scope to include insurance, banking, mutual funds and wider corporate services. Because of traditionally close links with the US Virgin Islands, the British Virgin Islands uses the US dollar as its official currency.

### 3. STANDARDS OF GOVERNANCE IN THE OVERSEAS TERRITORIES

3.1 The UK Government continuously maintains that it must protect itself against contingent liabilities and ensure it can discharge its international obligations.

3.2 The BVI Government strongly believes that the circumstances and eventualities where the UK Government engages in governance issues must be clearly defined on a constitutional basis and not bundled in miscellaneous wrappings and general headings. We will continue to support the principle of good governance and made this case strongly to the UK team during the recent Constitutional negotiations.

3.3 Evidence of our belief in and practice of good governance can be seen in a range of areas including the constitutional protection of the public service from political interference and the separation of powers of the Attorney General and the Director of Public Prosecutions to the robust regulation of our financial services sector.

3.4 It should be noted that the BVI has adhered to high levels of governance for a number of years. As evidence of our progress and good governance, our international financial services sector remains beyond reproach and various jurisdictions continue to benchmark their own offering against ours. Our financial services sector has and continues to meet all the international standards of prudence and regulation. Our tourism sector continues to be robust, again because of sound management. A number of our statutory bodies, employing a major portion of our public workforce outside the direct constitutional control of the Governor, have functioned efficiently from their inception, some of which are now recognized as models for the region. One example is the Social Security Board.

3.5 Recognition of the standard of governance in the BVI by the UK can further be seen in the 2005 statement of agreed borrowing procedures jointly signed by the UK and the BVI. This recognizes that borrowing is a legitimate tool of BVI Government policy and agrees the principles and processes by which Government borrowing can be undertaken. Furthermore, the BVI strictly adheres to the "borrowing guidelines" negotiated with the UK Government and for many years has consistently generated surpluses in its annual budget.

3.6 The key point to note is the level of trust placed by the UK in the BVI Government to use borrowing as a tool up to certain levels without the need for explicit UK Government approval.

### 4. THE ROLE OF GOVERNORS AND OTHER OFFICE-HOLDERS APPOINTED BY OR ON THE RECOMMENDATION OF THE UNITED KINGDOM GOVERNMENT

4.1 Governors have an important role to play in the Territories as the representatives of Her Majesty's Government (HMG). There has, however, increasingly been a lack of clarity between what the democratically elected government believed to be its responsibility and what the Governor believed was his right to be involved.

4.2 The new BVI Constitution has attempted to address this and laid out the role of the Governor and indeed other senior public office holders more precisely so that the role and responsibilities of the Governor vis-à-vis the Territory's government are more clearly defined.

4.3 It remains to be seen how this will operate in practice but the new Constitution should ensure more involvement by the BVI Government in areas traditionally the preserve of the Governor, such as crime, policing and the civil service.

4.4 The BVI's new Constitution also includes a requirement for the Government of the BVI to be consulted on the appointment of a new Governor as it is on the appointment of all senior officials. The BVI Government is democratically elected, it represents the Territory all over the world and its citizens expect the partnership approach advocated by the UK in the 1999 White Paper: *Partnership for Progress and Prosperity: Britain and the Overseas Territories* to be followed. A logical extension of this partnership would be for the BVI Government to be consulted not only on the type of person to be appointed as Governor but the precise individual being considered.

4.5 Recommendation: Overseas Territories governments should be consulted not only on the general qualities expected of a Governor but also on the individuals being considered before the appointment is made.

4.6 Furthermore, there is tendency for the FCO to use the Governors as an exclusive channel to Overseas Territories Governments which at times can delay matters and create inefficiencies. If Ministers or officials wish to get in touch with Overseas Territories Governments they should be able to do so directly.

4.7 Recommendation: The BVI Government recommends that direct relationships between the FCO and other UK Government departments and their equivalents in the BVI be encouraged. The Governor may be copied in on relevant correspondence but is no longer the exclusive channel for all communication.

## 5. THE WORK OF THE OVERSEAS TERRITORIES CONSULTATIVE COUNCIL (OTCC)

5.1 The OTCC has become an important component in relations between the FCO and the Overseas Territories. The annual meetings give Leaders of Overseas Territory Governments an opportunity to meet their political counterparts and senior officials in the UK and discuss a range of issues of interest and concern to the Overseas Territories.

5.2 However, it may be that the time has come for a change in format. BVI's Constitution is slightly different to the one adopted by, for example the Turks and Caicos Islands, and quite different again to that of Gibraltar's. The Territories also vary in political and economic development and levels of self governance.

5.3 As a result we do not believe that the "one size fits all" approach which the FCO tends to adopt with the Overseas Territories can continue to be taken.

5.4 Of further concern however, is that the partnership approach advocated by the 1999 White Paper has not been followed through by the FCO in terms of the OTCC meetings. For example, it is our view that any changes to the composition of the meetings should be agreed by the political leaders of the Overseas Territories before the changes are made. The 2005 decision by the FCO to invite the Governors to attend without consulting the Overseas Territories not only showed a lack of respect for this approach but also created tension.

5.5 The BVI Government believes that the format of the OTCC be modified.

5.6 Recommendation: The BVI recommends that the format be changed in the following ways:

- The session between the Leaders of the Overseas Territory Governments and the responsible FCO Minister without officials present remains. This then gets the OTCC back to the reason it was created in the first place—a discussion between the political leaders of the territories and their political counterparts in the UK.
- Bi-lateral meetings be arranged with other Government Departments on specific issues requested by the BVI.
- No decisions should be taken on attendees and format, including attendance by Governors, without consultation.

## 6. TRANSPARENCY AND ACCOUNTABILITY IN THE OVERSEAS TERRITORIES

6.1 This issue is related in many ways to good governance. The BVI Government is democratically elected on a four year mandate. Under the terms of the new Constitution a greater degree of transparency in Government has been built in, particularly where the relationship between the BVI Government and the Governor is concerned. Similarly if he disagrees with a position taken by the newly created National Security Council he is required to report why at the next meeting of the Council.

6.2 Accountability is divided between the Governor, who is accountable to the Secretary of State for Foreign and Commonwealth Affairs, through the FCO and the locally elected BVI Government who, as in any democracy, is elected on a mandate laid out in its manifesto and is accountable to their citizens. In 2003 the NDP won the election while in the recent 2007 election the VIP won. Both election campaigns and the level of debate clearly demonstrated the vibrant democracy in the BVI.

## 7. REGULATION OF THE FINANCIAL SECTOR IN THE OVERSEAS TERRITORIES

## 8. PROCEDURES FOR AMENDMENT OF THE CONSTITUTIONS OF OVERSEAS TERRITORIES

8.1 The two policy papers that dominate the relationship between the UK and its overseas territories are the 1997 National Audit Office report: "*Contingent Liabilities in the Dependent Territories*" and the 1999 White Paper on "*Partnership for Progress and Prosperity*". The first pointed to the risk to the UK of maintaining its relationship with the overseas territories while the second proposed an improved partnership approach and a perceived need to reflect "*a balancing of obligations and expectations*". It is the latter which resulted in the invitation by the UK to each of the overseas territories to undertake a constitutional review. However, this was on condition that such reviews take into account that the UK Government must have sufficient and effective powers to protect its overall responsibility for ensuring good governance, compliance with international obligations and minimisation of contingent liabilities. It was with this background in mind that the BVI entered into constitutional talks with the UK in 2006.

8.2 While there is currently no demand in the BVI for independence, British Virgin Islanders have a very clear sense of self and "nation", which was reflected in the call for the Constitution to reflect the aspirations of the BVI people. There was therefore a clear expectation that in the constitutional talks a number of changes would be made to the Constitution to remove some of the colonial remnants of former structures and enhance this sense of self to ensure that the Government of the BVI is empowered to make the necessary decisions to better the lives of British Virgin Islanders and protect their rights as well as strengthening the partnership element of the constitutional relationship.

8.3 Indeed, in the case of the BVI, history tells us that on every occasion that more authority was placed in the hands of the locally-elected government, we have been able to make meaningful improvements to the quality of life of our people. Moreover, a strong correlation between constitutional advancement and economic advancement has always been clearly demonstrated. Increasing moves toward greater autonomy and self-governance accompanied by the will to self-determination continues to result in greater economic self-sufficiency, prosperity and the overall maturity of the BVI.

8.4 There can be no greater responsibility placed on a Government than to prepare a new Constitution and from the start both Government and Opposition were determined that there be maximum consultation with the people of the BVI.

8.5 The BVI Government established a Constitutional Commission. Comprised of people with many years of current or past public service, the Commission took written evidence from people across the BVI and organised a number of public meetings across the territory. Following this process the Commission produced a report which outlined the detailed thought process and presented a series of recommendations for constitutional change.

8.6 The Government accepted the recommendations of the Commission and established a Constitutional Negotiating Team to engage in discussions with the FCO. It comprised two members of the Constitutional Commission and Members of the Legislative Council from both Government and Opposition.

8.7 Negotiations with the UK Government took just over a year and months and included four rounds of face to face talks, three in the BVI and a final round in London, with the Minister Lord Triesman.

8.8 The BVI prepared intensively for the negotiations. In addition to a substantial human rights chapter, the resulting Constitution also defines much more clearly the role of the Governor and other officials and clearly states that unless it is a role specifically assigned to the Governor, administration of the BVI is the responsibility of the locally elected BVI Government.

## 9. THE APPLICATION OF INTERNATIONAL TREATIES, CONVENTIONS AND OTHER AGREEMENTS TO THE OVERSEAS TERRITORIES

9.1 Some international treaties, conventions and other international agreements which the UK ratifies also apply to the Overseas Territories.

9.2 While the BVI Government understands that part of being an Overseas Territory means that this must be the case, it would ask that the FCO do more to alert Overseas Territories Governments about such matters well before they are ratified so that representation, if necessary, can be made in a timely fashion. Unfortunately, there is often a delay which can lead to tension between the Territories and the UK. It is also important that other UK Government departments have a clear understanding of what can be applied to the territories and what cannot and the FCO must communicate this adequately to them.

9.3 We recognise that the Governor is the formal link between the territories and the UK Government. However, this does not have to be an exclusive channel and where such important matters are concerned, other links such as the UK Representative, in the BVI's case, should be utilised to speed up the process and maximise the time the BVI Government has for consideration.

9.4 Recommendation: The BVI Government recommends that the FCO institute a system whereby the UK Representative is included in the information loop when prospective new international treaties, conventions and other agreements are being considered to ensure that Overseas Territory Governments are informed of such developments on a timely basis.

## 10. HUMAN RIGHTS IN THE OVERSEAS TERRITORIES

10.1 A human rights chapter is the first and substantial section of the new BVI Constitution. It means that for the first time these rights are enshrined in BVI Constitutional law. In addition to the full Constitution, the BVI also prepared a summary document which was widely circulated throughout the Territory to ensure that the citizens were made fully aware of these rights.

## 11. RELATIONS BETWEEN THE OVERSEAS TERRITORIES AND THE UNITED KINGDOM PARLIAMENT

11.1 Relations between the BVI and the UK Parliament are good. Like many territories we work with an active All Party Group, chaired by Lindsay Hoyle MP and we hosted a visit by the Group and other MPs to the BVI in 2006 and 2007. There is also the All Party Overseas Territories Group, which acts as an umbrella group for all the territories. We have carefully considered whether we believe there should be more formal representation in Parliament. However, in conclusion we prefer the status quo as this way we have the right of access to all Parliamentarians not just the one or two who "should" have an interest.

11.2 The BVI Government believes that we should have greater access to the UK Parliament to ensure that we maximise our representation given the fact that the UK Parliament can pass laws which can directly impact upon us. In addition, to truly understand and have a proper feel for the BVI and its people we think

it important that as many MPs as possible have the opportunity to visit. This is obviously an expensive undertaking for the BVI Government to fund on an annual basis; therefore we propose that consideration be given to some Parliamentary funding.

11.3 Recommendation: The BVI Government recommends that the UK Representative of the BVI have a right to a Parliamentary pass in the same way as the CPA Secretariat does. Additionally, we recommend that Parliament consider funding at least one visit to the BVI on an annual basis under the auspices of the All Party BVI Group.

30 October 2007

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### Submission from Mr Conrad Glass, Chief Islander, Tristan da Cunha

An introduction: I'm Conrad Jack Glass, Chief Islander (Head Councillor) of Tristan da Cunha. I've been a Councillor 12 years, the last three as Deputy President. I work as Tristan's police inspector, the only full time officer on the island. I trained in St Helena and the UK and have travelled to Britain several times for courses or leave. I'm a direct descendant of the pioneer Tristan settler, William Glass, so my family has lived on Tristan since 1816. In 2005 I wrote the book *Rockhopper Copper* about my life and work. It was the first book written by an islander.

Tristan da Cunha is said by the *Guinness Book of Records* to be the most remote inhabited island on Earth. Our small British island is 37 miles square, located in the middle of the South Atlantic Ocean. It's a dependency of St Helena, 1,300 miles to our north. Tristan was discovered in 1506 by the Portuguese, and served as a place for ships bound for the Far East to check their navigation and to collect fresh water. The British took control in 1816 at the time of Napoleon's exile to St Helena, stationing a garrison on Tristan. The soldiers are long gone, but our speck on the map remains proudly British to this day.

South Africa is the nearest landmass: 1,500 miles distant, at least six days by ship. We have no airport or air service nor any prospect of one. All supplies and machinery must travel by ship from Cape Town. Our small harbour is our lifeline, too small for ocean going ships, so people and goods must transfer to small boats (or the helicopters of the SA Agulhas during her annual voyage to the meteorological station on Gough Island) to reach the island. There are but nine scheduled visits annually by fishing ships to Tristan. Each brings cargo and 12 passengers. These are the MFV Edinburgh, and the MFV Kelso, belonging to the South African fishing company Ovenstones Agencies (Pty) which has a contract to catch crayfish around Tristan and the uninhabited Nightingale, Inaccessible and Stoltenhoff islands nearby. This is our main source of revenue; the only other is the sale of Tristan postage stamps to collectors.

Ovenstones operate the only factory on Tristan, employing islanders to process fish which they catch in small boats. The company supplies 24-hour electricity from diesel generators to the village and to United Nations scientific monitoring stations.

All 269 Tristanians, the 12 expatriates and their families live in Edinburgh of the Seven Seas, the rather grand name of the only settlement on Tristan, located on the largest plateau, five miles long by a mile, facing north. Otherwise the island consists of a peak (6,760 feet high), forbidding cliffs dropping sheer into the Atlantic, gulches and volcanic deposits and boulders. The community includes the Administrator (from the UK), the Factory Manager and the Doctor (South Africa), the Church of England Minister (UK) and a UN employee. The Anglicans are the most numerous, co-existing happily with the thriving Catholic community. The local lifestyle resembles that of homesteaders, or crofters. Each family has their own sheep, cattle and poultry. Fish is in abundance around Tristan and is an important part of peoples' diet. The families have their own allotments, which they call The Patches (sited three miles from Edinburgh, along the one metalled road, upon which Tristan's only timetabled bus service operates). On these allotments they grow vegetables, principally potatoes. There are very few fruit trees on the island, although the climate is moderate: its extremes make cultivation difficult. Most people work for the Tristan Government, except on days when weather and sea conditions permit fishing. Then, half the work force is allowed to process the catch at the factory. To learn more about our way of life, visit our website [www.tristandc.com](http://www.tristandc.com) which is run in conjunction with the Tristan da Cunha Association, an organisation for people interested in the island.

### TRISTAN'S ECONOMY AND THE WELFARE OF ITS COMMUNITY

Tristan's economy, its policies, ethics and its welfare, are issues which must be addressed if the island is to achieve good governance and move forward. I will list them in order of what I feel are the most important. The recently appointed Administrator, David Morley, is doing his best to get results, but needs the support of London and the community to succeed. He has been handed an administrative post when the economy is in decline, with an inexperienced local management in charge of a disillusioned workforce. At the same time, the community faces increasing health problems. My view is this is the legacy of previous administrations which have made premature decisions and sometimes given incorrect information to councillors and heads of departments. In turn, this has dissipated the island economy and disillusioned its workforce. While the leaders of the community soon realised what was happening and made numerous

requests for these trends to be reversed, the administrators seemed unable to be able to do so. I feel strongly that such situations could be avoided with open and transparent communication between Tristanians, the Administrator and London.

One way forward would be for Tristan to nominate someone to represent them in the UK as already happens with the Falkland Islands and St Helena. While the St Helenan representative in London is also supposed to look after Tristan's interests, the reality is that person is far too busy with St Helena business. This leads to a continuation of the age-old fact that the majority of resources go to St Helena, leaving Tristan with the leftovers.

Tristanians are very loyal to the Crown and proud to be British, but often they feel like the ugly duckling—neglected, out in the cold and having to fend for themselves. It has to be said that all feel that David Morley is doing a sterling job here. He has achieved more in the few weeks since his arrival than previous administrators have done in their three year tenures!

So we must achieve good governance and a stable economy to improve the morale, the ethics and the welfare of our community through open and transparent communication and between the FCO, the Tristan Government, the Administrator and the Chief Islander. The Island Council needs to see and be able to respond to all political correspondence between London and Tristan.

#### PRIORITIES TO IMPROVE INFRASTRUCTURE AND LIFESTYLE

##### 1. *Education*

This is vitally important for present and future generations of Tristanians.

- (a) We need a teacher from the UK to bring our rather rudimentary education up to British standards and to give local teachers in-service training. This last took place in 1991. More than half of the teachers will be retiring in the next five years, two are our most senior teachers and there is no one to replace them. The school needs new computers so it can offer computer-training classes to pupils and the community.
- (b) We need management training for heads of government departments and the workforce engaged in electrical, mechanical, information technology, fisheries, agriculture, business, nursing, accountancy and clerical duties. To have on-island training from those qualified in farming, civil engineering, and labour management would be a great asset, as it would in other areas. Some islanders ought to be able to go abroad for specialist skill training.

##### 2. *Medical Department*

The hospital must upgrade its building and facilities.

- (a) The present labour ward needs converting into a properly equipped emergency room. The hospital interior needs refurbishing to enable the dental suite to be swapped with the theatre complex, a new dispensary with extra shelving to be created and a computer acquired to manage the stock. There should be an additional ward for use as a labour ward near the theatre complex.
- (b) Equipment: the hospital needs a patient monitor (ECG, NIBP, SpO<sub>2</sub> Respirations), a theatre light, theatre (operating) table, resuscitation table/gurney, operating light (for the emergency room), ultrasound scanner, gastroscope, ECG monitor/defibrillator, sigmoidoscope. UV Filter for hospital water supply, Paqa lab test kit.

All this equipment is essential to the doctor in such a remote community. It means the difference between life and death.

##### 3. *Supermarket*

There is only one shop for the sale of foodstuffs, clothing and hardware and our current building is very outdated, with inadequate storage facilities. It does not meet UK standards, being constructed of asbestos over a steel frame. There is a constant (losing) battle to exclude rats. For environmental and health and safety reasons, we urgently need a new supermarket.

- (a) Requirements: proper cold storage for meats and fruit, new computers for stock and cash flow systems, computers, adequate and safe shelving, facilities for hygienically cutting cheeses and other foodstuffs and the means to upgrade personal facilities for employees. The warehouse must be upgraded to meet current UK hygiene standards.

I realise of course that these essential improvements will cost money and resources, something Tristan simply does not have at present. The community will be grateful for support with these proposals and help in implementing them and devising a business plan to enable them this to happen.



I hope the Committee will give its kind consideration to the contents of this document and look forward to a response in due course.

30 October 2007

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### **Submission from the British Virgin Islands Financial Services Commission**

#### INTRODUCTION

In July 2007 the Foreign Affairs Committee of the UK House of Commons announced that it would be conducting an inquiry with respect to the Foreign and Commonwealth Office's (FCO) responsibilities as they relate to the security and good governance of the Overseas Territories. In particular, the inquiry will focus, amongst other things, on the issues of transparency and accountability and regulation of the financial sector.

2. The BVI Financial Services Commission ("the Commission") uses this opportunity to apprise the distinguished Members of the Committee of the Territory's regulatory regime, for often the claim is unfairly made that the so-called offshore centres (of which the BVI is classified as one) are not properly regulated and are a haven for tax evasion, money laundering and terrorist financing. These claims are mostly made by those in the developed world with whom we are in material competition for business and too often no effort is made to give recognition to the regulatory advances of such jurisdictions as the BVI.

3. The Commission plays a key role in the sustainable development of the BVI economy. While the Commission has the responsibility for collecting fees on behalf of the Government, its primary function is the regulation and supervision of the financial services industry by insuring against abuse of the legitimate financial structures and maintaining integrity and professionalism in the BVI's financial services industry; in addition, the Commission has the responsibility of developing relations with foreign regulatory authorities, international associations of regulatory authorities and other regional and international organizations concerned with prudential regulation, the effective combating of financial crime and the promotion of international cooperation between regulators and law enforcement agencies.

4. Since its transformation from the Financial Services Department in 2002 to become an autonomous institution with responsibility for its own affairs, the Commission has strengthened its capacity and experience in providing quality service to the private sector, particularly in sensitizing them of the domestic and global initiatives relating to money laundering and the financing of terrorism. The Commission continues to participate in regional and international meetings at which international standards of prudential financial regulation are developed and promoted.

#### STRUCTURE

5. The Commission is an autonomous institution established under the Financial Services Commission Act, 2001. It was formally established as such in 2002. From a political administrative standpoint, the Commission is answerable to the Cabinet and the House of Assembly through the Minister of Finance who pilots all legislative initiatives in relation to the Commission. The highest body of the Commission is a Board of Commissioners which comprises a Chairman and six other Commissioners, including the Managing Director. One of the Board Members is required to be selected from outside the BVI and has to be a person with a financial services background. It should be noted that appointment to the Board is based on a fit and proper criteria with relevant knowledge, experience and expertise which could assist the Commission in the discharge of its functions; Members of the Legislature and public officers are disqualified from membership of the Board.

6. The Managing Director functions as the Chief Executive of the Commission and has responsibility for the Commission's day-to-day operations, with assistance from two deputy Managing Directors—regulation and corporate services. The Commission has seven Divisions with responsibilities in separate areas of the Commission's work—Banks and Fiduciary Services, Investment Business, Insurance, Insolvency, Legal and Enforcement, Policy Research and Statistics and Registry of Corporate Affairs—and each Division is headed by a director, save for the Registry of Corporate Affairs which is headed by the Registrar of Corporate Affairs. There are three other very significant portfolios—human resources, finance and information technology—respectively headed by a Human Resources Manager, Financial Controller and Manager.

7. There are two statutorily established committees within the Commission: the first is the Licensing and Supervisory Committee, which has the responsibility for receiving, reviewing and determining applications for licences, supervising licensees to ensure that they fully meet the fit and proper criteria for the conduct of financial services business and publishing the names of licensees; the second is the Enforcement Committee, which has responsibility for considering and determining the Commission's exercise of its enforcement powers with respect to licensees, reporting to the Board of Commissioners all enforcement actions taken against licensees and reviewing the Commission's enforcement powers and submitting recommendations to

the Board for possible legislative initiatives. While these committees are required to report to the Board on a quarterly basis on the performance of their functions, they operate very independently in performing their functions and exercising their powers. This is considered essential for prudential regulation and effective enforcement.

#### PRUDENTIAL REGULATION

8. The Commission essentially regulates financial services sectors relating to banking and fiduciary services (trusts and company service providers), investment (including hedge funds and mutual funds), insurance (including captives), insolvency practice and company incorporation and administration. It takes its mandate from relevant key legislation (*see next paragraph*) pertaining to the various sectors of financial services, although its broad powers of licensing, regulation and enforcement are outlined in the Financial Services Commission Act, 2001. As a key player in the financial services world, the BVI recognizes the obligations that relate to such a role in ensuring global financial stability. Thus all of the Territory's financial services legislation are benchmarked against internationally established standards of prudential regulation as enunciated from time to time by standard-setting bodies like the FATF, CFATF, IOSCO, OGBS, IAIS, etc. This has necessitated a review of current legislation and enactment of new legislation as that becomes necessary in order to keep the Territory attuned to emerging standards of regulation.

9. The major pieces of legislation in terms of regulation and company administration that are administered by the Commission may be cited as follows:

- (a) Banks and Trust Companies Act 1990;
- (b) Company Management Act 1990;
- (c) Insurance Act 1994;
- (d) Mutual Funds Act 1996;
- (e) Insolvency Act 2003; and
- (f) BVI Business Companies Act 2004.

These legislation, including the most recent one, have undergone periodic amendments over the last several years as an attempt to both modernize the financial services business regime and ensure compliance with emerging standards of regulation. As noted in the immediately preceding paragraph, the Financial Services Commission Act, 2001 is the key legislation that outlines the Commission's broad powers of licensing, regulation and enforcement. Plans are now quite advanced to put in place a modernized regime that builds on the IAIS standards of prudential regulation by enacting a new Insurance legislation; the mutual funds regime is under review to modernize the investment business sector and formally regulate securities (although currently the BVI does not operate a securities portfolio); plans are underway to develop a comprehensive single Regulatory Code for the regulatory sector of the Commission's functions as well as to develop relevant guidelines on politically exposed persons.

#### ANTI-MONEY LAUNDERING (AML) AND COUNTERING THE FINANCING OF TERRORISM (CFT) REGIMES

10. The BVI recognizes the negative effects money laundering and terrorist financing activities could have on its financial services industry and makes every effort to put in place necessary measures to counter such activities. Those engaged in these nefarious activities aim strenuously to abuse the legitimate financial structures for illegitimate purposes and if left unchecked they could bring about instability in the financial sector.

11. In 1997 the BVI enacted the Proceeds of Criminal Conduct Act designed to formally counter money laundering activities. The legislation thus introduced a new reporting regime for all suspicious activities relating to financial transactions. It established a Reporting Authority to which all such activities are to be reported; the Authority synthesizes all information received to determine whether or not further investigation is warranted and what recommendation should ensue. The Authority comprised the Attorney General, Managing Director of the Commission and the Director of the Authority. In 2003 the Financial Investigation Agency Act was enacted and the Financial Investigation Agency established in 2004. The Authority was transformed into a Steering Committee with the same membership but with much broader powers. The Commission is represented on the Board of the Agency by the Managing Director, with the other members being the Deputy Governor as Chairman, Attorney General, Financial Secretary, Commissioner of Police and Comptroller of Customs. The Commission considers the work of the Agency very crucial to its AML/CFT monitoring process with respect to regulated entities as well as the conducting of background checks of applicants for licences.

12. The Proceeds of Criminal Conduct Act, 1997 is complemented by the Proceeds of Criminal Conduct (Designated Countries and Territories) Order, 1999 and the Anti-money Laundering Code of Practice, 1999. While the Order in essence introduces supporting mechanisms for legal assistance and judicial processes, the Code of Practice outlines the framework for customer identification (including beneficial ownership),

verification process and other relevant mechanisms for compliance. In 2007 the Proceeds of Criminal Conduct Act was amended to introduce a mandatory reporting requirement for financial transactions that are suspicious, in compliance with the CFATF recommendation following its last evaluation of the BVI.

13. In 1998 the Commission initiated and led a public-private sector dialogue with a view to imparting knowledge and appreciation of the ills of money laundering within the legitimate business structures of the Territory and the steps to be taken to check against such activity. This culminated the same year in the drafting and promulgation of the Anti-money Laundering Guidance Notes. These Guidance Notes are currently the subject of review and revision to take account of the new and emerging developments in the area of money laundering.

14. Furthermore, the Commission (prior to its transformation and since that transformation) had established a Financial Services Legislation Advisory Committee, comprising both public and private sector representatives, to review and advise on the need for specific legislative measures in order to buttress the existing systems of financial regulation, law enforcement and international cooperation. It also established a public-private sector Task Force on Taxation Matters to review and advise on tax competition issues as they relate to or affect the financial services sector. The BVI Business Companies Act, 2004 mandates the establishment of a Company Advisory Committee, which had since been established to review and advise on matters pertaining to company administration and to review and submit recommendations on legislative matters relating to companies. The Commission, in recent years, has instituted a system of forming focus groups to review and discuss new proposed legislation before they are finalized to be placed on the legislative wheels. Such groups comprise experts from the public and private sectors and their recommendations are, to the extent feasible and consistent with current policy, factored in the final draft legislation. This arrangement has proven extremely helpful to the Commission as it brings to the table varied experiences to aid the decision-making process. Indeed no legislative measure of significant impact is proposed without private sector consultation and input and the Commission routinely organizes workshops and seminars to discuss major legislative initiatives.

15. The Territory's CFT regime is essentially comprised in The Terrorism (United Nations Measures) (Overseas Territories) Order 2001 and The Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002. Both enactments are Orders in Council. The Commission adheres to the compliance and prohibition measures outlined in both enactments. Indeed the Commission takes notice of the UN and EU lists of persons suspected of having links with terrorism or terrorist organizations to ensure that they or the entities they are associated or affiliated with are not licensed in the Territory.

16. The Commission plans to commence work on developing guidelines on countering terrorist financing using the FATF model. This should culminate in the sensitizing of the private sector of the key implementation tools with respect to CFT.

17. One of the functions of the Commission is to develop a continuing education programme for the practitioners in financial services business and accordingly the Commission has instituted a forum known as Meet the Regulator whereby it sensitizes members of the industry of current and emerging developments in the areas of AML and CFT and what their obligations are in respect thereof. This forum is held periodically—two to three times each year—and it brings together a large number of industry practitioners and regulators and is seen as a very useful interactive medium that develops confidence between the regulators and the industry with respect to regulatory, legal, enforcement and international cooperation matters, including AML/CFT matters. The Commission is set to continue this process for the foreseeable future.

#### INTERNATIONAL COOPERATION

18. The BVI operates different regimes relative to international cooperation. These relate to regulatory, law enforcement and tax information exchange matters. The Commission administers a robust mutual assistance regime in relation to foreign regulators and law enforcement authorities.

19. The Financial Services Commission Act, 2001 ("the 2001 Act") vests the Commission with broad powers of enforcement which include the exercise of powers to respond to requests for mutual assistance. Thus the Commission exercises compulsory powers with respect to the disclosure of information and production of documents (sections 30 and 32). It may also apply for search warrants and submit applications to examine a person on oath before a Magistrate (section 33); it is vested with the power to conduct such examinations itself as it deems fit in any particular case (sections 33A and 33B). Section 33C of the 2001 Act empowers the Commission to take appropriate steps to cooperate with foreign regulatory authorities and other persons who have functions relative to the prevention or detection of financial crime, including money laundering, terrorist financing, misconduct in or misuse of information relating to financial markets as well as offences involving fraud or dishonesty. Section 33D specifically provides the mechanism for providing assistance to foreign regulatory authorities.

20. Prior to its transformation from a department of Government and since its establishment as an autonomous institution, the Commission has been engaged in providing assistance to foreign regulatory authorities (before 2002 the repealed Financial Services (International Cooperation) Act, 2000 was applied). From the law enforcement angle, the Criminal Justice (International Cooperation) Act, 1993 is utilized to

render assistance in criminal law matters; the Mutual Legal Assistance (Tax Matters) Act, 2003 provides the legislative framework for the exchange of information in tax matters with countries that conclude a bilateral agreement with the BVI. The latter enactment was amended in 2005 to embody the requirements of the EU Savings Directive on the Taxation of Savings Income and thus implement the bilateral agreements entered into between the BVI and the EU Member States.

21. The Commission and the BVI Government recognize the pivotal role effective international cooperation plays in combating crime and the misuse of the financial system which, if left unchecked, could lead to global financial instability. Both therefore remain resolute in their policies of fostering greater cooperation to render assistance where necessary. It was in this vein that the Commission, in association with the Government, prepared and published a *Handbook on International Cooperation and Information Exchange: A Guide for Law Enforcement Officials and Regulators*. Apart from providing a better understanding of the BVI's mutual legal assistance regimes, the Handbook outlines the processes that need to be followed by foreign authorities in making requests for assistance. It is a simple, user-friendly guide and is published on the Commission's website at [www.bvifsc.vg](http://www.bvifsc.vg). The Handbook will be reviewed from time to time with a view to updating and modernizing it, taking account of new and emerging developments in the field of international cooperation. It is highly recommended for those persons and authorities with interest in learning of the BVI's international cooperation regime generally or with a desire to submit requests for mutual legal assistance.

#### TRANSPARENCY AND ACCOUNTABILITY

22. The Commission operates a transparent system of regulation of licensed entities engaged in business within or from within the BVI. In terms of its own processes, the Commission (as noted earlier) is answerable to Cabinet and the House of Assembly through the Minister of Finance. The Board of the Commission holds an annual meeting with Cabinet to go through the Commission's annual report, strategic plans and budget, including a discussion on such other matters affecting or relating to Government policy. This is considered a very useful exercise that ensures that the political directorate with responsibility for overall policy direction is made fully aware of new and emerging developments in the international field of standard-setting in relation to finance and financial services.

23. With the enactment of the BVI Business Companies Act 2004, the BVI removed the ring fencing of local companies and placed them on the same footing (in terms of obligations and liabilities) with international companies, thus ensuring a fair and transparent system of company incorporation and regulation. In addition, the BVI introduced a system of immobilizing bearer shares by requiring companies with bearer shares to lodge them with a custodian who is recognized and operating from within the BVI or who operates outside the BVI but is approved by the Commission for that purpose. The rationale for this measure is to ensure that in the event of a request for assistance, access to information on beneficial owners of business entities can be achieved.

24. It should be noted that contrary to what some believe, the BVI does not (and it never did) operate a secrecy regime with respect to its financial services; it has no legislation that institutionalizes secrecy as a part of any regulatory process. However, the BVI recognizes and subscribes to the common law principle of confidentiality. This principle must be distinguished from secrecy. Whereas secrecy connotes a prohibition of access, confidentiality represents a long established rule of keeping material or information with respect to a person confidential save as may be permissible under law. Thus while the BVI laws recognize and uphold the common law principle of confidentiality, they create a legitimate avenue for accessing information for regulatory and law enforcement purposes, including the rendering of assistance to foreign regulatory and law enforcement authorities.

#### MEMBERSHIP OF ASSOCIATIONS/ORGANISATIONS

25. As a key player in the global financial services sector, the BVI recognizes the importance and value of associating with regional and international standard-setting institutions for prudential regulation, effective enforcement and international cooperation. Such an association not only affords the Territory the ability or opportunity to be a part of the development process with respect to the evolution of new standards, but also provides it with the opportunity to think ahead and devise and implement policies and laws to better regulate its financial services industry. The Commission plays a leading role in this regard with respect to all matters relating to and concerning the regulation of financial services and the fostering of international cooperation.

26. The BVI is an active member of the Caribbean Financial Action Task Force (CFATF) and Egmont, both respectively dealing with matters relating to money laundering and terrorist financing and intelligence gathering and dissemination. These are considered to be areas of enormous interest if the efforts of money launderers and terrorists and organized criminal groups are to be effectively countered.

27. Earlier this year the BVI was admitted to the International Organization of Securities Commission (IOSCO) after a vigorous scrutiny of its international cooperation regime. Thus the BVI became the first jurisdiction to be admitted to membership under IOSCO's Multilateral Memorandum of Understanding on Consultation and Cooperation and the Exchange of Information on the basis of its legislative compliance

with the MMoU. The Commission is a member of the International Association of Insurance Supervisors (IAIS) and fully participates in the Association's deliberations. It was on 31st October, 2007 admitted as a member of the Offshore Group of Banking Supervisors (OGBS), after having previously served therein in an observer capacity, and is a founding member of the Offshore Group of Insurance Supervisors (OGIS), the International Trade and Investment Organisation (ITIO) and the Offshore Group of Collective Investment Scheme Supervisors (OGCISS). As a member of Association of Banking Supervisors of the Americas (ASBA), the BVI currently holds the directorship position representing the Caribbean region. The BVI participated in the OECD-Commonwealth Working Group on Tax Competition and recently served on the Working Group set up to review the FATF's 40+9 Recommendations on combating money laundering and terrorist financing. It was also a member of the OGBS Working Group that developed the Statement of Best Practice on Trust and Corporate Service Providers; indeed the BVI (along with Gibraltar) was the first jurisdiction to regulate trust and corporate service providers.

28. As a result of the BVI's membership of or observer status in these recognized institutions, the Commission has been able to develop a wealth of knowledge to guide the financial services industry along the right path, while at the same time checking against nefarious activities and sharing information with other jurisdictions. It hopes to continue this trend for the foreseeable future and to remain an active player in the shaping of standards of regulation and fostering of international cooperation.

#### THE PROVISION OF RESOURCES

29. As an autonomous regulatory body with independent powers, the 2001 Act provides a funding mechanism for the Commission that takes into account the duties and responsibilities of the Commission. The Commission retains a percentage of the total revenue it collects on behalf of the Government, which could be anywhere up to the 15% mark; since the establishment of the Commission, this has ranged from 9 to 11 percentage points. This formula for resource allocation to the Commission has been considered adequate and it is a formula that works quite well.

30. The Commission is able to properly and fully resource its strategic plans, regulatory and enforcement processes, participation at overseas meetings, conferences with the private and public sector persons, information dissemination, duties relative to requests for mutual assistance from foreign regulatory authorities, etc. In addition, the Commission maintains a reserve fund as a contingency plan to ensure the due and uninterrupted functioning of the Commission's activities.

#### ASSESSMENTS

31. As a member of the CFATF, the BVI has been undergoing periodic reviews to establish the Territory's compliance with internationally established standards in the areas of financial regulation, legislative reform, law enforcement and international cooperation, including compliance with current AML/CFT standards and recommendations of the CFATF. This process has been found to be extremely valuable as it affords the Territory the opportunity of benefiting from external independent objective assessments of its systems and processes; recommendations for remedial action have proved very helpful as the Territory continues to be a key player in international financial services.

32. The BVI is set to undergo its third round of CFATF mutual evaluation in the first quarter of 2008. Also the IMF will undertake its second assessment of the BVI later in 2008. It should be noted that these assessments seek to determine the level of compliance with standards established by the various standards-setting institutions like the OGBS, IAIS, FATF and CFATF. The Commission sees this exercise as an important continuing process which every key jurisdiction in the financial sector ought to be subjected to. The last reports of the CFATF and IMF in respect of the BVI can be found on the Commission's website at [www.bvifsc.vg](http://www.bvifsc.vg).

#### EVIDENCE

33. The legislation and other documents cited in this submission may be found on the Commission's website at [www.bvifsc.vg](http://www.bvifsc.vg). However, the Commission may be requested to provide any additional information considered relevant by the distinguished Members of the Foreign Affairs Committee and stands ready to assist with its deliberations in any other way considered necessary.

#### HOW CAN THE UK GOVERNMENT ASSIST THE BVI?

34. The Commission has matured over the years and has developed immense expertise and experience in the area of financial services regulation, AML/CFT, enforcement and international cooperation. It seeks not to be dependent, but rather to be progressive and self-reliant and to make positive contributions to the BVI economy for which it provides more than 50% of the revenue that goes to the public budget. It guards the interests of the jurisdiction jealously, while at the same time recognizing the threats to financial services and the need for bilateral and multilateral cooperation in running an efficient and effective stable economy and keeping crime and criminals far away from the legitimate structures of business operations.

35. The Commission believes very strongly that there are meaningful ways in which the UK Government can be of great assistance. While the BVI participates in quite a number of fora at which international standards of regulation, enforcement and cooperation are shaped, the fact remains that in some very important fora (such as within the FATF and the Financial Stability Forum (FSF)) the jurisdiction is not a member or observer and is not invited to participate. It is normally in the latter situation where very important decisions are taken that affect most of the so-called offshore jurisdictions without considering their interests. Accordingly, one would expect that the UK, when represented at such meetings, would protect the interests of its Overseas Territories against adverse and unfair decisions that, in some cases, singularly target the Territories. The Commission therefore invites the Foreign Affairs Committee to consider the following in their deliberations:

- (a) the extent, if any, to which the UK advocates the interests of its Overseas Territories, especially in relation to the operation of their financial services industries;
- (b) the need for prior consultation with the BVI Government before committing the jurisdiction to unfavourable measures specifically and generally affecting its financial services industry; the UK committed the BVI to the implementation of the EU Savings Directive on the Taxation of Savings Income without any prior consultation, thus potentially allowing a competitive advantage to the Territory's competitors outside the realm of the Directive;
- (c) the need for equal and fair treatment of the Overseas Territories. When the UK committed the BVI and other Caribbean Overseas Territories to the EU Directive referred to in sub-paragraph (b) above, it left out Bermuda, thus enabling that jurisdiction to market itself without the strings of the Directive;
- (d) the importance of notifying the BVI of important developments around the globe (considering the UK's network of information gathering) and rendering such advice as may be necessary;
- (e) the need for the UK to publicly acknowledge the strides made by the BVI to efficiently and effectively regulate its financial services industry and to buttress that fact in relevant fora where the jurisdiction is being unfairly criticized and its systems and processes are being misrepresented; in circumstances where the jurisdiction is represented, it is expected that its representatives will take on that responsibility, but the added voice of the UK does help to strengthen the jurisdiction's position; and
- (f) any suggested reforms or initiatives that the UK thinks should be considered by the BVI in relation to its financial services sector should be notified well in advance to enable the Commission to take an informed decision thereon and render necessary advice accordingly after relevant consultations; this obviates any unfair accusations of disinterest and non-compliance.

## CONCLUSION

36. The Commission, consistent with the policy adopted by the Government, continues to engage the regional and international standard-setting institutions to ensure full compliance with established standards. It recognizes the importance of continued vigilance in the execution of its functions and the threats posed by organized crime, including money laundering and terrorist financing. While it adopts an independent approach in administering its financial services sector, the Commission is fully aware of the interdependence of world economies and its responsibility as a partner in maintaining global financial stability. It cannot deny the fact that criminals engaged in organized crime, money laundering, terrorist financing and other illegitimate use of the financial system have no and do not distinguish between borders; their activities permeate every jurisdiction and it is only through effective policing and cooperation at the international level that the activities of such criminals can be minimized or eradicated.

37. It is important to recognize at the same time that the BVI is engaged in an activity (financial services) that places it on a competition pedestal with other so-called onshore and offshore jurisdictions. It therefore advocates the importance of a level playing field with its competitors and expects that the UK sees value in this approach and champions the cause of not only the BVI, but of all of its Overseas Territories. The Commission certainly does not consider it to be in the UK's best interest to allow a situation where the financial services sectors of its Overseas Territories are severely affected, considering the portion they contribute to government revenue, which in turn impact positively on important social and infrastructural developments.

38. The Commission commends the Foreign Affairs Committee in engaging in this process and similarly commends the Foreign and Commonwealth Office for inviting the Overseas Territories to render account of their service industries (amongst other things). It is hoped that this will be a regular exercise to enable the distinguished Members of the Foreign Affairs Committee and by extension Members of the House of Commons to learn more about the Overseas Territories and the developing relations they have with Her Majesty's Government in the UK.

### **Submission from Mr Larry Marshall Sr, Bermudians Against the Draft (BAD)**

1. I am writing on behalf of the anti-conscription movement in the island of Bermuda in general and specifically on behalf of the organization which I head known as Bermudians Against the Draft (BAD).

2. Our group was formed in January 2006, as a result of 42 years of abuse perpetuated upon young men unfortunate enough to be randomly selected. In the past individuals have fought against this system but only on an individual basis. However, prior to our emergence there has never been a collective effort to dismantle the present oppressive system and bring complete freedom to our country. That in a nutshell is our mandate. To abolish conscription in our country as soon as possible.

3. To get a better understanding of what we face it is first necessary to deal with the origins of conscription in Bermuda. In 1965 the then predominantly white government of the day enacted legislation which in essence took away the right to freedom of young men "called up" in the draft. Needless to say this is blatant gender discrimination.

4. The fact that this was a time when young black men were viewed as threatening and potentially dangerous helps to explain why the 1965 Defense Act came about. When the turbulence of the early 60's precipitated by racial injustice is factored into the equation along with the accompanying belief that those same young men possessed a genetic predisposition to violence it becomes apparent that this legal action had absolutely nothing to do with defense. Rather it had everything to do with maintaining the status quo and controlling a certain segment of Bermudian society viewed as so animalistic they could not be entrusted with freedom. At least not all of them at once.

5. Not surprisingly this racist element still manifests itself today as attested to by two statistics which speak for themselves and need no explanation. First there is a disproportionate number of young black men drafted each and every year. Secondly, there is a disproportionate number of whites who serve in the capacity of officer. Furthermore, according to a newspaper report in our local daily on June 2, 2006, there has been a history of conflict within the Bermuda Regiment due to internal racial divisions. That substantiates what has just been stated along with statistics received from our National Statistic Department.

6. Yet despite this deplorable past what is even more deplorable is that their system is allowed to continue under a predominately black government in 2007. It would appear that they too subscribe to the very same philosophy of the previous government which further explains why young blacks continue to be marginalized and ignored. It would also appear that they are more concerned with maintaining power than doing what's right as far as conscription is concerned irrespective of how many are victimized in the process.

7. How sad when one considers just how oppressive this system actually is and how many thousands of Bermudians have been adversely affected to one degree or another. At BAD headquarters we are constantly inundated with calls from both parents of young men and young men alike who have suffered abuse at the hands of sadistic goons who delight in inflicting pain, physical and emotional, upon their fellow human beings.

8. This abuse includes incessant profanity and vulgar language and also extends to physical beatings. More than one person has told of an environment in which they feared they might be sexually assaulted. This coupled with the routine practice of incarcerating young men in their underwear is a recipe for disaster. For the record these same young men are not even allowed to use the bathroom at night while in boot-camp. This has resulted in many urinating in cans, bottles, plastic bags or even out the windows as they seek to relieve themselves. Mr Andrew McKinley, one of your MP's alluded to this in the early part of 2007. Several members of our coalition who have served time at Warwick Camp confirmed this and also described the bathroom facilities as absolutely filthy. As terrible as all of this is what takes it down to the level of 21st century slavery is the extremely low pay conscripts receive. A measly \$2.25 per hour in one of the richest countries in the world. This same government has spent an exorbitant amount of money on football and cricket.

9. How your committee might ask, could the aforementioned be allowed in any civilized society. First of all because whenever society allows an individuals basic right to freedom to be violated abuse of all sorts is inevitable. Our current system of conscription is testament to that. Secondly because that law of necessity authorizes those in power to exert force when necessary, and it will always be necessary due to an innate mechanism which automatically causes mankind to rebel under such circumstances. As a consequence any law authorizing conscription includes a variety of penalties the most severe being incarceration.

10. As a further consequence this has resulted in over 40 young men being incarcerated at our local prison for three to six months since 2000. All were black. That is a significant percentage considering the overall number of conscripts. And to add insult to injury they still must complete their military duty upon release. Failure to do so means another term of incarceration which means that, technically speaking, one could do a life sentence in Bermuda simply for being a conscientious objector. Indeed this is a most antiquated and draconian law.

11. Yet as far as incarceration is concerned it is not by any means limited to Westgate Prison. An innumerable amount of young victims have been jailed in the Bermuda Regiment's cells aptly described as "third world" by one of your compatriots. The sentences vary from one or two days to the maximum under law which is 58 days. A military officer determines the length of stay. During this stay they actually have

less rights than a prisoner who has been convicted of a crime in a court of law. Leg shackles and handcuffs are used on a regular basis in an effort to humiliate these detainees. Mr McKinlay's interest arose after he became enraged having seen a photograph of eight young men being treated so inhumanly in 2003. Amazing not one local politician even blinked an eye.

12. This still continues which is why BAD has challenged this most corrupt system through our local courts. More specifically the Supreme Court. On 3 December 2006 we launched the first of two writ's the both of which have since been consolidated.

13. And to illustrate just how totalitarian and autocratic this system is, the young men were still hunted down like criminals even though they were taking the matter to court. Had they been caught they could have been jailed indefinitely or at least for the duration of the court case which could possibly last for years. At one residence an army jeep with six soldiers accompanied by three police cars arrived to arrest one BAD member on the writ. As unbelievable as that sequence of events sounds it is all well documented in articles of our local newspaper the Royal Gazette. The relevant links are provided at the end of this presentation.

14. During that period not one local politician had the guts to offer any support for the group even though what transpired could aptly be described, to use the American Supreme Court Justice Clarence Thomas words, as a modern day, high-tech lynching. Needless to say we expect no help from these hypocrites and cowards who publicly endorse and champion conscription while their own children avoid military duty. To them political expediency is what matters most.

15. It is for this reason that I, on behalf of both BAD and every young conscientious objector in this country, appeal to your committee to act on our behalf in the following ways if possible:

- (i) Conduct a board of inquiry into the innumerable allegations of abuse which are said to have taken place in our country at Warwick Camp during the past 42 years due to conscription. Such a board would provide anonymity for those afraid of reprisals.
- (ii) Put pressure on the present government to end this madness at once seeing they lack the back bone and conscience to do so by themselves.

16. After all Britain is just as responsible seeing they inexplicably allowed it to begin in 1965 when it had been abolished in your country two years prior. Your foreign policy clearly states that the same rights enjoyed in Britain should be enjoyed by every citizen in every overseas territory. How then can you sit idly by and allow such an institution like conscription with all of its accompanying evils to exist when it has been abolished in all but two other jurisdictions within the Commonwealth. How can you sit idly by while young Bermudian men are subjected to such demeaning and abusive treatment while young Englishmen are protected under law. Hopefully you cannot and will act on our behalf in the name of freedom as thousands of young men in our country cry out for justice in the only place people will listen. Sadly that is the House of Commons.

17. In closing I would like to thank you for the opportunity to make this written presentation and will also request the opportunity to appear before your committee in London to make an oral presentation as this would allow me to do justice for our cause.

18. I would also like to state that as a Bermudian I am embarrassed and ashamed to have to appeal to you in London for justice due to my own countryman's ignorance, intransigence, and arrogance concerning this issue.

3 November 2007

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### **Submission from The Hon Joe Bossano, Leader of the Opposition, Gibraltar**

I apologise for the delay in making these submissions to your committee following the recent general elections here and I am pleased that you will still be able to take our views into consideration.

I write on behalf of the official GSLP/Liberal Opposition in the Parliament of Gibraltar.

There is one specific issue relating to the status Gibraltar into which we would welcome your committee's investigation.

#### **1. THE BACKGROUND**

In 1997, a seminar was organised in Gibraltar by the Self-determination for Gibraltar Group entitled "The Channel Islands Option". This was addressed by the leaders of the three main political parties in the territory. A consensus view was expressed by all three parties around the table for a decolonised status for Gibraltar similar to that of the Channel Islands.

The moves to obtain a new constitution for Gibraltar stem from this seminar which took place in 1997 and not from the Foreign Office White Paper which came about two years later in 1999.



In July 1999, a Select Committee of the Gibraltar House of Assembly was established in order to formulate proposals for constitutional reform. I was a Member of this Committee along with my colleague Dr Joseph Garcia.

The Opposition participated on this Committee on the basis that the decolonisation of Gibraltar was the single most important objective of the process.

The Select Committee reported to the full House of Assembly in early 2002.

In Page 2 of its report, the Select Committee concluded:

“The Committee’s approach has been guided by its unanimous view that reform of the Constitution should achieve both a suitable modernisation of the relationship with the United Kingdom (with consequential and enhanced powers of self-government) and that these reforms should, when and if accepted by the people of Gibraltar in a referendum, bring about the decolonisation of Gibraltar through the exercise of the right to self-determination by the people of Gibraltar, and Gibraltar’s subsequent delisting from the UN’s list of Non Self Governing Territories maintained under Article 73(e) of the Charter”. (Annex 1)<sup>239</sup>

The Preamble to the Constitution, as proposed by the Gibraltar House of Assembly unanimously, included a second paragraph which read as follows:

“AND whereas the people of Gibraltar have accepted the Constitution annexed to this Order in an act of self-determination and Gibraltar can therefore be deemed to have attained the fullest possible measure of self-government”. (Annex 2)<sup>240</sup>

This wording was compliant with the requirement and procedure of the United Nations and had been inserted with decolonisation in mind.

The text of the new Constitution was formally submitted to the United Kingdom in December 2003. Negotiations were held between a cross-party Gibraltar delegation and a UK Government delegation in 2004, 2005 and 2006.

## 2. THE 1999 WHITE PAPER AND THE FOURTH OPTION

The Foreign Office 1999 White Paper “Partnership for Progress and Prosperity” says the following on Gibraltar:

“The British Government policy is clear and long-standing; it supports the principle or right of self-determination but this must be exercised in accordance with the other principles or rights in the United Nations Charter as well as other treaty obligations. In Gibraltar’s case, because of the Treaty of Utrecht, this means that Gibraltar could become independent only with Spanish consent”. (Annex 3)<sup>241</sup>

The view of the UK Government, as stated in the White Paper, is that independence is the ONLY option which it is not possible for Gibraltar to attain without Spanish consent. It makes no mention of the other three options, which are integration, free association or a tailor-made solution.

The Select Committee report, in any case, did not propose independence. It proposed a new international status for Gibraltar under the so-called Fourth Option enshrined in UN Resolution 2625(XXV) whereby a territory can be decolonised through a tailor-made formula. (Annex 4)<sup>242</sup>

In Page 3 of its report, the Select Committee of the House of Assembly said:

“In respect of this last matter, and while there is no specific amendment or provision in the Constitution to reflect this, the Committee (as well as a significant majority of those making representations) felt that the people of Gibraltar should achieve decolonisation by electing, as is reflected in the proposed reformed Constitution, the so-called ‘Fourth Option’, which has been identified by the United Nations as one of the acceptable ways of achieving this”. (Annex 5)<sup>243</sup>

However, it became apparent during the negotiations that the United Kingdom position went further than the letter of the 1999 White Paper. In reality all options for the decolonisation of Gibraltar, and not just independence, were being ruled out unless such an option had the consent of Spain.

This was reflected very clearly in the controversy that ensued around the second preamble.

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<sup>239</sup> Not printed, as publicly available.

<sup>240</sup> Not printed, as publicly available.

<sup>241</sup> Not printed, as publicly available.

<sup>242</sup> Not printed, as publicly available.

<sup>243</sup> Not printed, as publicly available.

### 3. THE SECOND PREAMBLE

The text of the second preamble was discussed at the very start of the talks with UK in 2004. The lead UK negotiator at the time, the FCO Director for Europe Mr Chilcott, stated then that determining whether the maximum level possible of self-government had been attained would be a judgement reserved for the end of the process. He added that there was an added difficulty which was Spain's reaction. Mr Chilcott added that this would be a judgment for Ministers at the end of the process and that they needed to be comfortable with the language aimed at UN delisting.

In 2005, at the second meeting of the negotiating teams in Gibraltar, the Opposition again asked the UK team whether any thought had been given to the fundamental issue of decolonisation. The answer was that Ministers had not yet been briefed, and that in any case it was important to know beforehand what level of constitutional changes had been tentatively agreed and this would not happen until the talks had concluded.

It was not until the end of the process, on 17 March 2006, that we were told at the last session of the last meeting on the last day that UK Ministers would not agree to include in the Preamble words saying that the proposed referendum would be the exercise of our right to self-determination or that the new Constitution provided the maximum level possible of self-government.

This answer was not compatible with the answers we had received in the first two meetings in 2004 and 2005.

Given that the impression was created that the issue could be one of wording rather than substance, the Opposition Members on the Committee submitted a new draft text for the second preamble which did not include the word "self-determination". This text used different terminology with the same result.

In a letter dated 28 March 2006 to the Chief Minister, the then Foreign Secretary Jack Straw indicated that the UK was not inclined to agree preambular language for the Order in Council until after the Referendum had taken place. (Annex 6)<sup>244</sup>

When this was communicated to the Opposition Members of the Committee, we took the position that we were not prepared to support the new Constitution without the second preamble. It was essential to us that the United Kingdom recognised that the referendum was an act of self-determination which gave Gibraltar the maximum degree of self-government.

On 27 March, in a statement to Parliament, the then Foreign Secretary Jack Straw said that "Gibraltar will remain listed as a British Overseas Territory in the British Nationality Act of 1981, as amended by the British Overseas Territory Act 2002". (Annex 7)<sup>245</sup>

On 28 March 2006, in an exchange of letters with Jack Straw, the Spanish Foreign Minister Miguel Angel Moratinos noted that "neither the text of the constitution nor the planned referendum have any effect on the pending process of decolonisation, under the mandate of the United Nations". The Spanish Foreign Minister added: "I take note that this new constitution does not alter the international status of Gibraltar in any way, which remains a British Overseas Territory . . ." Mr Moratinos made it clear that for the Spanish Government the vote in the referendum and the exercise of the rights envisaged in the text of the constitution were merely the democratic expression of the inhabitants of Gibraltar to provide for themselves a more modern and efficient administration. (Annex 8)<sup>246</sup>

Although Jack Straw replied to this letter, the claim made by Spain, that the new constitution would leave Gibraltar's international status unchanged, were not contested by HMG at the time or ever since. The United Kingdom has instead preferred to concentrate on describing the relationship between Gibraltar and the UK as "modern" and "non-colonial" in nature.

However, it is essential to understand that the Gibraltar-UK relationship is one thing, and Gibraltar's status in international law is something completely different.

At the beginning of May, Margaret Beckett replaced Jack Straw at the Foreign Office, and the affairs of Gibraltar came to be handled by the new Europe Minister Geoff Hoon.

On 24 May, the Spanish Government declared that the wording of the proposed second preamble could throw the tripartite process over Gibraltar into "disarray, back to square one". (Annex 9)<sup>247</sup>

On 4 July 2006, Geoff Hoon, in answer to a parliamentary question, confirmed that "the new Constitution provides for a modern and mature relationship between the UK and Gibraltar. I do not think that this description would apply to any relationship based on colonialism". He reaffirmed that it had been the UK's longstanding view that none of its remaining Overseas Territories, including Gibraltar, should remain on the UN list of Non Self Governing Territories, and added that the criteria used by the UN are outdated and failed to take into account of the way in which relationships between the territories and the UK have been

<sup>244</sup> Not printed, as publicly available.

<sup>245</sup> Not printed, as publicly available.

<sup>246</sup> Not printed, as publicly available.

<sup>247</sup> Not printed, as publicly available.

modernised. “The UK does not, therefore, engage formally to seek the removal of any of the Overseas Territories from the UN list”. This statement confirmed that the referendum in Gibraltar would be an act of self-determination. (Annex 10)<sup>248</sup>

The second preamble to the new constitution was agreed with the following wording:

“And whereas the people of Gibraltar have in a referendum held on XXX freely approved and accepted the Constitution annexed to this Order which gives the people of Gibraltar that degree of self-government which is compatible with British sovereignty of Gibraltar and with the fact that the United Kingdom remains fully responsible for Gibraltar’s external relations”. (Annex 11)<sup>249</sup>

Under Article 73 of the Charter of the United Nations, the UK, as the administering power for Gibraltar, is bound to submit an annual report which details the progress which Gibraltar is making on the road to full self-government. It is not clear why the United Kingdom continues to report to the UN when according to Gibraltar’s new constitutional preamble, we already enjoy that degree of self-government which is compatible with British sovereignty.

#### 4. THE CONSENSUS DECISION

The United Kingdom and Spain agreed the text of a consensus decision on Gibraltar which was approved by the 4th Committee of the United Nations (Political and Decolonisation) on 24 October this year. This goes to the General Assembly in December.

The consensus decision urges the UK and Spanish Governments to reach a definitive solution to Gibraltar’s decolonisation in the spirit of the Brussels Agreement of 1984, while at the same time listening to the interests and aspirations of Gibraltar.

This is practically identical to the text that was agreed last year before Gibraltar’s new Constitution came into effect.

It is clear that notwithstanding that the 2006 referendum and constitution created a modern and mature relationship with Gibraltar, which UK claims cannot be said to be based on colonialism, HMG’s position at the United Nations has not changed.

A verbal statement was given this year explaining the UK position for the record. This does not, in any case, alter the consensus decision which remains the same. This limited itself to saying that the UK would not proceed down the route of coming up with definitive solution to Gibraltar’s decolonisation, as they are urging themselves to do in the consensus decision, unless Gibraltar was content that UK should do so.

The continuation of the UN consensus decision with Spain on Gibraltar does not make any sense and should have been discontinued by the HMG. It is essential to establish why this has not happened and why the consensus continues as if the referendum and the new constitution had not existed. (Annex 12)<sup>250</sup>

#### 5. THE INTERNATIONAL STATUS OF GIBRALTAR

It is therefore essential that your inquiry into Gibraltar establishes beyond doubt and with no equivocation whether the international status of Gibraltar has changed, or whether that status remains the same after the new constitution came into force as it had been before.

We have not been able to establish this point beyond any doubt to date. Indeed, this was one the reasons why we recommended a free vote during the referendum to approve the constitution that took place in November 2006. While the text of the constitution had been agreed by us, there was profound disagreement as to what that text represented once it was implemented in terms of the status of Gibraltar in international law. This point is fundamental and it should be cleared up.

I request that I be given an opportunity to expand on this by giving oral evidence to the Committee in addition to this letter, and in this way answer any questions that you may have. In particular I wish to address you on the question of the United Kingdom’s position in completing the decolonisation process so that it ceases to have a requirement under Article 73(e) of the Charter.

8 November 2007

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<sup>248</sup> Not printed, as publicly available.

<sup>249</sup> Not printed, as publicly available.

<sup>250</sup> Not printed, as publicly available.

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**Letter from the Second Clerk of the Committee to Richard Cooke, Head, Parliamentary Relations Team,  
Foreign and Commonwealth Office**

SEABED CLAIMS

Thank you for sending me the FCO's memorandum for the Committee's Overseas Territories inquiry. The Committee has asked me to write to you to request further information relevant to the inquiry.

The Committee would like the FCO to provide an explanation of its initiative to claim sovereignty over sea beds in five areas, as reported in the Guardian on 17 October 2007. The Committee is particularly interested in the claims to territory around Ascension Island, off the British Antarctic Territory, and around the Falkland Islands and South Georgia.

I would be most grateful to have your response by Friday 14 December.

*13 November 2007*

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**Letter to the Committee from Mr Paul Jeremy**

I am writing with regard to the Government's recent decision to appeal to the House of Lords over the case of the Chagos islanders.

As the Government clearly remains obdurate in its opposition to their return, is there not a case for the House of Commons Select Committee on Foreign Affairs to hold a hearing into why this is so?

I should emphasise that I have no connection with the campaign mounted by the islanders, but as a Labour Party voter I am appalled by the treatment they have received from Labour Governments since the evictions started under Denis Healey from the 1960s. This record of callousness and duplicity belies the Labour Party's honourable record of standing up for oppressed people in British colonies and dependent territories.

I have no doubt that your committee has to prioritise in its inquiries, but surely when we witness this government slyly slipping this appeal through just when the Queen's Speech was being delivered, then it should be brought to account by an independent committee which is in the best position to examine such abusive practices.

*18 November 2007*

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**Submission from Dr Paul Charman, Falkland Islands**

**OVERSEAS TERRITORIES: ANNOUNCEMENT OF ORAL EVIDENCE SESSION AND  
EXTENSION OF DEADLINE FOR WRITTEN EVIDENCE**

I have recently seen the above. I have no idea whether I am allowed to say anything—or how to say it. But here is a contribution.

I lived in the Falklands/Malvinas many years ago and have maintained an interest in the affairs of the Islands.

Recently I have been researching some of the political aspects relating to the Islands.

It distresses me that the British Government regularly states that it has no doubts about British sovereignty. Yet I quite regularly come across documents at the National Archives that show that successive British Governments have had serious doubts—going back at least to the early years of the last century.

In addition, Britain states that the wishes of the Islanders are paramount. But how can 2000 people dictate Britain's economic relationship with Argentina? How can so few people dictate to the oil companies who say that they will not develop oil in / around the Islands without the involvement of Argentina.

The people of the Islands are very important to me. It seems a pity that the ideas being discussed in the 1970's (including the possibility of compensation in the event of a change of sovereignty) were not concluded successfully.

*6 December 2007*

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### **Submission from Mr Peter Williams, Turks and Caicos Islands**

I am hereby recommending that the Foreign Affairs Select Committee enquire into the awarding of Government contracts to Companies with some form of ownership by Government ministers.

- It is commonly said that the companies paid millions of dollars in road building contracts, are owned by ministers of government.
- Ministers should perhaps be made to name all the companies in which they have any ownership, doing so under oath in the event they are subsequently proved to be purging themselves.
- There is reportedly the practice by ministers of government using their cronies as surrogates for the purpose of themselves benefiting from both public and private contracts.

13 December 2007

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### **Letter from Richard Cooke, Parliamentary Relations Team, Foreign and Commonwealth Office**

Thank you for letter of 13 November, in which you requested additional information in respect of FCO activity as regards sovereign rights to parts of the seabed—and in particular, the areas around Ascension Island, British Antarctic Territory and around the Falkland Islands and South Georgia.

I am pleased to enclose a comprehensive brief on the issue.

1. Under the United Nations Convention on the Law of the Sea, the UK has until May 2009 to submit claims for an extended continental shelf to the Commission on the Limits of the Continental Shelf. We have already made one submission to the Commission, and we are presently considering four others. Details are set out below. The UK is one of some 40–50 States expected to make submissions. The process is not, as some media reports have suggested, a free-for-all “land grab”, but a long-term UN process to establish by consensus under international law, an effective delimitation of continental shelf where sovereign rights apply, from the remainder of the seabed which is under the control of the International Seabed Authority. Sovereign rights over the extended continental shelf would allow Parliament and other British authorities to determine the nature and scope of any activities proposed to take place on the shelf, and prevent unsustainable exploitation which otherwise might have taken place. NB this is unlikely to be the case for the Antarctic which is afforded comprehensive environmental protection under the Antarctic Treaty System.

2. Article 76 of the UN Convention defines the continental shelf of a coastal State as extending in the first instance to a distance 200 nautical miles from the shoreline. The Convention further provides that a State’s continental shelf may extend beyond 200 miles, but only if specified geological conditions can be satisfied. In order to establish this, States are required under the Convention to submit detailed information to the Commission on the Limits of the Continental Shelf, which then makes recommendations concerning the establishment of an extended outer limit. The coastal State must then establish final limits on the basis of the Commission’s recommendations. Under the terms of the UN Convention, all States parties have up to ten years following ratification by which they have to submit any claims. For States which ratified prior to 1999, that deadline was extended by an agreement of States Parties to May 2009. The UK ratified the Convention in July 1997, and therefore currently works to the May 2009 deadline.

3. Any continental shelf gives the coastal State sovereign rights over the seabed and the subsoil thereof. No such rights accrue in respect of the water column or fishery resources beyond 200 nautical miles. Seabed areas not falling under any national jurisdiction will be designated as being for the “benefit of mankind”, and be regulated by the International Seabed Authority. It is therefore in the long-term interests of the UK to secure its sovereign rights to the continental shelf at this time, as provided for under international law.

4. Some potential UK claims may overlap with those of other States (see below). In cases where a dispute exists between the coastal States concerned, the Rules of Procedure of the Commission on the Limits of the Continental Shelf require it to decline to examine any submission, until the said disputes are resolved. Ideally then, the States concerned will agree on a common approach before submitting to the Commission.

5. The UK has made one claim and is considering four others. These five claims—both in respect of the mainland UK and overseas territories—are:

#### **FALKLAND ISLANDS AND SOUTH GEORGIA**

6. The UK is currently researching its submission to the Commission in respect of the continental shelf around the Falkland Islands and South Georgia. Our plans for the submission have not been finalised. We have already had useful contacts on the issue with technical and legal experts from the Argentine MFA with a view to making a joint submission without prejudice to rival sovereignty claims. Meetings took place in 2001 and 2004. In June this year, we proposed a further meeting. If this goes ahead as hoped, it will further demonstrate UK commitment to co-operation on areas of mutual interest in the South Atlantic.

7. The UK has no doubts about its sovereignty over the Falkland Islands and South Georgia—nor its right to submit a claim to extend the continental shelf.

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 ASCENSION ISLAND

8. The UK is considering a submission to the Commission in respect of the continental shelf around Ascension Island. No decisions have been taken.

## BRITISH ANTARCTIC TERRITORY

9. The press reports on the UK's handling of continental shelf matters around the British Antarctic Territory were wholly inaccurate. Contrary to the reports, the UK has not made any announcements, or final decisions, about its approach to the UN Commission for the Limits of Continental Shelf. The UK will make its intentions known to the Commission prior to the deadline in 2009.

10. The UK is fully committed to upholding the provisions of the Antarctic Treaty including the Protocol on Environmental Protection and its clear prohibition on minerals related activity. The Environmental Protocol to the Antarctic, agreed in 1991, prohibits all minerals related activity, other than for scientific research. Any change to this ban would need to be agreed by all Antarctic Treaty Parties and would first require adoption of a new and binding agreement, including an agreed means for determining whether, and if so, under what conditions, any such activities would be acceptable. The UK is committed to upholding the indefinite ban and to ensuring the highest possible standards of environmental protection in Antarctica.

## BAY OF BISCAY

11. As noted above, the UK has made one submission to the Commission on the Limits to the Continental Shelf in respect of the Bay of Biscay—a region where the interests of four neighbouring countries overlap. This submission was made in 2006 together with France, Ireland and Spain, and is the first example of a joint submission to the Commission. The submission followed negotiations over a number of years between the States concerned. It represents an example of international co-operation on a highly technical and politically sensitive matter. The four States continue to co-operate in working with the Commission towards the production of its conclusions.

## HATTON-ROCKALL

12. The UK is also engaged in similar negotiations with Ireland, Iceland and the Faeroe Islands in respect of the Hatton-Rockall basin, where again there are overlapping interests. Geological and morphological conditions are more complicated in this area and a final agreement has yet to be reached. However all States continue to work towards the May 2009 deadline.

*13 December 2007*

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 Email from Richard Sankar

## TURKS &amp; CAICOS ISLANDS—MISUSE OF POLITICAL INFLUENCE

Until November 4, 2007, I lived on Providenciales, Turks & Caicos Islands, for almost 11 years. In that entire time I worked for Prestigious Properties which is majority owned by the Premier's brother, Washington Misick (former Chief Minister of the Turks & Caicos Islands); the Premier himself being a minority shareholder.

In the fall of 2002, I applied for permanent residence with the right to work and complied with the requirements; because I was of significant financial benefit to the Misick family, my application for permanent residence was opposed. As a result, I realized that the only way I would ever be able to gain status in the Turks & Caicos Islands was if I did not work for the family. I tendered my resignation in order to allow myself the opportunity to join a more non-partisan business which has resulted in the addition of my name to a list of people that the Immigration Department will not allow back into the country.

Shortly after the PNP came into power in 2002, the real estate ordinance was amended to allow Prestigious Properties to gain greater monopoly in the real estate industry by making real estate brokers licenses 100% from 51% "belonger" owned. This is a disadvantage to start up businesses in the industry because "belongers" are unable to partner up with financially beneficial "non-belongers" in order to gain entrance into an oligopolistically competitive industry.

I was born in Trinidad and Tobago and became a Canadian citizen in my 20s. I own several properties in the Turks & Caicos Islands and I am a shareholder in two businesses. The misuse of power by the Misick family and action taken against me is unconscionable considering the contribution I have made to their company and the country. I would like to be removed from the stop list that prevents me entry into the Turks & Caicos Islands and granted permanent residence status in the Turks & Caicos Islands not only for my gain but also to prove to the citizens and expatriates that justice can prevail in the country. I am forced to run a TCI company (from abroad) in which I have invested a large portion of my net worth.

## SYNOPSIS

### *Prestigious Properties Graceway House Office*

In the spring/summer of 2005 (after more than eight years of service to Prestigious Properties), the business I was generating through my various advertising campaigns and referrals from past customers had grown to the point that I needed two personal assistants to support the inquiries and subsequent transactions. There was limited space at the old Prestigious Properties office so I first approached Washington about setting up a branch office but he refused. I subsequently approached Clive Stanbrook to rent space at Graceway House at my expense. Clive was unwilling to rent space to me but choose to discuss my request with Washington and who subsequently agreed to the set up under the following terms:

- Prestigious Properties gave me \$15,000 for improvements to the space; I spent an additional \$5,000 on the improvements.
- Prestigious Properties was responsible for the monthly rent and utilities.
- I purchased the furniture and equipment and it was understood that this was my property. As with all agents at Prestigious Properties, they are expected to have their own computer equipment. For example, when Ms Laverne Skippings left Prestigious Properties to work for Dellis Cay she was not asked to give her laptop to Prestigious Properties and/or provide an assurance that any files she may have had pertaining to the business were deleted—which is basically what Washington is now asking me to do. For the ease of functioning as a branch office, all files were scanned and e-mailed to head office creating a paperless environment. This may become an issue of intellectual property law because I own the hardware that the files are stored on and unwilling to give an assurance that all files have been deleted.
- I paid for my support staff and advertising; there was no benefit given for my increase in expenses in order to make the additional income for my broker.

## RESIGNATION

Washington's claim that I did not approach him about my move is incorrect because in mid-September 2007 I spoke with the Sales Manager, Rob McLean about my impending resignation and requested a meeting with Washington to discuss and engineer a graceful, mutually beneficial transition. I never got a response from Rob regarding a meeting nor did Washington call me to discuss my move. In an effort to keep the communication open, in mid-October 2007 I called Karen Misick who is a director of Prestigious Properties and discussed my resignation with her and my desire to move to Tropical Paradise Realty.

In the last two weeks of October (realizing there was no meeting in the horizon to discuss the transition) I decided to add Ron Burton to all of my listings so the transition would appear transparent to clients in case Washington decided to terminate me from Prestigious Properties and cancel my Filogix account (this is the Multiple Listing System used by the Turks and Caicos Real Estate Association). There were two clients that I did not get to before the meeting on November 2, 2007—Wymara and Turquoise Ridge.

At 5.30 pm 1 November 2007 after a long day on the road with clients, I received the attached disciplinary letter from Washington demanding I meet at 10 am the next day with the directors of Prestigious Properties. The tone of his letter caused me to believe this was not going to be an easy transition and that I may even be persecuted by Washington. I was concerned that once I tendered my resignation Washington would lock me out of the Prestigious Properties Graceway House office and seize the contents which cost me in excess of \$30,000. In an effort to circumnavigate that event, I moved my furniture and equipment into storage on the evening of 1 November 2007 and prepared myself for what would come next.

At the meeting on 2 November 2007 I was allowed to have two witnesses. I choose to bring Ron Burton and Peter Crawford-Smith. I read my letter of resignation and thanked Washington for the opportunity to work with him for almost 11 years. He said that he would be lying if he did not say that I had made a significant contribution to the company but that he would do whatever he could to prevent me from obtaining status to work in the Turks and Caicos Islands.

Later that day I received a call from Rob McLean requesting my work permit—there would be no two week notice period. Prestigious Properties then terminated my Filogix account and because I was the only agent named on the Wymara listings and co-named with Imelda Burke (whose Filogix account was also terminated) on the Turquoise Ridge listings, those listings were cancelled automatically by the system. The action taken by Prestigious Properties resulted in those listings being cancelled on the system—there was some subsequent confusion as to how the listing were cancelled and I called Rob McLean and explained that it was a result of their action. If I had chosen not to add Ron Burton to the other listings, an action which with certainty proves that I did my best not to take existing business away from Prestigious Properties, all the listings would have been cancelled. A good example of this occurred recently when Birdie Selver left Remax Elite to start her own firm—her listings with Remax were all cancelled by the system and she took them over with her.

I have complied to the best of my knowledge with my Employment Contract and Multiple Listing Agreements. What Washington wants back is my knowledge and expertise which cannot be controlled and most certainly will not be contracted back to him in the future. Mr Washington Misick has misused his

relationship with his brother, the Premier, Michael Misick (who is also 20% shareholder of Prestigious Properties) and influence with civil servants of the Turks & Caicos Government to prevent me entrance into the Turks & Caicos Islands by illegally adding me to a stop fly list.

13 December 2007

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### Submission from Mr Lee Ingham

First, let me thank you and the persons associated with this inquiry for extending the time for submission of concerns relative to the Overseas Territories, but specifically as it relates to the Turks & Caicos Islands.

I am a native Turks & Caicos Islander who currently resides in the United States, but make frequent visits back to my islands-home. Invariably, when I visit, regardless of the government in office, I am bombarded with complaints and concerns about the direction in which the country is headed. I must say that in most cases, the complaints are partisan; however, I listen, offer my opinion, and make it known that I am a native Turks & Caicos Islander, but not a partisan. I have friends and family members in both camps, and in my opinion, with a few exceptions, members of both the PNP and PDM, when they are in the government, seem to use their positions for self-aggrandizement and control their offices as little fiefdoms to dole out the country's largesse to their loyal followers and humble serfs. The one constant conclusion that reach from most of my discussions is this: the politics of fear so pervades the country that people are afraid to speak in certain group settings, the newspapers do not engage in any sort of investigative journalism and those who do attempt to shed light on some of the illegal, immoral activities of those in power, are ostracized and/or marginalized. I fear for the future of my native country if the current trend continues.

The three areas that concern me most about what is currently transpiring in the Turks & Caicos Islands are: (1) immigration; (2) education and (3) corruption and the acquiescence or complicity of those who are in positions to oppose or criticize decisions of the government.

As you know, the native population of the Turks & Caicos Islands is rather small. So, understandably, there is a need for importing people for the labor force if the country is to continue its rapid development. However, it seems that the importation of workers is controlled in such a way by those in power, that they are the beneficiaries at the expense of the natives. For example, I have heard it said that "locals don't want to work". I believe that to be false. A truer statement might be: "locals don't want to work for the low wages that are being offered". I believe that the local people will work—that is the work ethic that I grew up in the Islands—if the government would ensure decent wages for the workers and not allow immigrant workers to be exploited for the greater profit of themselves and their compliant investors. If this problem is not addressed in a serious manner, soon the country will be dominated by ex-patriots and/or there will be a serious conflagration between the native workers and the displaced local people who perceive the immigrant workers as their rivals. The immigration problem has to be controlled to prevent this from happening. I have written an article suggesting an independent commission to study the issue, but I am sure that it was not taken seriously by those in authority. In that article, I pointed to the fact that there is a plethora of native professional people living in the US, the Bahamas and other countries with expertise and experience in most areas that could be beneficial to the country. These people, if they are willing, should be recruited and invited, by the government, to come and take part in the development of their native country. I do believe that many would accept the opportunity and the challenge.

The educational system, as I see it, is worse now than it was when I was a student in the country almost a half century ago. There appears to be no educational plan. Too many teachers are being imported and, (even though the following statement might be too general), do not have the interest of the students at heart. They have jobs!! I have been in higher education in the US for over 30 years and have made efforts to assist where deemed most appropriate, but because those in positions of authority lack the knowledge, experience and/or qualifications to be in those positions, the result has been indecision, nepotism and a steady decline in the educational system. As I see it, students are ill-prepared for work beyond the secondary school level; but generous scholarships are given for educational pursuits, mostly in the US, based on political affiliation. There have been numerous accounts of students who come to the US for educational purposes, with government scholarships, but use the funds for their personal use, and, in some cases, are deported from the US for illegal activities. I believe that knowledge of US institutions of higher learning is lacking by the students who come here and, perhaps, most importantly, by those who are in position to grant the scholarships. What is even more troubling is the fact that many of these students, even though they are given government scholarships, do not return to the country to help in its development, and when some of them do return, there is no system to accommodate their return and placement in the work-force. I do believe that the appointment of the current Minister of Education will bring about some changes, but I fear that because he was appointed, he might not be allowed to bring about the necessary changes that will improve the system for the benefit of the country.

I believe that it was Lord Acton who is believed to have said: "Power corrupts. Absolute power corrupts, absolutely". Given the rapid economic development that is taking place in the Turks & Caicos Islands and the dictatorial approach to governing that currently exists, "absolute corruption" might be closer than we think. It appears that any and every investment in the country is gotten as a result of kick-back to a government minister or his/her immediate family. It is true that the country is experiencing economic



growth, but it is too obvious that the government ministers and their close supporters and their immediate relations are accumulating great wealth as a consequence of their being in their positions. If you consider the wealth of these people pre-control of the government, while and post-control of the government, the discrepancy becomes too obvious. There may be other explanations for the accumulation of wealth by the government officials, but I seriously believe that government funds are being used as personal bank accounts.

I make my comments freely, voluntarily and you have my permission to use my comments as you see fit.

14 December 2007

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### **Submission from Ray Carbery, President Turks & Caicos Islands Olympic Committee (Steering)**

#### **CLARIFICATION ON OLYMPIC/COMMONWEALTH ISSUES**

The Commonwealth games allow all Commonwealth countries to participate and are somewhat sanctioned by the IOC. All NOC's within the Commonwealth have a cross over role with the IOC . . . eg the Chair of the Commonwealth Games, Mr. Michael Fennell is also President of the Jamaican Olympic Committee and an IOC Member.

Commonwealth games committee's receive limited funding from the Commonwealth Games Committee . . . whereas . . . NOC's receive sufficient amounts of financial support from the IOC. hence the imbalance between Territories recognized and those "like us" sitting on the outside looking in. The Commonwealth are not the supreme organ of sport . . . that title is held by the IOC through the Olympic Games of which our Premier pointed out so eloquently to Mr Mackinlay.

We bring all of this to your attention as we feel that our quest is reviewed in the correct context as this is a complicated issue which requires in-depth knowledge on all issues. In closing I will be in London in March sometime and should you require further information on our quest . . . I would be more than happy to oblige and meet. In the mean time the FCO continue to sit back and do nothing to resolve this debacle they state time and time again we have to wait for Gibraltar's case to conclude before they will even contemplate doing anything . . . which is not correct. We have nothing in common with Gibraltar's legal arguments in Swiss Federal Court . . . Sovereign Land issues do not come into play with the TCI! You will note for the records that I have cc our Secretary General Ms Alice Malcolm and our Legal Advisor Mr Paul Keeble. Thank you on behalf of the TCI youth.

*Discrimination against people has no place in the world . . . or . . . sport including the Olympic Games.*

12 January 2008

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### **Submission from Mr Conrad Glass, Chief Islander, Tristan da Cunha**

As we begin 2008 I am looking at ways of generating extra revenue for Tristan da Cunha.

One very practical way of doing this will be to make it possible for Tristan lobster be sold on the Chinese Market.

Ovenstone Agencies (Pty), the South African fishing company, which is contracted by Tristan Government to catch and sell Tristan lobster, is unable to do this as the FCO has not included Tristan in the UK and/or EU trade treaties with China. If Tristan lobster could be imported into China at the preferred tariff rates covered by those treaties (around 16–17%), rather than the current punitive rate (around 50%), then there would be a huge economic and social benefit to the island and its population.

With China's booming economy and the imminence of the 2008 Olympics, the immediate inclusion of Tristan in these UK/EU treaties and the reduction of these punitive tariffs, would present a golden opportunity to improve the current status of Tristan's revenue.

My investigations on this matter have revealed that Ovenstone Agencies are receiving a lot of enquiries for lobster from potential Chinese customers. It is important to note that South African lobster suppliers are enjoying strong demand and prices in China's growing market and that this trend looks set to continue. It would be a very positive development indeed for Tristan lobster fishermen and processors (and Tristan itself) to penetrate the Chinese market.

Tristan can only achieve this if the FCO can include Tristan as part of the UK and EU trade treaties with China. The FCO is aware that the Ovenstone Agencies company is keen to get into the Chinese market, ensuring better business for this island and enhancing its economy, of which the lobster fishery is the single most important component.

A commitment by the FCO to immediately ensure the removal of this "red tape" which stands in the way of the development of the island and its business partners will help to generate more income, give the island much greater self-sufficiency and will reduce the need to rely on the UK for grants and budgetary aid.

I hope the Committee will give its kind consideration to the contents of this document and look forward to a response in due course.

14 January 2008

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#### **Further Email from Richard Sankar**

Please be advised that as of 10 January 2008 I was removed from the list that prevents me from entering the Turks & Caicos Islands—see attached letter<sup>251</sup> from the newly appointed Director of Immigration, Alonso Malcolm; his predecessor, Desmond Wilson issued the letter adding me to the list in the first place. I don't know if your office had any influence in affecting the change in my illegally imposed immigration status but I would like to extend my gratitude nonetheless.

My next obstacle is to get my application for Permanent Residence a fair review. It is being blocked by Washington Misick (former Chief Minister and brother of our Premier, Michael Misick). I have called the Governor's office in Grand Turk to request a meeting to discuss the situation and awaiting a response from his secretary. I shall report back with any response I receive from the Governor's office to update my file.

15 January 2008

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#### **Submission from Jonathan Suter, Bermuda**

##### THE SITUATION OF PERMANENT RESIDENT CARD HOLDERS IN BERMUDA

Below is a letter I have written to the Foreign Affairs Committee for their inquiry into Human Rights in the Overseas Territories. The submission outlines the situation of Permanent Resident Card holders in Bermuda, and the denial of their right to participate in parliamentary elections. I am writing this as a concerned individual, who has Bermuda status.

To Whom It May Concern:

I am writing to you today about the situation of Permanent Resident Card (PRC) holders in Bermuda, who are denied the right to vote and thus, are denied the right to fully participate in society.

A PRC entitles the holder to live and work in Bermuda without the need for a work permit, but does not give them the right to participate in parliamentary elections. Obtaining a PRC is by no means an easy thing to achieve. The individual must have lived continuously on the island for at least 20 years and remained an upstanding member of the community. There are many countries where permanent residents, who are not citizens, have the right to vote; examples include Barbados, Jamaica, Grenada, Antigua, Barbuda, and the UK, New Zealand, Chile, Venezuela, Bolivia, and Guyana, each with their own residence requirements.

Considering that the overwhelming majority of PRC holders would have arrived and continued to work in Bermuda under a work permit, which are only issued in the interests of strengthening the Bermudian economy, it can be deduced that PRC holders have made and continue to make a significant contribution to the community through their work, their involvement in community organisations, and overall, the contribution to the growth of the Bermudian economy. This contribution is by no means a fleeting one. They have spent over 20 years making Bermuda their home.

The current Government will argue that by giving PRC holders the right to vote, you would be opening the flood gates to more and more individuals being eligible for gaining this right, and this would somehow disadvantage Bermudians. Firstly, given restrictions now in place on work permit lengths, it is unlikely that many individuals will have the slightest chance of staying in Bermuda for the requisite 20 years to obtain permanent residency. Secondly, PRC holders already have the right to live and work in Bermuda, therefore giving them the right to vote does not put any further pressure on the housing market or lend itself to any of the xenophobic rhetoric concerning foreigners 'taking away' jobs from Bermudians. Therefore, the only significant impact would be that PRC holders would have the opportunity to participate in the democratic process. The current Government would argue that this would somehow dilute the voting right of Bermudians. Yet, looking at the numbers, the number of PRC holders is about 5% of the voting population (2,000/42,000), which is just more than a fifth of the voting population who didn't participate in the past election of December 2007, (which roughly had a 76% participation rate). PRC holders should have the right to hold the government accountable. They are not simply guests on the islands; they have been contributing members of society for over 20 years! Wouldn't such individuals have effectively earned their right to vote and hold government accountable after such a period?

It is an absolute embarrassment that the Bermuda Government cannot afford these hardworking and well-deserving individuals one of the basic human rights of participation. Many of these individuals have made Bermuda their one and only home, and don't have a right to vote anywhere else in the world. By failing to provide these individuals with the opportunity to participate in government elections, you are denying

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<sup>251</sup> Not printed.

them one of the fundamental elements of any democracy. What is more, many of these PRC holders have children who were born in Bermuda, whom after their 18th birthday received Bermudian status, affording them the right to vote.

Giving PRC holders the right to vote is about giving them the respect and dignity that they deserve, to be able to actively participate in the democratic processes of these wonderful islands that they have helped to build, and that they have called home for more than 20 years.

I therefore ask you to advise the Bermuda Government to take action to provide Bermuda PRC holders with the right to participate in parliamentary elections, so that they are no longer made to feel like second-class citizens.

15 January 2008

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### Submission from the Falkland Islands Government

#### 1. THE BACKGROUND TO ASSI

1.1 The International Civil Aviation Organisation (ICAO), as part of their Universal Safety Oversight Audit Programme (USOAP), audited the United Kingdom (UK) as a signatory to the ICAO Convention in 1999–2000.

As part of this audit, which was mainly of the UK Civil Aviation Authority (CAA) ICAO questioned the oversight process which the UK had in place for its Overseas Territories (OTs). The answers were not sufficiently robust to satisfy ICAO that the UK was adequately carrying out its responsibilities as a signatory of the Convention.

1.2 The UK CAA and the UK Government commissioned the Overseas Territories Institutional Development Study undertaken by W S Atkins. This study included several recommendations, one of which was the creation of a regulatory body that would have specific responsibilities and capabilities for ensuring that the UK's liability to ICAO with regard to OTs was being met. This led to the Department for Transport (DfT) issuing Directions for the creation of a wholly owned subsidiary of the UK CAA which would have specific powers and responsibilities to carry out the required functions—Air Safety Support International (ASSI).

#### 2. ASSI TERMS OF REFERENCE, PARTICULARLY IN RELATION TO THE FALKLAND ISLANDS

2.1 ASSI does not publish a TOR but states that it:

“supports the Overseas Territories’ existing authorities, in the safety regulation of all aspects of civil aviation, including the licensing of personnel and the certification of aircraft, airports, airlines and air traffic control. In territories where the civil aviation regulator does not have the resources to undertake the task themselves, then ASSI can be designated by the Governor to perform the civil aviation regulatory task on behalf of the Government”.

2.2 ASSI support differs with each Overseas Territory. In each it has direct “designations”. In the Falklands, the split of role is:

ASSI designations	—	Operation and airworthiness of aircraft, aeronautical telecommunications and environmental protection.
Internal DCA	—	Personnel licensing, aircraft accident and incident investigation, air traffic services.
and conditionally	—	Met services. Search and rescue. Aerodromes. Aeronautical information services. Transport of dangerous goods by air.

2.3 ASSI makes no charges for its services, which is very welcome. More recently a National Audit Office report has raised the principle of “user pays”.

2.4 Expectations were that ASSI would be a body with finite terms of reference, which would be phased out as OTs assumed greater accountabilities for their operations. The NAO report now identifies the ASSI role in the Falklands as “indefinite”.

### 3. THE FIRST TWO YEARS

3.1 In hindsight the role of ASSI was vastly underestimated. This is not a direct fault of W S Atkins but rather a lack of in depth understanding of each of the OTs, political and financial situations and their aviation industries. After the first round of assessments of the regulatory systems and infrastructure in each OT by ASSI, it became apparent that the OTs were some way short of the standards the UK wished to set and are required to prove to the next ICAO USOAP audit.

3.2 Having set the standard of compliance to the various legal requirements ASSI were then duty bound to take on all of the areas that were found as not being “capable or effective”. This led to Governors being recommended to designate ASSI as regulator for various areas (ICAO annexes) and a fair number of the remainder being only conditionally designated to the local regulator (DCA). The conditions attached to the latter type of designations have required significant resources to be supplied by the OTs and in many cases a large effort from ASSI in training and support. The audit for the designation process brought to light many deficiencies in the way OT’s had been carrying out their business. Much work has subsequently been carried out by OT aviation departments and in some cases significant financial and other resources have been identified.

3.3 The latest round of audits (FI in April 2008) will give ASSI a clearer idea of just how long it will take for the OTs to be self regulating in the areas that they wish to be and are capable of sustaining.

3.4 There is also the substantial burden on ASSI of running the entire regulatory function of one OT (British Virgin Islands) and possibly others such as Montserrat and Anguilla. This factor has seriously affected ASSI capability across the other OTs in their availability and resources.

3.5 The last DCA’s conference (Cayman 2007) featured the DfT announcement that it intended to cease the Department’s funding of ASSI £3 million per annum and that OTs would have to start to pay for their own regulatory oversight capability. The UK has the ultimate responsibility to ICAO and therefore to the regulation of aviation in the OTs. OTs have, however, already had to find considerable additional resources just to meet the new regulatory requirements, and will not welcome paying for ASSI as well.

### 4. THE FALKLANDS’ EXPERIENCE OF ASSI REGULATION

4.1 The Falkland Islands has had mixed benefit from the input of ASSI over recent years. Falkland Islands Government has tried to maintain a difficult balance between what is necessary for the local and non local aviation industry and the resources that are required to regulate that. It is recognised that some of the larger more technical and financially burdening elements are better off with ASSI. Closer scrutiny of our aviation industry has revealed areas where oversight by the local DCA, pre ASSI, has been inadequate, this has been analysed and there are a number of reasons why this happened not all attributable to the DCA.

4.2 But the ASSI effort to the FI has been very low. The FI has not had anywhere near the level of support and resources that the Caribbean OTs continue to enjoy.

4.3 Where ASSI are the designated regulator, their visits to the FI have been too infrequent. There is a real lack of understanding of the FI situation and local aviation scene by some of the inspectors especially in the area of Flight Operations. ASSI just do not understand the critical and vital nature of FIG Air Service operations, nor give credit for an enviable safety record over 27 years. ASSI’s performance has manifested itself in poor communication, lack of respect, slow progress on audits, findings and work to comply with new regulations. There is a similar issue with the FI non local industry as not one ASSI person has been to Antarctica, in any capacity, to get an appreciation of what that operator, the BAS Air Unit, is trying to achieve.

4.4 More recently, FIG has experienced major inconsistency in approach and findings between an ASSI inspection team sent to the Islands, and the HQ at Crawley. In this case, a satisfactory local finding was changed by the HQ into one of significant concern and threatened closure of airstrips, essential for the continued existence of people living on remote islands, tourism and scientific research. Inconsistent and mixed messages continue, with sporadic demands for intensive paperwork.

4.5 The lack of an ASSI system for medical examination of aircrew (OTAR 67) has been raised over the past 10 months, without response from ASSI. ASSI hope to have a common licence for all aircrews in the OTs which implies a common medical examination system. However, the task involves harmonising Caribbean OTs which use the American (FAA) standards and Gibraltar and the Falklands which use European (EASA) standards. There is a lot of work to do (on health manuals, audit of Authorised Medical Examiners, data recording and appeals processes), which has not been done, and for little apparent benefit.

4.6 FIG is concerned that ASSI are overstretched and underperforming, and that their future is not at all assured. All of this causes misunderstandings, friction, and significant ineffectiveness in the OT aviation industry. To have to pay for this level of service would not be welcome.

**Memorandum submitted by James E Skerritt**

RE: THE GOVERNMENT OF MONTSERRAT PROPOSALS TO BUILD A HOME FOR INDIGENT AND THE MENTALLY CHALLENGED AT SWEENEY'S VILLAGE, ST JOHNS, MONTSERRAT

There are objections already lodged by the residents of the above residential area. I am writing on behalf of my parents Joseph and Mary Skerritt, whose home is adjacent to the proposed project. My parents' property has been there for 30 years. Both of them spent most of their adult lives living and working in England. Having retired and returned to Montserrat in 1991 their peaceful hopes were ruined by the natural disasters that have occurred on the island. They have however remained loyal inhabitants of the island.

After the volcano erupted a temporary shelter was constructed on the site to help those made homeless. The plot of land in question is not very large. It has now been proposed to build a permanent home to house the Indigent and Mentally Challenged people of the island.

Having been to Montserrat to visit my parents and seen the site, my thoughts are that the location chosen does not lend much to the idea of long term planning. I do not think the site fits the purpose. I wonder does the department responsible for health really understand the needs of the people they are trying to help.

It is more than 12 years since the start of the volcanic activity, the time for short-term "quick fixes" has long passed. It would appear that the Government of Montserrat is not giving much thought to all concerned, ie the residents of Sweeney who have voted for them and pay taxes to them, and the unfortunate people who are probably not in a position to raise this issue themselves.

There was never any formal notification about the plans; in fact the first my parents knew of the project was by passing conversation. Though the matter has been ongoing from the middle of last year it was not until I pointed out, that the residents should be given formal notification of such a project that a Notice was placed on the site at the end of November. Information is not readily available from the Planning Department as there is nothing posted via their website. No further information has been forthcoming since.

The lack of transparency I have seen in this matter is of much concern, as it indicates the views of the public would not be appreciated. I welcome any comments.

19 January 2008

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**Submission from Dr A G James, Managing Director, Ovenstone Agencies (Pty) Ltd**

ACCESS FOR TRISTAN DA CUNHA LOBSTER TO THE CHINESE MARKET AT PREFERRED TARRIFF RATES TO INCREASE ISLAND'S REVENUE STREAM

This submission is made in support of the letter for the Foreign Affairs Committee regarding the above subject by Conrad Glass, Chief Islander, Tristan da Cunha.<sup>252</sup>

By way of introduction, I am the Managing Director of the Cape Town, South Africa, based company Ovenstone Agencies (Pty) Ltd, that is the exclusive operator of the Concession to catch, process and sell Tristan lobster.

The Licence Fee from the lobster Concession accounts for over 80% of Tristan's annual revenue, effectively making it a single crop economy, exposed to a range of factors outside the operator's or community's control that can significantly influence the value of the product.

Tristan lobster has two primary export markets:

USA—frozen tails product form.

Japan—whole raw frozen and whole cook frozen product form.

These markets are subject to cyclical fluctuations in market demand and price levels, both of which impact directly upon the Tristan's revenue stream. The traditional Japanese market for frozen lobster product has been contracting for the last decade.

Tristan lobster does not have access to EU markets due to the regulatory infrastructure not being in place—and this situation is not likely to change in the medium term.

There are, therefore, limited opportunities for development of new markets for Tristan lobster. China represents the best opportunity at this time.

Ovenstone regularly receives enquiries for Tristan lobster from Chinese importers. The Chinese market is one that Ovenstone is keen to develop for Tristan lobster due to the growing customer base able to afford lobster, a traditionally much sought after luxury seafood in China.

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<sup>252</sup> Ev 223, Ev 241.

However, as the situation currently stands, Tristan lobster is unable to compete with product of other origins in the Chinese market due to import tariff issues. Because of the fact that Tristan da Cunha is not included under the umbrella of the United Kingdom's membership to the World Trade Organisation (WTO) and reciprocal trade agreements with China, product from Tristan attracts a punitive import tariff rate in excess of 50% of product value, rather than the preferred tariff rate of 16.7%. Lobster from competing origins such as South Africa, Mexico and Australia all enjoy the lower, preferred rate.

Ovenstone has been communicating with personnel at the Foreign and Commonwealth Office since 2004 to try to find a solution to the issue of Tristan da Cunha being included under the umbrella of the UK's membership to the WTO to attain the preferred tariff rate of 16.7%. Very little progress has been made to date.

The benefits to the Tristan Community of access to the Chinese Market at preferred tariff rates for Tristan lobster are obvious:

1. Development of a new and growing market for Tristan lobster and a broadening of the customer base and market demand for the Island's product. It is a reasonable expectation that within a very short time—two years—the Chinese market could account for up to 35% of Tristan's lobster product.
2. Increased prices for certain sizes of lobster, generating increased revenue for the Island.
3. Reduced market risk and exposure to the large fluctuations in market prices in Japan that affect Tristan's revenue stream through market expansion and competition for the limited volume of Tristan's product between Japanese and Chinese buyers.

China represents the most important opportunity to increase market penetration and product value for Tristan lobster in the medium term—the next 5–7 years.

The issue that is blocking the penetration and development of this market for Tristan lobster is not commercial, it is bureaucratic.

Ovenstone respectfully requests that the Foreign Affairs Committee use its good offices to bring to bear the considerable resources of the FCO to consider solutions that will include Tristan da Cunha under the umbrella of the UK membership to the WTO and permit the import of Tristan lobster product into China at the preferred tariff rate for the ultimate financial benefit of the Tristan Community.

21 January 2008

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**Submission from Mr Don Mitchell CBE QC, Anguilla**

**BRITISH OVERSEAS TERRITORIES—ANGUILLA**

I have just read with interest your website which indicates that the deadline for making written submissions to the FAC has been extended to 31 January. I am taking the opportunity of that extension to enclose a copy of the Report of the Constitutional and Electoral Reform Commission for the use of the members of the FAC.<sup>253</sup>

The Report was presented to His Excellency the Governor and members of the Anguilla government on 31 August 2006. In the view of the members of the Commission, the Report, particularly the section headed "Recommendations", contains the views and opinions of the majority of Anguillians who made representations to the Commission. The section headed, "Introduction" will tell the members of your Committee everything they need to know about the Anguillian perspective on our history.

In the event that your members have already seen a copy of this Report, please accept my apologies for encumbering you with another copy of this document.

With best wishes for a successful conclusion of your Committee's work.

23 January 2008

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**Submission from Mr Clive Golt, Editor, The New People, Gibraltar**

I am writing to inform you of the harsh treatment and political persecution I have been subjected to by the Chief Minister of Gibraltar Peter Caruana.

Until 1996, I was Head of News at the Gibraltar Broadcasting Corporation. In April of that year, I was asked to accept voluntary redundancy by the corporation because I took up an invitation by the Chief Minister, at the time, Joe Bossano, to be included in his party's line-up for the general election. We lost the election and, finding myself without employment, the GSLP Opposition offered me to take over their party newspaper, *The New People*, which was published occasionally by them. I accepted the offer provided the

<sup>253</sup> Not printed.

party did not exercise editorial control. The party executive took a vote on the issue and decided to meet my terms so I proceeded to re-vamp the paper and converted it into a weekly with general content apart from politics. Editorially, I supported the GSLP, but did not receive subsidies and was not subjected to controls.

Immediately, the Chief Minister banned me from press conferences, denied me access to Government information and ensured public funds spent on official advertising did not include my newspaper. Given that The New People was my only source of income my right to earn a living in my chosen profession was denied me and I was subjected to unfair competition.

Despite attempts to negotiate with the Chief Minister, representations to the Ombudsman (who found in my favour), press colleagues, institutions etc, Mr Caruana refused to budge arguing that The New People was a party political organ and not a newspaper. I also made countless representations to successive Governors and Deputy Governors to no avail. My only recourse has been to engage in legal proceedings which have proved arduous and long protracted. The paper continues to be published on a minimal budget but I am unable to draw a salary and are currently working in Spain as an alternative.

I appeal to your good offices to take up my case, in defence of the Freedom of the Press and my individual Human Rights in our so-called Democracy. I am available for interview at your convenience.

23 January 2008

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**Submission from Mr Alan Savery, Banking Supervisor, St Helena**

1. Further to my submission of 20 August 2007<sup>254</sup> I would like to update the comments I made at that time. I have just returned from a visit to St Helena which involved a supervisory visit to the Bank of St Helena and providing assistance in the public consultation on the introduction of legislation concerning money laundering and financial services.

2. In my earlier submission I commented that some of the Government Officials in St Helena did not have sufficient grasp of the technical issues. This comment was based on my experience in dealing with officials since 2001. However, I feel it right to point out that the changes in personnel in recent times has led to a dramatic improvement. During this latest visit I have been able to hold meaningful and very professional discussions with all the relevant officials.

3. The problems I alluded to concerning the FCO however, remain and over the last few months it has become clear to me that the underlying problem arises from the fact that in dealing with technical issues such as financial services, they rely on experts in the subject who have no knowledge of the island and the desk officers who have knowledge of the island do not have sufficient technical knowledge to be able to put the expert advice into the proper context. This results in measures being proposed which are out of proportion to the problem being addressed.

4. If I can be of any further assistance to your enquiry I would be happy to help.

24 January 2008

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**Submission from Mr Robert Masters, Bermuda**

Once again it is that time of the year when new recruits are inducted into the Bermuda Regiment at the annual Boot Camp. The media seems to have little else to cover at this time of year and revel in every minute detail of the new recruits' experiences, especially the abuse shown to the new recruits. I am appalled every time I see a Bermuda Regiment recruit being treated like a criminal in our courts.

My purpose for writing this letter is to ask a simple question: What is the purpose of the Bermuda Regiment in 2008? What is the purpose of learning to march and handle a gun in peacetime?

The Regiment grew out of Bermuda's colonial past and may have had some purpose during the World Wars but there is no longer a need for an Army in Bermuda. What a shame it is that we have to teach our young men how to use weapons of war. We should be teaching them that peace and diplomacy are mightier than the sword.

The Bermuda Regiment should not exist simply for the sake of "offering discipline, life skills and structure" to young men, as this is the responsibility of parents, schools and society in general. Why should the Bermuda Regiment be held responsible for teaching discipline and respect to our young men?

Few Western nations require their young to serve in their Armies. If Bermuda wishes to continue to have a Bermuda Regiment, they should make it a volunteer organisation. Those who wish to serve could do so and the Regiment could attract candidates by offering free education such as the Military Services in the USA. Bermuda does not need a conscripted Army but maybe something like the National Guard in the USA to be called upon in emergencies. I am sure the morale of the troops would improve with an all-volunteer organisation.

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<sup>254</sup> Ev 71.

The military can be a career for some but it is not an environment that is healthy for others. I hope that all politicians will think about the need for a permanent Army and see the way in the future to change the Regiment from a mandatory obligation for our young men to a volunteer organisation which encourages members of both sexes to join.

25 January 2008

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**Letter to Richard Cooke, Head of Parliamentary Relations Team, Foreign and Commonwealth Office  
from the Second Clerk of the Committee**

**OVERSEAS TERRITORIES: REQUEST FOR FURTHER INFORMATION**

The Committee has asked me to write to you to request further information relevant to the Overseas Territories inquiry.

**BRITISH GOVERNMENT APPOINTMENTS TO THE OVERSEAS TERRITORIES**

The Committee would like a list of the official appointments in each Overseas Territory made by the British Government and the person or bodies responsible for making them. It would also like details of the terms and conditions of each of these appointments, including the length of the appointments and the procedures for terminating them; and information about how each of these appointments are made, including whether they are subject to open competition and, if so, how they are advertised.

**TERMS OF "LEASE" ON DIEGO GARCIA**

Following its evidence session with the Chagos Refugees Group on 23 January, the Committee would also like to request more information about the UK's agreement with the US on Diego Garcia. The Committee notes that:

"There is no lease of Diego Garcia or any other part of the British Indian Ocean Territory (BIOT) to the United States, and they make no payment in respect of their presence there. Under the initial agreement of December 1966 between the UK and the US on the use of BIOT, the whole territory is to remain available for the defence needs of the two countries for an initial period of 50 years from 1966, and thereafter for a further period of 20 years unless either party has given prior notice to terminate it. A further agreement concluded in 1976, which has been supplemented by various other agreements, regulates the establishment and functioning of a United States Defence Facility in Diego Garcia and related matters".<sup>255</sup>

The Committee would be grateful if you could confirm that: (i) the use of Diego Garcia by the US will automatically continue beyond 2016 unless either the UK or US gives notice that they no longer want this arrangement to continue and (ii) that it would be sufficient for the agreement to expire if only the UK were to give notice that it wished to terminate it. The Committee would also like information on the form in which this notice would have to be given.

I would be most grateful to have your response by Friday 29 February.

25 January 2008

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**Submission from Mr E H Peire, Secretary, Rock Firm (War Veterans) Group, Gibraltar**

In connection with the Strategic Priority No 10 we are pleased to submit as follows: Gibraltar is one of the smallest of the Overseas Territories (1.7 Km<sup>2</sup>) most of it occupied by the rock itself. The last 60 years have helped to consolidate the Gibraltarians into a distinct British democratic society which culminated into a self-governed self-sufficient small country with the Constitution of 1969. The United Kingdom's control of foreign affairs, law & order and non-domestic matters has help to protect the people against abuse by its elected leaders and guaranteed its existence in the face of the Spanish territorial claim, which in our view holds no valid legal, moral or historical criteria.

Our electoral system works against independents and minority parties. With each voter able to cast personal votes for as many candidates as are required to form government the strongest political party always gains power. This power is then transferred to the Chief Minister, who becomes an autocrat, and gets to know virtually every family by name. The media is under his complete financial control. Radio and Television, is controlled by the Gibraltar Broadcasting Corporation heavily subsidised by Government. Newspapers that do not follow the official line are denied official advertising and press releases. They barely survive with voluntary writers and anonymous sponsors. Most advertisers are afraid to use these newspapers for fear of repression. The governing party supporters have started a new weekly heavily supported by

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<sup>255</sup> HC Deb, 17 November 2004, col 1560W.



Government advertising. The Foreign Office Mandarins' only real aim as far as Gibraltar is concerned, is the maintenance of excellent Anglo-Spanish relations, in the first place because of trade and finance and secondly the MOD Base because of defence and NATO. They have endorsed the granting of our highly contested New Constitution, which validates Article 10 of the Treaty of Utrecht, although it was only voted for by a third of the total electorate. They have given the Gibraltar Executive more power over the judiciary and police, in a tiny community, which has long been complaining of the suppression of freedom of expression and the lack of checks and balances on restrictive legislation. Space for building is extremely scarce. Over the last eight years the MOD has released land to the local Government on conditions that have enabled it to sell this land to speculators for the building of tall blocks of luxury flats to appeal to high net worth strangers and neglected the needs of the local population. The housing waiting lists cleared prior to the arrival of the present Government are now longer than ever. We condemn the Foreign Office for permitting this. All land ceded to the local government should have had conditions attached to ensure that the use to which they are put favours the local population especially for the provision of affordable housing and flats for rental. The availability of new property has enabled very many UK nationals to come and reside in Gibraltar. The economic boom caused by the building construction and the arrival of the gaming companies to the Rock has also caused large immigration of British executives and workers, many of whom have had to reside across the border because of the high costs locally. These British people were denied the right to vote in the referendum to the New Constitution, by requiring them to have a residential period of 10 years! Although sovereignty of Gibraltar is British, the New Constitution was denying the U.K. jurisdiction over the judiciary and other areas, which might not suit these new residents. Yet, for the New Parliamentary elections the residential period was reduced to only six months! The reason being that with a sound economy assured in the short term new arrivals would not want to rock the boat. Also, many of them resided across the border and the Opposition was known not to be willing to make concessions to Spain and their election might disturb border fluidity. All these non-Gibraltarian voters, over three thousand of them, decided the result of the election. Gibraltar has always been a separate jurisdiction of the European Union and applied all relevant European Directives to its own laws just like any of the other States. Until the time that Spain joined the Common Market Gibraltar had the same responsibilities and benefits as all the other member States although Gibraltar itself was not a state in its own right. Spain uses the argument of Gibraltar not being a State to dilute our status in Europe. The Chief Minister appears unable to stop the Foreign Office to accede to the Spanish bully's demands. This results in the continuous deterioration of the Gibraltar status in Europe with it being left out of many favourable conventions, although legally entitled to them. The CM should adopt the King of Morocco's attitude; like Nelson he will not stand for any nonsense in negotiations. ON SOVEREIGNTY The belief of the Spanish Government of to-day as to their chances of an eventual take-over of Gibraltar can be gauged by comparing an article quoting Felipe Gonzalez in the *EL PAÍS* on 8 March 1999 with one from alleged government sources published by *EL TIEMPO* on 14 December 2008. Mr Felipe Gonzalez was reported as saying the following: "We cannot hide from ourselves, the Spaniards, that the contentious issue of Gibraltar is no longer bilateral, that is to say a problem to be resolved between London and Madrid. For some time now London has imposed on this issue the question of self-determination of the Gibraltarians. With this London has managed to neutralize the long standing contention of this British colony... there is a third party that counts, and plenty, in respect of future accords: the very Gibraltarian people. Therefore, that situation makes the recovery of the sovereignty of the Rock on the part of Spain, difficult, if not impossible. I rather believe the latter . . . If the road to the recovery of the sovereignty passes directly, necessarily, through Gibraltar we can say goodbye for ever to this problem giving it as settled in favour of the Gibraltarians". The G.S.L.P. Party was in office at the time. Quoting Spanish Government sources "*EL TIEMPO*" says:

"Spain is about to take an important step forward in the Gibraltar contentious question coinciding with the 25th anniversary of the reopening of the fence by the Spanish Government of Felipe Gonzalez, the Executive of Rodriguez Zapatero wants the veteran diplomat Agustín Gervás to direct the new Cervantes Institute on the Rock. The election of Gervás has been well thought out on the part of the Spanish Government. They have not elected a University professor or one concerning the Spanish language and literature, but, a career diplomat, and the one that best knows this long Anglo-Spanish conflict. In the eighties he led the Gibraltar Office in the Ministry of Foreign Affairs and he was later cultural attaché in London and Lisbon. His principal duty will be to direct the new courses in Spanish and the activities carried out by the Cervantes Institute, but he will not be limited to this. His presence as a diplomat will enable him to expound in private the position of Spain against any independent moves by the Gibraltarians. Besides, as semi-official representative of Spain he will have an important role in the political strategy towards the British colony as devised in Madrid. The PP party acknowledges the importance of a diplomat leading the Institute. The Socialist Executive will not grant him diplomatic status for this new mission so his course of action on the Rock will be limited and he will need to exercise care in public. This way he will not need to be formally accredited to the United Kingdom as cultural attaché and thus avoid the initial apprehension of the Gibraltarian leading class, who sees with suspicion the arrival of this particular Spanish Horse of Troy in the shape of an innocent cultural entity. The reality is that the Chief Minister of the Rock, Peter Caruana, has accepted the promotion of Castilian in Gibraltar and now has to offer a public building to the Cervantes Institute for its home. The local leader objected from the start to our country owning an official site on the rock, that is to say a piece of the Spanish State, by ceding the building he retains the final control of the Institute. In

case of grave crisis with Spain he could play his card closing the building. What will be inevitable will be the raising of the Spanish flag over the building, an act of great symbolism to which only a few will be indifferent. The leader of the Gibraltar Opposition, the fire-proof Joe Bossano, sees the wolf's ears of this whole story and retains his objection to a Cervantes whose objective is to "replace" British influence for that of Spain on the Rock".

This situation had been brought about by the Foreign Office, using a weak-on-Spain Chief Minister of Gibraltar, a master of spin, who has been provided with the means to create wealth with which to generously pay his under-worked ministers and to hoodwink and twist the minds of half of the residents of Gibraltar by scaring them of the brave opposition by demonising their leader. The quality of the Opposition at the last elections by far surpassed that of the Government.

28 January 2008

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**Submission from Mr E H Peire, Secretary, Rock Firm (War Veterans) Group, Gibraltar**

**GIBRALTAR—CORDOBA AGREEMENT**

Thank you for your letter of 7 September in reply to our request for assistance in obtaining a reply from the Foreign Minister. We have this month received a reply from The Group Leader of the Western Mediterranean Group. The essence of this matter is that the Foreign Office with the connivance of Gibraltar's Chief Minister has provided Spain with joint-use of a British military airport by the wily use of the irrelevant Schengen Accord of which Gibraltar is not a part. A subtle use of a convention that does not apply to Gibraltar and they cannot satisfactorily explain away; the twin brother of an Airport Agreement that the people of Gibraltar had previously rejected. The solution could have been to apply VAT to the Rock and include it in the Schengen area. The result now is that for the rest of Europe "Gibraltar begins to be Spanish" as the headlines of the Spanish weekly Magazine "*El Tiempo*" claimed on the 14th of last month.

Our specific concerns on sovereignty were described to the F&CO as "... the terms that, enable Spain to use the MOD airstrip as if it were a Spanish Airport, to appoint a Spaniard to a liaison committee and to share administrative functions at the terminal". They fail to satisfy us on the first concern and completely ignored the other two. We still feel that the guarantee on sovereignty in our Constitution has been breached.

Mr Caruana's re-election has nothing to do with his policy on Spain but rather that Gibraltarians have not forgiven the GSLP debacle due to the fast launches tobacco runs. He obtained 3% less votes (48%) but managed to beat the opposition by a few hundred because of the thousands of UK Nationals now working and/or residing in Gibraltar, who increased the electoral list by about four thousand through Mr Caruana's change in the law reducing the qualifying residential period to a mere six months. These same people had been denied a vote in the Referendum on the New Constitution because there was so much power being claimed from the UK on the judiciary and the police.

29 January 2008

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**Submission from Brenda Lana Smith, Bermuda**

**HUMAN RIGHTS IN THE OVERSEAS TERRITORIES**

1. As an abused septuagenarian male-to-female 23-years' post-operative transsexual Bermudian I am actively interested in amending the Bermuda Human Rights Act 1981 to afford full legal recognition of a post-operative transsexual person's presented gender, and criminalize discrimination against gender variant persons, particularly on the grounds of their presented gender identity.

2. While not precluding my right of individual petition under the European Convention on Human Rights ("ECHR") consistent with the rulings of the European Court of Human Rights with respect to the Convention rights of transsexual people under Article 8 (right to respect for private life) and Article 12 (right to marry) I respectfully draw to the House of Commons Foreign Affairs Committee's attention the lack of human rights legislation to protect transsexual persons on Bermuda.

3. The Bermuda Human Rights Act 1981 by omission not only legitimizes discrimination against persons on the grounds of their sexual orientation, but on one's presented gender identity, too . . . to wit:

4. Gleaned from a lengthy electronic exchange with the British government concerning the lack of human rights legislation to protect transsexual persons on Bermuda the United Kingdom Foreign and Commonwealth Office, Overseas Territory Department, confirmed:

- That the UK Gender Recognition Act 2004 does not extend to any British Overseas Territories.
- That Bermuda has not enacted any legislation to recognize transsexuals.

- That it would appear that there is no gender recognition system in place in Bermuda and Bermudian courts or officials will not therefore recognize United Kingdom gender recognition certificates.
- That Bermuda is expected to comply with obligations under human rights instruments which have been extended to it. In particular, Bermuda is bound by the European Convention on Human Rights (“ECHR”) and, like persons in the UK persons in Bermuda have the right of individual petition under the ECHR.

5. Accordingly, the financial cost to the Bermuda government of complying with its obligation under the ECHR, by voluntarily rectifying the present lack of rights afforded transsexual persons under its jurisdiction would be significantly less than having to defend one of probably no more than a handful of abused transsexual persons pursuing favorable justice that they understand they will receive—by precedent (*Goodwin v The United Kingdom* and *I v The United Kingdom* (2002) 35 EHRR 18.)—before the European Court of Human Rights.

29 January 2008

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### **Submission from Members of the Legislative Council of St Helena**

#### **BACKGROUND**

1. The Island of St Helena, an Overseas Territory of the United Kingdom, is of volcanic origin and covers 47 square miles. It is located north of the Tropic of Capricorn in the South Atlantic Ocean, 4,000 miles from the UK, 700 miles from Ascension, 1,100 miles from Angola, and 1,700 miles from Cape Town. Our population is around 4,000 persons and has fallen significantly in recent years. The economy is mainly dependent on imports and there is an unusually high proportion of remittance income. The private sector is small and all costs relating to transport and energy are high. With access only by ship, the economy has not really entered the global market, and we are heavily dependent on UK government assistance. Following a recent feasibility study it has been agreed to fund an international airport on St Helena but this will not be in operation until approximately 2012, until which time shipping will remain the only mode of access for all goods and people. It is hoped that the establishment of an airport and associated tourist development will stimulate wider economic development and eventually lead to a financially independent St Helena.

#### **THE LATE SUBMISSION OF EVIDENCE**

2. When the invitation to submit evidence to the FAC was discussed in the Executive Council (Exco) last October, the atmosphere of government was rather different and the decision was made not to make a submission. All Councillors have since reconsidered that judgement in the light of a number of positive developments over the last few months. We now have a new Governor, a new Chief Secretary, a more open style of government as well as the positive news of the submission of two bids for the construction of the airport at the end of November. These and other factors have generated a rather less cynical atmosphere throughout the community. This opportunity to make a late submission therefore comes at an opportune time, and we would wish to make a number of comments that we trust will be of assistance to the Committee.

#### **AIR ACCESS**

4. The St Helena Air Access project tackles the long term future of the Island and is foundational in enabling us to create a situation that gives us the best chance of having a self-sustaining economy. This project is probably the most important venture ever undertaken on the Island and is the cornerstone of our dual desire to achieve financial independence and put an end to the problems of depopulation.

The project comprises:

- the construction and operation of an airport capable of supporting services by Boeing 737-800 or equivalent aircraft;
- the conception and implementation of an appropriate tourism marketing strategy;
- the essential changes to the legal and regulatory framework to facilitate air services and protect against possible unwanted side effects;
- the setting up of environmental safeguards including a rigorous Environmental Impact Assessment (EIA); and
- the establishment of effective and appropriate project management arrangements to deliver the project.

5. Work on Air Access is at a key stage. An Invitation to Tender for the Design Build and Operate contract was issued in May 2007. Two of the pre-qualified consortia subsequently withdrew from the process. The remaining two consortia attended a week long site visit to St Helena in June 2007 and one of

the consortia made a further visit to St Helena. Both of these consortia submitted bids on 30 November to build the airport and related infrastructure. We will know the fate of the project during the northern spring once the complex evaluation process has been completed.

6. DFID is supporting the establishment of a scheduled service, (initially a weekly flight), to a recognised international hub. We are especially concerned that a regular air link to Ascension Island, where 78.1% of the population are Saint Helenian (Saints) is established right at the start. Procurement of an air service provider will be carried out once construction of the airport begins.

7. The Public and Private Sectors of the economy are planning to work in harmony on the many plans for modernisation, development and managed improvement that are aligned to the construction of the airport. Our Sustainable Development Plan (SDP—copy attached), is the result of a great deal of work, much of it carried out by Islanders. The SDP charts our pathway and shows that we will be working closely with HMG in ensuring that the financial assistance from the UK is well managed. It will be focussed on developing our infrastructure, on strengthening the institutional framework, and encouraging and growing the private sector through outsourcing and direct stimulation.

8. It is believed that the presence of the airport will enable the many Saints living and working elsewhere to be able to visit, and in many cases return to, their homeland. Although this resource may well be a driver of economic growth, we are all too aware that we will need to develop a long way before our salary levels equate to those available to Saints elsewhere. The re-uniting of families is an important priority to us.

9. The economic growth plans concentrate on tourism. Much of our thinking has been led by the success of other islands in this sphere. Nevertheless we appreciate the risk inherent in the degree of dependency on this market which is at the whim of world economic pressures. We are hoping to improve the productivity of our fishery as well as striving to move our agriculture back towards the prominent place it held in our rich history. However we know that these prizes will be hard won and are all too conscious of the size of the graveyard of past plans and reports.

#### LEGAL AND REGULATORY CHANGES

10. An Airport Development Ordinance was passed in 2006 to facilitate the design, construction and operation of the airport, and to provide the necessary legal framework for St Helena to enter into the relevant contractual arrangements. It includes provision for the application for Development Permission to be submitted directly to the Governor in Council rather than the Land Development Control Board.

11. A full review of the legislative environment has been completed, and a further programme of legislation is planned. In an effort to seek the views of the public and to make Government more transparent and accountable, We have established a new pattern for consultation over all future proposed legislation. This will enable the public to debate and scrutinise draft legislation and evolving policies at constituency meetings. This new procedure will provide for a broader and more structured input from the public.

#### FINANCIAL SERVICES LEGISLATION—PUBLIC CONSULTATION

12. In 2007, we published a statement of our policy in relation to the management of financial services in St Helena; the statement announced an intention to enact appropriate legislation. Since then our officials have been consulting with relevant specialist advisers off-Island, to prepare draft Bills to carry the policy into effect.

13. To assist with this consultation, the Attorney General's Chambers published the draft Bills on 19 December 2007. The drafts, a Financial Services Bill and a Money Laundering Bill, are important at both a local and at an international level. Locally, the Bills aim to protect St Helenians from falling victim to unscrupulous financial service providers as the economy begins to develop in preparation for tourism. At the international level, the new laws are necessary for St Helena to comply with international obligations and ensure that St Helena itself and businesses operating here are not subjected to sanctions by other countries and territories.

#### DEVELOPMENT ASSISTANCE PLANNING MISSION, MARCH 2007

14. A UK Government team (Development Aid Programming Mission) visited St Helena in March 2007 to review the use of budgetary aid over the previous year and agreed a three-year package of future development assistance. The team also advised on the draft SDP and linkage to departmental business plans including a framework for monitoring progress towards implementing national and departmental reform programmes. As a result of agreements reached during the Mission, the Saint Helena Government (SHG) is able to benefit directly from any reform measures by being able to retain and reallocate any budgetary savings in the recurrent budget made from efficiency measures and/or higher domestic revenues within the three-year framework.

15. The advent of the airport within five years means that capital investment in infrastructure will need to be speeded up in order to allow for the completion of agreed projects in a shorter timeframe than would ordinarily be possible. Thus certain infrastructure needs (eg in the island's roads, utilities and buildings)

should enjoy a “front-loading” of capital investment from HMG. This helpful timing of investment is dependent on the achievement of short term goals that are clearly set out in the SDP. However we are nervous over the utilisation of the phrase “full cost recovery” especially in the light of the poorer members of our society.

16. The SHG published the SDP on the 20th November 2007. The Plan builds on the six priority strategic objectives identified and contains details on key areas of work that are an essential part of the process to prepare the Island for the opening of the Airport. These are:

- improved access;
- further improvement in the standard of education for the people of St Helena;
- the development of a sustainable and vibrant economy to the benefit of St Helena;
- the development of a healthy community in a safe environment;
- the promotion and development of a sustainable workforce; and
- progress towards the establishment of modern democratic and human rights for all our people.

#### ECONOMIC DEVELOPMENT

17. SHG published its new Investment and Tourism Policies in October 2006. These policies demonstrate SHG’s commitment to raising standards of living, by securing greater levels of investment and ensuring maximum benefit from tourism development for the island’s economy and people. The investment policy seeks to provide appropriate encouragement to inward investors, while at the same time ensuring that St Helenian businesses and employees are able to benefit from opportunities arising from air access.

18. The St Helena Development Agency has responsibility for identifying business opportunities for Saint Helenians and creating the conditions for a more dynamic and stronger private sector. It is also the first and most important point of contact for overseas investors.

#### CONSTITUTIONAL REFORM

19. Following detailed negotiations with St Helena Councillors, a draft new Constitution was prepared in 2005. The draft Constitution would have established a ministerial system of government in St Helena as well as introducing revisions in a wide range of areas. Some of the proposed changes were acknowledged to be controversial. In particular the question as to whether a new Constitution should establish a ministerial system. This question was put to the people of St Helena in a consultative poll. The result of that poll was negative. Further consideration of a new draft will shortly be underway which builds on the 2005 basis but accepts that we are not yet ready for a ministerial form of government.

20. In an attempt to achieve greater transparency and trust between Government and the Public, and more inclusiveness amongst elected representatives, ExCo has agreed to its Chairman making a broadcast summarising the discussions immediately following each ExCo meeting. In addition all Councillors have agreed to the distribution of ExCo papers to all twelve Councillors rather than just the five on ExCo. These moves appear to have been well received by the public, have helped to dispel allegations about unnecessary secrecy, and provided a broader base for discussion and advice both within and to Government.

#### THE FUTURE

21. We do not doubt that once construction of the airport begins there will be a surge of much needed confidence throughout the Island. However we are acutely aware that we are the stewards of a unique natural and social environment and we will strive to ensure that the advent of the improved access that we all want is not achieved at the sacrifice of much that we hold dear.

22. We are also aware of the need for training and support throughout the community. The ongoing success of the AVES Project (Adult Vocational Education) demonstrates this point. Indeed we as Councillors are already undergoing a helpful training process and we are keen to see the whole of our administrative and managerial support in government working to the highest professional standards and shaking off the bureaucratic systems that bedevil much of post colonial administration. We feel that we have started on the road to achieving these aims.

23. All Councillors strongly support the recommendation contained in the recent NAO Report on the Overseas Territories, that HMG Departments in addition to the FCO and DFID should have greater involvement in the OT’s. Much as we respect and appreciate the support given by both the FCO and DFID, we feel we would greatly benefit by having direct access to DEFRA, the NHS, the DTI and other HMG Departments.

24. The next few years are crucial in St Helena. We enjoy sustained support from HMG and are keen to manage the pathway towards a prosperous and self-sustainable future. There will be pitfalls, and there are risks, but all Councillors feel that the considerable effort will be worthwhile.

29 January 2008

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### Submission from Mr S Rhys-Williams, Montserrat

#### PERSONAL DETAILS

I am a citizen of the United Kingdom, served in the Royal Air Force for 12 years, joined the European Space Agency in Holland in 1968 and travelled extensively on their behalf for four years.

In 1971, I established an electronics group—Jasmin plc—with two partners. The company grew to an annual turnover of £16 million by the time I retired in 1997. I now live full time on Montserrat.

My evidence is as follows:

I have observed the operation of the governmental regime for the past five years and consider some of the decisions taken to be rather at odds with natural law and justice.

The first case deals with the United Kingdom Government directive, which I presume, affected all Dependent Territories, that Montserrat MUST accept that homosexuality is no longer a crime. This was forced on the people of the island even though there was total opposition from the people and all the churches.

The second case covers Anticorruption and Good Governance. In the United Kingdom, legislation has been enacted, which requires all members of Parliament, to declare their interests in the Commons Register. I am not sure if the same rules now apply to local councilors and all civil servants.

I spoke to the Head of the FCO delegation sent to Montserrat to deal with changes to the Constitution. I was told that matters concerning Anticorruption and Good Governance were NOT the responsibility of HMG but rather for the Government of Montserrat to enact.

My question to the Committee is this:

Why in the first case can HMG change the rules over the avowed wishes of the people and Government of Montserrat, when in the second case even though the law has been passed in Parliament, it cannot enforce the same rule on Montserrat? In my view this is hypocritical.

At this time, HMG is funding the island as Grant-in-Aid via DFID. This represents 70–80% of the island's revenue. It must be in the interest of the British Taxpayer to ensure that the funds given are not used corruptly. Surely this must be as important as the matter of homosexuality?

Turning to other matters, it is patently wrong to have two funding departments supplying monies to the island. It makes for bad governance. The FCO or DFID should be wholly responsible, then there is no chance of the GOM playing one off against the other. At present both parties blame each other and nothing gets done.

#### SECURITY AND OVERSEAS AFFAIRS

Recently a group of illegal “boat” people were put ashore in the south of the island. The FCO through the Governor's office has indicated that they are the responsibility of GOM. How can this be, as the present system clearly defines that Security and Foreign affairs are the SOLE responsibility of the FCO. Montserrat has no overseas offices or embassies.

#### FREEDOM OF INFORMATION

The Freedom of Information act has been passed and implemented by Parliament and all public bodies are duty bound to provide any information requested by any member of the public, exceptions are matters related to Security of the Nation.

Why does this Act of Parliament then NOT apply to all the Overseas Territories? It does not apply to Montserrat where all matters dealt with by the GOM are shrouded in secrecy.

#### CONCLUSION

There are many other matters which need to be examined closely. They do not, however, come within the scope of the FCO. The main one having TWO masters controlling financial affairs, which in itself leads to mismanagement. Why for example does DFID provide GOM with Grant-in-Aid funds and then say "We have provided 70% of the island's running expenses, but we DO NOT ask how the money has been spent?" This is and would be a recipe for disaster in any company or concern but especially in countries where corruption is endemic.

Many decisions made by DFID have been proven to be incorrect. In some cases there have been large cost over runs, which should have been recoverable by the department concerned. Through poor legal judgment, the private contractor, has been able to walk away without repaying a penny!

I hope that the conditions, which are present here in Montserrat do not prevail in the other Overseas Territories.

29 January 2008

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#### Submission from Mr John Borda

#### GIBRALTAR

This is a report on issues affecting Gibraltar. Some issues mentioned here are also of interest when considering the Falkland Islands. I have not used diplomatic language, because it important to state the truth clearly, as, in my opinion, obfuscation has done more harm than good in the Gibraltar case.

#### *Summary*

1. Spain is not a democracy for Gibraltarian purposes.
2. Spain has no legitimate claim.
3. Spanish initiatives relating to Gibraltar can have negative impact elsewhere (UN, EU).
4. Spanish politicians and media frequently slander Gibraltar.

#### *Recommendations*

1. Challenge all "abuse of veto" exclusions at EU.
2. Resist corruption/qualification of right to self-determination at the UN.
3. Challenge extension of "territorial integrity" definition at UN.
4. Remove Gibraltar from UN non-self-governing territories list.
5. Withdraw offer of ICJ mediation- unilaterally declare matter resolved in Gibraltar's favour.
6. Extend Gibraltar's territorial waters to 12nm.
7. Be wary of "temporary concessions" (eg frontier flow).
8. Press for further normalization of Spain's relations with Gibraltar, including an end to the illegitimate claim.
9. Set up a fighting fund to prosecute those Spanish politicians and media that slander Gibraltar.

#### DEMOCRACY

Spain does not formally recognise Gibraltar's democratically elected government, nor the Gibraltarians' right to self-determination. In addition, Spain abuses her EU veto to exclude Gibraltar from EU legislation (legislation without representation), and is attempting to corrupt the UN's self-determination clause in order to exclude Gibraltarians from this fundamental human right. As such Spain cannot be regarded as a democracy for Gibraltarian purposes.

#### *EU*

Spain's abuse of her veto to exclude a people and a territory she does not represent democratically is a violation of Gibraltarians' right to be represented in the formation and application of legislation. These exclusions should be legally challenged in the European Court of Justice (ECJ). This behaviour sets dangerous precedents for other disputes (eg Turkey/Cyprus). If Spain is not happy with EU legislation, she should exclude herself from it, not others. This is a path the UK has legitimately taken on several occasions. No further vetoes should be tolerated.

Recommendation 1: Challenge all "abuse of veto" exclusions at EU.

*UN*

Spain and Argentina are currently attempting to undermine the right of self-determination for non-self-governing territories (NSGTs) in the United Nations, by adding the qualification “. . . except where there is a territorial dispute” to the clause on self-determination. It does not stipulate that this dispute should have any legal basis (which the “disputes” over Gibraltar and the Falklands do not), and is a recipe for chaos, as any crackpot could then follow the examples of Franco and Galtieri and claim other NSGTs as their own! Effectively, one person claiming a “territorial dispute” could override the democratically expressed wishes of thousands, undermining a fundamental democratic principle. Should the UN C24 recommend such an amendment, a vote of no confidence must be passed.

Recommendation 2: Resist corruption/qualification of right to self-determination at the UN.

Spain is further attempting to extend the “territorial integrity” definition at the UN. While, as currently stated, the clause would prevent, say, Catalonia seceding from Spain, it did not prevent East Timor seceding from Indonesia, or prevent the break-up of Yugoslavia or the USSR, and can be considered irrelevant today. Spain’s attempt to re-interpret it would mean that she could re-absorb Gibraltar (which she only held for less than 250 years, over 300 years ago) in violation of the right of self-determination. This also could send dangerous precedents for the former Soviet republics, Taiwan, and no doubt other places.

Recommendation 3: Challenge extension of “territorial integrity” definition at UN.

With Gibraltar’s new Constitution, designed to be “non-colonial”, Gibraltar can safely be removed from the UN’s list of NSGTs. This should be pursued vigorously, in order to ensure Gibraltar’s future political stability, and to deny Spain a forum where she might damage the rights of millions in order to pursue her narrow self-interest.

Recommendation 4: Remove Gibraltar from UN non-self-governing territories list.

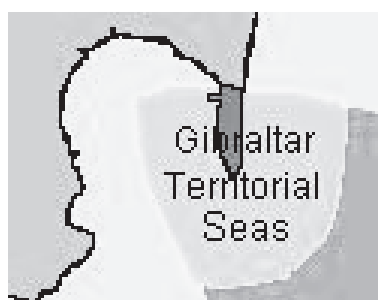
*Territorial Mediation*

For a long time, both the UK and Gibraltar have offered Spain the option of taking their claim to the International Court of Justice (ICJ). Spain has yet to take up the offer, in spite of having decades to prepare a case. This is because she does not have a case. The Treaty of Utrecht only has a “first refusal” clause (which does not constitute a claim), which is rendered null and void by the Gibraltarians’ right to self-determination. The UK should declare the matter resolved unilaterally in its favour, and formally withdraw the offer, thus closing the door on future dispute by Spain.

Recommendation 5: Withdraw offer of ICJ mediation—unilaterally declare matter resolved in Gibraltar’s favour.

*Territorial Waters*

Gibraltar currently has claimed 3 nautical miles (nm) territorial seas, but could legitimately claim 12nm, as Spain currently does. This has caused complications, such as in the Odyssey Marine case, where Spain has acted within the 3–12nm “shadow” (in blue in the picture) created by Gibraltar, which is effectively “high seas”, in what can only be described as acts of piracy, illegally detaining vessels under threat of deadly force. Spain illegally claims Gibraltar’s waters as her own. The claiming of the full 12nm of seas would prevent future acts of piracy, (Spain does not act inside the 3nm limit, despite not recognizing it), and secure rights to any mineral wealth and sea energy (tide, wave and current could be harnessed for Gibraltar’s future energy needs) as well as clear the way for the salvage of the HMS Sussex. This will need to be enforced with additional police and Royal Navy resources, especially as the waters are on a smuggling route from Africa.



Recommendation 6: Extend Gibraltar’s territorial waters to 12nm.



*“Temporary” concessions*

Many times since the frontier was opened, Spain has promised to “improve frontier flow” to reduce the queues into and out of Gibraltar. This has only grudgingly happened, and can be described as a “temporary concession” as the flow can be restricted by Madrid when it suits their politics. “Frontier flow” should not be considered as a fair exchange for a permanent advantage in Spain’s favour. The recent telephone normalization and the pensions resolution can be described as permanent concessions, as they cannot be undone. It must also be borne in mind that it is Spain’s position which is abnormal with relation to Gibraltar, so “tit for tat” concessions may not be possible, as Gibraltar never adopted restrictions against Spain. Thus, “normalization” is the goal of the Tripartite process, ultimately leading to Spain dropping her illegitimate claim to Gibraltar.

Recommendation 7: Be wary of “temporary concessions” (eg frontier flow).

Recommendation 8: Press for further normalization of Spain’s relations with Gibraltar, including an end to the illegitimate claim.

*Racism, libel and slander*

*“I make a fuss about Gibraltar when I don’t want Spaniards looking at me”.* Gen F Franco

Spanish politicians and media frequently malign Gibraltar, which is rarely given, and has no resources to enforce, a right of reply. From the illegal claim flows the racist concept that Gibraltarians have no rights, as they would be an inconvenience to a Spanish takeover. Acts of economic sabotage (false accusations of money-laundering, pollution, etc. aimed against the finance centre and bunkering industries, respectively, see Annex 1, *Gibraltar Chronicle* 30/1/2008 as a recent example)<sup>256</sup> have created an anti-Gibraltarian attitude in Spain. A fighting fund should be set up to contest these accusations, preferably ending with those responsible being prosecuted by the European courts. The punishment of some of these individuals or companies might serve “pour encourager les autres” and reduce the number of slurs, thus improving Gibraltar’s image and viability, as well as Anglo-Spanish relations in the longer term.

Recommendation 9: Set up a fighting fund to prosecute those Spanish politicians and media that slander Gibraltar.

29 January 2008

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**Submission from Jonathan Suter, Bermuda**

I would like to take this opportunity to write to you about the lack of action on behalf of the Bermuda Government to ensure that sexual orientation is included in the Human Rights Act.

While the current government is commendably taking action to encourage discussion on the topic of race, it has made no such intentions of doing the same in regards to sexuality. For a Government who is so dedicated to empowering individuals who have been down-trodden in the past, it provides little hope for affording a sense of belonging to individuals of the queer community (homosexual, lesbian, bisexual, transgender, transsexual, and inter-sex). It is deplorable that on Bermuda’s beautiful shores, many individuals must hide and deny who they really are, in order to be fully accepted. One only needs to refer to the controversy that was created around and influenced the Rosie O’Donnell cruise decision not to visit Bermuda. Yes, individuals have the right to freely express themselves, but if they do so in a way that is offensive, hateful and unproductive, it is completely uncalled for.

At the end of the day, the queer community are just normal people, like you and I, and everyone else. They just happen to be attracted to members of the same sex, both sexes, or neither sex. How that has any negative impact on society is a mystery to me. Certain individuals from the church and other organisations will claim that it is immoral and wrong. My question to them is how can loving someone be either of these? After all, love is the premise from which they preach.

Ensuring that individuals, regardless of their different personal characteristic, are able to fully participate in society without the fear of retribution or discrimination, is one of the fundamental human rights, under the UN Declaration of Human Rights. Whilst “sexual orientation” is not included in Article 2 explicitly, there have been several attempts to include it, with the understanding that the term ‘other status’ provides for the inclusion of sexual orientation, whereby individuals regardless of their sexual orientation are entitled to the rights and freedoms put forth in the Declaration.

If the Bermuda Government were to take the lead by adding sexual orientation to the Human Rights Act, it would ensure that queer individuals could not be discriminated against because of being queer. It is about affording the queer community the same rights and protection from discrimination as everyone else, and promoting equality and acceptance of people for who they are.

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<sup>256</sup> Annex 1 referred to above has not been published with this submission as this is a publicly available document.

The failure to include sexual orientation in the Human Rights Act is a failure of the Bermuda Government to ensure that all Bermudians and residents on the island are afforded the same fundamental human rights that should be afforded to all individuals regardless of their individual characteristics.

It's time to do something about it!

29 January 2008

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**Submission from Mr Colin Williams, Turks and Caicos Islands**

**TURKS AND CAICOS ISLANDS ("TCI") ENQUIRY**

From articles in the TCI press (following Leigh Turner's recent visit) I understand that your committee are presently investigating governance issues in TCI.

I am a permanent resident in TCI having departed the UK in 1995 to live in Bermuda and work in the USA until 2001 when I semi-retired and moved to new Providences in the Bahamas. In May 2003 I purchased a canal lot in the East Canal sub-division of Leeward Estate, Providenciales and set out to build our final retirement home. We moved to TCI in May 2005 since when I have been active with the local owners' association and in Estate matters within the Leeward Estate development. In the course of my Estate activities I keep a close eye on the changing environment and am in direct touch with Karen Delancy, my local member of the TCI parliament.

The TCI Government has a Minister of Natural Resources, Fishing and the Environment which appears to make the un-policed mining activity, reported in the letter attached as Appendix A, even more surprising. However the scale of those activities and the artists impression of Mangrove Cay resort indicate that the political process is not able to stay on top of the aggressive development going on in the islands. On behalf of concerned locals I trust the committee can help to resolve these issues.

30 January 2008

**APPENDIX A**

The governor of the Turks and Caicos Islands acting in the name of and on behalf of HRH Queen Elizabeth 2nd recently granted a 99 year Minerals Licence in favour of Leeward Waterfront Limited permitting them to dredge the sea bed—in order to maintain a navigable sea channel for recreational yachts entering from the Atlantic into the Leeward channel known as "Leeward Going Through" at the east end of Providenciales. In return there is a nominal annual fee and \$1.00 per ton royalty—for spoil with a potential market value of over \$50.00 per ton.

To everyone's horror Leeward Waterfront Limited have already extracted well over one million tons of sand—with little benefit to the navigable condition—and piled it over several acres, 50ft high on the foreshore—apparently with the intention of neighbouring development and potentially selling the sand at a profit. Sadly, as in neighbourhood developments in North Caicos, this new mining process has stirred up sand over a wide area, causing untold environmental damage to the coral reefs—without apparent reaction from the Government's environmental Ministry. This activity is in direct contravention to Clause 3(a) (v) of the October, 2007 licence—requiring the licensee to prevent the migration of spoils into the Leeward Channels.

TCI, once one of the top 5 unspoilt coral environments in the world, is now ranked by the National Geographic at the bottom of their list. I doubt Her Majesty would be amused to discover the damage caused in her name. To add insult to the Royal Family's injury the dredging contractor has begun to pile sand on a coral reef and conch breeding ground within Princess Alexandra Nature Reserve on the north side of Mangrove Cay. Apparently the TCI government have given outline permission for a resort to be developed on the coral reef with complete disregard to either environmental conservation or the Nature Reserve.

We understand that Foreign and Commonwealth Office (FCO) are conducting an enquiry into governance of the Turks and Caicos Islands. There have been abuses of power in the West Indies in the past and in the Crown Colonies. Many of the decisions made in TCI in the name of progress are difficult to understand. Granting rights to destroy the very environment that attracts tourism to TCI would only appear logical in the narrow interests of individuals and corporations rather than the nation as a whole.

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**Submission from Mr L Hale, Company Secretary, St Helena Line Limited**

OVERSEAS TERRITORIES

Our attention has been drawn to a submission by Mr Andrew Bell dated 15 October 2007 to the Foreign Affairs Select Committee inquiry into the Overseas Territories.<sup>257</sup> Mr Bell's evidence is, unfortunately, inaccurate in a number of respects as regards the relationship of The St Helena Line Limited (SHL) with Crown Agents and several of the other issues raised have been the subject of correspondence involving the Department for International Development (DEID) and National Audit Office.

At Paragraph 1.3 of his submission Mr Bell states that SHL is a branch of Crown Agents. This is incorrect as SHL is a UK registered company which acts for the St Helena Government (SHG) in holding legal title of the RMS St Helena. The company was formed at the behest of HMG and SHG. Its core objective is the provision of a safe and reliable shipping service to meet the needs of St Helena (as determined by SHG) at the lowest achievable cost and demand upon funding made available by the DFID. SHL operates under a formal agreement with SHG and DFID, To assist with the achievement of this objective, SHL engages the services of third party ship managers. Since 2001, when the contract with Curnow Shipping Limited (a company of which Mr Bell was a director) was terminated, the ship management contract has been held by Andrew Weir Shipping Limited.

In the same paragraph Mr Bell refers to Crown Agents' "hired in shipping consultant". Again this statement is inaccurate and no consultants are provided by Crown Agents to SHL. Following the formation of SHL, Crown Agents was requested by SHG and DFID to nominate a Chairman for the company's Board of Directors and to provide certain administrative services relating to the company's operations. The shipping consultant was appointed by SHL with the approval of its Principals to assist SHL to meet its objectives.

In Paragraph 1.4 Mr Bell states that control of SHL has been left with Crown Agents. As will be clear from the preceding paragraphs this statement is also incorrect.

Finally, in Paragraph 1.8 Mr Bell asserts that SHL and Crown Agents have never been required to openly bid for their government contract. As will be evident from the foregoing, it would be difficult to envisage a situation in which SHL might be required to bid for the very service for which it was established.

30 January 2008

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**Submission from Mr G E Harre, Former Chief Justice, Cayman Islands**

1.1 In the submissions which I sent I used headings which I shall repeat now where appropriate. First, however, I refer briefly to my submission dated 9 October in which I suggested that the responsibility for the affairs of Her Majesty's Judges in the Overseas Territories should fall under the Ministry of Justice rather than the Foreign and Commonwealth Office.<sup>258</sup> That was not to suggest that I did not recognise the importance of the interdepartmental consultation which takes place on such matters and others relating to the Overseas Territories

1.2 GOVERNANCE

On 12 September 2007, the Lord Chief Justice of England & Wales delivered the opening speech at the Commonwealth Law Conference in Nairobi. His theme was judicial independence, and he adopted the so-called Latimer House Guidelines endorsed by Commonwealth Heads of Government in 2003 as the framework for his speech. I shall make reference to his speech later in these my further submissions by way of more detailed treatment of issues which I suggest fall within the ambit of good Governance and to which the Foreign & Commonwealth Office and its appointees in the Cayman Islands did not deal with appropriately.

The full text of Lord Phillips' speech may be found, if desired, in the record of the Commonwealth Law Conference

1.3 JUDICIAL APPOINTMENTS PROCEDURE

The current review of the Constitution of the Cayman Islands includes a recommendation concerning the functions and membership of a Judicial and Legal Services Commission. The absence of such a body caused difficulty in the Cayman Islands during my tenure there. I have some reservations about the proposed membership of the Commission, in particular the inclusion of a nominee by the leaders of Government and

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<sup>257</sup> Ev 259.

<sup>258</sup> Ev 183.

Opposition respectively. I think that this introduces the Government input at quite the wrong point where it may introduce unnecessary controversy and even political grandstanding but that I can best pursue this as part of the general debate on the Constitutional Review.

#### 1.4 THE OFFICE OF ATTORNEY GENERAL

The Constitutional Review has recommended, as I did in my submission to your Committee, that the Attorney General should no longer be a member of The Legislative Assembly or of Cabinet. How he deals with any remaining conflicts of interest arising from his position as legal adviser to successive Governments will be matter for his professional conscience and possibly the professional conduct provisions of the proposed Legal Practitioners' Law. Reform of this is long overdue and finalisation of the draft Bill is being strongly urged by the Cayman Islands Law Society.

2.1 The Latimer House Guidelines call, among other things, for an independent, honest and impartial judiciary as being integral to upholding the rule of law. In that context Lord Phillips observes that judicial independence requires that judges should be true to their oath to administer justice without fear or favour, affection or ill will. He continues his consideration of the subject with a reference to the Latimer House Guideline which requires an appropriate independent process that will guarantee the quality and independence of mind of those appointed. After explaining the position in England and Wales, he says this—

“My understanding is that, so far as judicial appointments are concerned, we are catching up with the rest of the Commonwealth in that most members have transparent appointment systems that are protected from political influence, although there are some notable exceptions

Although in general I see no role for the executive in selecting judges there is a case for a limited power of veto in relation to the most senior appointments. The senior judiciary today have, to some extent, to work in partnership with Government”.

It is inappropriate that the Cayman Islands should still be a place which does not have an independent Commission charged with responsibility for Judicial appointments as a result of the lack of urgency given to this fundamental matter. I first raised it with the Governor of the day as long ago as 1996.

2.2 The next topic dealt with by Lord Phillips was judicial terms of service. On that the Latimer House Guidelines say that, as a matter of principle, judicial salaries and benefits should be set by an independent body and their value should be maintained. Judges should never feel that if they do not please the government their salaries may be at risk. I never felt that during my time as Chief Justice, although I was told in blunt terms by a Governor that one of my decisions had embarrassed the British (sic) Government. I have felt, however, that my retirement package has been adversely affected by my lack of rapport with the Governor who approved it. Moreover, if in ten years of judicial service in a small jurisdiction a judge never makes a decision which displeases anyone in a local position of power he will not have been doing his job. For that reason it is particularly important that judicial terms of service and, consequently, independence should be well protected there.

2.3 It was inappropriate that salaries and benefits of judges should have been set, not independently, but on the recommendation of a single member of the executive appointed as a consultant by the Governor. It was at least equally inappropriate that the Governor and his successors should fail to implement the power given to them by the Legislative Assembly to make delegated legislation on the matter for nearly eight years after the enabling Law was passed and that this should finally appear, showing every appearance of hasty drafting, on almost the last day of the tenure of the Governor who signed it.

3.1 The financial consequences of the events which I have already described have been disastrous for me and my family. Between my retirement as Chief Justice of the Cayman Islands in June 1998 and December 2001 I received no retirement benefits from there at all and had to draw on my modest capital to live. In December 2001 I agreed to accept C\$177,843 in settlement of past entitlements. This included a capital sum consequent upon my exercise of the option to commute part of my pension. It was not a fair figure, but I preferred not to argue and get on with my life. However, on 31 December 2001 I was informed that the Governor in Council had met to address the funding of my benefits and had removed the commutation option. I would accordingly receive only C\$88,621. This flew in the face of the Judges Emoluments and Allowances Law 1997 which had been presented to and passed by the Legislative Assembly on the basis that it provided that the annual salary, any pensions and other allowances of the Grand Court judges had (and I now quote *Hansard*) “nothing to do with the Executive Council of the Cayman Islands or indeed the Government. It is entirely a matter for the Governor himself, acting in his discretion”. If no provision had been made for access by the Governor to funds under his general responsibility for good governance, this was meaningless. Obviously it had not, and the Legislative Assembly was misled by the presentation by the Attorney General, speaking on behalf of the Governor.

3.2 The financial loss which I have suffered is far greater than the difference between C\$177,843 and C\$88,621 by reason of the collapse of the dollar between 2001 and today against the Pound and the Euro, the currencies on which I live.

3.3 Although a monthly sum has been paid to me since 2002 there was no formal legal basis for this for several years. Having already experienced what I have just described, I could not be confident from month to month that payment would continue. Even after the appearance of the contemplated delegated legislation

in 2005 there remain questions of interpretation which may yet lead to litigation. I now wish that I had sued years ago, as I was advised to do. One reason why I did not was that each Grand Court judge has a financial interest in the present pension arrangements (which are vastly more munificent than those which are likely to be enjoyed by their successors for reasons which deserve a saga of their own). An acting judge of manifest impartiality would have to be found.

3.4 All in all, I think that this affair merits a Commission of Enquiry, though it is hardly likely that an incumbent Governor will order one without pressure from London.

31 January 2008

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#### **Memorandum submitted by Mrs Jennifer Caines**

Thank you for this opportunity to share my observations and concerns of two different agencies in Bermuda which were specifically put in place to administer and enforce existing Acts. Those agencies are The Human Rights Commission (HRC) and the Ombudsman for Bermuda.

The Human Rights Commission in Bermuda operates under the direction of the Minister in charge. The one who oversees the day to day operation of the Department is the Executive Officer and there are a few Investigating Officers and clerks who assist.

The Human Rights Commissioners are appointed by the Governor, on the advice of the Premier, after consultation with the Leader of the Opposition. The staff of the HRC are public Officers. The expenses of the Commission are met out of funds appropriated annually by the legislation.

Although all persons lawfully residing in Bermuda are entitled to equality, dignity and freedom from acts of discrimination on various grounds, and are supposed to be protected from reprisal acts if they do complain to the HRC, there is one particular case that comes to mind which was not handled fairly.

My husband, Mr Ahmed-Troy Caines is a Civil Servant with the Bermuda Government and is prevented from speaking publicly. I, however, am a former civil servant and I have seen first hand how these agencies operate and how policies and procedures are disregarded.

In my view, what I see happening is that the process is merely an information gathering opportunity for these agencies to navigate around complaints against the Bermuda Government.

When there's a policy of Bermudianization which clearly states that qualified Bermudians will be hired over non-Bermudians (persons who are not Bermudian) and the Bermudian applicants are told that based on their resumes, they are considered unsuitable and the Bermuda Government then hires a Canadian who is even less qualified, who was considered suitable although she lacked the required qualifications, then that to me should have been viewed as discrimination. Instead the process is changed in the midst of the investigation, thus allowing changes to be made that benefit the government's position. Barrier exams have been introduced to block the path of the complainant. This happens even though the HRC claims that the investigation will be objective, confidential and fair, and that there are to be no reprisal acts against the complainant.

Even though it is also stated that obstruction of an HRC investigation is unlawful, a fiat was issued by the Governor preventing evidence from being used at the hearing.

If the investigating officer had taken note to examine the policies and procedures which were in place at the time the complaint was lodged, the matter would have been settled at that level and should not have escalated into a hearing, not to mention the appeal stage.

The Human Rights process in Bermuda is just a process to cover-up wrongdoing to prevent exposing the bad practices which are being allowed, especially those complaints involving Bermuda Government officials.

The introduction of the position of Ombudsman for Bermuda gave the impression that they were about good governance, however, having personally submitted a complaint to the Ombudsman uncovered a one sided investigation. Again, this process should have been rectified at this stage but the Ombudsman informed me via telephone and in writing that she saw no maladministration on the part of the government officials involved. I have since which proven her wrong and she has made no attempts to apologize to me for the inconvenience caused or attempt to rectify the situation.

This complaint involved the actions of a lawyer who ranks #4 on the Bermuda Bar Association's list of seniority who holds The Bermuda Bar Act 1974 Practising certificate 2008. Owing to the seniority of this lawyer, it appears that other lawyers are reluctant to deal with one of their fellow members of the legal fraternity, especially from this particular law firm as the senior lawyer serves on some of the government boards. This same consultant lawyer works for the law firm which represented the Bermuda Government officials in the most recent gag order case which the media took to the Privy Council and won. The Honorary Secretary of the Bermuda Bar Association also works at this law firm.

A letter expressing the senior lawyer's opinion was submitted to a government board as fact when its true purpose was to circumvent the usual process of requiring my consent as an adjoining landowner of her clients. The fact that they accepted this information over the legal document that I provided them with is

questionable. If there's a code of conduct for Barristers and Attorneys in place, and considering the fact that this senior lawyer provided erroneous information to the government board without providing legal documents to support her claim, why did the Ombudsman for Bermuda not recognize this?

If the Foreign Affairs Committee can assist me in finding answers to these questions upon visiting Bermuda to conduct this study, then my confidence in the agencies mentioned, which are there to protect the rights of citizens, would be restored.

31 January 2008

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**Submission from Catherine Mills, Ontario, Canada**

**FCO STRATEGIES: INTERNATIONAL OBLIGATIONS, HUMAN RIGHTS AND GOOD GOVERNANCE**

While appreciating the scope and complexities an international community encompasses, I would hope in the context of accountability the practical applications to current, reformed or new legislative action will go beyond another review for further consideration.

When individuals tacitly assisted by the system are able to circumvent the rule of law, make a mockery of it and the governments who are responsible to uphold the legal framework of local and international obligations; the claim of FCO priorities effect window dressing, embolden the undermining of law, while maximizing your contingent liabilities.

Accordingly, 69 states and the European Community recently agreed to a new global convention on the International Recovery of Child Support and other Forms of Family Maintenance.\* This important work through the Hague gives practical effect to the rights of the child. While the UK has been an active participant, the Overseas Territories are woefully absent in the Convention, despite the fact most are reciprocating Territories with the UK's REMO (Reciprocal Enforcement of Maintenance Orders).

In closing, a loophole that facilitates an open arms policy, to host and provide haven in a UK Overseas Territory to those who purposefully seek to evade responsibility, will be a matter to be addressed through action in the near future.

\* [http://www.hcch.net/index\\_en.php?act=events.details&year=2007&varevent=140](http://www.hcch.net/index_en.php?act=events.details&year=2007&varevent=140)

31 January 2008

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**Submission from Susan Parsons**

**BREACH OF A FAMILIES CONSTITUTIONAL RIGHT TO LIVE TOGETHER IN BERMUDA**

I am married to a Bermudian and have been for 10 years we have two children together born in Bermuda who hold full status. I had three children from my previous marriage when we met, born to a UK status father. We have had to leave Bermuda as when my children turn 21 they could not apply for status. This would have left my family in a situation where three children would be ripped away from their family and siblings and expected to start a life alone elsewhere. After having been brought up and schooled in Bermuda for over 10 years.

Is this not a constitutional breach of our rights as a family?

To further complain every other civilised country in the world has a government website where one can check requirements for citizenship and status to see if its worth applying or if one indeed qualifies. For eight long years the Bermuda website (on the section of status) has had the message "under construction". Eight long years of no information. When I questioned this with the appropriate department I was told they were busy and had no funds!!

I think this is appalling and the government of Bermuda should be expected to clearly state their policy when it comes to legal spouses and blended families such as mine that fall into this terrible, desperate situation.

Until this happens my born in Bermuda husband is denied the privilege of living with his chosen family in his home country. Does anyone know what rights my children have to be able to live as one family or to remain together in Bermuda as siblings?

31 January 2008

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### Submission from Peter Sardeña, Gibraltar

#### LETTER OF PROTEST ON POOR STANDARDS OF GOVERNANCE IN GIBRALTAR

In relation to: Draft Terms of Reference (for Gibraltar)

- Standards of Governance in Gibraltar.
- The role of Governors and other office-holders appointed by or on the recommendation of the UK Government.
- The work of the Overseas Territories Consultative Council.
- Transparency and accountability in Gibraltar.
- Regulation and financial sector in Gibraltar.
- Procedures for amendment of the Constitution of Gibraltar.
- The application of international treaties, conventions and other agreements to Gibraltar.
- Human rights in Gibraltar.
- Relations between Gibraltar and the UK Government.

In relation to the above terms of references I wish to inform the committee without any prejudice that in my opinion the present Government of Gibraltar cannot be trusted with the good governance of Gibraltar and that the chief minister has misled or in the least misinformed the public in the last elections in his desire to be re-elected.

The Government also have grave shortcomings on important and fundamental human rights, which I can list below and which have come to light in two high profile cases presently at the Industrial Tribunals.

Both cases defended by Government appointed solicitors working for the law firm owned by the Chief Ministers own father in law and the firm where he practiced law before being elected into Government in 1996.

These cases show clear signs of discrimination, harassment and injustice.

The Government have failed to provide social justice in the following field:

#### 1. INDUSTRIAL TRIBUNALS

I base my views in the Governments interference and lack of objectivity, impartiality and transparency in two public cases, which are currently been heard at the Industrial Tribunals. These cases are proving to be vivid examples of Governments tactics to hide and suppress the truth from the public and drag the cases for over 2½ years and in the process squander 10's of thousands of taxpayers money in one case to prevent the case being heard and in the process ensure that allegations of abuse within the social services agency were not made public. In another case we have seen signs of collusion for unfair dismissal based on unproven allegations and retaliation for past involvement in industrial disputes.

“The allied criticisms of the operation of industrial tribunals and their failure to provide swift, fair rulings to appellants—including the fact some claimants have great difficulty in funding their cases. Everyone should be entitled to equal access to justice”.

The allegations and failures can be resumed as follows:

- (a) Monopolisation and interfered with its independence.
- (b) Failed to reform the system, which presently prejudices the claimant.
- (c) Need to set minimum period of time to process the cases.
- (d) Time limits to have the cases listed.
- (e) An established period of time to have the case heard and concluded.
- (f) A limited period of time for the Chairman to come up with a resolution.
- (g) Award costs to the complainant representation if successful.
- (h) The right to be reinstated.
- (i) Increase the compensation to claimant if successful.
- (j) Social assistance to the claimant, for the period of filing and conclusion of case. So that worker does not suffer financial hardships.
- (k) Legal Aid in the event of case been taken to a higher court of justice.

“Current cases which are filled against Government department agencies or owned companies are being dragged for over three years without any sign of them coming to a conclusion and during the time the claimant in such a small community stand no chance of obtaining employment and runs into financial hardship”.

This brings to light some important questions:

- (a) For how long can a lawyer acting for the Government in a tribunal hearing disregard the chairman's instructions that he should provide the opposing team with documents and/or information before some form of action is taken?
- (b) Does the tribunal chairman have any powers to compel advance disclosure of information (such as witness statements or affidavits), which either side intends to submit?
- (c) Is it possible that the regulations governing industrial tribunals are open to two interpretations—one for lawyers and another for complainants who cannot afford them?

## 2. HUMAN RIGHTS AND SOCIAL LIBERTIES

“There are many examples where this government discriminates and suppresses the human right and freedom of speech and fails a number of UK and EU human rights which I list below”.

- (a) Discriminates against the independent newspapers by not advertising at all on such privately owned newspapers and instead spends public funds in another newspaper which is specially funded with public funds as the flagship and printed propaganda of Government.
- (b) Police is set upon those who protest “publicly and peacefully” under the pretext of public disorder.

## 3. SEXUAL MINORITIES

- (a) “Anti-gay discrimination.
- (b) Equality and fairness requires that Gibraltar legislate legal recognition and rights for same-sex couples—perhaps modelled on the UK's Civil Partnership Act 2003 but also—unlike the flawed UK law—making civil partnerships available to heterosexual couples to ensure parity.
- (c) Same-sex relationships have no legal recognition or rights in Gibraltar. Civil partnerships do not exist and there are no plans to introduce them.
- (d) Mr Caruana's Government supports pervasive anti-equality, pro-discrimination (Rodriguez same sex tenancy Case).
- (e) Eligibility for affordable housing schemes has been extended to unmarried heterosexual partners but not to unmarried same-sex partners. How can this differential treatment be justified?
- (f) The unequal age of consent for gay men is illegal under the European Convention on Human Rights, to which Gibraltar is required to adhere. Why is the government defying the European Court and refusing to equalise the consent laws?
- (g) Chief Minister Caruana, himself a QC, seems unaware of the common law principle of equality.
- (h) Gibraltar Constitution does not protect lesbian and gay people against discrimination.
- (i) In the absence of legal protection against discrimination in the provision of goods and services, restaurateurs, hoteliers and shop owners are entitled to refuse to serve a gay or lesbian person. When does the government propose prohibit anti-gay discrimination in the provision of goods and services? It has already eliminated such discrimination on the grounds of race and ethnicity. How about also protecting the gay and lesbian citizens of Gibraltar?”

## 4. EQUAL OPPORTUNITIES COMMISSION

- (a) “The creation of the EOC is a welcome first step, but its terms of reference have never been made public. Why not? The remit of the EOC is narrowly defined to cover only race equality. It should be extended to cover all discrimination, including discrimination based on gender, age, sexual orientation, disability and religion or belief, possibly along the lines of the UK's new Commission for Equality and Human Rights”.

## 5. DISABLED RIGHTS AND MENTAL HEALTH ISSUES

- (a) Why is there is no walking stick or Braille training for the blind or visually impaired?
- (b) The government has promised to build a new Psychiatric Hospital—when does it intend delivering on this promise?
- (c) Disabled people have limited legal protection against discrimination. To remedy this failing, legislation similar to Britain's Disability Discrimination Act is a priority. It would help safeguard the rights and welfare of disabled Gibraltarian.
- (d) There is an urgent need for a full independent public inquiry into allegations of abuse at the Dr Giraldi Home. In the meantime, the Police Commissioner should open a new investigation into allegations of criminal misconduct.



6. MEDIA INDEPENDENCE

- (a) It is highly desirable to establish an independent Press Complaints Commission to safeguard freedom of the press and ensure fair and ethical standards of reporting—with adequate statutory redress for people who have been unfairly maligned by the media.
- (b) The Gibraltar government announced it would undertake a review of GBC (Gibraltar Broadcasting Corporation). Why has the government not announced the terms of reference, scope and timetable of this review?

7. MOROCCAN COMMUNITY

- (a) “The Moroccan community has raised a number of concerns, including parent’s difficulties in obtaining visas for their children to visit Gibraltar during the summer holidays; the denial of permanent residence rights to people who have lived and worked in Gibraltar for 25 years or more, contrary to Gibraltar’s own laws; and the unfairness of the English-proficiency requirement for residence, given that the government has failed to provide English language training to enable applicants for residence to fulfil this requirement”.

8. THE DRIFT TO AUTOCRACY

Before the October 2007 elections “there were concerns at the way the Chief Minister had taken for himself the very important Ministries of Finance and Justice. This is a very unhealthy concentration of power in the hands of one man, which goes against the British tradition of separation of powers and of checks and balances.

The suspension of the Chief Justice, Derek Schofield, combined with the Chief Minister’s assumption of the Justice Minister post prior to the 2007 elections, raises questions concerning the independence of the judiciary and the proper separation of powers between the judiciary and the executive”.

CONCLUSION

“There is a human rights deficit in Gibraltar. It is backward and outdated compared to most of Europe. The public mood seems to be in favour of equality and human rights, but the government of Peter Caruana is thwarting legislative action and appears to be drifting towards autocracy. Chief Minister readily ignores the human rights of his own citizens, both sexual minorities and others”.

“I do not understand why the Chief Minister is so reluctant to ensure equal and fair treatment for all Gibraltar’s citizens. It would cost him next to nothing and win him much goodwill”.

“Gibraltar is fantastic. But it is being bought down by the foolish prejudice of its government”.

ACKNOWLEDGEMENTS

In the above letter I have used extracts from:

A report written by Mr Peter Tatchell, human rights campaigner—Gibraltar, 2 October 2007.

Industrial tribunal write up: extracts from the TGWU General Elections Policy Submissions Manifesto.

Vox Newspaper coverage of M/s Joanna Hernandez case at the Industrial tribunal.

My own notes taken at the same tribunal.

31 January 2008

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**Submission from Alan Gamble, Bermuda**

GOVERNMENT OF BERMUDA

I understand that a committee will be visiting Bermuda for an audit of standards of governance here. The Progressive Labour Party was recently returned to power for a third term which to some would indicate a level of satisfaction with their performance. This is a matter of opinion but what is a matter of fact is that the people of Bermuda are not receiving information which they are entitled to in many areas. There is no obligation (other than a moral one) for Government to make information public and there is a catalogue of secret reports and enquiries which remain hidden.

We can only guess at the level of debt in which this Government has placed us and the treatment of the Auditor General has been disgraceful. To throw a public servant out of his office while he is off island and then arrest him for doing his job must be unprecedented in any democracy. In my view it is imperative that

legislation is put in place immediately to restrict the unchecked spending which is taking place, some of which is clearly a use of public money to reward political activities. This may not be “illegal” under current regulations but it certainly should be made that way.

Recently the “Right to Know” campaign was started and last year the Voters Rights Association was formed but to date they have been ignored by the Government. It is time that the party in power in Bermuda whatever it may be was made accountable.

31 January 2008

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**Submission from Chedmond Browne, Former Member of Parliament and Spokesperson,  
Free Montserrat United Movement**

**BRIEF INTRODUCTION**

An organisation dedicated to seeing the Colony of Montserrat eventually attain its fundamental Right to Govern Itself.

Representative to the United Nations Decolonisation Committee.

- (a) Representing the government of Montserrat.
- (b) Representing civil society.

Member of the Drafting Committee on Montserrat Constitutional Review. (did not sign the draft).

Chairman of the Select Committee of the House on recommendations to the Legislative Council.

Representative of the House sitting in negotiations with the FCO team during my time as an MP.

To the Committee I give my thoughts as briefly as I can, with the hope that you the Members will incorporate them into your eventual conclusions.

1. From the outset, it would appear to me, that the Committee is seeking to justify the process, that has concluded in some colonies, and still taking place in other colonies.
2. I note with interest, that the Committee held oral evidence sessions. however, I don't recall any such session being held in Montserrat.
3. It would seem to me that the people of the colonies involved would have been one of the target groups for oral sessions.
4. I would draw attention to the Committee to the United Nations Special Committees Resolution of 2007.

In these recommendations to the General Assembly, they stated.

1. There is a direct linkage between Self Determination and Human Rights.
2. Clarification on the fact that internal constitutional reviews taking place were not designed to upgrade the present political status of those territories.
5. Overseas Territories Report Vol VI, 3 July 2007.

**Headlines: UK TO EXTEND CONTROL OVER COLONIES**

In a major shift with its relations with its overseas territories the United Kingdom has announced its intention of seeking to extend its control over the 14 colonies under its administration. This new position is contained in a document recently sent to the Governors of the territories . . .

Overseas Territories Report & Overseas Territories Review are publications of Caribbean Information Services Ltd. Box 75853, Washington, DC, 20013.  
Reprinted from the Bermudanet Workers news.

6. In the colony of Anguilla the response from Civil Society basically follows the same thought process. As did their reports from experts and Civil Society to the UN Decolonisation Committee.

7. The numerous papers and reports given to the UN Decolonisation Committee in 2001, 2003, 2005, 2007 by the UK' remaining colonies all state clearly that the Constitutional Review process does not reflect those clauses in the 1999 White Paper, that speak to Partnership and the Hopes Visions and Aspirations of the People of the remaining colonies.

8. The UK Government has chosen to ignore the voice of the People in pursuit of its own policies.

The people of the remaining Colonies basic Human Rights are being trampled upon, initially very quietly, but now extremely openly.

Where in the Committees inquiries? Is there a query as to the position of the FCO in its approach and policy?

9. Will the Committee justify what has taken place, and what is still taking place in colonies like Montserrat and Anguilla who are still holding out despite the pressures being applied. The hopes visions and aspirations of the people of the remaining colonies were the operative words in the UK's 1999 White Paper.

If the Committee can look into whether the Hopes Visions and Aspirations of the People of Montserrat have been addressed, if the Committee can look into the abandonment of one of the basic tenets of the Human Rights charter.

“The right of a People to be governed by the representatives they elect”.

10. If the Committee can look into the approach and position taken by the FCO negotiating team that they “will not” I reiterate, will not discuss, consider or debate in any fashion certain basic and fundamental rights of a People to move in a direction that eventually brings them to a Self governing state.

If the Committee can look into and justify the UK's government open position, that it no longer has to pay any attention the UN Committee on Decolonisation, that it has the right to dictate to its remaining colonies its position despite their protestations.

The UK is after all an Administering Power. The UK does not own Montserrat. It has been given a responsibility to bring Montserrat to a Self Governing state.

However, it would appear, that the UK has now taken the position that it not only owns Montserrat, but it also has the Right to dictate to Montserrat the direction it should take.

Is this a position that the Foreign Affairs agrees with or wants to justify?

11. If the Committee can look into the fact that the Government and People of Montserrat have not had any outside advice from any credible International Body on Constitutional review and reform.

If the Committee can look into and justify the in house methodology of the FCO negotiating team and their single minded approach to accomplishing their agenda at the expense of their “Partnership's” Rights, Hopes, Visions and Aspirations.

Where is the transparency? A key operative word in UK policy. Is it not applicable to this process also?

12. If the Committee can accept without question or query the UN Decolonisation's Committee Report that states clearly the UK constitutional exercise was not designed to upgrade the colonies.

That statement I might add directly contradicts the UK 1999 White Paper position which also says it would negotiate with its remaining colonies in an atmosphere of Partnership to attain the Hopes, Visions and Aspirations of the People.

13. Here is hoping that the Foreign Affairs Committee, pays some attention to my response, but not only mine.

Not all of the remaining colonies want to be tied to the UK forever.

Montserrat in particular is tied because of an ongoing challenge from the forces of Nature.

In many instances because of UK policy mostly controlled through DFID economic pressures that challenge has turned into not only a natural one but a man made one that allows, once again UK policy of a vision for itself to be imposed upon the People of Montserrat. Well, I think you get my point.

So, I will end my brief. I am open and ready to interact and communicate with the Foreign Affairs Committee on this issue and any other issues that relate to Montserrat.

31 January 2008

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#### **Submission from The Rev Miss Jean Montgomerie**

Introduction: I have had an interest in the Island of St Helena since a member of my family first visited in 1964. However, because of the Island's isolation, I had not had an opportunity to take a trip there until recently. I have now spent six weeks on St Helena, on holiday, but with ears and eyes open! Although my understanding of the issues may therefore be sketchy, I believe there are certain salient points that I can add to the debate.

This is a beautiful Island rich in Maritime and Napoleonic history, geological features, plant, marine and bird life. Much loved by its native and adopted people, it is nevertheless going through a period of depopulation—largely due to the fact that many Islanders leave for work in the UK, Ascension and the Falklands—primarily, I believe, due to the fact that salaries on the Island are depressed, leaving some on St Helena working for less than half the UK minimum wage, with sporadic pension provision and a relatively high cost of living (water rates/electricity/fuel/food and other necessary supplies). On the political front, I have been impressed by the new Governor, Andrew Gurr, but fear that the layers of bureaucracy he has inherited, together with the expanding government structure, may well stifle his best efforts.

1. The current situation expects a population of around 4,000 people (the size of a village in the UK!) to constitute a Government, and develop a sound infrastructure to promote greater economic prosperity and thus independence from UK subsidies. This, in my view is thoroughly impractical.

2. Government spending (sometimes referred to as “aid”—why, when the Island is a British Territory, and its inhabitants British Citizens?) is, I believe, in the region of £16,000,000 per annum—a proverbial drop in the ocean of the overall UK budget. As far as I understand, the subsidy for the RMS St Helena, the Island’s lifeline, is included in this amount—simply putting St Helena on a par with the Islands of Scotland. I was unable to ascertain any breakdown of how the rest of this money is used, but imagine that a significant proportion is spent in administration of the affairs of the Dependency, and paying salaries to overseas personnel whose remuneration packages can only be dreamed of by qualified ‘Saints’ who work in similarly skilled jobs on the Island.

2.(i) A greater proportion of aid needs to be channelled into projects aimed at encouraging moves towards increased self-sufficiency viz:

- (a) Provision of rich fertiliser to improve soil quality for agriculture and domestic gardens. (Kirkconnel in Scotland provided an excellent model for this some years ago by turning sewage and paper waste into fertiliser).
- (b) Solar panels for every dwelling and business premises—the climate is a gift!
- (c) Eradication of fruit fly.
- (d) Encouragement to use insecticides (organic if wished) to aid healthy crops.
- (e) Control of the Mina bird population and other pests eg rabbits and rats.
- (f) Investigation into the possibility of supplying untreated water for irrigation to supplement householders’ own rainwater tank supplies.

2.(ii) The Jamestown breakwater project is long overdue, not least in view of the stated aim of encouraging more tourism to the Island. Presently, any cruise ships arriving in harbour depend on totally benign weather conditions to allow them to discharge passengers who wish to spend time ashore.

3. Tourism apparently viewed as the salvation of the economy of the Island, and now (also apparently) driving the move towards the construction of an Airport, a five star Hotel and Golf Course, as well as the encouragement of inward investment for tourism services. No one to whom I spoke was able to indicate what research had been done into potential numbers of tourists once the airport is built, nor whether that number would be significantly larger than visitors from cruise ships if they were able to disembark passengers at all times.

3.(i) Given the disruption during construction phases, and the consequent impact on Island life—its people and its environment—will the Airport truly benefit the Island and its people?

- (a) The demand for fresh and untreated water will increase exponentially.
- (b) Additional resources will be required to expand medical services on the Island.
- (c) Air-sea rescue services will be required—for the airport; in anticipation of an increase in road traffic accidents and in readiness for more casualties among those walking the rugged terrain.
- (d) Encouragement to expand the availability of B&B and self-catering accommodation will require an increased availability of eating establishments with extended opening hours along with more abundant supplies of good quality fresh foods and competitively priced groceries etc.
- (e) Thus a ship—with the facilities of the current RMS for unloading containers on to inshore vessels—will still be required for imports.
- (f) Travel for Islanders will be considerably restricted, given that, as far as I understand it, there will no longer be any direct link to Ascension Island—thus entailing a flight to mainland Africa, then to the UK, and “back” to Ascension. Seems strange—as currently Ascension is part of the single territorial grouping of St Helena, Ascension and Tristan da Cunha!

3.(ii) Should there be a significant influx of tourists once the Airport is built, this will put severe stresses, not only on the infrastructure of the Island, but also on its natural environment on land and sea.

#### 4. CONCLUSION

St Helena and its Dependencies, Ascension Island and Tristan da Cunha, is currently one British Overseas Territory, a part of the United Kingdom where a significant proportion of the population earn comparatively low wages, where few have decent pensions (no State Pension here), and where the cost of living is high. The cost to the British Government a mere £16 million per annum—by my calculation less than 9,000 Jobseeker’s Allowances, or the salaries and allowances of 160 Members of Parliament! Yes, this money needs to be used efficiently, but to expect a resident population of around 4,000 people on a remote outpost in the South Atlantic Ocean to be economically independent is absurd. Tourists are currently

attracted to St Helena by its remoteness, its history, its geology, its unspoilt natural features, its plant, marine and bird life, and, 'though this may not necessarily be *completely* destroyed by the proposed tourist development, the unique character of the Island will. And I remain unconvinced that the developments envisaged will truly benefit the "Saints".

31 January 2008

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**Submission from Mr William J S Zuill, Editor, The Royal Gazette, Bermuda**

**FOREIGN AFFAIRS COMMITTEE REVIEW OF BRITISH OVERSEAS TERRITORIES**

I write concerning the above captioned review. I understand that the deadline for submissions to the committee conducting the review is today.

I would like to bring to the committee's attention a campaign that The Royal Gazette, Bermuda's only daily newspaper, has been conducting entitled "A Right to Know: Giving People Power" which is calling for the introduction of freedom of information legislation in Bermuda.

I should emphasise that this is not a formal submission to the committee calling for the committee to either enact legislation or to call on the UK Government to take up this question as a matter of policy, since such legislation clearly falls within the ambit of the Parliament of Bermuda.

Nonetheless, it is our feeling that because one of the terms of reference of the committee is Transparency and Accountability in the Overseas Territories, the committee may wish to examine the extent to which access to information is enshrined in legislation in Bermuda and in other OTs and how the United Kingdom Parliament might be able to assist and advise on bringing such legislation to the fore. I would particularly remind the Committee that freedom of information legislation has now been enacted in more than 70 countries and associations of states, including the United Kingdom and the European Union. It should be clear that such legislation is crucial to openness and transparency in Western democracies, and it makes sense for such rights to be available to the citizens of British Overseas Territories.

While it may be logical to assume that access to information in small jurisdictions like Bermuda would be easier than it is in larger countries, the opposite is often true as those in positions of power will often guard information quite jealously. There are times when there are privacy issues at stake, but often in a small community this is used as a reason for not making information public, when in fact no harm would be done, or when the public interest outweighs rights to privacy.

I also acknowledge that a Green Paper on Public Access to Information (PATI) was published in Bermuda in 2005 and that the present Government has stated that it is continuing to work on a Public Access to Information Act, but it may be that the committee would recommend that the governments of Bermuda and other Overseas Territories give this kind of legislation a higher priority.

I am taking the liberty of referring you to The Royal Gazette's website where the campaign is located: <http://www.royalgazette.com/siftology.royalgazette/section.jsp?sectionId=142>

Should the committee wish to see the stories in another format, we would be happy to furnish them.

I am grateful to the committee for its patience in considering this submission and am available should the committee require any further assistance.

31 January 2008

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**Submission from Mr John Barritt JP MP, Opposition House Leader and Party Whip, Bermuda**

I write with reference to the on-going inquiry of the Foreign Affairs Committee into security and good governance of the Overseas Territories of the United Kingdom, of which Bermuda is one, and in my capacity as Opposition House Leader and party whip for the United Bermuda Party.

I attach for the Committee's review and consideration a submission on behalf of Her Majesty's Loyal Opposition here in Bermuda which—as you will note above— also features three attachments.

1. Whilst we in the Opposition United Bermuda Party recognise that many of the matters to which we wish to draw to the committee's attention are matters for the Legislature of Bermuda, we nonetheless do so because they should, in our view, form a part of your review and assessment as they pertain to the issues of transparency and accountability in the Overseas Territories [in our case Bermuda] as well to standards of governance.

2. We do not believe the Legislature is as effective as it should be or could be. For instance, it has been some thirty (30) years since the Rules ("Rules") of the House of Assembly of Bermuda ("House") were reviewed and up-dated.

3. Three of the more important standing committees of the House still meet in private: the Private Bills Committee, the Joint Select Committee on the Register of Members' Interests and the Public Accounts Committee ("PAC").

4. It is in our view unacceptable that committees of the House continue to sit in camera. It is certainly contrary to widespread modern parliamentary practice. It is also contrary to the Recommended Benchmarks for Democratic Legislatures ("Recommended Benchmarks") which were the outcome of a Study Group hosted (ironically) by the Legislature of Bermuda on behalf of the Commonwealth Parliamentary Association and the World Bank Institute with support from the United Nations Development Programme, the European Parliament and the National Democratic Institute for International Affairs: See *The Parliamentarian 2007/Issue One*, pp 21–24.

5. Not surprisingly, PAC itself recently recommended that its meetings be open to press and public, but the committee's recommendation failed to obtain the necessary support from the Rules and Privileges Committee of the House which is controlled by a majority of Government members.

6. PAC has an important role to play in monitoring Government expenditure and following up on matters raised by the Auditor General in his annual report, as well as in any other special reports issued by his office from time to time. Unfortunately it is not as active and as effective as it should be. Whilst the PAC is chaired by an Opposition member [typically the shadow spokesman for finance] meetings sometimes fail for lack of a quorum. Membership is currently set at five members—two from the Opposition and three from Government. The committee's work can be stymied should the Government members decline to attend: a quorum is three (3). PAC recommended in its 2004 report that the quorum remain at three (3), but that the membership be increased to seven (7), one additional member for each of Government and Opposition. This recommendation has not been acted on.

7. The Rules governing the practice of asking Parliamentary questions ("PQs") are also out-dated. Questions are required to be submitted in writing ten (10) days in advance. The Rules limit each member to three questions for oral answer per sitting day: the House normally only meets once a week when in session except for a two week period following presentation of the Government Budget when it meets three days a week ("Budget Debate"). The Speaker has also ruled that no Minister can be asked more than three questions per sitting day, which constitutes a further limitation as some Ministers have responsibility for multiple departments.

8. The transparency and accountability that comes from asking PQs is further limited because questions that cannot be asked and answered within the first hour of meeting are reduced to writing and thus there is no opportunity for supplementary questions on the floor of the House. There is no sanction for Ministers who decline to answer questions or defer them to when they prefer to answer them. On the other hand, Government Ministers are at liberty in the first hour to read Ministerial statements which are not subject at that time to either question or debate: [although the statements can become the subject of comment, much later in the day, at the end of the day of meeting on the motion to adjourn when members are free to speak on any subject for up to twenty (20) minutes].

9. The annual Budget Debate is limited to a maximum of 42 hours debate in committee of the whole House, "unless the House otherwise agrees". While the Opposition has the right to determine the order in which the heads of expenditure are considered, your committee should be aware of the stultifying practice which has been allowed to develop over the years: which is the reading of voluminous briefs prepared by civil servants for Ministers to read, at length, and for hours, literally, all with the effect to stifling debate and preventing a close examination of line items of expenditure. It hardly makes possible the meaningful oversight which might reasonably be expected—and required—in a modern parliamentary jurisdiction: see Recommended Benchmarks, 7, Oversight Function. This practice also underscores the growing need for a more active PAC and meetings open to the public and press.

10. The Opposition has attempted to institute change in the above areas, but on each occasion over the past eight years, those recommendations have been referred by motion in the House to the Rules and Privileges Committee where they have not found favour with a committee that is subject to a Government majority.

11. The Legislature of Bermuda continues to be treated as another Government department, the responsibility for which is assigned to a Government Minister. This practice neither enhances nor facilitates the development of an independent Legislature and calls into question whether the Legislature is or can be subject to undue political pressure or interference through funding.

12. We believe a modern parliamentary jurisdiction—which Bermuda aspires to be—should either by legislation or resolution establish an independent (of the executive) and/or corporate body (which is also bipartisan in composition) to be responsible for the provision of services and funding entitlements for parliamentary purposes as well as providing for the overall governance of Parliament: see Recommended Benchmarks, 5.4. Organisation and Management.

13. While there is provision in the Rules governing the behaviour of members inside the House, the enforcement of which is left to the Speaker or the person in the chair at the relevant time, there is no written code of conduct to which members are expected to adhere and by which they can be judged by the public. This too, should be a feature of a modern parliamentary jurisdiction: see Recommended Benchmarks, 10. Ethical Governance, specifically 10.1.2.

14. There is a Register of Members' Interests ("the Register") under which members are expected to voluntarily disclose required, relevant financial assets and holdings. The Clerk to the Legislature maintains the Register but there is no sanction should a member decline to make disclosure. The Register is made available for public inspection.

15. The Rules do provide that "no member shall vote on any question in which he has a direct or pecuniary interest, peculiar to such member as distinguished from the public at large". Members are expected to voluntarily disclose that interest or be challenged by any other member prior to any vote. The Speaker then rules whether or not the member can vote.

16. There is also the matter of disclosure of interests as required under the Bermuda Constitution Order 1968 ("the Order") with respect to Government contracts, the relevant two sections of which read as follows:

"30 (6) Subject to such exceptions and limitations as may be prescribed by the Legislature, a person shall not be qualified to be elected as a member of the House of Assembly if he has an interest in any Government contract and has not, within seven days of his nomination as a candidate for election, disclosed the nature of the contract and his interest therein by means of a notice published in the Gazette or in a newspaper published and circulating in Bermuda".

"31 (1) The seat of a member of either House shall become vacant—

(f) subject to such exceptions and limitations as may be prescribed by the Legislature, if he acquires an interest in any Government contract and has not, within seven days of acquiring that interest, disclosed the nature of the contract and his interest therein by means of a notice published in the Gazette or in a newspaper published and circulating in Bermuda".

A number of exceptions and limitations are prescribed by section 10 of the Legislature (Qualification and Disqualification) Act 1968 ("the Act").

17. There is however, no established independent mechanism for oversight and enforcement when it comes to disclosure of relevant interests and any conflicts that may arise as a result. The potential for conflict is likely in a small community like Bermuda where members of the House are typically part-time and are permitted to pursue their private businesses interests and professions during their tenure in office. We believe that a strengthening of oversight and enforcement is required, again in keeping with modern practice: see Recommended Benchmarks, 10 Ethical Governance, specifically 10.1.3. and 10.1.4.

18. As a matter of good practice, we support the stated intention of Her Majesty's UK Government to extend the UN Convention Against Corruption to Bermuda and other Overseas Territories. It is our understanding that this has been discussed with the Overseas Territories at recent Consultative Conferences and believe that it may well facilitate the introduction and development of "Integrity In Public Service" Legislation in Bermuda. In light of recent experience in Bermuda with a Government-funded quango (Bermuda Housing Corporation) and allegations of improprieties that warranted criminal investigation, as well as the Auditor General's reported concerns about a "growing culture of opportunity for dishonesty" within government, it is clear that our anti-corruption legislative framework needs to be overhauled and modernised.

19. The committee may not be aware of the Opposition United Bermuda Party's position generally on matters of good governance and so I attach for your information and review a copy of the relevant section party's platform at the last election (December 2007).<sup>259</sup> These obviously represent some of the reforms and changes which we would have instituted had we been elected the Government, and might reasonably be regarded as our recommendations for consideration by the committee in its deliberations.

20. On the matter of any future constitutional change, I also attach for the committee's information and review a copy of a letter dated 28 January 2004, from then Opposition Leader Dr the Hon Grant Gibbons to then Governor of Bermuda, Sir John Vereker, which fairly sets out position today of the United Bermuda Party on how it should be undertaken.

31 January 2008

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#### **Submission from Dennie Warren Jr, President, People for Referendum, Cayman Islands**

Since the 1950s there has been widespread interest in learning about constitutional matters, but the education process has been limited. The attached documents provide information about the efforts the various groups in the Non-Self-Governing Territories (NSGT's) have attempted to make in this process.

In our research to understand the relationship and our rights between an NSGT and their Administering Power, we contacted the United Nations Decolonization Committee for educational material on this subject, their website is <http://www.un.org/Depts/dpi/decolonization/main.htm>

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<sup>259</sup> Not printed as publicly available.

As a result of these investigations we discovered that the United Kingdom has unilaterally and in violation of its international obligations withholding our inalienable rights to the various UN options for self determination.

We would hope that your committee in order to understand better the situation in the OT would visit the OTs. Further if you do visit the Cayman Islands we would request a meeting with yourselves and we also suggest that a meeting open to the public be convened so that our people can be further educated on the subject of the relationship between ourselves as an Overseas Territory and our Administering Power, the United Kingdom.

We also request that all discussions on the revision to the Cayman Islands "Constitution" be done in the Cayman Islands, that all discussions be done in a public, open forum, with written verbatim transcripts of all proceedings.

Should you wish to discuss any of the above or any of the attachments, please do not hesitate to contact us.

Thank you for the opportunity to submit these documents.

Fourth Committee 2007 reports to the UN General Assembly:

[http://www.un.org/Depts/dpi/decolonization/fourth%20committee\\_documentation\\_2007.htm](http://www.un.org/Depts/dpi/decolonization/fourth%20committee_documentation_2007.htm)

Fourth Committee press releases 2007:

[http://www.un.org/Depts/dpi/decolonization/fourth%20committee\\_press%20releases\\_2007.htm](http://www.un.org/Depts/dpi/decolonization/fourth%20committee_press%20releases_2007.htm)

Decolonisation Regional Seminars: despite repeated requests by the UN to host these seminars in a (NSGT) this occurred only in May 2003 when the seminar was held in Anguilla.

In 2007 we understand that it was the wish of the Decolonization Special Committee to convene the 2007 Regional Seminar in the Cayman Islands but this did not occur.

The Cayman Islands NGO Constitutional Working Group was represented at the Anguilla seminar in 2003 and in St. Vincent and the Grenadines in 2005. They have also sent representatives to the UN in New York.

The annual seminar documents:

[http://www.un.org/Depts/dpi/decolonization/regional%20seminar\\_main.htm](http://www.un.org/Depts/dpi/decolonization/regional%20seminar_main.htm)

Historical General Assembly resolutions:

[http://www.un.org/Depts/dpi/decolonization/docs\\_historical%20resolutions.htm](http://www.un.org/Depts/dpi/decolonization/docs_historical%20resolutions.htm)

The General Assembly Resolution 1654 you will note that the United Kingdom of Great Britain and Northern Ireland was a founding member of the Special Committee on January 23, 1962.

Additionally the UN Handbook 1960 states that the United Kingdom of Great Britain and Northern Ireland was a member of the UN Special Committee of Six (India, Mexico, the Netherlands, United Kingdom of Great Britain and Northern Ireland and the United States) that developed and unanimously recommended to the UN Special Political and Decolonization Committee (Fourth Committee) the twelve (12) principles to determine whether or not an obligation still existed for an administering Power to transmit information under Article 73e of the UN Charter.

The UN Special Political and Decolonization Committee (Fourth Committee) accepted then submitted the recommendations of the UN Special Committee of Six to the UN General Assembly, the twelve (12) principles for self-determination of an NSGT, the UN General Assembly accepted the recommendations and Resolution 1514 was approved on 14 December 1960.

Included in these twelve (12) principles for self-determination are the three (3) options an administering Power is obligated to allow the peoples of their NSGT's the rights to choose in the relationship of an NSGT's with their administering Power. The three (3) self-determination rights are integration or free association or independence.

You will see from the documents that the UK did in fact participate in the drafting of the twelve (12) principles for self-determination and the work of the founding Special Committee.

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/167/07/IMG/NR016707.pdf?OpenElement>

The indefensible evidence is:

1. The United Kingdom of Great Britain and Northern Ireland participated in the drafting of the right of people in their NSGT's to choose either of the three (3) options of integration, free association or independence.

2. The United Kingdom of Great Britain and Northern Ireland was a founding member of the Special Committee on 23 January 1962.

The current UK position is that "We did not vote for it, so we are not bound by it", the UK now unilaterally dictates to their NSGT's, that there are only two (2) options: take the constitution we give you by Order in Council or go independent.



We are sure you will agree with us that the UK is in violation of their international obligations as a member of the UN because they are denying the peoples of the NSGT's their inalienable self-determination rights.

We look forward to your reply.

31 January 2008

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### Submission from Mr Harry Wiggin, Anguilla

#### 1. SUBMISSION

1.1 This submission is made by Harry Wiggin.

1.2 I qualified as an English solicitor in 1965. I was admitted as a solicitor in Anguilla in 1995.

1.3 I am a Belonger of Anguilla, having married an Anguillian.

1.4 In terms of the time it will take to read this submission, please note that the body of this submission is six pages only. The rest of the pages are Annexes.<sup>260</sup>

#### 2. REASON FOR MAKING SUBMISSION

I and very many others (native Anguillians—not just expatriates) are deeply concerned:

- (a) that Anguilla's birthright is in the process of being destroyed on the altar of short-term gain;
- (b) that there are no adequate controls in place designed to ensure good government; and
- (c) that the recommendations of the Anguilla Constitutional and Electoral Reform Commission, which were painstakingly and expertly assembled following a wide-ranging consultation process, are being sidelined for political purposes.

#### 3. ENVIRONMENTAL SUSTAINABILITY

3.1 The Anguilla National Environmental Management Strategy ("NEMS") of 2001 amounted to a commendable roadmap for sustainable development. It was published in October 2001, some 18 months after the elections of 2000, when the present government first came to power.

3.2 While much of the detail of the NEMS was lost or forgotten, and to this day has not been implemented—in many respects quite the reverse—it quickly became a welcome "given" that the Government would not, as a matter of principle, give approval to any single developer for more than one project, and would certainly not permit any developer to become dominant.

3.3 In April 2006 this summary of Anguilla's position was reported on Caribbean NetNews:

*Tuesday, April 25, 2006*

*HAMILTON, Bermuda: The Eastern Caribbean island of Anguilla will continue its commitment to "low volume, high value" tourism, says Dr. Aidan Harrigan, Anguilla's Permanent Secretary in the Ministry of Economic Development, Investment, Commerce and Tourism.*

*Speaking at this month's Caribbean Hotel and Tourism Investment Conference in Bermuda, Dr Harrigan said that neither rapid development nor over-development present a winning formula for a small 35 square mile island with a population of only 12,500.*

*"Anything we do, we have to be able to absorb the level of development, so that's why we have opted for a more gradualist approach (and) it has worked dividends for us", said Dr Harrigan, who notes that Anguilla continues to maintain the image of an up-and-coming, upscale, luxury destination.*

*"You can earn just as much money from that approach as from mass tourism," said the Permanent Secretary, who notes that capturing the high yields also mitigates negative environmental and social impacts. "It's not to say that it's the approach for everybody . . . (but) it makes sense for us," he said.*

3.4 But all of that (apparently quite suddenly) has changed, and the reason for that change gives rise to grave concerns.

3.5 The most convenient and authoritative account of the headlong sellout is contained in a report of a talk given in June 2007 by the same Dr Aidan Harrigan, Permanent Secretary at the Ministry of Economic Development (but, significantly, speaking in his private capacity).

3.6 It will be noted from the table accompanying that press report that a single developer has been granted approval for no less than three developments, with a total room capacity amounting to 1,525 rooms or some 35% of the total new room approvals at that time.

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<sup>260</sup> Please note that Annexes are available at [www.parliament.uk/facom](http://www.parliament.uk/facom).

3.7 It will also be apparent that the number of workers required (a) to construct these developments; and (b) to service them once constructed, is enormous. Very serious social consequences for Anguilla have already resulted from the large numbers of immigrant construction workers now on the island, and it cannot be doubted that much worse consequences are to come when it becomes necessary to bring in even more foreign workers than are already in Anguilla, to provide service in the finished resorts. Problems of percentage immigration which may affect the UK pale into insignificance beside the percentage that will be needed in Anguilla.

#### 4. WHAT IS THE MOTIVE FOR THIS REVERSAL OF POLICY?

4.1 There are mixed views as to the motives of Government for following this course.

4.2 The view of the Chief Minister is expressed in his address of 11th July 2007.

4.3 A particular concern was articulated but, as was apparent from the item as originally published, not necessarily personally shared by Don Mitchell QC, CBE on his blog.

4.4 Since this item is currently the subject of a libel suit brought against Mr Mitchell by the four Government Ministers named, it has now been removed from the blog website and is not reproduced in the Annex to this submission.<sup>261</sup> In the libel suit, the Ministers have claimed substantial sums of money from Mr Mitchell, notwithstanding his publication of an apology, his withdrawal of the piece from his blog website, his acknowledgment that he had no evidence of any wrongdoing and his offer to make donations to charity. In view of these circumstances, the writer expresses no opinion as to the merits of the item that appeared on Mr Mitchell's blog, except to record that it is symptomatic of a lack of confidence in the present system of government in Anguilla.

4.5 It should be noted, however, that Mr Mitchell is a highly respected individual and is currently the Chairman of the Anguilla Public Service Integrity Board. He is a former Judge of the Eastern Caribbean Supreme Court, a believer of Anguilla, and lives amongst the people of Anguilla. He is also dedicated to the well-being of Anguilla and Anguillians and spends a large proportion of his time in devoted public service, including the provision of free legal aid clinics.

4.6 The Government has had, but has not taken, the opportunity to answer straightforwardly the very simple question: why have they placed the country at the mercy of a few dominant investors? The fact that they have refused to answer perfectly reasonable questions, and have said only (to use the exact words of the Chief Minister) that they have "made mistakes" but they will "make amends", serves only to raise more questions. This is not good for them and it is not good for Anguilla.

4.7 The same lack of transparency manifested in connection with this issue pervades throughout almost everything the government does. The Government website (<http://www.gov.ai/>) is a monument to this lack of transparency. Implying that its purpose is to inform, the Chief Minister's introduction rings hollow when one considers the almost complete lack of information concerning government deliberations (as distinct from public relations announcements) the website carries and the fact that such information is not provided by other means either.

4.8 Nor, when the Government is under an obligation to hold public consultations (eg on major planning matters), do they do so properly. If they do so at all, the relevant meeting is usually called at extremely short notice, with the minimum, if any, publicity, so that it amounts only to a pretence at consultation. When ministers are determined, for whatever reason, to approve a project, it seems that formalities go by the board and favoured developers appear to be allowed to do more or less what they like (including non-compliance with any permissions actually given without any formality or adherence to regulations).

4.9 In my view the Ministers should be strongly encouraged by the UK Government to institute an official and authoritative independent enquiry into the events that have led to these troublesome questions, in the best interests of Anguilla and its people. My view that this is needed does not stem from any conviction that culpability is involved. But it does stem from a conviction that it is thoroughly unhealthy and corrosive that suspicions have been widely aroused and that those who are suspected apparently see no way to allay those suspicions. If, as I sincerely hope, they are innocent, then it should be seen as in their own best interests no less than the interests of Anguilla as a whole that an official independent enquiry should resolve the concerns which the explosive economic upsurge in development activity, and its adverse consequences, have engendered. The suspicions will certainly not be allayed by a libel claim against Don Mitchell QC, CBE, which risks doing little or nothing more than to enable the claimants to enrich themselves personally. A measured, reasoned and explained upsurge in development activity would have been acceptable. As it is, it has all been accomplished behind closed doors and with no adequate or rational explanation.

<sup>261</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

5. THE FUTURE—WHAT STEPS SHOULD THE FCO TAKE IN THE BEST INTERESTS OF GOVERNMENT IN ANGUILLA AND OTHER OVERSEAS TERRITORIES?

5.1 In the United Kingdom, good governance is achieved not only by legislation. There are conventions, understandings, best practices, concepts of honour, dignity and propriety, that are cultural. In some ways, they do not need to be reflected in legislation because it is felt that they are stronger left unwritten but deeply and culturally understood. So the UK has managed its affairs, for the most part, by operating under an unwritten constitution.

5.2 Not so in Anguilla. This is a frontier state. Emigration takes away the best educated and trained. Lessons learned are soon forgotten. The press is weak and wholly ineffective—it is too timid to risk offending the government of the day.

5.3 Opposition politicians are unfamiliar with parliamentary tools for keeping government straight. Some will openly say that they do not even want to do so, because they can secure the best political advantage by letting a government get up to mischief and then haul it over the coals. Opposition politics are based on bringing down the government, not on opposing it in order to put it on the right path.

5.4 There is an urgent and crying need to insist that government be held to high standards in public life. The entire gamut of anti-corruption and good government mechanisms known to law can no longer be left either to good sense or to the local parliament to enact into law. This has not worked.

5.5 After 40 years of constitutional government, Anguilla has yet to enact the legislation anticipated in the Constitution and designed to ensure good government.

- (a) There is no Public Accounts Committee.
- (b) There is no law requiring legislators to declare their assets and those of their immediate families to the Speaker. This despite the fact that it is mandatory under section 60A of the Constitution and despite the fact that section 61 mandatorily requires that “A law enacted under this Constitution may determine and regulate the privileges, immunities and powers of the Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons’ House of Parliament of the United Kingdom or of the members thereof”.
- (c) There is a legally established Public Service Integrity Board. But it is limited to matters concerning civil servants and can function only when requested to do so by the Governor. There is need for a mechanism to be put in place to investigate allegations of corruption and improper behaviour among Ministers of Government, parliamentarians and Boards of statutory corporations, all of which are presently exempted.
- (d) There is no Boundaries Commission to redraw the electoral boundaries from time to time.
- (e) There is no Ombudsman law or “whistle blower” law.
- (f) There is no Freedom of Information Act.
- (g) Crown Lands can be disposed of without any discussion in the House of Assembly.
- (h) In contrast to the good intentions expressed in the NEMS, Environmental Impact Studies are not required for major developments, and when requested are not effectively published or discussed at meetings that are well advertised. Furthermore, government experts are, it is widely understood, often presented with requests to report accompanied by notifications that their report will be just for the record as the project in question has already been pre-approved (ie without regard to the environmental impact, or whatever else the report may contain).

5.6 Such provisions and a score of other measures could, with advantage to good government, be placed in the Constitution.

5.7 But it would not only be an advantage to good government. It would, it is to be hoped, restore trust in government and thereby eliminate, or at least drastically reduce, the present cancerous cynicism much of the Anguilla public currently has towards its public institutions.

5.8 Drafts of any necessary supporting law and regulations should be prepared and published at the same time as any new draft Constitution, with an undertaking that they will be enacted according to an agreed timetable.

5.9 In addition to writing into law provisions for ensuring good government, no governor in Anguilla in recent years has been known to use moral persuasion to insist on good government. On the contrary, Governors have been known to permit and endorse actions that are publicly known or recognised to be improper. An example of this is the extraordinary circumstance that members of government occupy commercial positions involving mind-boggling conflicts of interest. The most conspicuous of these—and there are many other examples—is the fact that the Chief Minister retains his chairmanship of one of the leading commercial banks in Anguilla. A former Governor implied that this was not as inappropriate as common sense would suggest. This has not, I believe, brought credit to the Foreign Office in the minds of many Anguillians.

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## 6. SUMMARY

6.1 The Government of Anguilla appears to be bent on disregarding the views of the Anguillian people as reflected in the Report of the Anguilla Constitutional and Electoral Reform Commission, of which it is assumed the FAC already has a copy.

6.2 If the FCO fails in its duty to ensure that any constitutional change does, indeed, reflect the properly informed views of the Anguillian people, Britain may well, in due course, have blood on its hands if, as could ensue as a consequence at some time in the future, the rule of law ceases to run in Anguilla.

6.3 The key to securing a successful future for Anguilla will be to ensure that proper checks and balances (of the kind described in paragraph 5.5 above) are written into any new Constitution that emerges from the current reform process. It will be wholly inadequate, and indeed counterproductive, for Anguilla to have a new Constitution that not only merely tinkers with these issues, but which further erodes such safeguards as currently exist (inadequate though they are), as the present government apparently wants, by placing yet more power in the hands of the elected representatives without accountability.

6.4 It is vital that, as in any civilised democracy, accountability should be underpinned by oversight and compliance measures. Whether these should merely be local (in the sense that they are enshrined in the Constitution and are therefore enforceable at law by those whom they affect) or whether they should also be international (in the sense that the FCO would have additional oversight powers), is a wider issue. The important point, however, is that if unfettered powers are transferred to the elected representatives, without the normal and proper checks and balances being improved and strengthened, the change will be worse than a missed opportunity—it will be a catastrophe.

31 January 2008

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### Submission from Richard Gifford, legal representative, Chagos Refugees Group

1. This memo deals with the extent of Parliamentary oversight (or lack of it) in the detachment of the Chagos Islands to form BIOT, and the removal of the population to exile.

2. It also deals with the tenure by the USA of the military base, and the prospects for it remaining after 2016.

3. From 1956 the US Navy drew up a list of 60 islands in the Indian Ocean which should be investigated further with a view to establishing a military base with which to dominate affairs in Asia, the Middle East and Africa. The USA had devised what they called the “Strategic Island Concept”, which they modelled upon their military bases in the Pacific Ocean on Islands which they had acquired as a result of the Second World War. It was discovered that with a minute landmass, enormous military and consequent political influence could be wielded from remote parts of the world but affecting substantial geo-political areas.

4. In the early 1960s, Aldabra Island (part of Seychelles) was identified as a suitable military base. However, there was a rare breed of turtle which used Aldabra for its nesting, and the scientific community quickly raised the alarm. Questions were asked in parliament by Tam Dalyell MP about the future of the island. Aldabra was quickly dropped as a potential US base.

5. In August 1964 a joint UK/US military survey team landed on Diego Garcia to study its military potential. The military party were fully aware of the functioning plantations and the population in excess of 1500 souls living, working and enjoying their lives on this and other islands of the Archipelago. A Colonial Office Memo dated 20 October 1954 reported upon discussions between the UK and US delegations which had met in London, and upon the visit of the military party. It recommended that: “HMG should be responsible for acquiring land, resettlement of population and compensation of Mauritius’ interest”.

6. The following day, 21 October 1964, the Memo was annotated thus “S/S (*Secretary of State for the Colonies, Sir Anthony Greenwood*) agrees”. From this moment on, the fate of the population was sealed. There had been no debate in the House of Commons, no serious debate within government departments, and certainly no enquiry as to the welfare and needs, let alone the status, of the population.

7. There were extensive records of the population and its history in Colonial Office records. A Colonial office film, which was shot in Chagos in 1955, described the lifestyle of the islanders, and mentioned that most of the population was born there. Now, however, Diego Garcia was described as “a coconut island whose present population under 500 is largely contract labour from the Seychelles”, a miss description which was reflected in official statements thereafter.

8. In September 1965 there was a Constitutional Conference at Lancaster House on the forthcoming Independence of Mauritius. By October 1965 the pre-independence prime minister of Mauritius had agreed to the detachment of the islands in return for £3 million, and the evacuation of the Chagos Islanders to Mauritius. There was no mention to Parliament of this deal.

9. There was no process of consultation with the islanders and no part of the Chagos Islands was included within any constituency of the Mauritius Legislative Assembly.

10. On 8 November 1965 the BIOT Order in Council was made. It detached the islands of the Chagos Archipelago from Mauritius, and three further islands from Seychelles, thus creating a new territory: BIOT. The British Governor of the Seychelles was to be appointed its Commissioner. He was to have legislative power in BIOT. There was of course no provision for any representative assembly, since the islanders were to be “resettled”.

11. On 10 November 1965 the Colonial Secretary gave a written answer to a self-generated question, to the House of Commons. It referred to the agreement of Mauritius and Seychelles to the detachment of these islands; it mentioned a population of 1,384. It stated an intention that the islands would be available for defence facilities of the UK and US. It failed to mention that the population was to be deported.

12. In the absence of any disclosure of the intended fate of the population, there was no public unrest or further enquiry from members of the House.

13. Officials agonised over how to get rid of the population when it had a right to self-determination guaranteed by Article 73 of the United Nations Charter. For example, a Minute dated 9 November 1965 within the Colonial Office stated “we should for the present continue to avoid any reference to permanent inhabitants, instead referring to the people in the islands at present as Mauritians, Seychellois, or by some similar term”. Other officials talked of “a whopping fib”, and of “maintaining the fiction” that there were no permanent inhabitants.

14. On 11 November 1965 the British representative at the United Nations, Mr F D W Brown, was due to make a full disclosure of Britain’s efforts at complying with the UN Charter, in respect of its various colonies. He too agonised over how to get away with the establishment of a new colony with its own population, when UN resolutions had (a) prohibited the break-up of non-independent colonies; and (b) the use of colonies for military purposes. Mr Brown proceeded to announce what had happened in seriously misleading terms. He stated: “*The islands in question were small in area, were widely scattered in the Indian Ocean and had a population of under 1,500 who, apart from a few officials and estate managers, consisted of labourers from Mauritius and Seychelles employed on Copra Estates, Guano extraction and the turtle industry, together with their dependents. The islands had been uninhabited when the UK first acquired them. They had been attached to the Mauritius and Seychelles administrations purely as a matter of administrative convenience. After discussions with the Mauritius and Seychelles governments—including their elected members—and with their agreement, new arrangements for the administration of the islands had been introduced on 8 November. The islands would not longer be administered by those governments but by a Commissioner. Appropriate compensation would be paid not only to the governments of Mauritius and Seychelles but also to any commercial or private interests affected. Great care would be taken to look after the welfare of the few local inhabitants, and suitable arrangements for them would be discussed with the Mauritius and Seychelles governments. There was thus no question of splitting up natural territorial units. All that was involved was an administrative readjustment freely worked out with the governments and elected representatives of the people concerned.*”

15. In truth, (a) the population had lived there since the 1770s and went back five generations; (b) no consultation had taken place with the islanders, and they had no elected representatives, being disenfranchised both in Chagos and in Mauritius (c). Again, there was no mention of deporting the population.

16. Moreover, Mr Brown was well aware of the permanence of the population and the UK’s obligations under the UN charter, since in his letter dated 22 February 1966 to the Colonial Office, Mr Brown stated: “*on the basis of the information available it seems to us difficult to avoid the conclusion that the new territory is a non-self-governing territory under Chapter XI of the Charter particularly since it has and will or may have a more or less settled population, however small.*”

17. On 30 December 1966 the UK and US governments exchanged notes (Command 3231) concerning the availability of BIOT for defence purposes. This was presented to parliament in April 1967. Paragraph 11 of the Exchange states “*The US Government and the UK Government contemplate that the islands shall remain available to meet possible defense needs of the two Governments for an indefinitely long period. Accordingly after an initial period of 50 years this Agreement shall continue in force for a further period of 20 years unless, not more than two years before the end of the initial period, either Government shall have given notice of termination to the other, in which case the Agreement shall terminate two years from the date of such notice.*” It could be argued that this provision means that either party can give notice of termination at any time after 2016, in which case the facility must end two years later. There would be nothing to stop HMG telling the US well in advance of that date that it intends to renegotiate the Agreement in 2016 or seeking their agreement to it finishing earlier.

18. The Exchange of notes also made an oblique reference to what was to happen to the population which the USA had encountered on its various reconnaissance visits: It was for the UK to take what were described as “those administrative measures that may be necessary to enable any such defence requirement to be met” as the US might want. There was to be consultation with UK over the time required for the taking of such

measures provided that in the event of an emergency requirement “measures to ensure the welfare of the inhabitants are taken to the satisfaction of the Commissioner of the territory”. There was therefore no reference whatever in the treaty to the removal of the population. There was however a secret Minute of Agreement dated 30 December 1966 which identified the “administrative measures” referred to in the Exchange of Notes. These included terminating or modifying any economic activity and the resettlement of any inhabitants. This Minute was not made public until legal proceedings took place some 30 years later. The Exchange of Notes was signed by Lord Chalfont.

19. On 8 February 1967 the BIOT Ordinance 1, the Compulsory Acquisition of Land for Public Purposes Ordinance was made by the Commissioner, acting alone as the sole legislature for BIOT. It empowered the Commissioner to acquire the land compulsorily for a public purpose, notably the defence purposes of the UK or Commonwealth or other foreign countries in agreement with the UK. No statement was made to the House of Commons.

20. On 3 April 1967 the Plantation Company transferred its ownership of the islands to the Crown for £660,000. The Crown then granted a lease to the Plantation Company to carry on running the islands until the United States wished for them to be evacuated.

21. It was not until December 1970 that the US Congress approved the expenditure necessary to constitute the new military base in BIOT. Notice was given to the UK that Diego Garcia must be evacuated by July 1971. In January 1971 the BIOT administrator, Mr Todd summoned the islanders to a meeting on Diego Garcia and told them they would have to leave. He recorded the consternation of the islanders who were shocked and bewildered.

22. In March 1971 the US Construction Battalions landed on Diego Garcia. A number of villages were flattened in the North of Diego Garcia causing the islanders’ homes to be destroyed. Unfortunately a graveyard was also destroyed without deconsecration.

23. On 16 April 1971 the BIOT Commissioner enacted (alone) the Immigration Ordinance 1971. It made it unlawful for someone to enter or remain in the territory without a permit, whether or not they were born in the territory. It enabled the Commissioner to make an order directing that person’s removal from the territory. It was given the minimum of lawful publicity. It was the only legal instrument for removing the population and it was at no stage referred to the Houses of Parliament.

24. The final removal from Diego Garcia was described by Mr Justice Ouseley as follows: “Paragraph 36. The Ilois left behind their homes, their pets and domestic animals, their larger items of moveable property, taking only a small quantity of personal possessions. They regarded Diego Garcia, rather than the Chagos Archipelago, as home. There is no evidence of physical force being used, but most of their dogs were rounded up and gassed or burnt in the “Calorifer” used in Copra production. The sadness and bitterness was continuing and evident”.

25. On 3 November 2000, the High Court declared unlawful Clause 4 of the Immigration Ordinance 1971 which exiled the Chagos islanders from their homeland. On the same day Robin Cook as Secretary of State caused the Commissioner to enact the BIOT Immigration Ordinance 2000. This restored the right of abode of the islanders to the Archipelago, save in respect of Diego Garcia where a permit was still required to land.

Since November 2000, many Parliamentary Questions have been asked, dealing with the plight of the exiled community of islanders, their right of return upheld by the Courts, the lack of provision for their welfare from the Revenues of BIOT, and finally the cost to Council Tax Payers of Crawley of the influx of around 1,000 Islanders who have arrived in UK when they would prefer to return to BIOT.

On 10 June 2004 two Orders in Council were passed without consultation or inquiry or any reference to Parliament or Members of the House. Jack Straw’s letter of 15 June 2004 to the FAC Chairman, admitted that he had deliberately not consulted the FAC although bound to do so. The letter is on the Hansard website.

26. Together they provided that the Chagos islanders’ right of abode in their homeland was abolished. An early day motion was sought by approx. 40 MPs and on 14 July 2004 a Westminster Hall debate took place. Members of all parties criticised the Government’s actions but no steps were taken to revoke the Orders in Council.

On 11 May 2006 the High Court declared the Orders in Council unlawful. They were described as “repugnant” and “irrational” by two senior High Court Judges. On 23 May 2007 the Court of Appeal upheld this judgment and refused leave to appeal to the House of Lords. However on 30 June 2007 the House of Lords granted the Secretary of State leave to appeal on condition that she pay the costs of the appeal on both sides, whatever the outcome of the appeal. All questions of the policy behind the Orders in Council have, since the Westminster Hall debate been resisted by Ministers on the ground that the case is “sub-judice”.

In answer to a Petition on the No 10, Downing Street website calling for the appeal to be abandoned, the Prime Minister's office responded on 4 September 2007 as follows:

*“Orders in Council are the only current means, save an act of Parliament, by which we can introduce primary legislation for ceded Overseas Territories, of which the British Indian Ocean Territory is one. It is common to use Orders in Council to legislate both in the UK and in the Overseas Territories. For example, in 2000 the Government enacted an Order in Council under the Royal prerogative to decriminalise homosexuality in the Caribbean Overseas Territories.*

*“The former Foreign Secretary, Margaret Beckett, decided to seek permission to appeal against the 23 May 2007 Court of Appeal judgement primarily because the judgement raises issues of constitutional law of general public importance that, in her view, would adversely affect the effective governance of all British Overseas Territories. This would include confusion in the legal system to be applied in those Overseas Territories, and potential conflicts between local and English courts. For these reasons the former Foreign Secretary thought it to be in the public interest that the effect of the Court of Appeal's judgement even if correct, should be clarified.*

*“If permission is granted, we expect the case to be heard by the House of Lords in 2008. It would be inappropriate to comment further in relation to ongoing proceedings”.*

31 January 2008

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#### **Submission from Geoffrey C Parker Sr, President, Voters' Rights Association, Bermuda**

With reference to the subject of security and good governance of the Overseas Territories—BERMUDA.

To the Honourable the Commons of the United Kingdom of Great Britain and Northern Ireland in Parliament assembled. We humbly take this opportunity to make the submissions below for your review and action, upon the invitation by the Deputy Governor of Bermuda, Mark Capes, published in the Bermuda daily *Royal Gazette* newspaper on 10 July 2007. We understand that the period for acceptance of written submissions has been extended until 31 January 2008, and pray that this information will arrive in time.

Our submissions will provide information on the following subjects that we believe are of great concern to Bermudians and so should be addressed by the Foreign Affairs Committee.

1. A Voters' Bill of Rights enshrined in Bermuda's Constitutional Order to ensure that the People have control of their government and not the reverse, as currently obtains.
2. Reforms to the Parliamentary Election Act: in particular to voters' registration, to reduce the opportunity of the voter fraud that appears to exist. In particular we recommend that an independent authority should conduct an audit of the voting in the recent General Election [December 18th, 2007] to determine the number of illegal voters in each constituency in which candidates won by small margins, say, 10% or less. Where the numbers of illegal voters exceeded the difference between the winner and loser of any constituency, the result should be voided and a new election for that constituency should take place after removal of those illegal voters from the register of voters.
3. A constitutional Election Commission of independent individuals to administer, supervise and report on all facets of the election and polling process including an audit on each constituency to ensure no voter fraud took place.
4. Fixed Parliamentary Term Elections to remove the political advantage gained for the Government.
5. Absentee Balloting to enfranchise Bermudians resident outside or temporarily absent from Bermuda, as they currently are when they are overseas at school, on business, in hospital or on holiday, etc.
6. Reform the broadcasting legislation to prevent the contravention of the regulations of the blatant sort that occurred during this past General Election, creating a major unfair advantage for the governing party.
7. A constitutional Ombudsman with power to investigate the activities of all members of Government including the Premier and Cabinet Members, to stop abuse of power, as no one should be above the law.
8. The removal of the Office of Attorney General from direct political influence, as presently exists, in order to provide a fair judicial system expected by the People under the law.
9. The reform of the weak Bermuda laws on corruption so that local anti-corruption legislation mirrors that of the UK Legislation and complies with United Nations Convention Against Corruption.
10. Investigation by an independent authority, of the Bermuda Housing Corporation scandal and all persons involved that have allegedly benefited. We support the Opposition's call for a Royal Commission to get to the truth in this and any other irregularities, misuse and abuse of power and public funds that may be brought forward from the Auditor General or other credible sources.
11. Review and reform the Human Rights Commission to eliminate political influence.

12. Investigation by an independent authority of the case of Mr. Harold Joseph Darrell in his seven-year fight to bring a claim of discrimination against the Bank of Bermuda. This claim had been agreed to by the Human Rights Commission but its progress has been consistently blocked by alleged political influence and subterfuge.

13. Enhancement of the powers and independence of the Auditor General to insulate that office from harassment and intimidation by the Government.

14. Legislation to ensure fiscal accountability by Civil Servants, Government, the Premier, the Cabinet and all Parliamentarians, to reduce waste of tax revenue on policies and perks that are not in Bermuda's best interest or that of the tax payer.

15. Establish an independent, possibly constitutional, committee or commission to oversee fairness in government purchases and contracts. Presently major construction contracts are going to the same contractors who are personal friends of the Premier. One was involved in the Bermuda Housing Corporation scandal and one is alleged to be in a cooperative venture with the Premier in another island in the Caribbean. These associations have raised questions about the fairness of the current system by many of the Bermuda tax payers.

16. Improvement of the Bermuda Police Service to ensure public safety and to reduce the political influence over the Police Administration that is generally perceived by the Bermuda public.

17. Confirmation that the United Nations International Covenant on Civil and Political Rights apply to Bermuda, particularly, Article 20.2, which states that Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. We recommend that Bermuda adopt the UK's position on the promotion of swastikas, black power salutes, cross burning and other demonstrations of political hatred. The recent General Election saw unchecked racial hatred expressed against whites in speeches by the Premier and candidates, which shocked this community.

18. "Whistle blowers" legislation to ensure that the truth is brought out and justice served.

19. Review and reform of General and Special Orders for the Civil Service. Currently civil servants are not allowed to join or support political groups, including the neutral, non-partisan Voters' Rights Association. We are aware that the regulations have affected spouses of civil servants who are fearful that their joining could be detrimental to their civil servant spouse. We feel this is a Civil Rights issue that must be addressed.

20. Review the results and costs of the public education system over the past decade in comparison with local private education. As the quality of education affects the quality of the economic and social environment any falling behind in any area has a negative affect on the overall performance and stability of the country.

21. Investigation by an independent authority of the Rebecca Middleton murder case and all other unsolved murder cases to determine whether the investigative arm [the Police Service] and the judiciary [the Courts] have functioned as expected by the People of Bermuda and determine and implement any reforms to improve the process to ensure justice is done. To determine if compensation is due to the victims estate for those cases in which major errors by the Police and Courts have taken place and justice is not served.

The Voters' Rights Association hopes that, based upon your review of all of the above submissions and supporting data, you find sufficient reason to make a lengthy visit to Bermuda to hold public hearings on all of the above issues and any others that may have been brought forward by others.

We have some serious problems here in Bermuda. Our island had been evolving quietly until a group of individuals within the Progressive Labour Party [PLP] decided it was now, as they put it, "pay back time". They ousted two former premiers and have now ensconced themselves in an almost untouchable situation to do as they wish, to spend as much as they wish, ignoring all the basic principles of democracy and the laws of natural justice.

To quote one of our well-known and highly respected attorneys, Mr. Michael J. Spurling: "*We are witnessing the erosion of the rule of law, constitutional rights, individual political rights and the progress made over the past 50 years in terms of civil rights and social cohesion and complete disdain, if not contempt, and adverse consequence for contrary opinion*".

Bermuda is just a month or so along since the General Election and many foreign long-term residents are contemplating their future. Small and medium size international exempt companies have begun downsizing or relocating as the political climate and unworkable immigration policies are taking their toll on the patience of multinational business. Although new business continues to arrive we fear it will not be long before the word gets around that Bermuda is now "unfriendly" to international business. Trust for the new government of Dr Brown has been eroding.

The newly introduced amoral [Americanisation] approach to politics in Bermuda has frightened many people who have nowhere else to go. Under the Westminster system of winner take all, allowing the winner to do as it wishes for five years, a run away government can bring a country like Bermuda to its knees very quickly. When that happens the quality of life in this island will be hugely and quickly affected, particularly those retired with fixed incomes. With the Bermuda Social Insurance scheme impossible to fix, many of the



lower and middle class will be the first to feel the economic downturn. The number one industry is the international business that can move its business with a click of a button, leaving thousands of Bermudians out of work and no chance of getting a job. This is where we are heading. The attached comments from the President of the Bermuda Chamber of Commerce provides food for thought.

During the run up to the recent General Election the Voters' Rights Association offered to facilitate debates on the issues for each constituency and at the end of the campaign there was to be a Leaders debate on national TV. The United Bermuda Party agreed but the Progressive Labour Party declined, thus providing no democratic debates on issues for the people to decide. The Progressive Labour Party stirred their supporters with racially divisive rhetoric and allegedly padded several constituencies. This was not democracy at work! This is not the real Bermuda that the People of Bermuda know and expect.

We have to have checks and balances that place the People in control of their destiny instead of at the mercy of a Premier and six hand picked Cabinet Members who dictate to the people. At the moment the Bermuda Constitution offers no way out of this distressing situation except through an appeal to the Mother Country to take note of the deterioration and offer assistance through reforms designed to protect the Bermuda people, not the Political Parties for whom the Constitutional Order of 1968 was written.

The Constitution was written 40 years ago for a two party system. The ordinary man in the street is excluded from any participation in the political process except in national and bye elections. There is no positive right in the Constitution of every Bermudian, in all circumstances, to vote—just the right to elect a candidate if ordinarily resident and present in Bermuda on the Advanced or National Polling Day. This restricted right to vote does not suffice in this age of globalization, international business and movement of people. Bermuda's people want and deserve political rights, they want to have a say in the determining of their future. The Voters' Rights Association has arisen in response to this need.

The UK Government has the right of intervention to ensure the people under their jurisdiction are properly governed. At the moment Bermuda is not properly governed and a full commission of enquiry will bear that out. *After all, is this not the main reason for this Overseas Territories Audit: to find out exactly what is going on to prove that good governance and security for the people exists, and if not, make the required reforms to get good governance back on track?*

The division codified by party politics over the past 40 years has now become a huge chasm and the government appears uninterested in building any bridges. Dame Jennifer Smith was ousted from the Premiership by Dr Brown and company on the night she won the PLP's second term. Dr Brown's famous words at the time to the public were . . . "We had to mislead you!". However, he did not get the nod from his party and William Alex Scott was chosen as the Premier, with Dr Brown as Deputy.

Just short of three years later Dr Brown took over the Premiership through a simple vote at a PLP delegates conference. Mr Scott, an honourable man, had put in place a Sustainable Development Initiative that brought the people together on the many issues facing Bermuda's future. He also had other programmes he intended to move on to in order to try and heal the great divide within this country. When Mr Scott was removed from office all such programmes were sidelined or halted. The Sustainability Initiative was truncated and the huge cost and effort that had gone into it was basically wasted.

Dr Brown's government seems uninterested in healing this country, and instead seems intent in exploiting divisions. Instead of preserving open space the Brown government has doled out Special Development Orders [SDO's] for new construction, in several cases by-passing the planning requirements established in law. Despite environmental protests, most projects approved by SDO's have been to the detriment of Bermuda's environment and prospects for sustainability. With just 20 square miles of land Bermuda's survival in the future is dependent upon the checks and balances of a sensible and sustainable approach. With global warming and sea levels rising it is estimated that in less than 50 years the size of Bermuda could be cut by a third through erosion and flooding of the many low areas in and around the Island. The airport itself would disappear. To ignore the obvious is folly, yet long term planning for such calamities is not on the political agenda.

The Bermuda Housing Corporation scandal implicated Dr Brown (prior to his becoming Premier) and several other sitting parliamentarians in what was termed "unethical but not illegal" dealings. The Police alleged that unknown individuals had stolen a comprehensive dossier on the scandal from Police Headquarters and leaked various aspects of the contents that were then published in the press. The Premier Dr Brown, through his political appointee the Attorney General, and the Police Commissioner worked closely together to delay or stop further publication, going as far as the Privy Council to delay the publication, presumably so it would not affect the upcoming election. We see this as evidence of a continuing erosion of the rule and respect for law.

We need increasing accountability and stability to ensure our future. At the moment the current government is preaching black power, anti-white rhetoric. Over the past few years the government has introduced programmes in the public schools that arguably are developing a negative image of the white population among young children. The Premier has intimated that they will continue to make the whites feel uncomfortable. Such a stance must be in contravention of the United Nations International Covenant of Civil and Political Rights, Article 20.2.

The Voters' Rights Association identified an average inaccuracy of 8% in the Parliamentary Voters' Register. Such inaccuracy in the recent election should have triggered the Opposition to demand an audit to identify the number of illegal voters in the close decision constituencies [say 10% and less] and if the number was more than the difference in the win then the results should be made void and new bye elections required with those illegal voters removed from the register. We understand that in one constituency that voter challenges were ignored contrary to the law. In this same district a large number of basically homeless people were moved into the constituency just weeks before the election and were not allowed visits by the Opposition Candidate. These affronts to democracy desperately need your inquiry.

We believe that your Committee should by now begin to get a picture of the growing problems in Bermuda where the expectations of good governance requires the Committee's investigation and intervention.

The Voters' Rights Association prays that the House of Commons will take note of the foregoing and will review the supporting submissions that follow.<sup>262</sup> We fervently hope that the House of Commons will agree, at the very least, to send a delegation to Bermuda to discover the truth and initiate suitable reforms.

31 January 2008

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#### **Submission from Wil Pineau, Secretary, NGO Constitutional Working Group, Cayman Islands**

I am writing to provide you with information about the work of the non-governmental organizational (NGO) constitutional working group that was established following the release of the Partnership for Progress and Prosperity report released by Her Majesty's Government in 1999. The NGO group includes the Cayman Islands Chamber of Commerce ([www.caymanchamber.ky](http://www.caymanchamber.ky)), the Cayman Ministers' Association, People for Referendum ([www.prf.ky](http://www.prf.ky)), Concerned Citizens Group and the Forum.

Since the 1950s there has been widespread interest in learning about constitutional matters, but the education process has been limited. The attached documents provide information about the efforts the various NGO groups have attempted to make in this process. We contacted the United Nations Decolonization Committee for educational material on this subject. For ease of reference their website is <http://www.un.org/Depts/dpi/decolonization/main.htm>

We would welcome a visit by your group to the Cayman Islands so that we could meet to discuss these matters. We also suggest that a meeting open to the public be convened so that our people can be further educated on the subject of the relationship between ourselves as an Overseas Territory and our Administering Power, the United Kingdom. Should you wish to discuss any of the above or any of the attachments, please do not hesitate to contact us.

Thank you for the opportunity to submit these documents.

Fourth Committee 2007 reports to the UN General Assembly:

[http://www.un.org/Depts/dpi/decolonization/fourth%20committee\\_documentation\\_2007.htm](http://www.un.org/Depts/dpi/decolonization/fourth%20committee_documentation_2007.htm)

Fourth Committee press releases 2007:

[http://www.un.org/Depts/dpi/decolonization/fourth%20committee\\_press%20releases\\_2007.htm](http://www.un.org/Depts/dpi/decolonization/fourth%20committee_press%20releases_2007.htm)

Decolonisation Regional Seminars (despite repeated requests by the UN to host these seminars in a non self governing territory this occurred only in May 2003 and the seminar was held in Anguilla. In 2007 we understand that it was the wish of the Decolonization Special Committee to convene the 2007 regional seminar in the Cayman Islands but this did not occur.) The NGO Constitutional Working Group was represented at the Anguilla seminar in 2003 and in St. Vincent and the Grenadines in 2005. The annual seminar documents:

[http://www.un.org/Depts/dpi/decolonization/regional%20seminar\\_main.htm](http://www.un.org/Depts/dpi/decolonization/regional%20seminar_main.htm)

Historical General Assembly resolutions:

[http://www.un.org/Depts/dpi/decolonization/docs\\_historical%20resolutions.htm](http://www.un.org/Depts/dpi/decolonization/docs_historical%20resolutions.htm)

The General Assembly Resolution 1654 you will note that the United Kingdom of Great Britain and Northern Ireland was a founding member of the special committee.

<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0167/07/IMG/NR016707.pdf?OpenElement>

1 February 2008

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<sup>262</sup> Documents not published as publicly available.

**Further submission from Ray Carbery, President, Turks & Caicos Islands Olympic Committee (Steering)**

Dear Mr. Chairman and fellow Committee Members, please note the recent email response to questions (see below) which we presented to Ms Meg Munn MP . . . who is the Parliamentary Under-Secretary of State at the Foreign & Commonwealth Office of which the Caribbean Territories fall under her jurisdiction.

As you know from our previous correspondences about our ongoing complaints about how we are being snubbed by FCO Officials (in London) related to our Territories repeated request for answers....so here is a classic example of get lost attitude and don't bother me in "BOLD LETTERS"!!!! This is totally unacceptable, unprofessional and given her high profile position damn right rude. The Turks & Caicos Islands people do not need this sort attitude we have enough on our plate in getting answers from the very people (FCO) who represent us.....and our rights world wide.

The very heart of the problem are in those words and her lackadaisical attitude towards the TCI and its people . . . what a shame! I intend to bring this to attention of the Premier of the TCI.

"Your email is for the Foreign & Commonwealth Office; however it has reached the office of Meg Munn, the Member of Parliament for Sheffield Heeley.

Your email will not be forwarded nor any action taken with it. It has been deleted and any further emails sent to this email address will automatically be deleted.

Please re-send your email to the following address: msu.publicin@fco.gov.uk"

"Dear Ms. Munn, We are not sure if you are aware of the current situation with the Turks & Caicos Islands Olympic Committee's ongoing challenges to seek recognition with the IOC for the TCI? Over the past six years our quest has been stalled by the BOA by voting against the TCI in critical vote back in 1996 whereby we are now precluded from being part of the Olympic Family like our Sister Territories; Bermuda, Cayman and the BVI. We will not bore you with the in-depth details because our case history with the FCO is well documented. The FCO have over these six years has taken a rather lackadaisical approach in helping our cause....they refuse not to get involved even though they are responsible for this whole mess...by allowing a charity to vote on constitutional matters that directly violated our rights. Again you can read the file and get a clearer picture of what we are talking about.

Our email to you today as Parliamentary Under-Secretary of State for our Region is to receive some positive feed back to our ongoing questions which never seem to get answered. You will note the email sent Ms Kate Blacker . . . who is the desk officer for the TCI and the region in general. The current stance by the FCO is that you want us to sit back and wait for the Gibraltar case which is in Swiss Federal Court against the IOC to be heard and verdict made....in our opinion that is purely another stalling tactic on your part. We will address that issue at a later date . . . but you will note below a list of questions which we are waiting for a reply from the FCO. Seeing that this falls under your jurisdiction we would appreciate hearing from you on this subject as Ms. Blacker has taken the attitude of not even acknowledging our email. Thank you on behalf of the youth of the TCI.

*Discrimination against people has no place in the world or sport . . . including the Olympic Games*

*1 February 2008*

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**Further submission from Sonia P E Grant, Bermuda**

1. The Islands of Bermuda received her new Governor, Sir Richard Gozney, and his spouse, Lady Gozney, on 11 December 2007. He arrived in Bermuda on the evening of the advanced poll of our General Election and as such was in Bermuda for a week into the lead up to our General Election held on Tuesday 18 December 2007.

2. Immediately after the General Election, His Excellency the Governor was full of praise for the Parliamentary Registrar and the way in which he had executed his job, noting that the Parliamentary Registrar had carried out his role in a very transparent manner.

3. His Excellency's observations are indisputable.

4. Imaginative television advertisements and radio soundbites, highlighting the advance of Democracy in Bermuda, in an all out effort to prompt individuals to register, were the order of the day. Lists of registered voters who had been challenged by party scrutineers, were duly published by the Parliamentary Registrar in the local newspapers, with the registered voters being challenged, asked to verify their registrations with the Parliamentary Registrar, failing which they would be struck off the Parliamentary Register.

5. The homeless who applied to be registered, were registered.

6. In the context of Municipal elections held by the Corporations of Hamilton and St. George, and pursuant to The Municipalities Act 1923 [hereinafter called "the Legislation"], the equivalent of the Parliamentary Registrar is the Secretary to the Corporation of Hamilton and the Secretary to the Corporation of St. George. Under the Legislation, they are deemed to be Registering Officers.

7. The Parliamentary Registrar of the Bermuda Government and the Registering Officers of the respective Corporations, when performing their duties act in a quasi-judicial capacity. This means that in the exercise of their roles under the Parliamentary Election Act 1978, as amended, and the Legislation respectively, they must have regard to the rules of Natural Justice. Openness, Transparency and Fairness must be the order of the day.

8. The contrast between the behaviour of the Registering Officer for the Municipal Election for the City of Hamilton held on Thursday 26 October 2006 and the behaviour of the Parliamentary Registrar with respect to Bermuda's General Election held on 18 December 2007, is as different as night and day.

9. Without doubt, the openness and transparency for which the Parliamentary Registrar was lauded by His Excellency The Governor, was non-existent in respect of the lead up to, and the day of the Hamilton Municipal Election held on Thursday 26 October 2006.

10. The Hamilton Municipal Election held on Thursday 26 October 2006 was the "Katrina" of all Municipal Elections for the following reasons:

#### ELECTORAL REGISTER

(i) At the start of the said election, at 11.00 am, there was no complete Municipal Register, and the existing Municipal Register became a shambles.

(ii) At the start of the said election, the registering officer, Helen Kelly Miller, failed to provide me a candidate, with a complete register.

(iii) Although, the Registering Officer of the Corporation of Hamilton had received a legal opinion on the 18th October 2006, which said opinion stated that the Registering Officer had a discretion to change the names of nominees [of Municipal Electors], she failed to advise the constituents of the City of Hamilton, at all, much less in a timely manner, that she was prepared to exercise her discretion to change the names of nominees of Municipal Electors. The exercise of such discretion, to the best of my knowledge, information and belief, had never been used from the time the 1978 amendments to the Legislation were promulgated and the discretionary provision, inter alia, introduced. As a consequence the following individuals were denied the right to vote because they did not know that, given that they would be abroad at the time of the Hamilton Municipal election, as nominees of municipal electors, they could have substituted someone else in their place:

- Courtland A Boyle
- Richard D Boyle
- Frances J Breary
- Peter Bubenzer
- Donald R French
- Amanda Swan
- Jewel L Landy
- John Swan
- Edward G Ball

It is totally irrelevant whether the above named individuals supported me or not.

(iv) After midnight, in the wee, wee hours of election morning, the Registering Officer changed the names of 14 nominees of some Municipal electors without telling anyone. Furthermore, from 6 October 2006 to 25 October 2006 inclusive, there were other changes of nominees, as well as additional municipal electors who were added to the Municipal Register.

(v) The Registering Officer then failed to provide a list of the changed nominees to me when I requested the list just prior to the start of the election. The list was only received by me at 9.15 pm after the election, when I requested it for the second time.

(vi) The Registering Officer however did provide a list of changed nominees to the Returning Officer at approximately 12.15 pm on the day of the election, but failed to provide me with a copy of the same list at the same time, despite the fact that I had requested same just prior to the start of the election.

(vii) Without writing to approximately eleven individuals to advise them that they were about to be struck off the Municipal Register for the Corporation of Hamilton, and for no reason whatsoever, and clearly contrary to the provisions of the Legislation, the Registering Office removed approximately eleven individuals from the Hamilton Municipal Register which included people who have lived in the City of Hamilton all of their lives.

(viii) In each case, the individuals attended at City Hall to vote, only to find that their names were not on the Municipal Register, even though their names had been on the Municipal Register for the 27th April 2006 Corporation of Hamilton Election. Some of the individuals were Municipal Electors, others were the

Nominees of Municipal Electors. No one had received a letter from the Registering Officer of the Corporation of Hamilton to advise that their name was about to be removed from the Municipal Register. Amidst confusion, their names had to be restored to the Municipal Register, and each was allowed to vote.

(ix) For no legitimate reason whatsoever and without any regard to the Legislation, Mr Cromwell Shakir's name was removed from the Municipal Register. His name had been on 27 April 2006 Municipal Register.

(x) Mrs Laquita Hill and her husband Mr Kevin Hill submitted their registrations to the offices of the Corporation of Hamilton at the same time. Mrs Laquita Hill was registered. Mr Kevin Hill was not.

(xi) On Election Day, 26 October 2006, Mr Kevin Hill attended the City Hall to check to see if he was registered and was told by the Registering Officer that he was not registered. He was also told by the Registering Officer that his wife Laquita Hill, whose name was on the register, would not be allowed to vote, if she came to City Hall to cast a ballot. As a consequence, Mrs Laquita Hill did not attend at City Hall, and did not vote;

(xii) On election day, Mrs Anne Kast arrived at City Hall only to find that despite handing her registration to the late Mayor, she was not registered.

(xiii) The Legislation for the registration of municipal electors requires that tenants, as opposed to owners of real property, produce Landlord certificates. However at the time of 26 October 2006 election, the Application forms for registration failed to have this salient fact stated on the Application form. In turn, this meant that the following people, having applied to be registered, were placed on a pending Municipal Register, because they had not provided their landlords' certificates:

- Edward S Christopher
- Evernell L Davis
- June I Dowling
- Mr Peter M Grayston
- Mrs Peter M Grayston
- Dennis L Harris
- Janita Hendrickson
- Kevin Hill
- Laquita Hill
- Jeannette B Hypolite
- Iva E Jones
- Jewel L Landy
- Fred Lewis
- Alastair MacDonald
- David C McLean
- Cindy Morris
- Carol D Swan
- [A now Deceased individual]

Some of the above-named individuals were able to produce landlord certificates, were duly entered on the Hamilton Municipal Register and did vote. Other individuals were unable to vote because they never produced their landlord certificates. Indeed two individuals attended at City Hall on the evening of election day and not being allowed to vote, left the premises visibly disgusted.

(xiv) In the case of Ms Iva Jones [ante] a long term resident of the City of Hamilton, she was told by a Corporation of Hamilton staff member prior to the said October 2006 election that she was registered, only to find out on polling day that she was not.

(xv) Further, there was a continuing muddying of the legal waters by the Returning Officer [duly followed by the Registering Officer] when the Returning Officer continually said that the Registering Officer's discretion would only be exercised for the change of nominees of Municipal Electors after the Notice of the Election had been published, but there was no discretion to register Municipal Electors. This cannot be so. If the discretion exists to receive application forms from Municipal electors, it must mean that if the discretion is exercised to receive the application forms from Municipal Electors, then the Municipal Electors in question have to be registered. Sadly, the whole relationship between the Returning Officer and the Registering Officer, one of pure bullying, reflects the sexism that would appear to be on the rise in this community. In my humble opinion, in recent times, the standing of women in this community is in decline.

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THE RETURNING OFFICER

(xvi) On Nomination day, 19 October 2006, after nominations had closed, The Returning Officer, John Cooper, a lawyer, usurped the role of the Registering Officer by making a public announcement by way of VSB radio [and presumably VSB television] that a change of nominees would be permitted, when the Registering Officer had not made up her mind to exercise her legislated discretion one way or the other.

(xvii) Moreover, having being told by the Returning Officer of what he had done, the Registering Officer did not set the record straight, publicly or otherwise. On Monday 23 October 2006, I telephoned the Registering Officer about the pending Municipal Register [ante] that she had given me, when the Registering Officer told me about the Returning Officer's legal opinion which stated that the Registering Officer had a discretion to allow a change of nominees after the Notice of Election had been published. She repeatedly told me on the telephone, in response to my two questions put to her, on Monday 23 October 2006 and Tuesday 24 October 2006 and Wednesday 25 October 2006, that she had not made any changes to the Municipal register with respect to a change of nominees, and that she would not be making any changes to the Municipal register with respect to a change of nominees. Subsequently, this was proven not to be true, because on the 23 October 2006 she already begun to change the names of nominees by adding David Sullivan's name to the Municipal Register.

(xviii) On the Eve of the election, late in the afternoon of Wednesday 25 October 2006, the Returning Officer, by way of a telephone conversation with the Registering Officer [said telephone conversation overheard by Councillor Graeme Outerbridge, who was in the Registering Officer's office in City Hall] threatened the Registering Officer.

(xix) The Returning Officer told the Registering Officer that if the Registering Officer did not change the names of the nominees who had applied to have the changes made [after the Notice of Election had been published], if the nominees desiring to vote attended at City Hall to cast their ballots, he [the Returning Officer] would give them ballot papers and allow them to vote. This would be despite their names not being on the Municipal Register.

(xx) Once the telephone conversation between the Returning Officer and the Registering Officer concluded, the content of the said telephone conversation was relayed to Councillor Graeme Outerbridge by the Registering Officer.

(xxi) David Sullivan is an individual who was told by the Returning Officer prior to the election that if the Registering Officer did not put David Sullivan's name on the Municipal Register, if David Sullivan attended at City Hall to vote, the Returning Officer would give him a ballot paper.

(xxii) On Nomination Day, 19 October 2006, the Returning Officer [a voter on the Municipal Register for the City of Hamilton] told a Member of The Corporation of Hamilton, Acting Mayor and Senior Alderman, David Dunkley, that he [the Returning Officer] supported the other candidate, Mr Sutherland Madeiros.

(xxiii) As a voter on the Municipal Register for the Corporation of Hamilton, the Returning Officer should not have been allowed to act as Returning Officer for the Municipal Election of Thursday 26 October 2006. This practice of allowing Returning and Presiding officers to officiate in their own parliamentary districts, that is to say in parliamentary districts where they voted, had been abandoned by the Parliamentary Registrar of Bermuda in the early 80s, and rightly so.

(xxiv) Moreover, as a voter on the Municipal Register for the Corporation of Hamilton, the Returning Officer should not have been allowed to act as a SOLE Returning Officer. There should have been two officials as there has always been in all of the previous Corporation of Hamilton elections, except for the election of 27 April 2006, when the Returning Officer told the Registering Officer that he did not need anyone to assist him.

(xxv) By acting as the sole Returning Officer, without any other additional election official present, during the election of 26 October 2006, the ballot box was left unattended three times, once when the Returning Officer went off to the bathroom, taking the unused ballot papers with him; secondly, when the Returning Officer cast his vote; and thirdly, when I saw the Returning Officer outside of the polling station in the evening of election day, just milling about.

(xxvi) The Returning Officer just does not get it. The Returning Officer does not want to understand that as a Returning Officer he had no discretion to exercise, with respect to a changing of the names of nominees of municipal electors. It was simply not his discretion. It was the discretion of the Registering Officer. The Registering Officer could choose to exercise her discretion or not. Once John Cooper, the lawyer, gave the Corporation of Hamilton his opinion pertaining to the change of nominees of municipal electors, he should have backed off. John Cooper, the Returning Officer, had no discretion to exercise and he should have left the matter alone, rather than cause the endless confusion which resulted. And the fact that the Registering Officer should invite the Bermuda Police to be stationed at the Polling Station on election day, 26 October

2006, when she failed to do anything about the Returning Officer's threats [re handing out ballot papers to purportedly changed nominees not on the Municipal Register] is simply outrageous! I do not recall any member of the Bermuda Police Service being asked to attend at the Municipal polling station in the City of Hamilton, previously.

(xxvii) By virtue of the fact that the Returning Officer was a voter on Hamilton's Municipal Register, he could only vote for one candidate, which he did, [none of the ballots cast was spoilt] and was therefore biased, and under no circumstances could he and did he exercise his role as Returning Officer in a quasi-judicial capacity.

#### PARLIAMENTARY ELECTION ACTS 1963 AND 1978

11. It is said that Parliamentary Election Act 1963 applies to the Legislation. I do not agree. However, as the Returning Officer believes it to be so, I must point out that after the count of ballots, reconciliation of the ballot papers is not required. The said 1963 Act is an anachronism of the past and does not embody the principles of transparency and accountability that one would expect in legislation pertaining to any elections.

12. In the premises, was the Hamilton Mayoral Election of Thursday 26 October 2006 an example of good governance?

13. Was the Hamilton Mayoral Election of Thursday 26 October 2006 carried out in a transparent manner?

14. Was the Hamilton Mayoral Election of Thursday, 26 October 2006 fair?

15. What happens when the Registering Officer and/or the Returning Officer get it wrong?

16. At this stage, I have no confidence in the ability of the Corporation of Hamilton, given the incumbent Registering Officer and the Corporation of Hamilton's penchant to continuously employ Mr John Cooper as a Returning Officer or Presiding Officer, to administer elections in a fair and equitable manner for all of her constituents, and if that is the case, the Corporation of Hamilton's role in her elections must be relinquished.

17. Presently, there are no provisions for advanced polling that applies to the Corporation of Hamilton elections. [And being candid, one is left to say if the Registering Officer and the Returning Officer cannot handle a normal election properly, what hope would there be for an advanced poll?] Further, there are no provisions for the deferring of Municipal elections before voting starts, as with Bermuda's general elections. I know of only one Commonwealth case, a Canadian case, where a judge stopped an election before the voting started.

18. The right to vote is not a privilege. The right to vote is a fundamental human right. In my two part submission to the FAC, I am not questioning the outcome of the Mayoral election of 26 October 2006, but I am questioning the conduct of same. The only place for the questioning of the outcome of an election is a court. Just because I failed in my Supreme Court of Bermuda Election challenge of the Mayoral Election of 26 October 2006, it does not mean that the conduct of the said Election was fine. I am taking a stand for the human rights of the constituents of the City of Hamilton. They deserve better!

#### OPEN MEETINGS

19. The Corporation of Hamilton meetings have not always been held in private. There was a time, albeit brief, in the late 19th century or early 20th century when the Corporation of Hamilton meetings were open to the public. Then the Corporation reverted to closed meetings.

20. In the year 2000, at a full Corporation of Hamilton meeting I moved that Corporation meetings be open to the public. The Motion was seconded by Councillor Reginald Minors. A full discussion was deferred to the next meeting. After a full discussion at the following meeting, the motion was roundly defeated. To the best of my recollection, it was only myself and Councillor Minors who supported the motion.

21. In 2003, I put the same motion back on the table. By that time, I may have been the Deputy Mayor and Senior Alderman. Again the motion was rejected. However, as a compromise, it was agreed that the Corporation of Hamilton would publish an abridged version of its Minutes. The publication of abridged Minutes never came to pass. It would have been for the then Mayor to have moved matters along, but that was not the case.

22. Part of my platform for the two 2006 elections [April and October] was for open meetings. Needless to say there are personnel matters that could never be part of open Corporation of Hamilton meetings, in addition to other matters.

## BERMUDA HOUSING CORPORATION

23. From 2 October 2003 until 20 April 2006, I served as the Deputy Mayor and Senior Alderman of the Corporation of Hamilton. Part of my responsibilities included the finances of the Corporation of Hamilton.

24. Because of my somewhat detailed knowledge of the events transpiring at Bermuda Housing Corporation [“BHC”], if there are lessons to be learned by the Corporation of Hamilton from the BHC affair, it is simply this.

25. As elected officials, I believe that we are obliged to enhance all operating systems. As a matter of urgency, the Councillors and Aldermen of the Corporation of Hamilton should demand that all expenditure of the Corporation of Hamilton should be tabled at the Corporation of Hamilton meetings and approved before the cheques are written. This was never the case in my tenure, and would have become so had I become Mayor.

*1 February 2008*

## APPENDIX A

## CHRONOLOGY—19 TO 26 OCTOBER 2006

Thursday 19 October 2006—Nomination Day—The Returning Officer usurps the role of The Registering Officer who is akin to the Parliamentary Registrar.

Thursday 19 October 2006—Nomination Day—The role of the Registering Officer is usurped because, after the close of Nominations for the office of Mayor of The City of Hamilton, the Returning Officer gave an interview to VSB indicating that a change of nominees [of Municipal Electors] would be accepted by the Registering Officer.

Thursday 19 October 2006—Nomination Day—After giving the said press interview in the foyer of City Hall, the Returning Officer goes to the Registering Officer and tells the Registering Officer of the press interview he has just given.

Thursday 19 October 2006—Nomination Day—The Registering Officer tells the Returning Officer that he should not have made the statement about changes of nominees [of Municipal Electors] being allowed.

Monday 23 October 2006—Sonia P E Grant [“SPEG”] calls the Registering Officer about a pending Municipal Register. After that discussion, the Registering officer says to SPEG that she is being asked to exercise her discretion to change the names of nominees after the register had closed on 5 October 2006. SPEG first asks the Registering Officer if she has changed any names of nominees and is told by the Registering Officer that she has not. Then SPEG asks the Registering Officer if she would be changing the names of the nominees and is told by the Registering Officer that she would not.

Tuesday and Wednesday 24 and 25 October 2006—SPEG calls the Registering Officer about other matters. Each day SPEG asks if she had changed the names of nominees, and secondly if she would be changing the names of the nominees and was told repeatedly by the Registering Officer that she had not made any changes and that she would not. However, the Registering Officer has already begun to alter the register, as on 23 October 2006, she has already added the name of David Sullivan.

4.00 pm or thereabout Wednesday 25 October 2006—The Returning Officer calls the Registering Officer at City Hall and threatens her saying that if she [the Registering Officer] did not put the change of names of nominees on the Municipal Register, then on the next day, the day of the election, he [the Returning Officer] would be giving ballot papers to the people whose names should have been placed on the register, should they come to City Hall to cast their ballots. During the telephone conversation Councillor Outerbridge is in the Registering Officer’s office. After the telephone conversation concludes, Acting Mayor and Senior Alderman David Dunkley enters the Registering Officer’s office to be told of the Registering Officer’s telephone conversation with the Returning Officer.

4.30 pm or thereabout Wednesday 25 October 2006—SPEG receives back-to-back calls, first from Acting Mayor Dunkley and then Councillor Outerbridge, advising that the Registering Officer was more than likely going to put the change of nominees on the Municipal Register. [SPEG WAS NEVER TOLD OF THE THREATS MADE BY THE RETURNING OFFICER TO THE REGISTERING OFFICER ABOUT WHAT HE WOULD DO IF THE NOMINEES’ NAMES WERE NOT CHANGED]. [SPEG ONLY HEARD ABOUT THE THREATS AFTER THE ELECTION PETITION HAD BEEN FILED].

5.05 pm or thereabout Wednesday 25 October 2006—SPEG received a call from the Registering Officer asking her to meet with the Registering Officer and Alderman Sutherland Madeiros so that she could advise of her decision about the change of nominees. SPEG stated that she was on her way to a 5.30 pm meeting and that she would be unable to attend and that after the 5.30 pm meeting she would be canvassing. SPEG did say that she would be able to meet with her—the Registering Officer—the next morning prior to the election.



AFFIDAVIT OF GRAEME PHELPS OUTERBRIDGE  
FOREIGN AFFAIRS COMMITTEE

HOUSE OF COMMONS

OVERSEAS TERRITORIES INQUIRY

AFFIDAVIT OF GRAEME PHELPS OUTERBRIDGE

I, GRAEME PHELPS OUTERBRIDGE, of “Skylight” 6 Benevides Lane in the Parish of Southampton, in the Islands of Bermuda, MAKE OATH and SAY as follows:

1. That the content of this my Affidavit is true to the best of my knowledge and belief. That I am a Professional Photographer.
2. That I was sworn in as a Councillor of the Corporation of Hamilton on Thursday 20 April 2006 for a three year term.
3. That it is my belief that Miss Sonia Grant did not receive a fair election based on the events I witnessed and heard.
4. That with respect to the 26 October 2006 Mayoral election, on 19 October 2006, Nomination Day, I was in the office of Kelly Miller, the Corporation Secretary at City Hall. Shortly after nominations had closed at 1.00 pm, John Cooper, the Returning Officer, entered the Secretary’s office and told Kelly Miller that he had told the press, specifically, Mr Bryan Darby of VSB, that the changed nominees could vote. Kelly Miller told him “I wish that you wouldn’t have done that, John!” She indicated that the Corporation had not received a legal opinion from its lawyer and that he should have not made such a statement to the media. Mr Cooper replied that it was his legal opinion that changed nominees could vote. John Cooper was referring to those nominees whose names were changed after to 5 October 2006. John Cooper quickly left the office before Kelly Miller could speak further on the matter.
5. That by the next week, which was the week of the election, I went into Mrs. Miller’s office at City Hall, when she happened to be on to phone with, whom I later learnt to be, John Cooper, the Returning Officer. Kelly Miller was arguing on the phone with John Cooper. At that time Kelly Miller had not acquiesced in changing the names of nominees after to 5 October 2006. Mrs Miller was still waiting to make a decision as Secretary on the opinion of the Corporation of Hamilton’s lawyers, Appleby Hunter Bailhache, which came several days before the election. John Cooper was adamant that the new names for the change of nominees be added to the municipal register failing which, if Kelly Miller did not agree with his opinion by the day of the election, John Cooper would give to unregistered individuals ballot papers regardless of what Kelly Miller said or did. All of this information was shared with me by Kelly Miller after she had finished her telephone conversation with John Cooper.
6. That during the same week of the election, I again was in the office of the Corporation Secretary, Kelly Miller, at City Hall, when the then Alderman Sutherland Madeiros happened along with papers in his hand, these papers being nominee forms for changing nominees.
7. That Alderman Sutherland Madeiros held up the papers in his hand and said that he had a legal opinion that he could proceed with what he was doing, and that he would continue doing it. Kelly Miller was there. Acting Mayor David Dunkley was there and was shaking his head.
8. Acting Mayor David Dunkley was concerned about how things were being conducted. Acting Mayor Dunkley felt that he could not get involved. Acting Mayor Dunkley indicated to me that as the Notice of Election had been published, he could not interfere with the Secretary’s power over the election.
9. That Alderman Dunkley did agree however that both candidates should be called in by the Secretary and be made aware of any changes to the electoral process, so that candidates would be on an equal footing.
10. That Alderman Dunkley supported this view in Ms. Miller’s office and I again called Kelly Miller before the election and asked her to bring both candidates into City Hall and inform them of the changes to the electoral process.
11. That in conclusion I would like to add that in the early days of Mayor Bluck’s tenure, perhaps the first week of May 2006, I attended a meeting where the Mayor wanted my opinion on Mrs. Miller’s removal as Secretary of the Corporation of Hamilton.
12. That I was perplexed by this request and asked what was the problem. It was indicated that she had problems with her staff and that it would be best for the Corporation if she went.
13. That later privately however, another Corporation member stated that Ms. Miller had done such a good job solving the many problems that the Corporation had on the docks that the process had created enemies.
14. That my view on the matter was that there not being any letters of warning on file, that it would legally be seen as constructive dismissal and the Corporation would be exposed to a very costly civil action.
15. That Mrs Miller was locked out of her office and City Hall itself by the late Mayor Jay Bluck, the then Alderman Sutherland Madeiros and Alderman William Black.

16. That she then had a forced sabbatical before returning to her position as Corporation Secretary because the members of the Corporation refused to give her a six figure golden handshake, and in the absence of being given warnings, she could not be dismissed.

17. That legal Counsel, Mello Jones & Martin, retained by Mr. Bluck for the Corporation specializing in employment law, gave the same advice as I had and the matter was dropped.

SWORN in the City of Hamilton in the)  
Islands of Bermuda by the above-named)  
GRAEME PHELPS OUTERBRIDGE)  
the 31st day of January 2008)

BEFORE ME:

Larry

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A Commissioner for the taking of Oaths  
Affidavits and Declarations in the Supreme  
Court of Bermuda

**APPENDIX C**

**AFFIDAVIT OF DAVID WAYNE DUNKLEY  
FOREIGN AFFAIRS COMMITTEE  
HOUSE OF COMMONS  
OVERSEAS TERRITORIES INQUIRY  
AFFIDAVIT OF DAVID WAYNE DUNKLEY**

I, DAVID WAYNE DUNKLEY of 12 Point Shares Road in the Parish of Pembroke HM 05 in the Islands of Bermuda, MAKE OATH and SAY as follows:

1. That the content of this my Affidavit is true to the best of my knowledge and belief,  
That I am Business Owner.
2. That I am the nominee occupant of DWD Development Group situated at 58 Victoria Street, City of Hamilton HM 12 in the Municipal Register of the Corporation of Hamilton.
3. That on Nomination day, 19 October 2006, I questioned John Cooper about the fact that he, John Cooper, had told me previously that if I ran for Mayor and lost I would be out of the Corporation of Hamilton altogether.
4. That I asked John Cooper on Nomination Day how could Sutherland Madeiros be running for Mayor and be told by John Cooper that if he [Sutherland Madeiros] lost, Sutherland Madeiros would stay on The Corporation of Hamilton as an Alderman. I asked John Cooper why he never got back to me to indicate his change of opinion to me. John Cooper said: "Things change."
5. That I said to John Cooper on Nomination Day that it appeared to me that John Cooper was a supporter of Sutherland Madeiros. John Cooper said: "Yes I am."
6. That I said to John Cooper that if that was the case he [John Cooper] should not be the returning officer. I spoke of this incident to Councillors Courtland Boyle and George Grundmuller when it first happened.
7. That on Monday 23 October 2006 at City Hall in Mrs. Miller's office, Alderman Suthy Madeiros mentioned that he could put nominees on the register because he had a legal opinion.
8. That I asked Mrs. Miller if she had a legal opinion from our lawyers to confirm that. Mrs. Miller said yes.

9. That the next day, 24 October 2007 I called Michael Fahy of Appleby Hunter Bailhache and Mr Fahy said that he had given Mrs Miller a verbal opinion and that he had not given her anything in writing.

10. That on Wednesday 25 October 2006 Alderman Suthy Madeiros came to City Hall, waving some papers in hand and said that he had just spoken to Alan Dunch and that Alan Dunch approved that nominees' names could be changed and that Alan Dunch would speak to John Cooper and John Cooper would call Kelly [Miller].

11. That later on that day, I walked back into Mrs Miller's office when she was telling Councillor Graeme Outerbridge that John Cooper had told her that he [John Cooper] would give ballot papers to people whose names she did not put on the register if they came to vote at the election. I left the room and went back to speak to Mrs Rochester.

SWORN in the City of Hamilton)  
in the Islands of Bermuda by the above-)  
named DAVID WAYNE DUNKLEY)  
the 31st day of January 2008)

BEFORE ME:

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Michael Telemaque  
A Commissioner for the taking of Oaths  
Affidavits and Declarations in the Supreme  
Court of Bermuda

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**Submission from Antony Siese FBCO, Bermuda**

Thank you for considering submissions after 31 January 2008.

My concerns are surrounding the lack of transparency in Government which can be exemplified in the following.

The present Government developed and promoted a Sustainable Development programme for the Bermuda Islands last year. Since this was promoted there have been at least three Special Development Orders which means that the general public and the Planning Department do not have any say in such developments. Some of these are contrary to existing Planning regulations.

When Planning Regulations have been contravened and permission not granted, we have a situation in Somerset in the western part of the islands, where a PLP supporter, Mr Henry Talbot carried out illegal construction work, excavated woodland, destroying cliffs and longtail bird nesting areas, breached the rules of building a dock and violating the "Queen's Bottom" on the foreshore in 2004. After a lengthy inquiry, then Minister of the Environment, Neletha Butterfield, issued an order to correct these problems with a deadline of 18 October 2005 to repair the damage caused. If this work was not carried out by that date, enforcement action was threatened. It appears that no action has been taken some two and a half years later taken against the perpetrator.

Laws are supposed to be observed by all and not breached by "party members" because they are party members. This non-observance of the law is resulting in the lawlessness which is pervading our society down to the day to day driving habits of the general population. When one observes the drivers of GP license plate cars (cars owned by Government for Ministers and people on Government business) breaking the law then it is open season for all and sundry. Evidence of the bad driving on this island can be seen with the number of damaged walls.

The Bermuda Cement Company, a privately owned Company, was told they had to remove the two silos to another part of the Dockyard and would be given a 21 year lease only. The cost of doing so was running into the millions of dollars and negotiations for the lease could not come to a successful conclusion. Government also wanted the shareholding opened up to the general public, which the company was prepared to do providing they obtained a reasonable lease. As a result of their lease terminating, the shareholders agreed to sell the company. Now, there are only six shareholders in the company and we wait with baited breath to see whether the Government will force them to remove the silos, rebuild and what sort of lease they will be offered. The major shareholder is a PLP supporter. Will they ensure that the shares will be offered to the public as demanded of the original company? It will be interesting to actually see what happens.

There is a major drug problem on the Island and when there is little respect for the law then all of our problems escalate. People know they will get away with it, so, "what the hell"!

Unfortunately, the politicians do not respect the voters so how can the voters show respect to the politicians? Classic example of this is that over 50% of the registered voters signed a petition requesting a referendum on Independence. This has been totally ignored by the present administration. The last vote in the 1990's showed 68% against Independence. The attitude is "we know best so you take what we give you". I agree, one cannot take every issue to the voting public, however, on major issues the voting public should be able to offer an opinion on the matter in question.

Contracts are being issued without being put out to tender, and yes, these contracts are being issued to the Party faithful. The new dock being built at Dockyard was not put out to tender and not only that but work was started prior to Planning Permission being given. This type of action does not exactly give the voter confidence in the ruling party.

I realise Bermuda is governed by the Westminster system of Government, which is not perfect, but a whole lot better than the American system of Government or what one sees in many other countries such as Zimbabwe. I just don't want to see the Bermuda go into a dictator type system where voters are afraid to express their views.

Money is being spent by the present administration as though it is going out of style and without accountability. The accounts are not being presented to the Accountant General in a timely manner. When the Accountant General does do his job, he is hounded, jailed, offices raided, moved from one office to another without his permission and so it goes on. We do not have accountability on the Berkeley Institute construction which went over budget. How many other projects which we do not know about, are also over budget? Without having an effective Accountant General, who is not a political appointment, we will not have the necessary information. The current Accountant General was a pain to the United Bermuda Party when they were in control of Government, but he was doing his job and he should be allowed to continue. I hate to think what will happen when he retires and maybe legislation passed so that it becomes a political appointment. I can see this as a possibility under the current administration.

The education system needs a complete over haul with more control being placed in the hands of the head teachers and less interference from the Department of Education where there are more Chiefs than Indians.

On the racial issues, the present administration are telling companies that there needs to be a more population ratio in the work force, ie 70% black and 30% white. I am a firm believer in the fact that if you are qualified for the job then, whether you are black or white, male or female, the job is yours. Whilst they want this for the private sector, my question is, does this also apply to Government? My estimation is that 90—95% of the Government work force is black so we need to get more white representation. Government cannot dictate ratios and not do the same thing themselves.

It does reach the point of being ridiculous. One lady complained that there were not enough women in Cabinet and my argument was that there were not any white people in Cabinet either. Where do we go from here? How many Protestants, Catholics, Seventh Day Adventists etc are in Cabinet or any other company or Government? There can never be a ratio projecting the country's ethnicity. The best person for the job! The PLP won the election so, naturally we have a larger percentage of black people in the Cabinet, but that does not have to go all the way down to Government employees.

This is just scratching the surface of the problems in Bermuda but will have to suffice due to time constraints.

4 February 2008

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### Submission from John Redmond, Turks and Caicos Islands

#### VIOLENT CRIME IN THE TURKS AND CAICOS ISLANDS

I am writing as a resident of 18 years standing here in the Turks and Caicos Islands to express my deep concern at the situation in the islands, particularly the island of Providenciales, with regard to violent crime and the lack of police resources to deal with it.

Prior to moving to these islands, in my 40 plus years living in England, I do not recall knowing at first hand someone who had been the victim of a violent crime. In my 18 years residing here, I have (or had) friends and acquaintances of whom one has been murdered, two violently raped (both of whom were very pregnant at the time), one sexually assaulted in the course of an armed robbery and countless (nine in the just last month) who have been threatened/beaten and robbed at knife point or gun point.

All of these instances have the following in common:

1. They took place in the victim's own home, usually in the middle part of the evening, once at 6.30 in the morning.
2. The perpetrators took their time, typically in the order of half an hour, to intimidate, beat, rape or kill their victims. In one recent case, they cooked themselves a meal whilst waiting for their victim, a single, middle aged woman living alone, to return from an evening out.

3. Where the perpetrators of these crimes have been identified, they are usually found to have been born in the TCI and are repeat offenders, well known to the police.
4. The police response was very slow.
5. The victims (if still alive) are, without exception, traumatised and most have left the islands as soon as possible after the incident. Many are too frightened to return to their own homes.

This is just the tip of an iceberg. Violent crimes are no longer given any publicity as it is generally thought that this sort of news will drive away tourists and expatriated residents on which the islands' economy largely depends. Armed robberies of banks and other businesses holding cash are frequent.

Some of the reasons are not hard to find:

1. Prosecutions are not always possible due to the difficulties the police have in collecting evidence.
2. Successful prosecutions are difficult because of the reluctance of juries to convict. In such a small community, jurors may well know or be related to, the suspect.
3. Jail sentences are often remarkably short for the type of crime committed.
4. Suspects, even murder suspects, are often allowed out on bail.
5. The recent US policy of repatriating hardened criminals to the countries of their birth means that we get some very undesirable people forcibly repatriated to these shores.
6. The lack of a rapid response by the police means that the perpetrators of these crimes can usually make an untroubled getaway and be well away from the crime scene by the time the police arrive. The current favourite method is to take the victims car, load it with the loot and drive some distance from the crime scene, then transfer to another vehicle, abandoning the stolen car.
7. Schemes like Crime Stoppers have been unsuccessful, as those with knowledge of the criminals are frightened to come forward.
8. Illegal fire-arms are in plentiful supply, apparently being smuggled in by Haitian refugees.
9. The lack of an effective addressing system to enable the police to locate and reach the crime scene without delay.
10. Last, but not least, the lack of police resources, which have not kept pace with the rapid growth of the islands.

Most, if not all, of these reasons can be addressed by those in authority, if they have the will and commitment to address them and anything that can be done, directly or indirectly, by the H.E. The Governor's office or the British Government will be welcomed.

6 February 2008

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#### **Submission from Hengride Permal, Chair, Chagos Islands Community Association**

1. My name is Hengride Permal. I am the Chair of the Chagos Islands Community Association which represents some 2,000 Chagossians. Some of them live in Manchester and London, but the vast majority are living in Crawley. Out of these 2,000, a very small number of around 50 are babies who were born in the United Kingdom. Around 200 are elderly residents who were born in the Chagos Islands. The remainder were born in Mauritius and came to the UK because they were desperately seeking a better life and their families were suffering in the slums of Mauritius.

2. We began to arrive in Crawley in May or June 2002 when we started to receive full British passports. Once here, most of us spent days sleeping in Gatwick Airport, then spent a certain amount of time in hostel accommodation in Horley, then returned to Crawley where we had to seek private lodgings. The council did not consider that it had the responsibility to house us and we had to struggle in order to gain access to council housing.

One of our members was only given a council house after he fell into the clutches of a private racketeer landlord, who assaulted him and beat him up and only then did the council move to provide him with accommodation.

We had a 24-hour demonstration outside Crawley Council Offices throughout the winter months of 2005-06 to insist on our right to council housing and to demand access to the Jobseekers Allowance and to other benefits. These were denied to us, despite the fact that we had full British passports. To this day, we are still involved in struggles to gain access to the Jobseekers Alliance and to the Old Aged Pension, with elderly people who are entitled to it, still being denied.

We are also suffering from our families being spilt up, with husbands living in Crawley and wives and children still in Mauritius and vice versa. Despite the fact that we are all British subjects, the conditions on which we were given British passports mean that some family members are admitted and others aren't. This causes a real trauma. It is possible to get long stay visas, but these cost nearly a thousand pounds which Chagossians do not have. Even then, when a family has been temporarily united through a long-term visa, big problems arise. We have a case currently where the father and his children, who came to stay with the

mother in Crawley, on a long term visa, has been told that he has failed a Citizenship English test and is liable to be returned because of this to Mauritius with his children unless he is able to purchase a new visa to restart his stay here. There is no other word for this but torture. The family are distraught and fearful about what is to happen to them.

In our opinion, this is no way to treat a people that have already been evicted from their homes and saw their animals being killed and their actual housing being demolished as they were removed from Diego Garcia and taken to Mauritius, never to return, as we were told. This is also not the way that people from other overseas British territories are being treated, such as from Monserrat and the Falklands.

The British people are tolerant and have welcomed us, but there have been a number of instances of racist attacks on people and people's houses creating an atmosphere of fear, for which, of course, only a tiny minority are responsible.

We come from a tropical island where you never get cold, where there is never a lack of food supply, either from the ocean or from the land, and where there were very few troubles and stresses. We find it very difficult to live in a completely urban environment and also in a climate that is cold and damp and we find difficult, leading to all kinds of illnesses, colds, chills, general aches and pains, which have blighted our stay here, especially for the elderly, who spend their days dreaming about returning home.

Our community does look for work and many of us are working. But unfortunately it is in the lowest-paid jobs, with very little prospects. Also, our native language is Creole French. Many of us do not speak English and they have to be represented in dealing with problems, such as attempts to gain access to the Jobseekers Allowance and access to council housing, and problems with visas.

So it is wrong to accept the picture that is being made that we are a community that is fully integrated into Britain, more or less British, and that has no real connection or desire to return to our homes. We all want to return to our homes. We all want to return to the Chagos Islands and to the life that our parents once had and which we all dream about.

3. We do not accept that there is a group of Chagossians who are more entitled to return to their homes than the rest of the Chagossian community, which is scattered in the UK, the Seychelles, Mauritius and other countries. We are all suffering. We all have the right to return and we all represent the same generations.

4. We are very disturbed that it seems to us that we are being by-passed. Nobody has ever informed us of the establishment of a resettlement team. It was news to us that a resettlement plan for some Chagossians would be launched in the House of Lords next month. We have never seen this resettlement plan. Nobody has consulted us about it. In our opinion we have the right to return, we have the right to draw up, with the rest of the Chagossian community, a resettlement plan and be represented on a negotiating team. This cannot be done for us or without us. This is why we would like to give face-to-face evidence on these issues to your Foreign Affairs Committee.

We are very, very appreciative of the legal work that Richard Gifford from Sheridan's Solicitors has done to advance the cause of the Chagossian people. However, he cannot negotiate either on behalf of us or without us. The Chagossian community must have its own negotiating team. I would like to repeat that no section of the Chagossian community has a monopoly of the right to return, we all have it.

The same is the case with the question of which Islands are to be resettled. We have the right as a community to decide on this. We do have the right of self-determination and I think that you will, and the British government will, recognise this right. It is now agreed that removing us from our homes was illegal. It follows from this that the establishment of the huge base on Diego Garcia was illegal. We cannot accept that since this illegal action is an established fact that we cannot return to Diego Garcia, from which the vast majority of us came from. In our opinion the United States of America must be asked to remove its base.

5. On the question of compensation, in our opinion the amount of compensation that has been paid up until now is pitiable. Two and a half thousand pounds is no compensation for what we have been through.

However, many of us have never received any compensation and we would like your Foreign Affairs Committee and the British government to investigate what happened to the amount of money that was on offer as compensation. As far as we are concerned, we have the right to return and we have the right to a proper amount of compensation, to be negotiated, for what the Chagossian people have suffered.

6. We are prepared to discuss the issue of a phased return to our homes, but all have the right to return, not a limited 1,000, and the planning must be for a full return of the Chagossian people, with all of the different Chagossian groups represented in the different phases of this return.

We wish to see self-determination for the Chagossian people. We want to be able to elect a Chagossian administration to run the Chagos islands so that we will never be tricked out of our homes again, although of course we are not opposed in any way to being members of the Commonwealth.

Once again, I would like to thank you being able to make a written submission to you and we are looking forward to being able to appear before your committee to discuss the issues that have arisen.

We would just like to re-emphasise that the Chagossians must decide who will negotiate for them, that all the Chagossian communities must draw up the plans for resettlement (and in this context we would appreciate it if you could see that we receive a copy of the current resettlement plan), and that all Chagossians must have the right to return with adequate compensation for their 40 years of suffering, if the terrible wrong that was done to us is to be really righted.

12 February 2008

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#### **Submission from W L Chamberland, Gibraltar**

I wish to advise you that following the evidence given to your Committee by the Hon Joe Bossano, Leader of the Opposition in respect of, in part the ongoing saga between the Chief Minister and the Chief Justice. In fact the remarks in regard to protocol are quite accurate as on more than one occasion Military Parades have surprise surprise started late because the Hon Chief Minister has tried to arrive after the Governor and Commander-in-Chief.

A previous incumbent of this later office used to post a member of staff to check when the CM left.

Another very important aspect which Mr Bossano failed to bring up was as to loyalty, whether this was a lapse or he tried not to add more fuel to the polemics only he knows.

I shall limit myself to the following quotation which appeared in a local newspaper website on Tuesday 28 May 2002.

Quote “In an interview to the magazine *Hermes* of the Sabino Arana foundation which will be on sale next week in Spain, Mr Caruana calls for a process of dialogue where no one ‘feels threatened or undermined or with a knife to his neck or a pistol to his head. Mr Caruana says that Spain should ‘spoil’ the Gibraltarians a little until the Gibraltarians decide to lower the Union Jack flag. This last remark unworthy of any leader and unheard of in the past”.

February 2008

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#### **Submission from the Government of Gibraltar**

The Gibraltar Government (“GOG”) welcomes the Committee’s inquiry into the exercise by the Foreign and Commonwealth Office (“FCO”) of its responsibilities in relation to the Overseas Territories.

##### **THE FCO’S RESPONSIBILITIES FOR GIBRALTAR**

The responsibilities of the FCO, as a Department of State of the United Kingdom Government, for the governance of Gibraltar are those set out in the new Gibraltar Constitution, namely, responsibility for Gibraltar’s external affairs and defence.

Under the Gibraltar Constitution, and under UK law, the Governor is the representative in Gibraltar of Her Majesty the Queen, as Queen of Gibraltar. He is not a representative or official of HMG in the UK. Powers reserved in the Constitution of Overseas Territories to Her Majesty (or Her Governor) are thus NOT powers reserved to the UK Government or to the FCO. When a Secretary of State advises Her Majesty in the exercise of a reserved power he does so in his capacity as Her adviser qua Queen of that Territory and NOT in his capacity as Minister or on behalf of the Government of the United Kingdom.

These propositions were established by the Appellate Committee of the House of Lords in its judgement in the Quark Case—*Regina v Secretary of State for Foreign and Commonwealth Affairs ex parte Quark Fishing Limited*, [2005] UKHL 57). This case is seminal to a proper analysis and understanding of the Gibraltar Constitution and to the powers and responsibilities of the FCO, and to the role of Governors there under.

Under Gibraltar’s new Constitution, the Governor retains responsibility for internal security, (including certain functions relating to the police) and certain formal functions in relation to appointments to public offices acting on the advice of Commissions (see section 47). Responsibility for all other matters (save where the Constitution specifically vests it in some other Gibraltar non-governmental authority, eg Judicial Service Commission, Police Authority etc) is vested in Gibraltar’s elected Government.

Flowing from the UK’s international responsibilities for Gibraltar, the UK has the right to ensure that Gibraltar is in compliance with all international legal obligations binding upon it. Subject to that, responsibility for standards of governance, transparency and accountability, regulation of the financial sector and human rights in Gibraltar vest in the people, Government, Parliament, Judiciary and democratic processes of Gibraltar, as they do in the UK and other democracies.

Accordingly, subject to compliance with domestic and international laws, the arbiters of the quality of governance in Gibraltar are the Parliament, the media and, especially, the electorate of Gibraltar.

Under the Gibraltar Constitution no governmental or statutory authority of Gibraltar, including the Governor, is accountable to HMG in the UK, or to the FCO. GOG is accountable to HMG in the UK only for compliance by Gibraltar with binding international obligations.

Under the New Constitution, Her Majesty (not HMG in the UK) reserves the power to make laws from time to time for the peace order and good government of Gibraltar. This power does not vest in the FCO or in the UK Government. This is an exceptional and residual power intended to be used only in exceptional circumstances. UK Ministers no longer have the power to disallow laws made by the Gibraltar Parliament. Under the new Constitution the Governor is the only appointment in Gibraltar made on the recommendation of the United Kingdom Government. Even this is more “de facto” than “de jure”, since in advising Her Majesty on such an appointment, a Secretary of State is NOT acting on behalf of the FCO or the UK Government. The Governor is the representative of the Queen, in Her capacity as Queen of Gibraltar and not the representative of the UK Government (see Quark case). No other appointment in Gibraltar emanates from the UK, or is in any sense the responsibility of HMG in the UK, or the FCO.

#### GIBRALTAR’S NEW CONSTITUTION

Gibraltar’s new Constitution came into effect on 2 January 2007. This new Constitution delivers, in very large measure the policy aspirations of the current Gibraltar Government as reflected in its election manifestos since 1996. The Gibraltar Government is thus well satisfied with the outcome of the Constitutional Reform negotiating process with UK that resulted in the New Constitution. The New Constitution achieves all of the Gibraltar Government’s major policy objectives in that regard, namely:

1. Enshrinement of Britain’s commitment on the question of sovereignty and close constitutional links between UK and Gibraltar.
2. Constitutional recognition of our right to self determination.
3. Maximum self government consistent with Sovereignty.

The new Constitution renders Gibraltar effectively self governing to a full practical extent in all areas except defence and external affairs. The stated policy objective of the current Gibraltar Government since 1996 has been to achieve effective decolonisation of Gibraltar by means of Constitutional reform that would establish a Constitutional relationship between Gibraltar and the UK that was not colonial in nature, while retaining our sovereignty and other links with the UK. The Gibraltar Government believes that the New Constitution achieves this.

#### THE CONSTITUTIONAL REFORM PROCESS

Following its election in 1996 with a manifesto commitment to seek the modernisation of the Constitution, the Gibraltar Government convened an all party Select Committee of our Parliament in 1999 which took written and oral evidence from all persons and entities who wanted to submit views to the Committee about the proposed new Constitution. The Select Committee also undertook a clause by clause revision of the 1969 Constitution. The Select Committee unanimously adopted its report and submitted it to the full House in January 2002. The full House unanimously approved and adopted the Select Committee’s Report on 23 January 2002. That report became Gibraltar’s formal negotiating position in the bilateral negotiations with HMG in the UK (“the Constitutional Negotiations”).

In order to conduct the Constitutional Negotiations on Gibraltar’s behalf, the Gibraltar Government constituted a Gibraltar delegation, led by me as Chief Minister but consisting also of other Ministers, the Leader of the Opposition and the Leader of the other Opposition Party in the House and of a party not represented in the House, as well as some of Gibraltar’s leading retired politicians.

After a lengthy but constructive and businesslike (and most often consensual) negotiating process with the FCO team, which took the form of various plenary negotiating meetings as well as numerous exchanges of draft text, the text of a new Constitution, acceptable to both the Gibraltar and UK delegations emerged and was agreed in early 2006.

This negotiated text was unanimously approved by all members of Gibraltar’s Parliament on 30 October 2006 and it was approved (60% in favour) by the people of Gibraltar in exercise of their right to self determination in a referendum on the 30 November 2006.

#### THE STATUS OF GIBRALTAR FOLLOWING THE NEW CONSTITUTION

GOG believes that the New Constitution provides for a relationship between Gibraltar and the United Kingdom which is not colonial in nature. The nature and extent of the powers of self Government and autonomy that the New Constitution bestows on Gibraltar are not compatible with the view that the relationship remains a colonial one and that Gibraltar therefore remains a colony. HMG in the UK shares this view and has so declared publicly.



On 4 July 2006 Minister for Europe Geoff Hoon said publicly that the Government of the United Kingdom regards the referendum in which the people of Gibraltar would decide on the New Constitution as an exercise of the right of self determination by the people of Gibraltar.

On 22 January 2007 the Permanent Representative of the UK at the UN wrote to the Secretary General of the United Nations, informing him of the coming into effect of Gibraltar's New Constitution and sending him a copy. In it, Sir Emyr Jones Parry states that the New Constitution provides for a modern relationship between Gibraltar and the United Kingdom, which description (he said) would not apply to any relationship based on colonialism.

On 15 October 2007 the UK's new permanent representative at the UN addressed the Special Political and Decolonisation Committee (Fourth Committee) on behalf of the British Government in relation to Gibraltar. He said:

“The New Constitution provides for a modern relationship between Gibraltar and the UK. We do not think that this description would apply to any relationship based on colonialism . . . Her Majesty's Government shares the view of the Chief Minister of Gibraltar that Gibraltar is now politically mature and the UK-Gibraltar relationship is non colonial in nature”.

The very same sentiment was expressed by the then Foreign Secretary Jack Straw to the Spanish Government in a letter dated 31 March 2006 addressed by him to Foreign Minister Moratinos.

On 27 March 2006 Jack Straw told the House of Commons that Gibraltar's new Constitution “strengthens the links between Gibraltar and the United Kingdom and thoroughly modernises the relationship between us, which I hope will be as welcome to the people of Gibraltar as it will to the people of the United Kingdom”.

#### *Gibraltar's International Status and “Delisting” at the UN*

In GOG's view the question “has Gibraltar's international status changed as a result of the new Constitution” is misconceived and irrelevant. There can be no doubt about what is Gibraltar's international status. After the new Constitution (as before it) Gibraltar remains a United Kingdom Overseas Territory under the Sovereignty of Her Majesty Queen Elizabeth II. This international status has not altered as a result of the New Constitution, although its nature has changed in a very relevant way.

In terms of decolonisation, the relevant question is whether the relationship between the UK and Gibraltar has changed from colonial to non-colonial in nature. If it has, the New Constitution has necessarily resulted in the decolonisation of Gibraltar since, although Gibraltar continues (as is its wish) to be a UK Overseas Territory, it is no longer in a colonial relationship with the UK, and thus is not its colony. Ergo, it will have been decolonised.

The answer to the question whether or not the New Constitution has decolonised Gibraltar will vary depending on whose definition of, and criteria for, decolonisation is used.

Clearly, if the sole valid test of decolonisation is that applied by the United Nations (a proposition that GOG rejects) then Gibraltar remains a colony, because the new Constitution fails to meet some of the UN's published criteria for removing territories from its list of non-self Governing Territories. For this reason, both GOG and HMG believe that the UN's delisting/decolonisation criteria are anachronistic, and should be updated to reflect the realities of the modern relationship between UK and some of its overseas Territories (such as Gibraltar) with which both are content, and which relationship is not colonial in nature.

If, on the other hand the test to be applied is (as GOG believes) an objective assessment of whether the relationship created by the New Constitution is not colonial in nature, so that there has been an emergence from colonial relationship in a practical sense, then a very different answer is obtained. The UN can of course be the arbiter of whatever criteria it chooses to adopt, but it is not the sole judge of objectivity and logic and of factual reality. It is not the sole judge of whether a relationship desired by both sides is colonial in nature or not.

In the view of both HMG and GOG, the New Constitution alters the balance of power in Gibraltar, and transfers to the Gibraltar Government and out of HMG's control, that degree of power and functions that render the relationship non-colonial in nature. If Gibraltar's relationship with the UK is now non-colonial in nature, Gibraltar is not a colony and has been decolonised. The Committee has been told that the UK can now automatically stop submitting annual reports to the United Nations about Gibraltar, and on whether it does so or not depends on the acid test of whether the UK really believes that Gibraltar has been decolonised. This is incorrect. Under UN Charter and procedures, the UK is required to continue to submit annual reports under Article 73(e) of the Charter until the General Assembly votes in favour of the removal of that territory from its list of non self governing territories. It appears that the UK is not free to unilaterally discontinue the submission of annual reports about Gibraltar. The Gibraltar Government has thus called on HMG to make clear in submitting this year's Gibraltar report that it does so for that reason, and asserting that following the new Constitution Gibraltar and the UK are no longer in a colonial relationship with each other and that Gibraltar should thus be delisted.

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### *Relations with Spain*

In December 2004, the Gibraltar Government was able to achieve its longstanding policy of an architecture that would permit of dialogue between Gibraltar and Spain, on basis that was acceptable to all sides, including Gibraltar. This was achieved with the establishment of the so-called “Trilateral Forum” separate from the bilateral Brussels Process. In this Forum the three sides take part in their own separate right, and on the same basis as each other. The agenda is open, and thus not focused or preconditioned on sovereignty. And nothing can be agreed unless all three sides agree, thus giving Gibraltar an effective veto on unacceptable agreements. The Gibraltar Government, which has been calling for precisely such secure terms for dialogue since 1996, is naturally happy to take part in the Forum now that it has been established with precisely these terms.

In addition, the unacceptable Brussels Process has been effectively disabled, because the UK has committed itself to the Gibraltar Government that it will not take part in any process of Sovereignty discussions or negotiations with which Gibraltar is not content. Gibraltar has never been in a position as politically secure as this.

The first fruits of this new Forum of Dialogue were the agreements reached at Cordoba in September 2006. These resolved, on terms which GOG believe to be beneficial to Gibraltar some of the most intractable and long standing relationship problems between Gibraltar and Spain including the Airport, the claim of Spanish pensioners, telephones and frontier fluidity issues. Recognition by Spain of Gibraltar’s international direct dialling telephone code “350” was obtained. The airport becomes a fully EU entitled, normal international airport, under exclusive UK/Gibraltar sovereignty, jurisdiction and control. No passenger has to submit to controls by Spanish officials in respect of entering or leaving Gibraltar. There will be no Spanish officials located in Gibraltar. A red and green channel system was agreed for the frontier. The UK agreed to fund a settlement of the Spanish pension claim, as it had been encouraged to do by this Committee in the past. The Gibraltar Government rejects as political opportunism of the worst kind the allegation of the Gibraltar Opposition that the pensions settlement represents unfair discrimination against Gibraltar and other pensioners—a view rejected by the Gibraltar electorate at the recent general elections.

The Gibraltar Government remains fully committed to continue participation in this Trilateral Forum to continue to achieve the greatest possible degree of friendly and constructive co-operation and normality of relations between Gibraltar and Spain. The agenda for the next phase of the Forum includes co operation on such matters as protection of the environment, maritime safety, education, financial services and tax, police, judicial and customs matters.

### HUMAN RIGHTS IN GIBRALTAR

The New constitution (as did the 1969 Constitution) contains Chapters codifying Human Rights in Gibraltar. The New Constitution brings those provisions right up to date with the European Convention of Human Rights language.

The right that citizens in the UK enjoy under the UK Human Rights Act to bring action directly in the UK courts alleging human rights violations has been the position in Gibraltar since the 1960s. Any citizen who believes that his or her human rights as recognised in the ECHR are being violated may bring action in the Gibraltar Courts, since the ECHR provisions are fully reflected in the human rights chapters of our Constitution.

### RELATIONS BETWEEN GIBRALTAR AND THE UNITED KINGDOM PARLIAMENT

The Gibraltar Government warmly welcomes and appreciates the support for, interest in and concern for the political aspirations and rights of the people of Gibraltar shown historically and currently by Members of the House on all sides, not just individually, but also collectively through this Committee and through the Gibraltar Group. The people of Gibraltar warmly welcome and continue to rely and count on this support and interest.

An important function of the Gibraltar Governments’ Representative Office in London is precisely to liaise and serve as a link with and source of information to, members of Parliament in the UK. GOG believes that Gibraltar’s London Representative should therefore be entitled to an access pass into the Palace of Westminster in his capacity as Gibraltar Government Representative, without having to rely on the assistance of any individual Member of Parliament to facilitate such access.

I will be happy to expand on these, or any other issues, when I appear before the Committee to give oral evidence in response to the Committee’s invitation to do so.

*18 February 2008*

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## Submission from The Diego Garcian Society

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### 1. THE DIEGO GARCIAN SOCIETY—PROFILE

1. The Diego Garcian Society is a voluntary organisation which was formed and constituted in the UK on 10 December 2007, after seven years of work in the Chagossian community in Mauritius and the UK, by Community Leader Allen Vincatassin and his colleagues. The Society's works involve settlement, welfare, education, health, culture and making representations before statutory bodies and the Government on behalf of Diego Garcians (islanders and descendants of the island of Diego Garcia) and islanders who originate from Peros Banhos and Salomon islands and their descendants (also known as Chagossians, Chagos Islanders or sometimes BIOT people).

2. The society is supported by donations from the community and is managed by an executive committee; it is registered with Crawley Council for Voluntary Service, ICIS—Information for Life and VOLG West Sussex Voluntary Organisations Liaison Group. We work in partnership with local voluntary organisations and charities such as Age Concern and Anchor Staying Put, and belong to Crawley Local Strategic Partnership. We work in close collaboration with West Sussex County Council and Crawley Borough Council in matters concerning the islanders and also on local issues to promote integration and cohesion.

3. Our volunteers receive regular training. Allen Vincatassin, our Patron and Project Leader, has considerable experience in dealing with resettlement of our community in the UK and in matters relating to community integration.

4. We operate from an office in the town centre of Crawley where we hold a daily surgery for matters affecting the islanders. We offer free advice and support for new arrivals and support for our older people. We run a small club for our older members and others, in the same building. We frequently organise talks where we invite speakers from various organisations to come and address members of our community.

5. From 2000, we operated as the Diego Garcia Island Council, British Indian Ocean Territory Islanders Movement, before becoming formally constituted as the Diego Garcian Society, in December 2007.

### 2. BRIEF HISTORY

6. The people of the British Indian Ocean Territory were removed for the purpose of establishing a military base for defence purposes without their prior consent, and were forced to live in Mauritius and in the Seychelles. The eviction and banishment of about 1,500 British islanders were carried out under Orders in Council, and was executed in the most high handed manner that any civilised democracy can contemplate.

7. However, after several court battles the Government has acknowledged that the action of the Government of that time cannot be justified. The former Foreign Office Minister, Bill Rammell, stated in Parliament on 7 July 2004:

“I shall start by acknowledging that, in my view, the decisions taken by successive Governments in the 1960s and 1970s to depopulate the islands do not, to say the least, constitute the finest hour of UK foreign policy. In no sense am I seeking to justify the decisions that were made in the 1960s and 1970s. Those decisions may be seen as regrettable, but the Government must deal with the current situation. The responsibility of the UK Government for the decisions taken in the 1960s and 1970s has been acknowledged by successive Governments since then, as is demonstrated by the substantial compensation that has already been paid to the Chagossians”.

8. We have started to see some progress in the last seven years, but would like the Government to do more to ensure that these wrongs be redressed on humanitarian grounds and that our connection with the United Kingdom as British Overseas Territories Citizens and British Citizens is safeguarded. We believe that this can be achieved through constructive dialogue and action and this is why we believe the submission of this report to the Foreign Affairs Committee is so important.

### 3. THE SETTLEMENT OF DIEGO GARCIA ISLANDERS AND OTHER CHAGOS ISLANDERS IN THE UK

9. On 16 September 2002, Allen Vincatassin led 19 Diego Garcia islanders (including islanders and descendants) in the UK to start a new life and to settle as destitute British Overseas territories citizens who had no right to return to Diego Garcia, even after the judgement of the High Court in the case of Bancoult 1 of November 2000. They were escaping poverty and wanted to exert their right of abode in the UK to start a new life.

### 4. DIFFICULTIES

10. Allen Vincatassin and the committee of the then Diego Garcia Island Council wrote to the government for assistance and support in starting a new life in the UK. However, they were told that they would have to comply with the general rules for British Overseas Territories citizens which stipulate that one should be able to fend for oneself on arrival in the UK and that there would be no special treatment for them.

11. The group took a one way ticket and landed at Gatwick Airport where they had to sleep rough for three days at the airport, with no support and nowhere to go. Allen had to deal with the lethargy and complexity of rules in order to successfully get support. On the third day, West Sussex County Council had to step in and took the group into emergency accommodation and supported them under the National Assistance Act 1948. They had to stay in a hotel for a period of six months, as they were not entitled to any state benefits because they could not pass the Habitual Residency Test (HRT). They were given £30 per week individually as support.

12. Allen and his team supported another group of 50 islanders to come and settle in the UK in March 2003 and had to jump the hurdle of the Habitual Residency Test again but, fortunately, West Sussex County Council stepped in for a second time, which caused them to spend £500, 000 from their old peoples' budget.

13. A group of about 23 people was sent to London in June 2003, by Olivier Bancoult of the Chagos Refugee Group, for settlement. These people were expected to pay for their own accommodation which most of them could not do, because they could not afford the sums of money required for bed and breakfast, even though some of them had taken out loans in Mauritius. There was a crisis and the group in Crawley had to go and investigate the matter. Allen got in touch with the local authorities in London but no one wanted to take responsibility. Allen and the committee decided to take the 23 people and put them temporarily at Gatwick Airport, and had to ask for a judicial review. An interim order was given for West Sussex County Council to temporarily support the group. Later West Sussex County Council accepted responsibility but the Government continued to deny assistance to the islanders.

14. Despite all the difficulties, the committee decided to help another group of about 60 people to settle in the UK, which arrived on 8 and 16 October 2004. We had the same scenario and we were very upset by the refusal of the Government to treat our case on compassionate grounds as far as the HRT test was concerned. When we suggested to the group that they apply for Jobseekers Allowance shortly after they arrived in the UK, they were refused this vital state benefit which could have helped them until they found work. We encouraged the group to appeal against the decision. On 21 February 2007 the Commissioner of the Social Security Tribunal finally gave his verdict in the CJSJA/1223 and 1224/2006 case under section 14(8)(a)(i) of the Social Security Act 1998, after a long legal battle, as follows:

1. "My DECISIONS are:

The claimant in CJSJA/1223/2006 was habitually resident on and from 20 December 2004.

The claimant in CJSJA/1224/2006 was habitually resident on or from 8 of December 2004".

Para 75. "I have considered whether the claimants' connections were so few and so tenuous that a period of more than three months might be required before they became habitually resident. I have, though, concluded that the period should be shorter than that. These are my reasons. First, there is the strength of their determination and their tenacity of purpose. That forms the context in which the significance of their actions has to be assessed. It also colours their actions. Second, the claimants became part of the network provided by fellow members or supporters of the British Indian Ocean Territory Islanders Movement. They provided moral support, but there are also hints in the papers of some financial support. No doubt, the movement also provided advice on the practicalities of living in this country. Third, there is the nature of actions taken by the claimants. Some naturally, were concerned with the immediate needs of providing food and accommodations. The others were directed at finding work and motivated by a desire to become self-supporting members of the community with their own accommodation for themselves and their family members. In other words, the claimants were not just concerned with their immediate needs, they were taking steps directed to establishing long-term connections with this country".

15. The society had to make representations to the Jobcentre for the islanders to finally start receiving their due Jobseekers Allowance, in December 2007. Since the Government refused to relax the HRT, the islanders took them to the High Court. Unfortunately, the islanders lost their appeal at the end of 2007, and this now waiting to go before the House of Lords.

## 5. THE COMMUNITY

### (a) *Population*

16. There are about 1,000 islanders mainly residing in Crawley with about 20 living in Manchester. Of this number, about 100 were born in the Islands and the rest are descendants of the second and third generations. We have had about 80 births and three deaths during the past five years. There are about three new arrivals every three months and we have more than 100 people who are waiting for us to help them to come to the UK. We are currently trying to do a cost analysis of running a centre for these people as they cannot apply for benefit on day one of their arrival in this country.

### (b) *Housing*

17. The islanders have to follow the general rule of the local authority. Most are in private accommodation (which is expensive), while some are living in council properties. About four people have been able to buy their own properties with mortgages.

18. The deposit required to rent a property is usually quite large and the islanders find it hard to raise the required amount. Although Crawley Borough Council operates a Rent Deposit Scheme that give the deposit in the form of a bond, this is not accepted by all landlords and the Council has made it clear that their financial resources are limited when it come to this scheme.

### (c) *Employment*

19. All the groups have been able to find jobs in Crawley and many are working at Gatwick Airport, in the cleaning services, administration and food industry and in other sectors of the economy. 90% of the community are working and contributing to the local and national economy, while 10% of the older members of our community and those who have not yet found a job are on benefits.

### (d) *Education*

20. Illiteracy was very high in the community before we came to the UK. In 2002 the committee managed to get most of the islanders enrolled on English courses at Sussex College (formerly Crawley College) after Allen Vincatassin had proved that the islanders were an exceptional case, for the courses to be funded by the Learning Skill Council. All the groups that arrived took advantage of that and manage to start learning English and computer skills. Currently, the Society is working in partnership with Crawley Council for Voluntary Service on an English training programme for adults, and about 30 adults (including older members of the community) are attending on a weekly basis. Most of our children attend local schools and colleges. We have three young people who cannot go to university, again because they would have to have been in the UK for a period of three years before they qualified for help to enter university.

### (e) *Culture and welfare*

21. The society helps to revitalise culture by organising frequent social gatherings where the older generation can perform and thus pass on our culture, heritage and traditions to the next generation. We also participate in the Crawley Mela, which is a multicultural festival celebrated in summer every year and are present on stage to perform the sega (traditional music and songs) in the Black History month. We work in partnership with the Women's Chagossian Welfare Association which makes a significant contribution to the cultural activities of the community.

22. We also organise healthy cooking sessions and talks on health issues, thus encouraging our people to keep fit and enjoy good health.

### (f) *Role in the local community*

23. The Society represents the Islanders in the local community and interacts with other groups and the BME community. Our members are encouraged by the society to participate in local forums, debates and social activities. This networking with local organisations, charities and BME groups is helping us in the process of integration, cohesion and progress locally. We feel accepted and are able to integrate into UK society.

## 6. UNRESOLVED ISSUES

### 1. *Immigration*

24. Most of the third generation (adults now) born in Mauritius are not entitled to British Citizenship by descent. Some of these people cannot satisfy the criteria that the law requires, since they were born in Mauritius, even though as a consequence of exile rather than their own choice. There were no immigration laws in the British Indian Ocean Territory to regulate the immigration status of these people and now they are caught between a rock and a hard place.

### 2. *Habitual Residency Test (HRT)*

25. The HRT is still applied by the Government and it is a major issue for the islanders as it makes it hard for newcomers who have no friends or family link in the community. These people have to wait in Mauritius in desperation until we can support another group to come and settle.

## 3. COMPENSATION

26. Most islanders believe that the compensation that was paid between 1982 and 1983 was inadequate. The court of appeal has stipulated that the compensation was inadequate although it cannot give redress to the compensation claim of the in Chagos Islanders VS Attorney General & Her Majesty's British Indian Ocean Territory Commissioner case July 2004.

Lord Justice Sedley said as follows in his judgement:

Para 54. "This judgment brings to an end the quest of the displaced inhabitants of the Chagos Islands and their descendants for legal redress against the state directly responsible for expelling them from their homeland. They have not gone without compensation, but what they have received has done little to repair the wrecking of their families and communities, to restore their self-respect or to make amends for the underhand official conduct now publicly revealed by the documentary record. Their claim in this action has been not only for damages but for declarations securing their right to return. The causes of action, however, are geared to the recovery of damages, and no separate claims to declaratory relief have been developed before us. It may not be too late to make return possible, but such an outcome is a function of economic resources and political will, not of adjudication".

## 7. PROJECTS AND DECISIONS BY THE ISLANDERS IN THE UK

### *Visit to Diego Garcia, Peros Banhos and Salomon Islands*

27. The society is now in negotiation with the Foreign and Commonwealth Office for the organisation of a visit to the islands, for a proposed group of fifty UK based islanders, which will include a cross section of the population. The aim of the visit is to revitalise links with our homeland and our cultural and ancestral heritage and to do our own feasibility study to compare life in the islands with life in the UK. Laura Moffatt MP (Crawley) has been talking to the Overseas Territories Minister and a meeting has been scheduled with the minister to discuss possibilities at the end of February 2008.

#### (a) *A Centre*

28. In the absence of provision for new comers we are working on the cost analysis for a centre to welcome and support those islanders who have no friends or family link in the UK. We will then need to apply for funding to get this project off the ground. We are looking at various models around the country and the cheapest way of doing this project.

#### (b) *A Company*

29. We are currently encouraging the islanders to form a company to start trading in the UK and to undertake projects in the British Indian Ocean Territory such as eco tourism and exploitation of other natural resources which will benefit all families.

#### (c) *Project for the Older Generation*

30. We have joined in a consortium called POPP (Partnership For Older People Project) which is a pilot project by West Sussex County Council, aimed at giving more independence to older people and minimising health problems and hospitalisation. If our consortium wins the bid, it will be of tremendous help to the older members of our community.

(d) *Election in the Community*

31. The islanders living in the UK voiced their aspirations on Saturday 16 February 2008 at a general meeting and have asked for an election to be organised for a body to represent them officially in all matters. They do not recognise that the election of the representatives on the Ilois Welfare Fund in Mauritius have the power to represent them.

32. The Diego Garcians have expressed their desire to stay indefinitely in the UK until the time that Diego Garcia will cease to be an American base. Islanders who originate from Peros Banhos and Salomon islands have also expressed their desire to stay in the UK. The people have made it clear that their families are joining them in the UK for settlement and that they will not return, but would like to maintain links with their homeland and to have the right of exploitation of the islands' natural resources, in order to benefit their families and other generations.

33. They will elect a leader for Diego Garcia, Peros Banhos, and Salomon islands, and do not want to be dictated to by the Chagos Refugee Group and its leader. They want everything to be centralised and they want to have a say in their future. They have agreed also for islanders who are based in Mauritius, Seychelles and Europe to vote in this election.

## 8. CONCLUSIONS

34. After several meetings over the past five years and including the last meeting on 16 February 2008, we have come to the conclusion that the majority of the islanders do not wish to return, but have expressed their desire to visit and to keep a link with that part of their ancestral and cultural heritage, to which end they would like the right to exploit the natural resources that will benefit their families. They have expressed their wish to stay in the United Kingdom as this country gives them the support and the security they need with a better standard of living.

35. Additionally, most of them would like the Government to come up with an increased level of compensation or with other means of reducing their burden; our community is currently suffering from the consequences of exile, such as non entitlement to British Citizenship, which are the result of laws and rules that they are unable, through no fault of their own, to satisfy. They want to exert the right of abode in the UK but they cannot do so because of the Habitual Residency Test (HRT), which prevents them from getting state benefit to start a new life until they can find a job, and fend for themselves.

36. The resettlement of our people was hard and we would not have been able to do it without the help and support of Crawley Borough Council and West Sussex County Council. These authorities have carried out their statutory responsibilities towards the islanders, in the most complex situations they have ever come across.

37. Finally, the people of Diego Garcia, Peros Banhos and Salomon islands do not want their decisions to be decided by the Chagos Refugee Group and its leader, but want everything to be centralised, and to this purpose they have expressed their wish to elect a board that will represent the interest of every islanders in the UK. They wish that the issues affecting them could be resolved in a civilised way in good and constructive discussions between them and the Government.

## 9. RECOMMENDATIONS

38. We strongly recommend that the following be laid before the House:

1. The Diego Garcians and other people of the British Indian Ocean Territory wish their homeland to remain a British Overseas Territory and wish to have the right to return to Diego Garcia when the island will cease to be used as a military base. They want the Government to ensure that the islanders and their descendants' rights, will be respected according to the provisions of the UN charter and according to international law, and that their homeland will not be ceded to another state.
2. The Government should urgently renegotiate and engage in talks with the US on getting financial support for the islanders (to compensate for the inadequate compensation of 1982–83) as their agreement to transform the island of Diego Garcia came into force in the 60s without any consultation with the people and was done in the most secret way. The initial agreement termination and renewal will occur only in 2016. The people want matters to be resolved as soon as possible, as many islanders will be deceased by that time.
3. The Government should fund the establishment of a centre that will welcome new islanders who want to settle in the UK or give appropriate funding to the local authorities (Crawley Borough Council and West Sussex County Council) to establish and run this facility, and provide more assistance to the islanders.
4. The Government should consider extending the entitlement to British Citizenship to all those who can be classified as descendants of the British Indian Ocean Territory (Chagos Archipelago), based on consequences of exile.

5. The Government should allow the islanders to exert the right of exploitation of their homeland's natural resources, and provide assistance where needed, for the benefit of all families.
6. The Government should consider helping the islanders to resettle in the UK, by providing financial support for them to go into private accommodation, secure a deposit or buy their own property.

Prepared and approved by the Diego Garcian Society Reports Committee, for submission to the Foreign Affairs Committee at the House of Commons, United Kingdom.

20 February 2008

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#### **Submission from Mr W L Chamberland, Gibraltar**

Pardon my further intrusion into your valuable time, which in all fairness you have to dedicate to your electors.

On 7 February I wrote to you, in the main supporting the Hon Joe Bossano's testimony vis-à-vis the ongoing saga between the Chief Minister and the Chief Justice. This new "epistle" if I may be permitted to state goes to the core of all our problems, dating back to 1704 but which any decent nation would have put to bed, but when you have certain elements both in Britain and Gibraltar who unwisely wish to reach an accommodation the very essence of democracy goes out of the window. Both Spain and the Foreign Office have been waiting for a fall guy after years of non co-operation to fold up by successive Gibraltar Governments from the late Sir Joshua Hassan through Sir Bob Peliza, thankfully still alive and Mr Bossano.

From the gist of the correspondence you will be able to perceive how much Spain has gained and Gibraltar lost. To continue in the 21st century with an archaic claim and still not be willing to test in court speaks for itself but if you have a CM of Gibraltar accepting to sign an agreement without an implied mandate from us the Gibraltarians and to cap it all continues to defend the Spanish interpretations as to the isthmus, the non existence of the frontier (but a police post to them) and the renaming of the "Bay of Gibraltar", is I am afraid not a sign of a mature politician but rather a sign of either weakness or undue pressure from the FO Mandarins. If you or any other member of your committee wish to recap the words of Mr Peter Hain to the people of Gibraltar which was more of a threat than a message you may or not arrive at my and quite a few thousands of my compatriots conclusion that the FO were behind these insinuations, gladly we are still about, he has had to look for other pastures.

Gibraltar has not been defended for quite a number of years and in all sincerity one cannot blame the present Government as this stems from the times of Lord Howe and Baroness Thatcher, I could go on and on but would detract from the object of this letter. I sincerely hope that you Sir take the time to digest fully the contents of all these letters and can be proved by production of documents. I am not an angry young man, I am 73 years of age and except for the war years, spent in the heart of London during the blitz, lived here, I served our equivalent of National Service in 1953, very appropriate Coronation Year, in 1957 with a group of some 38 other Gibraltarians I was Commissioned in the then local Defence Force now The Royal Gibraltar Regiment and until recently Chairman of the Regimental Association from which I resigned in October 2007 after 8 years in the post.

Therefore Sir I do not consider myself a trouble maker but more of a partisan and in conclusion may I suggest that since certain letters contain Spanish words, which I have purposely not translated as not to appear to be bias, I can but recommend that Mr Albert Poggio OBE, well known to you all be asked to explain the words.

My profound apologies for the letter but in all fairness you and your committee are the only ones we can trust because at this rate Gibraltar will never be decolonised but could end up as a Banana Republic or worst still Spanish.

25 February 2008

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#### **Further submission from Clive A Stafford Smith, Director, Reprieve**

#### **RENDITIONS AND SECRET IMPRISONMENT IN DIEGO GARCIA**

I am writing in relation to the recent disclosure by David Miliband that CIA ghost prisoners were in fact transported through UK Overseas Territory in Diego Garcia. As you are aware, for some time now Reprieve has been pushing for a full, public inquiry into serious allegations of rendition and secret imprisonment in Diego Garcia, not least in our submission of October 2007 to the Foreign Affairs Select Committee's inquiry into the Overseas Territories.

We have had very little response from your Committee and have not been invited to present oral evidence in your inquiry. Very many questions remain unanswered with regard to Diego Garcia's role in the CIA rendition system and we certainly can no longer fall back on US "assurances" that all is well.



I hope that the FAC will be investigating this matter further and suggest that, as a matter of urgency, the following issues must be determined and made public:

- The identities of the two men admitted yesterday to have been rendered through Diego Garcia.
- Where these men were held prior to their transfer from Diego Garcia and whether in fact either of them were held on the island itself or on ships off Diego Garcia prior to their transfer.<sup>263</sup>
- Where these men were taken having been transferred from Diego Garcia and how they were subsequently treated.
- What permissions were sought by the Americans from the British in respect to these renditions or individuals.
- Full flight logs, data strings<sup>264</sup> and passenger manifests of the planes on which these men were transported.
- What permissions were granted and/or guarantees or promises sought in respect to these renditions or individuals.
- Any follow-up the British government has made in respect of the conditions in which these men have been held by the Americans or any other state.
- A full investigation into any other flights which have stopped off in or flown through Diego Garcia.
- A full investigation into detentions on any boats in any way supported by the naval base at Diego Garcia.
- A full investigation into reports that any prisoners may have been held on or near Diego Garcia, including but not limited to the following prisoners:

(i) *Muhammed Saad Iqbal Madni*

You mention in your letter that one rendition flight took place in January 2002. Based on the difficult work that we at Reprieve have done trying to track down the victims of this illegal practice, a likely candidate for this illegal act is Muhammad Saad Iqbal Madni. Mr Madni (ISN 743) is a dual Egyptian-Pakistani national who was seized in Jakarta, Indonesia, on 9 January 2002, after arriving from Pakistan. Mr Madni has insisted that he is innocent of any crime, and was in Jakarta to visit his Indonesian step-mother and his brother after the death of his father.

We have traced the plane, and on 9 January 2002, the Gulfstream N379P (dubbed the “Rendition Express”) flew from Dulles to Cairo, presumably to pick up Egyptian “colleagues” who would take part in the rendition process. The plane flew on to Jakarta.

On 11 January, Mr Madni was hustled aboard N379P and flown to Egypt. After leaving Mr. Madni to his fate in Cairo, the plane flew from to Washington via Prestwick (once again, British territory).

Meanwhile, Mr Madni spent 92 torturous days in Egyptian custody, until 12 April 2002. He was then taken to Afghanistan for 11 months, before arriving in Guantanamo on 22 March 2003. He became so depressed by his treatment that he attempted suicide after 191 days in Guantanamo. He remains there to this day.

(ii) *Sheikh Al-Libi*

The other person in our files who might fit this profile is Sheikh Al-Libi, who was transferred off the USS Bataan in January 2002, likely in the vicinity of Diego Garcia. He was taken to Egypt, where he was tortured into “admitting” that Al Qaida was in league with Saddam Hussein in the development of weapons of mass destruction. This was one plank of President Bush’s case for the invasion of Iraq, a “confession” specifically mentioned in President Bush’s argument to the world. It was, as we all know to our cost, entirely false, extracted through torture of the most horrendous nature. He has indeed been “released” by the US—but only in the sense that he was rendered (refouled is the technical term, in violation of the Refugee Convention and the Convention Against Torture) to Libya where our information leads us to believe he is suffering at the hands of the Gaddafi regime.

<sup>263</sup> The second rendition flight allegedly took place in September 2002. Flight logs for the N379P “Rendition Express” show a flight from Washington to Athens and then to Diego Garcia on 13 September. The plane subsequently appeared in Morocco on 18 September. Unless we believe a ghost prisoner was picked up in Athens before being transferred to Diego Garcia, it seems likely that a prisoner was in fact transferred to N379P from Diego Garcia itself and then on to Morocco or Egypt.

<sup>264</sup> The Council of Europe is in possession of these data-strings.

The government has stated that the second rendition flight took place in September 2002. Flight logs for the N379P "Rendition Express" show a flight from Washington to Athens to Diego Garcia on 13 September. The plane subsequently appeared in Morocco on 18 September.

(iii) *Ramzi Bin Al-Shibh*

This plane may well have contained Ramzi Bin al Shibh. He was apparently taken into custody on 11 September 2002, in Pakistan. He is, indeed, now in Guantanamo Bay, and has been since being brought here in September 2006. More importantly, he is facing capital charges brought by the US military on Monday 11 February 2008. If he was the prisoner taken through Diego Garcia, there is a serious question as to whether the UK has violated its legal obligation to secure from the US assurances that the death penalty will not be imposed on a prisoner transferred from British territory. Please could you make immediate inquiries to determine whether this law has been violated and let me know, as it may prove vital to preserving his life.

(iv) *Hambali aka Riduan Isamuddin*<sup>265</sup>

(v) *Abu Zubaydah*<sup>266</sup>

(vi) *Khalid Shaikh Mohammed*<sup>267</sup>

#### FURTHER INVESTIGATION

A full list of further lines of inquiry was included in our submission to you of October 2007. These should now be followed up as a matter of urgency. We urge you also to invite Reprieve and other relevant organisations to present oral evidence to your ongoing inquiry into the Overseas Territories.

#### BINYAM MOHAMED

Equally important, after visiting Diego Garcia, N379P flew on to Morocco at a time when British resident Binyam Mohamed was being tortured there (after himself being rendered by the CIA). Around September 18, 2002, when N379P flew to Rabat, Mr Mohamed was having a razor blade taken to his genitals as part of an effort to build a case against him. He, too, languishes in Guantanamo Bay. Was this rendition plane bringing someone else for torture to Morocco? (Perhaps Mr bin al Shibh or another person.) Or was it bringing American agents to take part in the torture process against Mr Mohamed himself?

#### ALTERNATIVE USES OF DIEGO GARCIA TO FACILITATE RENDITION AND TORTURE

There have been at least 54 queries (parliamentary questions and so on) concerning Diego Garcia, made in one form or another. Many concern the use of the territory of Diego Garcia to hold prisoners. More compelling however, is the idea that prisoners were held on ships in the waters surrounding Diego Garcia and supplied from the mainland. Whether this is technically within "territorial waters" (defined perhaps as three miles) or slightly further is immaterial. It has always been more likely that the territory of Diego Garcia was not, itself, the place where the major part of the rendition process was taking place. This makes all the logic in the world, since the US has a *modus operandi*: to hold prisoners in carefully controlled environments that are protected from the annoyance of lawyers and journalists. We have been tracking several ships that have been refitted to act as prison ships. These ships are listed in our submission to you of October 2007. Please would you make specific inquiries about whether rendered or ghost prisoners have been held on ships of this nature within a reasonable distance of any British territory (including Diego Garcia) and in what ways British territory has been used to supply such ships.

I thank you for your attention and look forward to hearing from you.

26 February 2008

<sup>265</sup> *Ending Secret Detentions* Report by Human Rights First, June 2004

[http://www.humanrightsfirst.org/us\\_law/PDF/EndingSecretDetentions\\_web.pdf](http://www.humanrightsfirst.org/us_law/PDF/EndingSecretDetentions_web.pdf), accessed 26/4/07.

<sup>266</sup> Knox, Paul, *War on terror ignites battle over course of U.S. justice*, *The Globe and Mail*, 5/9/02, <http://foi.missouri.edu/terrorandcivillib/waronterror.html> accessed: 26/4/07.

<sup>267</sup> Selsky, Andrew, *Guantanamo transcripts paint portraits of detainees, but much remains cloudy*, *Associated Press*, 3/4/06, <http://www.globalsecurity.org/org/news/2006/060403-gtmo-transcripts.htm>, accessed 26/4/07.

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**Further letter to the Chairman of the Committee from Andrew Tyrie MP, Chairman, All-Party Parliamentary Group on Extraordinary Rendition**

**FOREIGN AFFAIRS COMMITTEE INQUIRY INTO THE OVERSEAS TERRITORIES: DIEGO GARCIA**

1. I wrote to you on 15 October 2007 about Extraordinary Rendition, requesting that the Foreign Affairs Committee examine the repeated allegations that Diego Garcia had been used by the US administration in its rendition programme. These allegations included “concurring confirmations” established by the Council of Europe<sup>268</sup>; statements by members and former members of the US administration<sup>269</sup>; and a flight log depicting the arrival on Diego Garcia of a plane thought to have taken part in rendition flights, N379P.<sup>270</sup>

2. Last week the Foreign Secretary confirmed some of these allegations. He stated that recent US investigations had revealed two occasions in 2002 when Diego Garcia had been used for rendition flights. I strongly agree with your response to him in the House of Commons that the Bush administration had “clearly misled or lied to our Government”,<sup>271</sup> and that this in turn led the Foreign Secretary to mislead the Foreign Affairs Committee and the House. I also agree that this is a “most serious matter”.<sup>272</sup>

**THE ROLE OF THE FOREIGN AFFAIRS COMMITTEE**

3. Your Committee can now play a major role in getting to the truth on extraordinary rendition. I recognise the difficulties your Committee has previously faced in its attempts to investigate rendition and possible UK involvement. In the Committee’s Sixth Report of 2004–05 you highlighted the government’s “policy of obfuscation”,<sup>273</sup> and stated that:

“We conclude that the Government has failed to deal with questions about extraordinary rendition with the transparency and accountability required on so serious an issue”.<sup>274</sup>

4. Nonetheless, your Committee has made a number of important findings and recommendations in past investigations. In the Committee’s Fourth Report of 2005–06 you said:

“We conclude that there has been a lot of speculation about the possible use of rendition to countries where torture can take place, so called “Black Sites” and the complicity of the British Government, all of which would be very serious matters, but that there has been no hard evidence of the truth of any of these allegations”.<sup>275</sup>

Some such evidence has now been provided by the US administration, and set out in the Foreign Secretary’s Statement of 21 February 2008.

**SUGGESTED ACTION BY THE FOREIGN AFFAIRS COMMITTEE**

5. In the light of this I am asking your Committee to bring greater transparency to the issue of rendition, and reassurance to the public on it, in a number of specific ways:

- (a) We need a search of US files to be undertaken for a large number of flights. The search that discovered the two flights mentioned by the Foreign Secretary was carried out only in relation to Diego Garcia.<sup>276</sup> If, as Legal Advisor to the Secretary of State John Bellinger puts it, “a new and even more exhaustive search” is the only way to obtain accurate information sufficient to establish whether or not US rendition flights have gone through UK airports or airspace, then the UK should request that a similar search be carried out with respect to all suspected US rendition flights through UK territory since 11 September 2001. On the basis of the Foreign Secretary’s Statement, he appears to have agreed to request this of the US. This search should include flights through UK airspace of planes alleged to have been on the way to or from carrying out a rendition, and not limited to those carrying detainees at the time of their transit through UK airspace. Specific flights that may need to be investigated include, but are not limited to:

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<sup>268</sup> Council of Europe Committee on Legal Affairs and Human Rights, “*Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report*”, 7 June 2007, para 70. [http://assembly.coe.int/CommitteeDocs/2007/EMarty\\_20070608\\_NoEmbargo.pdf](http://assembly.coe.int/CommitteeDocs/2007/EMarty_20070608_NoEmbargo.pdf)

<sup>269</sup> <http://web.amnesty.org/library/index/engamr511772005>; <http://www.msnbc.msn.com/id/4924989>; <http://www.npr.org/templates/story/story.php?storyId=6582948>.

<sup>270</sup> Source: Reprieve flight logs.

<sup>271</sup> <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080221/debtext/80221-0008.htm#08022198000007>

<sup>272</sup> *Ibid.*

<sup>273</sup> Foreign Affairs Committee Sixth Report 2004–05, <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmfaif/36/3607.htm#a14>, para 98.

<sup>274</sup> *Ibid.*

<sup>275</sup> Foreign Affairs Committee Fourth Report 2005–06, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmfaif/573/57305.htm#a5>, para 58.

<sup>276</sup> Daily Press Briefing, US Department of State, 21 February 2008, <http://www.state.gov/r/pa/prs/dpb/2008/feb/101214.htm>

- (i) the 73 flights named by Alistair Darling in an Answer to a Question by Michael Moore MP on 17 March 2006;<sup>277</sup>
- (ii) the four ‘ghost flights’ referred to in the Intelligence and Security Committee Report into Rendition;<sup>278</sup>
- (iii) the flights cited in the Reprieve report “Enforced Disappearance, Illegal Interstate Transfer, and Other Human Rights Abuses Involving the UK Overseas Territories”; and<sup>279</sup>
- (iv) the 170 CIA flights highlighted by the Temporary Committee of the European Parliament’s Final Report.<sup>280</sup>

I hope that your Committee will feel able to request that the Foreign Secretary ask for a search of US records to be undertaken for the above flights.

- (b) We need more information relating to the fate of the two individuals rendered through Diego Garcia. US assurances that neither of the detainees were tortured or held in secret detention are insufficient. As you know, the UK and the US have different interpretations of their obligations under the Convention Against Torture.<sup>281</sup> In 2002 the US Deputy Assistant Attorney General stated that to constitute torture, the following test had to be met: “[w]here the pain is physical, it must be of an intensity akin to that which accompanies serious physical injury such as death or organ failure”.<sup>282</sup> The Foreign Affairs Committee could elicit more detail about the two specific rendition flights and the individuals transported. This can include:
  - (i) the countries in which they were held and interrogated;
  - (ii) the interrogation methods used;
  - (iii) what permissions were sought by the US administration from the UK government regarding these two renditions; and
  - (iv) the plans of the US administration for the detainee who was flown to Guantanamo, including whether he will face a Military Commission, and if so, whether he will face the death penalty.
- (c) The checking mechanisms currently in place need improvement. The Foreign Secretary’s Statement confirmed the concerns that many organisations, including the Intelligence and Security Committee, have expressed about the UK government’s policy of reliance on US assurances. You might want to examine what more detailed checking mechanisms or procedures could be introduced to ensure that the UK fulfils its legal obligations, or whether the measures outlined by the Foreign Secretary, including providing a list of flights to the US administration for checking, will be sufficient for this and any future cases.
- (d) We need more information about the role of Diego Garcia. The Committee is now well placed to use its investigative powers to try and establish the full extent of the involvement of Diego Garcia in the US rendition programme, in the course of its inquiry into the Overseas Territories. Questions that could be addressed include:
  - (i) what prompted the US administration to re-examine its records in relation to Diego Garcia;
  - (ii) what specific legal obligations were breached by the UK in relation to the two rendition flights of January and September 2002 which refuelled at Diego Garcia;
  - (iii) whether other rendition flights have refuelled at Diego Garcia;
  - (iv) whether allegations that detainees have in the past been held on or in the vicinity of Diego Garcia are accurate; and<sup>283</sup>
  - (v) what, if any, legal and/or procedural safeguards need to be introduced in order to ensure that the UK adheres to its international obligations relating specifically to Diego Garcia and other dependent territories.

<sup>277</sup> [http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060317/text/60317w02.htm#60317w02.html\\_sbhd2](http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060317/text/60317w02.htm#60317w02.html_sbhd2)

<sup>278</sup> Intelligence and Security Committee Report into Rendition, 25 July 2007, Para 187, <http://www.cabinetoffice.gov.uk/intelligence/>

<sup>279</sup> [http://www.extraordinaryrendition.org/component/option,com\\_docman/task,cat\\_view/gid,30/Itemid,27/](http://www.extraordinaryrendition.org/component/option,com_docman/task,cat_view/gid,30/Itemid,27/)

<sup>280</sup> Temporary Committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners, Report on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners (2006/2200(INI)), 30 January 2007, para 78, [www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2007-0020&language=EN&mode=XML](http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2007-0020&language=EN&mode=XML)

<sup>281</sup> Department of Defense Memo, 11 October 2002, <http://www.defenselink.mil/news/Jun2004/d20040622doc3.pdf>

<sup>282</sup> Memo from Deputy Assistant Attorney General John Yoo to the White House Counsel, 1 August 2002, [http://www.humanrightsfirst.org/us\\_law/etn/gonzales/memos\\_dir/memo\\_20020801\\_JD\\_%20Gonz\\_.pdf](http://www.humanrightsfirst.org/us_law/etn/gonzales/memos_dir/memo_20020801_JD_%20Gonz_.pdf)

<sup>283</sup> Reprieve, “Enforced Disappearance, Illegal Interstate Transfer, and Other Human Rights Abuses Involving the UK Overseas Territories”, [www.reprieve.org.uk](http://www.reprieve.org.uk)

- (e) Your Committee may wish to consider contacting the Foreign Relations Committees in the US Senate and House of Representatives in order to ensure that a thorough job is done by the US administration in examining their records.

I am placing this letter in the public domain.

27 February 2008

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**Letter from the Chairman of the Committee to the Secretary of State for Foreign and Commonwealth Affairs**

**OVERSEAS TERRITORIES: TERRORIST SUSPECTS (RENDITIONS)**

I am writing further to your statement in the House last Thursday on terrorist suspects (renditions). During our subsequent exchange I referred to the Government Response to the Foreign Affairs Committee's Human Rights Annual Report 2006, published on 29 June 2007, in which the Government stated:

“We are clear that the US would not render anyone through UK airspace (including the Overseas Territories) without our permission”.<sup>284</sup>

Since your statement is of course relevant to our present inquiry into Overseas Territories, the Committee has asked me to write to you with a number of questions arising. I would be most grateful to have your response to the questions listed below as soon as possible. It would be particularly useful to the Committee if it was to receive a response by Wednesday 19 March.

**DIEGO GARCIA**

- The Committee would like to be given the identities of the two men admitted to have been rendered through Diego Garcia and the dates when these flights occurred. The Committee would also like details of where these men were held prior to their transfer from Diego Garcia, including whether either of them were held on the island itself or on ships off Diego Garcia prior to their transfer; where these men were taken having been transferred from Diego Garcia; and how they were subsequently treated. The Committee would also like to be given full flight logs, data strings and passenger manifests of the planes on which these men were transported.
- The Committee would like to know whether permissions were sought by the US from the British Government in respect to these renditions of individuals and what follow-up the British Government has made in respect of the conditions in which these men have been held by the US or any other state.
- The Committee would also like to know whether the UK has previously sought reassurances from the US about allegations relating to ships serviced from Diego Garcia and possibly stationed within UK territorial waters; and whether the Government plans to include these allegations among the allegations about which it will now be seeking specific reassurances from the US.
- Further to its previous letter to Richard Cooke, head of the FCO's Parliamentary Relations Team on 25 January 2008, about the terms of the agreement between the UK and US on Diego Garcia, the Committee would like to be sent full copies of the initial agreement of 1966 and the subsequent agreement of 1976. The Committee would also like details of the extent of UK supervision of activities on Diego Garcia, including the numbers and ranks of UK military personnel on the island, the notice which the US has to give the UK regarding flights going in and out of the island, to whom such notice has to be given, and whether it includes details of the prior and ongoing destinations of these flights and their passengers.

**TURKS AND CAICOS ISLANDS**

- The Committee would like to know whether the UK has previously sought reassurances from the US about allegations of stopovers on the Turks and Caicos Islands of rendition planes; and whether the Government plans to include these allegations among the allegations about which it will now be seeking specific reassurances from the US.

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<sup>284</sup> Response of the Secretary of State for Foreign and Commonwealth Affairs to the Third Report from the Foreign Affairs Committee Session 2006–07: Annual Report on Human Rights 2006, Cm 7127, para 44.

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LIST OF ALL FLIGHTS BEING SENT TO THE US

- The Committee would like to know when the list of all flights where the Government has been alerted about concerns regarding rendition will be sent to the United States.
- The Committee would like to know whether this list will include allegations about flights through UK airspace of planes alleged to have been on their way to or from carrying out a rendition, as well as allegations about flights carrying detainees at the time of transit through UK airspace.
- The Committee would also like to know whether this list will include reports about the following prisoners: Muhammed Saad Iqbal Madni, Sheikh Al-Libi, Ramzi Bin Al-Shibh, Hambali aka Riduan Isamuddin, Abu Zubaydah, and Khalid Shaikh Mohammed.
- The Committee would be most grateful if it could be sent the list as soon as it is passed to the US and to receive a copy of the reply.

I thank you for drawing the new information on rendition flights to the House's attention as soon as it had come to light and look forward to receiving your response.

28 February 2008

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**Submission from Anthony L Hall, Turks and Caicos Islands**

I regret that, despite my overtures, I have yet to hear from the chairman of the Committee.

Therefore, please forgive me for prevailing upon you once again to convey my lingering concerns. (Indeed, I would appreciate your forwarding this entire e-mail thread to the Committee).

In my initial letter, dated 10 September 2007, I admonished the Committee that leaders of the Turks and Caicos Islands were determined to discredit its inquiry in the minds of TC Islanders—no matter its findings of corruption.

And nothing vindicates my admonition quite like an article published last week in our most-widely read newspaper, in which TCI Premier Michael Misick ridiculed as “traitors” the opposition members and citizens who provided submissions to the Committee. (See <http://www.suntci.com/traitors.asp>)

Therefore, I feel obliged to reiterate my offer to help the Committee find the most amenable way to inform the people of my country of its findings, and possible sanctions.

After all, no one has any doubt about the egregious nature of corruption. The challenge for the Committee is to inspire enough respect among our people for its integrity and authority to help them overcome their fears of reprisals from the TCI government.

Unless we can do this, I respectfully submit that this inquiry will have been a futile exercise. And, more importantly, the UK government will be liable for an equally egregious failure of its constitutional (fiduciary) duties.

29 February 2008

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**Submission from Basil George, St Helena**

A formal request is made by way of this email to ask the Commission to take account of the matters raised in this email and the contents of the letter I wrote to the two local newspapers commenting on the submission that came from elected members of council on St Helena.<sup>285</sup> The submission by Councillors appeared in the local newspapers on the 15 February.

I wish to draw particular attention to the following:

(a) *Offshore Employment*

Of concern is the social effect on children of school age, especially teenagers, with about one in eight having at least one parent away from home working offshore. Some of these children have both parents working away from home.

(b) *Housing*

The move from an informal economy to one that is market driven is happening far too rapidly and making more Islanders leave to find employment overseas to have housing for themselves and their families. The price of SHG land for family housing plots for what is social housing increased in March last year by some 2,000%.

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<sup>285</sup> This letter has not been published with the submission since it is a publicly available document.

(c) *Fishing*

The poaching in our waters is of grave concern. In an editorial in the local paper *The St Helena Independent* last weekend 22 February 2008, the editor noted that “. . . we, almost daily, receive reports of unidentified foreign fishing vessels being sighted close to our shores”.

RECOMMENDATION

1. *Island families*

That the St Helena Government examines and gives greater importance to the social implications of offshore employment especially how it affects young people, and in the absence of few council houses being built, facilitate Islanders building their own family homes by making family house plots available and affordable as one of the major approaches to allow Islanders basic housing and an option for parents to stay and not leave.

2. *Fishing*

That the British Government sets up an inquiry about poaching in the territorial waters of St Helena and through the Government of St Helena consult the relevant fisheries organisations on the Island, notably the fisheries section of the ANRD, the Fisheries Co-operation and the Civil Society Fishermen’s Association, to gather data about illegal fishing.

Additional information should be obtained from known satellite surveillance, including that on Ascension, a dependency of St Helena. As a matter of urgency a case should be placed by the British Government to the appropriate EU and/or UN body for action to be taken against the companies and nations concerned.

In the 1999 White Paper on its Overseas Territories, it shows that though the Overseas Territories are responsible for their own local self-government, Britain is responsible for external affairs, defence, and usually, internal security and the public service . . . (1.6). In the same paper it says that Britain as an international player is “prepared to take tough decisions to deal with complex and pointed international difficulties—and where necessary, to back them with action” (1.3).

Britain has noted in the White Paper of the “increased awareness of the isolation and economic problems of some of the poorer territories—notably St Helena” (1.7). Fishing is a key industry both locally and for export. The present level of illegal fishing is crippling this industry to the extent that currently Islanders can only purchase a limited amount of tuna per family.

I write as an Islander having lived my life on the Island, worked here, built my own family home and raised a family. However the above matters I raised have also been raised in a submission by the Citizenship Commission of which I am a member is not just a personal view but reflects wider public opinion.

28 February 2008

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**Letter to the Second Clerk from Richard Cooke, Head, Parliamentary Relations Team**

**OVERSEAS TERRITORIES: REQUEST FOR FURTHER INFORMATION**

Thank you for letter of 25 January in which you requested information on British Government appointments to the Overseas Territories and on the UK’s agreement with the US on Diego Garcia.

**BRITISH GOVERNMENT APPOINTMENTS TO THE OVERSEAS TERRITORIES**

I attach a list of official appointments in each Overseas Territory which have involvement of UK Ministers. Constitutionally, in relation to the appointments set out in the list, Her Majesty and the Secretary of State are acting in right of the Territory concerned, and not on behalf of the United Kingdom Government. But we understand that the Committee is interested in posts where British Ministers are involved in the appointment. The list includes Governors and other public or judicial appointments that you said the Committee were interested in. You should note that from now on, when looking to fill Governor positions, the posts will be advertised to all FCO staff and through Whitehall inter-departmental trawl in line with policy on all FCO appointments in the Senior Management Structure grade.

## DIEGO GARCIA

The committee have asked for confirmation that: (i) the use of Diego Garcia by the US will *automatically* continue beyond 2016 unless either the UK or US gives notice that they no longer want this arrangement to continue and (ii) that it would be sufficient for the agreement to expire if only the UK were to give notice that it wished to terminate it. The Committee has also asked for information on the form in which this notice would have to be given.

The 1966 Exchange of Notes by which the British Indian Ocean Territory was set aside for the defence purposes of the UK and the US will continue in force for a further period of 20 years beyond 2016, unless it is duly terminated. However, the UK and US would of course continue to consult closely on their mutual defence needs and expectations well in advance of that time. The 1966 Exchange of Notes may be terminated by either Government giving notice of termination, in accordance with its terms. The form of such notice would most appropriately be a formal diplomatic note or letter from one Government to the other.

## FAC: OFFICIAL APPOINTMENTS IN THE OVERSEAS TERRITORIES

## ANGUILLA

*Governor*

- (a) name and title of the appointment  
Andrew George, Governor in and over Our Territory of Anguilla
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years (with the option of a 4th)
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO staff

*Deputy Governor*

- (a) name and title of the appointment  
Stanley Reid, Deputy Governor of Anguilla
- (b) person and/or bodies responsible for making the appointment  
The Governor makes the appointment, "in pursuance of instructions given by Her Majesty through a Secretary of State" (Section 19A(1) of the Anguilla Constitution Order 1982)
- (c) terms and conditions for the appointment  
The Deputy Governor is paid a salary by the Government of Anguilla, which started at EC\$160,000 per annum, with provision for increments, and benefiting from pay increases awarded to the Anguilla Public Service. The Deputy Governor assists the Governor in the exercise of his functions relating to matters for which he is responsible under the Constitution.
- (d) length of the appointment  
Constitutionally, the Deputy Governor holds office "during Her Majesty's pleasure". The incumbent (the first Anguillian to hold the office) has been appointed on contract for a term of five years.
- (e) procedure for terminating the appointment  
The Governor acting in his discretion and for cause may at any time terminate the engagement of the Deputy Governor by giving him three months notice or paying him three months salary in lieu of notice. The Governor may terminate the engagement forthwith if the Deputy Governor willfully neglects or refuses or for any cause (other than ill-health not caused by his own misconduct) becomes unable to perform any of his duties or fails to comply with any order or instruction given by the Governor, or discloses any information reflecting the affairs of the Government to any unauthorised person or in any way misconducts himself.
- (f) how the appointment was made/advertised  
The appointment was made following an open competition. The position was widely advertised within Anguilla, and to Anguillian communities overseas. Interviews were conducted by a panel including independent persons from the local community.



BERMUDA

*Governor*

- (a) name and title of the appointment  
Sir Richard Gozney, Governor and Commander-in-Chief of Bermuda
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Prime Minister
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years (with the option of a 4th)
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO staff

*Deputy Governor*

- (a) name and title of the appointment  
Mark Capes, Deputy Governor
- (b) person and/or bodies responsible for making the appointment  
Appointed by the Governor on instructions of Her Majesty through the Secretary of State (Section 18(1) of the Bermuda Constitution Order 1968)
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3–4 years
- (e) procedure for terminating the appointment  
By the Governor under FCO Terms and Conditions
- (f) how the appointment was made/advertised  
Open Competition within the FCO and Civil Service

BRITISH VIRGIN ISLANDS

*Governor*

- (a) name and title of the appointment  
David Pearey, Governor in and over Our Territory of the British Virgin Islands
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years (with the option of a 4th)
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO staff

*Deputy Governor*

- (a) name and title of the appointment  
Elton Georges CMG, OBE, Deputy Governor
- (b) person and/or bodies responsible for making the appointment  
Appointed by the Governor designated by Her Majesty “by instructions given through a Secretary of State” (Para 36(1) of the Constitution)

- (c) terms and conditions for the appointment  
The office is held “during Her Majesty’s pleasure”. The practice in the BVI is that the Deputy Governor is established as a public service post. Appointments to this post have, in the past, been both on permanent and pensionable terms and on fixed term renewable contracts. Elton George’s current appointment is on the latter terms. Salary and allowances paid are allowed for in the BVI Government budget. The job is currently grade 21 (the highest) in the BVI public service.
- (d) length of the appointment  
The length of appointment varies and, if on permanent and pensionable terms, can be for as long as the incumbent renders satisfactory service. The contractual appointments are for the specified term, subject to good performance. The last one was for three years and the present incumbent, Elton Georges, holds an interim “bridging” appointment for one year.
- (e) procedure for terminating the appointment  
An appointment held during Her Majesty’s pleasure can be terminated at any time, given reasonable notice. In BVI practice, the first two Deputy Governors were tenured public officers and retired from office on reaching the normal retirement age of 60. The appointment of those on contract are terminated in accordance with the provisions of the contract, which always includes a clause that it can be terminated giving three months notice on either side or a suitable payment in lieu.
- (f) how the appointment was made/advertised  
The current constitution requires that the postholder be a Virgin Islander as specified in para 65(2). The post is normally advertised in local publications and on the relevant Government website. Then the Governor, consulting as he/she sees fit, selects a preferred candidate to recommend to the Secretary of State. If advertising does not identify candidates with the right qualities, direct approaches are made to suitable candidates.

#### CAYMAN ISLANDS

##### *Governor*

- (a) name and title of the appointment  
Stuart Jack, Governor in and over Our Territory of the Cayman Islands
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years (with the option of a 4th)
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO staff

##### *Judges of Court of Appeal*

- (a) name and title of the appointment  
Judges of the Court of Appeal
- (b) person and/or bodies responsible for making the appointment  
The Governor, acting in his discretion, by instrument under the public seal and in accordance with such instructions as he may receive from Her Majesty through a Secretary of State.—Section 49B of the Constitution.
- (c) terms and conditions for the appointment  
In accordance with the Constitution and instrument of appointment.
- (d) length of the appointment  
The Judges of the Court of Appeal are appointed for such a period as may be specified in their respective instruments of appointment and they can only be removed from office for inability to discharge the functions of office or for gross misconduct.

(e) procedure for terminating the appointment

A Judge of the Court of Appeal can be removed from office by the Governor, acting in right of the Cayman Islands, by instrument under the Public Seal if the question of the removal of that judge has, at the request of the Governor, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 (or any other enactment enabling Her Majesty in that behalf), and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability or misconduct.

Where the Governor considers that the question of removing a judge of the Court of Appeal from office ought to be investigated, he is required to follow the procedure set out in section 49C(4) of the Constitution, that is:

- he shall appoint a tribunal consisting of a Chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;
- the tribunal shall inquire into the matter and report on the facts to the Governor, and advise him whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

Where the question of removing a judge has been referred to a tribunal, the Governor may suspend the judge from performing the functions of his office. Any such suspension however, may be revoked by the Governor and in any case, shall cease to have effect if the tribunal advises the Governor that he should not request that the question of removal be referred to by Her Majesty to the Judicial Committee or the Committee advises Her Majesty that the judge ought not to be removed from office.

(f) how the appointment was made/advertised

For the position of Justice of Appeal, the Governor may receive recommendations from members of the judiciary and the legal fraternity on possible candidates based on their qualifications and judicial experience. The positions may also be advertised. Candidates are interviewed.

## THE FALKLAND ISLANDS

### *Governor*

- (a) name and title of the appointment  
Alan Huckle, Governor in and over Our Territory of the Falkland Islands and Commissioner for South Georgia and the South Sandwich Islands
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years (with the option of a 4th)
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO staff

### *Chief Justice*

- (a) name and title of the appointment  
Christopher Gardner QC, Chief Justice of the Supreme Court of the Falkland Islands
- (b) person and/or bodies responsible for making the appointment  
The Governor makes the appointment "in pursuance of instructions given by Her Majesty through the Secretary of State" (Section 79(1) of the Falkland Islands Constitution Order 1985)
- (c) terms and conditions for the appointment  
The Chief Justice is paid a salary based on that of a Court Circuit Judge in England and Wales by the Falkland Islands Government (FIG) whilst in the Falkland Islands. FIG provides also provides travel and expenses to and from the Falkland Islands, as well as accommodation, medical and transport while

here. In addition, the Chief Justice receives payment at the current hourly rate of a Circuit Judge of England and Wales for all time spent outside the Falkland Islands on matters related to Falkland Islands cases.

- (d) length of the appointment  
The length of the appointment is specified in the instrument of the Chief Justice's appointment to that office. In the case of the present incumbent this is April 2015.
- (e) procedure for terminating the appointment  
Section 81(6) of the Falkland Islands Constitution Order 1985 provides that the Governor may suspend the Chief Justice if the question of removing the Chief Justice from office has been referred to a tribunal in accordance with section 81(4) (Section 81(4) permits the Governor to appoint a tribunal to inquire into the matter of removing the Chief Justice for reasons of inability (whether of body or mind) or misbehaviour, if the Governor considers that the question of removal ought to be investigated. If the tribunal advises that the question should be referred by Her Majesty to the Judicial Committee, the Governor shall request that the question be referred accordingly).

Section 81(3) provides that the Chief Justice shall be removed from office by the Governor if the question of removal of that judge from office has, at the request of the Governor made under subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1933 (or any other enabling enactment), and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability or misbehaviour.

It should be noted that subsection 81(7) provides that the powers exercised by the Governor under section 81 are exercised in the Governor's discretion (ie the Governor is not obliged to consult Executive Council in relation to that exercise of powers; reference section 61). The Governor is acting in right of the Falkland Islands in carrying out these functions.

- (f) how the appointment was made/advertised  
Open Competition. Job advertised in the Times and Law Gazette.

#### GIBRALTAR

##### *Governor*

- (a) name and title of the appointment  
Sir Robert Fulton, Governor and Commander-in-Chief in and over Gibraltar
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years (with the option of a 4th)
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO candidates and opened to MoD & /Cabinet Office for other nominations.

#### MONTserrat

##### *Governor*

- (a) name and title of the appointment  
Peter Waterworth, Governor of the Island of Montserrat
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years (with the option of a 4th)
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO staff

PITCAIRN ISLANDS

*Governor*

- (a) name and title of the appointment  
George Fergusson, Governor of the Islands of Pitcairn, Henderson, Ducie and Oeno
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
4 years.
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO Staff

ST HELENA

*Governor*

- (a) name and title of the appointment  
Andrew Gurr, Governor and Commander-in-Chief in and over Our Territory of St Helena and its Dependencies
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions for fixed term appointment
- (d) length of the appointment  
3 years
- (e) procedure for terminating the appointment  
For the FCO terminating: 5 weeks' notice  
For the incumbent terminating: not less than three months' notice
- (f) how the appointment was made/advertised  
Open Competition as defined by the Office of the Civil Service Commissioner.

*Chief Justice*

- (a) name and title of the appointment  
HH Charles Wareing Ekins, Chief Justice of St Helena and its Dependencies
- (b) person and/or bodies responsible for making the appointment  
The Governor in accordance with instructions given by Her Majesty through a Secretary of State—s 45(1) of the Constitution refer.
- (c) terms and conditions for the appointment  
The instrument of appointment refers to the office being held on such terms and conditions as the Governor shall prescribe in accordance with instructions given by Her Majesty through a Secretary of State.
- (d) length of the appointment  
Three years with the possibility of an extension to a maximum of six years in total, or until age 75 (whichever occurs first) or unless it is previously terminated in pursuance of instructions received from Her Majesty or the Chief Justice resigns from office in accordance with section 54 of the Constitution.
- (e) procedure for terminating the appointment  
In addition to (d) above, section 53(2) of the Constitution gives the Governor power, acting in right of the Territory, to remove those in public office.
- (f) how the appointment was made/advertised  
The appointment was subject to open competition and advertised in the media and on the St Helena Government website.

*President and Justices of the Court of Appeal*

- (a) name and title of the appointment  
HH Judge Brian Appleby, QC, President of the Court of Appeal

*Justices of the Court of Appeal*

HH Judge Sir (Francis) Humphrey Potts  
HH William Charles Woodward, QC  
HH Judge Victor Edwin Hall  
HH Judge John Rubery  
HH Judge Richard Frederick David Pollard

- (b) person and/or bodies responsible for making the appointment  
The Governor in accordance with instructions given by Her Majesty through a Secretary of State—s 47(3) of the Constitution refers.
- (c) terms and conditions for the appointment  
The instrument of appointment refers to the office being held on such terms and conditions as the Governor shall prescribe in accordance with instructions given by Her Majesty through a Secretary of State.
- (d) length of the appointment  
Not stipulated
- (e) procedure for terminating the appointment  
Section 53(2) of the Constitution gives the Governor power, acting in right of the Territory, to remove those in public office.
- (f) how the appointment was made/advertised  
On the recommendation of the Chief Justice.

## TURKS &amp; CAICOS ISLANDS

*Governor*

- (a) name and title of the appointment  
Richard Tauwhare, Governor in and over Our Territory of the Turks and Caicos Islands
- (b) person and/or bodies responsible for making the appointment  
HM The Queen, in practice acting on the advice of the Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years (with optional 4th)
- (e) procedure for terminating the appointment  
Standard FCO procedures
- (f) how the appointment was made/advertised  
Advertised to all FCO staff

*Deputy Governor*

- (a) name and title of the appointment  
Mahala Wynns, Deputy Governor
- (b) person and/or bodies responsible for making the appointment  
The Governor makes the appointment, “in pursuance of instructions given by Her Majesty through a Secretary of State” (Section 22(1) of the TCI Constitution)
- (c) terms and conditions for the appointment  
The Deputy Governor is paid a salary by the Government of TCI of US\$125,000. There is no specific provision for increments; these have to be proposed by the Government and agreed by Cabinet. Other terms and conditions are not laid down by the Constitution but the standard TCI Public Service terms have been adopted.
- (d) length of the appointment  
The Constitution does not define the length of appointment. The incumbent’s contract is for a term of two years (expiring August 2008).

- (e) procedure for terminating the appointment  
The Constitution, Section 22(1), states that the Deputy Governor shall hold office during Her Majesty's pleasure. It does not specify any grounds for the termination of the appointment.
- (f) how the appointment was made/advertised  
The Constitution does not specify any process for making the appointment but only requires that the Deputy Governor must be a Belonger. The incumbent was selected by the Governor after consultation with the Premier and the Leader of the Opposition.

#### BRITISH INDIAN OCEAN TERRITORY (BIOT)

##### *Commissioner*

- (a) name and title of the appointment  
Leigh Turner, Commissioner for the British Indian Ocean Territory
- (b) person and/or bodies responsible for making the appointment  
Her Majesty by instructions given through a Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years
- (e) procedure for terminating the appointment  
Resignation by the appointee or termination by Her Majesty by instructions given through a Secretary of State.
- (f) how the appointment was made/advertised  
The BIOT Commissioner is the current Director of Overseas Territories Directorate—the job was advertised to all FCO staff.

#### BRITISH ANTARCTIC TERRITORY (BAT)

##### *Commissioner*

- (a) name and title of the appointment  
Leigh Turner, Commissioner for the British Antarctic Territory
- (b) person and/or bodies responsible for making the appointment  
Her Majesty by instructions given through a Secretary of State
- (c) terms and conditions for the appointment  
Standard FCO Diplomatic Service Terms and Conditions
- (d) length of the appointment  
3 years
- (e) procedure for terminating the appointment  
Resignation by the appointee or termination by Her Majesty by instructions given through a Secretary of State.
- (f) how the appointment was made/advertised  
The BAT Commissioner is the current Director of Overseas Territories Directorate—the job was advertised to all FCO staff.

29 February 2008

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#### **Further submission from Mr W L Chamberland, Gibraltar**

Most grateful to you for conveying replies to my two recent letters to the Chairman.

A further piece of historical information with particular reference to the much publicised Article x of the Treaty of Utrecht by the Spaniards.

This is the clause which among other things prohibits Jews and Moors to either live or reside in Gibraltar, used at times by Spain to chastise Britain for breaking it in the 18th century and thereafter.

On 24 November 1977, the then Chief Minister of Gibraltar, the late Sir Joshua Hassan, a member of the Jewish faith accompanied by the leader of the Opposition, Mr Maurice Xiberras met in Strasburg with Dr David Owen, Foreign Secretary and his Spanish counterpart Sr Marcelino Oreja Aguire. If we want to be pedantic then in the 20th century a Spanish Diplomat broke article x of Utrecht, by shaking hands with the Chief Minister in recognition of his representing the people of Gibraltar, a person who by virtue of his faith was under the much maligned treaty not even able to reside in Gibraltar.

If the FO Mandarins wish to dismiss this as moving with the times then I suggest they put into practice and tell the Spaniards to grow up and realise that the 18th century is long gone and Britain has fought many a War since then.

NB As to the Frontier the living quarters in the area are known as British Lines Road going back to the 1800 hundreds.

2 March 2008

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**Letter from Mr Ben Roberts to the Governor, Turks and Caicos Islands**

Dear Governor Tauwhare,

This email is to voice to you, the Overseer of British matters, my alarm and concern about matters in Turks in Caicos. It has been less than a year that the courthouse in Grand Turk was burned in a fire. The result of this was that the old courthouse/council chamber building was put back into service as the venue for these operations. Two weeks ago that building, not only an office building but in addition a veritable archive of Turks & Caicos history, was found on fire. Now, less than two days ago the Attorney General Chambers was found on fire. This is quite unnatural. Turks & Caicos, and especially its government buildings, has never had fires on such a scale as witnessed on your watch in office. There is a lot of speculation in the country that these fires are not by any stretch of the imagination accidental, given our history of rarity of fires, along with the pattern of sites that have caught fire. These locations house important documents having to do with government transactions. Why are they going up in flames? Our police have been unable to solve any of these cases to date, along with numerous cases unrelated to what is being described as this apparent Guy Fawkes spree.

I am hoping that you have contacted British authorities in parliament and the Foreign and Commonwealth Office on this disturbing matter. If you have not I am imploring you to do so. We need a high level investigation on the order of Scotland Yard or Interpol, in this matter. If the British can offer them to assist a foreign sovereign country like Pakistan, in unraveling criminal activity in the loss of life of one of its prominent leaders, then its resources can most definitely be used to clear up these disturbing events in their own colony of T&C. Events which are not only threatening law and order, but are also dispensing with hundreds of years of historical documents such as birth certificates, land transactions, and citizenship documentation.

In the interim, while a British investigative contingent arrives, I can only hope that efforts are being made to shore up security to government buildings. What's next on the list of important government buildings that document our lives and interactions, past and present? More of this would be disastrous and debilitating to my home, and the country you oversee. There is a lot of speculation about these fires, but a proper and competent investigation by one of the above mentioned agencies should put all speculation to rest, and hopefully put an end to these fires that are playing havoc with our documented history of yesterday and yesteryear. That is of grave concern to me. Thank you.

4 March 2008

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**Submission from B Candace Ray, Bermuda**

I was unable to attend last night's public forum in respect of the British Overseas Territories and the UK's responsibilities for same.

Please, will you add to your list of notations regarding Bermuda's Human Rights Act the fact that "age discrimination" is also not a protected category.

Note that I write for the *Bermuda Sun*, but am sending this as a private citizen. I'm enclosing my signature in the event that you need to verify my status.  
Thank you.

12 March 2008

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**Submission from Mr R David, Bermuda**

GOOD GOVERNANCE OF BERMUDA

I wish to raise the matter of nationality for those who were born in Bermuda, but are not eligible for Bermuda Status.

Currently if one's parents are legally in Bermuda as migrant workers and happen to give birth on the island, the child does not have any claim to Bermuda Status. This situation occurs despite many years of residency, on the island, by the Bermuda born child.

The child is entitled to become a British Overseas Citizen of Bermuda; however this will only allow the right of abode and will not confer any rights of employment on the individual. The Government of Bermuda are able to bar the person from gaining employment and enjoying the full rights of citizenship through the "Bermuda Status" legislation. This effectively makes some Bermuda born children second class citizens in their own land of birth. Strangely this denial of basic human rights upon such individuals continues to be endorsed by the silence of the FCO on this matter.

In no part of the European Union would this situation be allowed to exist when individuals have had such a strong association with their place of birth for so many years.

I have used this as an example of how the winds of change brought about by the European convention on human rights have yet to blow through our dependent territories.

These dubious pieces of law that reestablish an "apartheid style" of human rights to Bermuda born individuals need to be addressed. How can it be right to justify the legal denial of full citizenship to these individuals? This situation is shameful and cannot represent a model of good governance in 2008.

12 March 2008

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**Submission from Carlos Miranda, Count of Casa Miranda, Ambassador of Spain**

According to the transcript of evidence before the Foreign Affairs Committee of the House of Commons on 5 March, the Chief Minister of the British Overseas Territory of Gibraltar, Peter Caruana, would have stated that the position that Spain holds in relation to the sovereignty or jurisdiction of the waters surrounding the Rock of Gibraltar and its isthmus ". . . is unsustainable because there is a 1952 (*sic*) UN convention on territorial waters which gives every spot in the planet the treaty right to territorial waters . . ." and he added that Spain had subscribed this UN Convention having made no reservation in relation to the question of Gibraltar, "so international law makes Spain denial of territorial waters completely unsustainable in law".

On behalf of my Government, I wish to submit to you, as Chairman of the Committee of the British Parliament which is carrying out an inquiry on the exercise by the Foreign and Commonwealth Office of its responsibilities in relation to the Overseas Territories, the position of the Kingdom of Spain on this issue, which I believe hasn't been accurately presented.

Spain does not recognize as having ceded to the United Kingdom any spaces other than those included in article X of the Treaty of Utrecht.

Consequently, and with regard to the waters surrounding Gibraltar, when ratifying the United Nations Convention on the Law of the Sea in New York, on 5 December 1984, the Spanish Government stated "*that this act cannot be construed as recognition of any rights or status regarding the maritime space of Gibraltar that are not included in Article 10 of the Treaty of Utrecht of 13 July 1713 concluded between the Crowns of Spain and Great Britain*". (This same statement was also made by the Spanish Government when ratifying the previous United Nations Convention on the Territorial Sea and Contiguous Zone of 1958 (not 1952)).

Moreover, Spain also declared upon ratification of the UN Convention on the Law of the Sea in its statement of 5 December 1984 that "*it does not consider that Resolution III of the Third United Nations Conference on the Law of the Sea is applicable to the colony of Gibraltar, which is subject to a process of decolonization in which only relevant resolutions adopted by the United Nations General Assembly are applicable*".

Spain has more recently reiterated this doctrine to the British Government by Note Verbale No 151/11 of 12 July 2007, issued in connection with the arrest in Spanish waters in the vicinity of Gibraltar of a ship registered in Panama and owned by a North-American company involved in underwater exploration. This

company took part in a case related to the protection of the Spanish underwater cultural heritage. The Note Verbale states the following:

*“In accordance with Art 3 of the United Nations Convention on the Law of the Sea, Spain, in no case, can accept any limitation to its right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles. In case of adjacent or opposite coasts, as there are in the Straits of Gibraltar, the Convention provides for an exception to the general rule of the median line when it is necessary, for reasons of historic title, to delimit the territorial sea in a different way (Art 15).*

*In this respect it should be recalled that Spain does not recognize the British sovereignty or jurisdiction over other spaces than those that are included expressly in article X of the Treaty of Utrecht. That is to say: ‘The town and castle of Gibraltar, together with the port, fortifications, and forts there-unto belonging’.*

*Therefore, the Rock does not create territorial sea and the waters adjacent to the coast of Gibraltar are under the sovereignty and jurisdiction of Spain”.*

I hope that you find this clarification useful and can take it into account in your deliberations and in the final report of your inquiry.

12 March 2008

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### **Submission from Kathi Barrington, Turks and Caicos Islands**

#### ISSUES THAT I AM CONCERNED ABOUT

1. Transparency in granting Belongships/approving Permanent Resident Certificates (See attached notes when you have time).

2. Elections: Those who have been granted Belongship are finding it difficult to have their names added to the Electoral List. Rules change and are not published.

3. Less than 7,000 voters decide the fate of over 30,000 people.

4. Protection of the Environment: It would appear that development approval is not based on any reasonable protection of the natural resources which have made this country prosperous. The Leeward Marina and Star Island Projects, the development of Bonefish Point, the development on Long Bay Beach, the total development of Grace Bay and the Bight, the selling outright of small islands—are perhaps an indication that the future is of no value to those making these decisions.

5. The Domestic Fire Service on Provo has been merged with Civil Aviation’s Fire Service. (At government’s insistence and against the advice of the Chief Fire Officer, Chris Gannon, who put the department together and made it work.

6. Government spending: On projects/entertainments/vehicles/planes/helicopters to show the world that the TCI is a high-end destination. Lack of spending on schools—especially the primary schools and the salaries of the teachers.

7. The delay in the hospital projects.

8. Rising Crime: Despite figures indicating decrease in crime, the escalation of the seriousness of the crimes is a huge concern with devastating potential fallout for tourism, never mind the safety of residents.

#### TO MEMBERS OF THE FOREIGN AFFAIRS COMMITTEE

I apologize for this lengthy account of our experiences with the governments of the TCI. I hope you will find the time to read it. There is no exaggeration, and it is as brief as possible

10 October 2006

The following is an account of our attempts to obtain permanent legal status in the Turks & Caicos, where we have lived since February 1985.

On 13 October 2000, Michael applied for PRC with the right to work. The application was submitted by Conrad Griffiths, QC, of Misick & Stanbrook and the application was under the then Immigration Ordinance Paragraph 3(2) and (c) of Schedule 2. This was an application under the Skilled Worker category and the fee was \$5,000.00.

In mid 2001, after numerous attempts by telephone and letter to find out the disposition of the application, I was able to get an answer. Michael’s PRC application had been put on hold because the department had decided that the fee he should pay was NOT \$5,000.00 for a skilled worker, but \$10,000.00 for a person who owns their own business. At no time previous to this telephone conversation, did the department communicate this information to us, despite our many calls.

We regrouped and started saving toward the new fee.

In November of 2001, following the advice of the Immigration Department's PRC/Belongership Office in Grand Turk, we both applied for both Belongership and PRC's with the right to work. This was Michael's second application for a PRC.

On 1 December 2001 we moved into the house we had been building in Long Bay.

3 May 2002 we received a letter signed by Derek Been, informing us that the request for Belongerships had been refused.

1 August 2002: The PDM Government increased the cost of the PRC in our category from \$10,000.00 to \$50,000.00.

At the end of September 2002 we received a letter dated 20 August 2002, signed by Barbara Higgs, stating that our PRC's had been refused at the Executive Council Meeting of 24 July 2002, paper No 02/105, Minute #811/02. No reason for the refusal was given. The letter stated: "Please note that you are eligible to reapply after six months after the date of this letter". As you can see by the timing of the refusal (24 July) a new application would fall under the new rate of \$50,000.00.

On 2 August I wrote a letter to then Minister responsible for Immigration, O O Skippings, petitioning a review of the PRC decision. I also wrote to the then Governor who responded sympathetically but did not have any suggestions. Numerous letters and telephone calls and requests for meetings with Minister Skippings were unanswered.

In August 2003, the PDM party left office and the PNP took charge. I made an appointment with the new Minister responsible for Immigration, Mr Jeffrey Hall. We met in the late Fall 2003 to talk about our difficulty in establishing the Turks & Caicos as our permanent legal residence and asked for advice. He indicated that things were changing and to be patient and it would all be worked out.

The Blue Ribbon Commission on Immigration took place and the published report indicated that the Commission felt that "old-timers" (residents of 15-20 years without permanent legal status) should be regularized.

May 2004 we met with Minister Jeffrey Hall and again he voiced the opinion that that we would soon be able to attain permanent legal status that we could actually afford. He told us that a new office would handle people like us (old timers).

It was announced, I think in the summer of 2004, that Donhue Gardner would open an office on Provo to handle the PRC/Belongership applications. I spoke to him in October and November 2004 and he said to come and see him as soon as his office was ready. I think his office opened in December 2004 or January 2005 and we then met with Donhue Gardiner at his new office in Caribbean Place.

Because he was the man in charge of this regularizing process, and had been hired by the Government to carry it out, we naturally took his advice and applied for Belongership, rather than the PRC. Once more we had the blood test, obtained the police record, got the bank reference letters and supplied two photographs each, and asked our Belonger friends to write yet another letter of recommendation/endorsement. Thankfully, they all did so willingly and sympathized with our long wait.

Feeling that we were on the right track, finally, I only occasionally checked with Donhue Gardiner about the applications. He assured me that the paperwork was complete and had been forwarded to the appropriate persons in Grand Turk. Twice we were told that the matter had gone before Executive Council but that the amount of business at these sessions was so great that our application had been deferred to a future session.

As, one by one, long time friends in the same boat, received notification that their PRC's or Belongerships had been granted, we became worried.

On 17 November 2005, I met again with Minister Jeffrey Hall. While I waited, he obtained the information that our application had been deferred until March 2006. However, he told me that he would pull our application himself, show a letter I had been written to him (copy enclosed) to the relevant Ministers and make sure the application was heard at the very next ExCo meeting. I was overjoyed.

On 23 November 2005, Michael received a telephone call from the PRC/Belongership Office in Provo, informing him that Executive Council had approved our Belongership application and to please bring the \$300 each fee and two photographs of each of us to the office so they could put the notice in the newspapers.

We complied the next day, 24 November.

We called everyone who had been cheering us on over five years of applying, and then called all our family, in Canada, the USA, Hong Kong, Scotland. Everyone was so happy for us, but not nearly as happy as we were. Home was finally, permanently, legally HOME.

Michael's then current work permit expired on 22 December 2005. Obviously, he did not renew it, as there was no longer any need for it.

Some of the people who appeared in the newspapers started getting their Belonger Certificates. We had heard nothing.

In March we started hearing rumours that something was amiss in the Belongership department.

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I called the Governor's Office and was advised to contact the Deputy Director of Immigration, Mr Alonzo Malcolm. I did so, and faxed him the particulars of our payment and the ExCo meeting which granted us Belongership. He told me he would follow up and let me know.

Since then, he has called twice and I have contacted him perhaps ten times to see what was happening but he was unable to ascertain why we had not yet received our Belongership Certificates, as so many of our friends had.

On 15 May I had an appointment with the new Minister for Immigration, the Honorable Galmo Williams. Gilley told me that he would look into the matter and get back to me the following day. I realize Ministers are very busy people and there was the Budget on top of regular work.

So I waited, and having heard nothing despite leaving messages for the Minister, I made another appointment with the Minister, for 8 June 2006.

At that meeting Gilley was amazed that no one from Immigration or the Belongership/PRC Office (which we were sitting in) had called to tell us that our Application had been deferred AGAIN.

He apologized, saying that the government had made a mistake in approving some applications but he did not tell us why we had again been deferred.

He suggested that we re-apply for PRC's with the right to work. Because we are now living in a legal status limbo, we cannot travel without first going through the three to five day process of getting a travel letter. We cannot open a bank account.

Another piece of fallout from government's "mistake" is that we have mortgaged ourselves to finance a guest house, on the strength that we had legal status here. Knowing that we would not be paying \$50,000 for a PRC or the annual \$7,000 fees for our work permits gave us the freedom to handle the financial commitment of a fairly large mortgage.

So we hired a Belonger contractor in early April and got started on the house.

Upon the advice of the Minister for Immigration, and our lawyer, Conrad Griffiths, we assembled 40 some documents—most of them notarized, and applied for a PRC under the Assimilated Persons category (which is the category that Minister Galmo Williams told us to apply under). I handed in all the documents and a table of contents and covering letter, on 5 or 6 July 2006.

We have lived here and supported this country for almost 22 years. For six years we have tried every legal channel to acquire permanent legal status. We have met every one of the often changing requirements and we have acted in good faith through two different administrations.

It is now 10 October 2006 and we have heard nothing from anyone about our application for a PRC.

#### UPDATE

*28 February 2008*

We received notification in a letter dated 20 January 2007 that our PRC, with the right to work (for both of us) had been approved on 22 November 2006. However, the category had been changed to Skilled Worker and the fee, rather than \$5,000.00 was \$30,000.00.

We received that letter four business days before 9 February 2007 elections. Rather than risk all by waiting until after the election and applying to have the amount reduced, (as many others had done earlier when faced with the same situation), we paid the government \$30,000.00 on 6 February 2007. (Our savings plus funds borrowed from a dear friend).

In early May we received the Permanent Residents Certificate, with the Right to work for each of us. In December 2007, January and February 2008, the papers again started publishing the notices/photos of those whom the government was granting Belongerships. So I wrote to Immigration Minister Williams, reminding him that the government had promised us that they would reconsider our Belongership "sometime in the future". After delivering letters to his constituency office on 5 February and then again on 11 February, asking for his advice, I called him on his cell. Gilley called back the next day and when he discovered who the caller was, he was abrupt.

He said that the "Regularization period" was over and that Belongerships are granted now, not applied for. After I pressed him, he did say he would bring the matter up at the next Cabinet Meeting.

*12 March 2008*

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## Memorandum submitted by H M Loyal Opposition, Turks and Caicos Islands

### 1. INTRODUCTON

The purpose of this document is to provide the Foreign Affairs Committee (“FAC”) with information deemed pertinent to its review of the Foreign and Commonwealth Office (“FCO”) as it relates to activities in the Turks and Caicos Islands specifically. This document is not intended to cover all instances of dereliction or inappropriate behavior, but has been limited to substantiated instances that appear from our prospective to be of importance to the FAC.

We have additionally included certain matters for which we were unable to obtain documented support, however we have limited this to matters that could be easily substantiated by the FAC.

#### 1.1 *References*

1. The current Government of the Turks and Caicos Islands is referred to in this document as “the Government” or “the PNP”.
2. The Official Opposition is referred to in this document as “the opposition” or “the PDM”.
3. The Foreign Affairs Committee is referred to as “FAC” or “the Committee”.
4. The Foreign and Commonwealth Office will be referred to as “FCO”.
5. The Turks and Caicos Islands Public Accounts Committee will be referred to as “PAC”.

#### 1.2 *Definition and Role of the Opposition*

1. The Opposition party in the Turks and Caicos is the party that holds a minority of the electoral seats in the house of assembly of the Turks and Caicos Islands. The Peoples Democratic Movement now serves as the opposition party.
2. The Opposition’s main role is to question the government of the day and hold them accountable to the public.
3. We also represent an alternative government, and we are responsible for challenging the policies of the government and producing different policies where appropriate.
4. We view our role as to not only guard against abuses of our democratic rights and freedoms by the ruling PNP, but also to “check and prod” to ensure that they manage our fiduciary affairs prudently.

#### 1.3 *Activities of the Opposition*

1. The opposition while making up  $\frac{1}{3}$  of the Public Accounts Committee chairs that committee and has ongoing reviews into the manifold working of Government. The Public Accounts Committee meets twice per month, reviewing at least two completed audit reports each time.
2. The opposition chairs the administration committee and has one additional member on this committee. The committee is scheduled to meet once per month.
3. The opposition appointed one member to the expenditure committee of the house where the government appointed 5, we do not chair this committee, however this committee is scheduled to meet once per month.
4. The Opposition of the Turks and Caicos Islands has been carrying out its role as the watchdog of the system, however many of our attempts have been met with resistance.

#### 1.4 *Overall Goals and Objectives*

1. To endure openness and transparency in the Governance of the Turks and Caicos Islands.
2. To remove all appearance and opportunity for impropriety from the governance of the Turks and Caicos Islands.
3. To work with all stake holder of the Turks and Caicos Islands to ensure the adherence to all principles of good governance in the Turks and Caicos.
4. To work towards the sustainable development of the Turks and Caicos islands with sensitivity to the environment and posterity of future generations of Turks and Caicos Islanders.
5. To obtain and maintain for the Turks and Caicos people a fairer and more equitable distribution of the wealth of the islands so as to provide more security and dignity for the less fortunate.

6. To maintain the political freedom of the Turks and Caicos Islands and to ensure the adherence to the “Fundamental Rights And Freedoms Of The Individual” as enshrined in the Turks and Caicos Islands Constitutional Order 2006.

7. To promote, nationally and internationally, the concept of human rights.

### 1.5 *Relationship with HMG and her representatives*

1. The leader of the Opposition and members of the opposition meet with the local Governor periodically to discuss matters deemed to be of national importance, we have however deemed these meetings to not be as fruitful as we would like.

2. For in excess of two years we have requested an audience with the Minister of state with responsibility for the Overseas territories, both through the local governor and directly, to no avail.

### 1.6 *Committee’s Role*

We accept your role:

- (a) To inquire into the exercise by the Foreign and Commonwealth Office (FCO) of its responsibilities in relation to the Overseas Territories and the FCO’s achievements against its Strategic Priority No 10, the security and good governance of the Overseas Territories. In particular, this Inquiry will focus on:
  - (i) Standards of governance in the Overseas Territories.
  - (ii) The role of Governors and other office-holders appointed by or on the recommendation of the United Kingdom Government.
  - (iii) The work of the Overseas Territories Consultative Council.
  - (iv) Transparency and accountability in the Overseas Territories.
  - (v) Regulation of the financial sector in the Overseas Territories.
  - (vi) Procedures for amendment of the constitutions of Overseas Territories.
  - (vii) The application of international treaties, conventions and other agreements to the Overseas Territories.
  - (viii) Human rights in the Overseas Territories.
  - (ix) Relations between the Overseas Territories and the United Kingdom Parliament.

### 1.7 *Our objective in submitting this communiqué*

1. to offer ourselves to assist the Committee wherever possible and to offer ourselves as resource persons were needed;

2. to inform the Committee of areas of concern in the Turks and Caicos Islands and how it impacts on their mandate;

3. to convince the Committee to select the Turks and Caicos Islands as a jurisdiction that it should visit during its review;

4. to outline areas where the committee’s scope should be broadened; and

5. to document for the committee the clear need for commissions of enquiry in to certain matters of governance in the Turks and Caicos and encourage the committee to recommend same.

## 2. STANDARDS OF GOVERNANCE IN THE TURKS AND CAICOS ISLANDS

### 2.1 *Conflicts of Interest*

#### 2.1.1 Health Care System

There is now a blatant conflict with the management of the Health Care system.

With limited medical expertise and resources locally, the Turks and Caicos Islands are forced to med evac many patients to the United States for further care. This cost has been escalating over the years and is due in some part to the increase numbers of catastrophic cases but recently it is largely due to the conflict that has arisen in the management system.

The Turks and Caicos Islands Government has over the years retained the services of Canadian Medical Network (“CMN”), an independent established provider of medical cost management services, to manage the overseas referral program. The main purpose of CMN’s relationship with The Government of the Turks and Caicos Island (“TCIG”) was to ensure quality care and obtain discounts on the fees charged by hospitals. In return for its services CMN received 25% of savings obtained as its commission.

On 8 March 2007 the Government's Audit Department produced a report of its system audit of the Grand Turk Hospital revealing among other things the "Poor Administration of the Overseas Treatment program".

In response to one of the queries raised in that audit, management indicated that it had changed service providers and was using a Cayman based company, Southern Health Network ("SHN"), as its treatment abroad coordinators. The Director further revealed that TCIG was SHN's first client in the business of managing medical treatment.

In a meeting of the public Accounts Committee held on 10 July 2007 (still awaiting minutes of this meeting),<sup>286</sup> the director of health services indicated that TCIG is now compensating SHN at a rate of 50% of the savings obtained.

The director of health services also indicated that during the process of change CMN had offered to reduce their commission to 15% of savings.

This makes SHN's cost 200% of the cost of CMN and 333% of the proposed cost of CMN.

### The Conflict

The new provider, SHN is principally owned and operated by Mr Delroy Howell, a Caymanian business man who is tied to the Government as follows:

- Mr Howell was a significant contributor to the PNP's campaign.
- Mr Howell is involved with the financing arrangements for two proposed new hospitals in the TCI.
- Mr Howell is a beneficial owner in Whalewatchers Ltd, a company that owns Harbour House, a building to which the government is planning to move some of its offices.
- It is also alleged that the Minister of Finance may have an interest in Harbour House with Mr Howell (this has not been confirmed) but what is of interest is the fact that the Deputy Premier's attorney, holds a Directorship in this company.
- Mr Howell is a partner with Hon Galmo Williams, Minister of Immigration in the Turks and Caicos Islands, in First Financial Caribbean Trust Company.
- Mr Howell is also a business associate of other ministers of government in other ventures, however we have limited our details to those that we are able to substantiate at this time.

As a result of the questing of the PAC we were informed that SHN has refused to provide detailed statements of procedures, patients, original cost and savings obtained, as was the case with CMN, to allow hospital staff to verify the calculation of SHN's commission.

Mr Howell has been known to call staff of the hospital himself directly to complain of non payments which are largely due to his refusal to provide the original paperwork.

### Supporting Information Attached<sup>287</sup>

1. Appendix 1—Special Report of the Chief Auditor of the Turks and Caicos Islands on the systems audit of the Grand Turk Hospital.
2. Appendix 2—Report of the Liquidator of Leadenhall Bank & Trust Company Limited, which outlines the shareholders of First Financial on Page 8.
3. Appendix 3—Copy of the Register of lands for Parcel 10304/142 (the registered block and parcel number of Harbour House).
4. Appendix 4—Details of a company search of Whalewatchers Ltd.

### 2.1.2 Government Housing Project

The Government of the Turks and Caicos Islands has embarked on two affordable housing projects, purportedly for the wellbeing of its citizens.

Under the scheme, there is one partially completed program on Providenciales where Crown land was awarded to Urban Development Ltd at considerably reduced prices to enable a savings to be passed on to consumers.

There is a second program planned for Grand Turk where 15 acres of crown land is being awarded to Cerulean Homes Ltd for 25% of the market value of the land.

There is also conflict as it relates to the Government's Housing Program.

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<sup>286</sup> Minutes of meetings are produced by staff of the house of assembly's office, under the direction of the Clerk to House of Assembly. Despite repeated request we are still awaiting minutes.

<sup>287</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

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*The Conflict*

1. Mr Jahmal Missick, who is the nephew of the Premier is a principal in Cerulean Homes, a company that was given crown land to construct affordable housing on Grand Turk.

2. Both entities have been given considerable concessions on the price of the land and on duties for importation of materials.

*Supporting Information Attached*

APPENDIX 4–8<sup>288</sup>

1. Appendix 5—Copy of Systems Audit of Housing Program.
2. Appendix 6—Copy of the offer of land to Jahmal Missick (nephew of Premier).
3. Appendix 7—Development Agreement for construction of Housing Program.

*2.2 Poor Financial Management*

*2.2.1 TCI National Insurance/Social Security Scheme*

We are extremely concerned about this fund and the Minister’s direct interference with its governance.

*2.2.1.1 The National Insurance Audit*

The Audit Report of the National Insurance Board, as at and for the year ended 31 March 2005 conducted by an independent accounting firm under section 62 of the Finance and Audit Ordinance revealed that despite the audit being tabled the previous year on the floor of the Legislature none of the matters had been addressed by the Minister and the Board of Directors or the Director himself.

The audit highlighted serious weaknesses with the accounting function. Basic Key controls were not properly prepared, nor in a timely manner:

“The financial records presented for the audit were inadequate, incomplete and misleading; in fact significant adjustments were made to reflect the true financial position of the national insurance board”.

The Audit Report also found that monthly financial statements presented by the NIB’s financial controller to the Board of Trustees were MIS-STATED by several thousand dollars. It also found that “the lack of basic key controls was compounded by the lack of management review” and oversight of the accounting function and financial records.

The audit report found that eleven (11) issues raised in the previous year’s audit report have been repeated in that year’s report. The large number of repetitions suggests that management and the Board of Trustees are failing in their fiduciary responsibilities. The Audit Report also found that there was a clear lack of commitment to a good control environment and that management has not responded to any of the issues raised in this report.

There are unverified balance and missing number balances, held over from the old accounting system that remain and compounded by the level of unverified contribution statements.

There are no reports on under collection or over collection. The matter the protection of the NIB’s assets is at issue here.

*2.2.1.2 NIB Building in Grand Turk*

The NIB is currently housed in rented accommodations in Grand Turk (main headquarters). In 2001 the Board took the decision to construct its own building and committed in excess of US\$5M for its construction.

Construction began in early 2003 and was completed in late the same year.

On assuming Office, the current government took the possession of the complete NIB Building, for use of the Premier’s office on the first floor and the House of Assembly on the second floor.

Four years have passed and to date the Government has not entered into a lease or letting agreement for the use of the building.

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<sup>288</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).



The National Insurance Scheme is the only social security/pension fund available to thousands of Turks and Caicos Islanders. The misuse or poor management of this fund may have dire effects on the well being of many Citizens.

We believe the Government's involvement in the management of the NIB, to be a breach of trust and an example of poor corporate governance.

#### 2.2.1.3 Contravention of investment policy

##### Over Investment in TCI Bank

NIB has a Policy that is being breached of having not more than 5% in the total assessment of one investment and no more than 10% within the Islands. The Fund is not in compliance with its own Investment Policy and its investment in TCI Bank has surpassed the stipulation as it relates to its investment in TCI Bank.

#### Supporting Information Attached<sup>289</sup>

1. Appendix 8—Copy of the 2005 report of the Chief Auditor to the house of Assembly on the National Insurance Board.
2. Appendix 9—Copy of the 2006 Report of the Chief Auditor to the house of Assembly on the National Insurance Board—highlighting the lack of a lease agreement.
3. Appendix 10—Copy of NIB investment policy.

#### 2.3 *Government dealing with investors of questionable reputations*

##### 2.3.1 Arturo Malave

The Government of the Turks and Caicos Islands has facilitated discussions with Arturo Malave, who has a questionable pass.

##### 2.3.2 Increasing Russian Involvement in TCI

In recent years there have been considerable new business interest in the Turks and Caicos Islands from Russian Business Men. This interest has been most easily seen, but not limited to the Real Estate Industry where there have been a significant number purchases over the past four years.

In recent weeks the Government of the Turks and Caicos Islands has led a delegation to Russia with a view of attracting additional Russian business to the TCI.

While we understand the growth in wealth in Russia and the potential for business opportunities we believe it to be equally important that proper due diligence and background checks are performed on each new investor to the TCI from that part of the world, given its less than stellar business reputation.

We have been unable to determine the extent or event occurrence of due diligence conducted.

#### Supporting Information Attached<sup>290</sup>

1. Appendix 11—(Not received).
2. Appendix 12—Copy of correspondence indicating the Government's willingness to engage in agreements with Mulave.
3. Appendix 13—News and correspondence detailing Mulave's history.

#### 2.4 *Government questionable immigration policies*

Shortly after coming to Office, the Government lifted the Visa Restrictions for Russians and Columbians removing the scrutiny process and leaving only the clearance process at the Airport once landed.

The list of countries no longer needing a visa to visit the TCI has been amended to include Romania, Russia, Cuba, Philippines, Namibia, Colombia, Thailand and Honduras. The list includes Eastern Block Countries such as the Czech Republic, Cyprus, Malta, Slovenia, Estonia, Lithuania, Poland, Latvia, Hungary and Slovakia.

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<sup>289</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

<sup>290</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

We believe that the limitation of controls creates a national security concern as it may provide for undesirables and terrorist gaining access to the wider world through the TCI.

#### Supporting Information Attached

1. Appendix 14—Government Press Release removing visa requirements.<sup>291</sup>

#### 2.5 *Anti-Corruption Legislation*

The current government came to office on 7 August 2003 promising to bring anticorruption legislation within three months of coming to office.

On 8 August 2006, after three years in office, the opposition submitted a draft integrity in public office (anti-corruption) bill for presentation to the house of assembly.

At the house meeting in October 2006 all members of the governing party voted against the new legislation, at its first reading preventing it from proceeding to a second reading for debate.

This was alarming given that over the preceding three years we saw:

1. Ministers of government building multimillion dollar homes;
2. Ministers of government selling off acres of crown land for their own personal benefit, but no anti corruption bill (see section 5);
3. Houses of minister's relatives being bought by the Government for far in excess of the market value, and title not being transferred (Appendix 18).<sup>292</sup>
4. Ministers spending millions on their private entertainment, but no anti corruption legislation;
5. We've seen alteration to the zoning of areas set aside as national parks and reserved wet land, and portions of those parcels ending up in the ownership of ministers, but no anti corruption bill;
6. We've seen companies sell their lottery license before it was issued, but no anti corruption bill;
7. A complete disregard for the tendering process, where contracts are awarded for millions of dollars above their value, and millions of dollars above what the owners of those business will see, but we have seen no anti corruption bill;
8. We had seen the lower bight road completed for almost twice what the lowest bid was, but no anti corruption bill;
9. Public funds have been paid to secure international awards and recognitions for ministers of Government, but no anti-corruption legislation;
10. In three years you've seen ministers of government gone from driving borrowed used vehicles to building homes in excess of 10 Million Dollars, but no anti corruption legislation.
11. Ministers of Government whose net worth was negligible when they came to office have been able to purchase land valued in excess of 2 million dollars with no mortgage.<sup>293</sup>

And through all of this no anti-corruption legislation has been passed by the government of the day. During the last sitting of the House, the Bill was again not passed and now left in Committee Stage.

Over the past three years we have also heard allegations of:

1. Ministers accepting and requesting bribes from attorneys and developers, but no anti corruption legislation; (Appendix 19).<sup>294</sup>
2. people buying PRC's and belonger status from the cronies of this government, but no anti-corruption legislation;
3. Ministers of government allowing Kischo to operate in Grand Turk without a license, but no anti corruption bill;
4. scores of businessmen having to provide ministers of government and their cronies with proceeds from their business in order to operate, but we have seen no anti corruption bill;
5. allegations of ministers involvement a plan to purchase the airports, but no anti corruption bill;
6. allegations of minister of government strong arming telephone companies for equity and delaying licenses for more than a year until they got what they wanted, but we have seen no anti corruption bill.

<sup>291</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

<sup>292</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

<sup>293</sup> You will note register of charges on the reverse side of the land Register of Parcel 60903/104 (on which the Premier's personal residence is located), that the previous land owner was able to obtain a mortgage in the mount of US\$2,300,000.00 on 11 February 2001. The premise being that no bank will lend or register a charge that is more than the appraised value of the land. See Appendix 17 (not printed).

<sup>294</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

Supporting Information Provided<sup>295</sup>

1. Appendix 15—Minutes of the meeting of the House of Assembly September 2006.
2. Appendix 16—Election Declaration of Premier in 2003.
3. Appendix 17—Copy of register for Premier’s Residence.
4. Appendix 18—Register of Land showing property purchased Government in 2004 still registered in the name of Charles Washington Missick.
5. Appendix 19—Copy of Judicial review filled by Paul Keeble alleging corruption on behalf of Ministers.

2.6 *Lawlessness*

We believe that there has been some degree of lawlessness condoned by the current administration and will site the following as examples:

1. Lottery license

In 2007 the Government of the TCI issued a license to operate a state lottery, however before the legislation was passed the licensee was sold stating the TCI License as a significant asset of the company.

2. Casino

The government recently made an amendment to the casino’s ordinance to allow Belongers earning over 70,000 per year to play, however people were playing in the casino before law was passed.

3. THE ROLE OF GOVERNORS AND OTHER OFFICE-HOLDERS APPOINTED BY OR ON THE RECOMMENDATION OF THE UNITED KINGDOM GOVERNMENT

3.1 *The Governor*

3.1.1 Appointment

The governor of the Turks and Caicos Islands is appointed by Her Majesty under Section 20 (1) of the Turks and Caicos Islands Constitution order 2006 (“the Constitution”).

3.1.2 Role of Governor

3.1.2.1 The Governor sits as the Chairperson of Cabinet.

3.1.2.2 Section 25 (2) of the Turks and Caicos Islands Constitution requires the Governor to act in accordance with the advise of cabinet.

3.1.2.3 The Governor’s special responsibilities as outlined in section 33 (1) of the Constitution include:

- defense;
- external affairs;
- the regulation of international financial services;
- internal security, including the Police Force;
- the appointment of any person to any public office, the suspension, termination of appointment, dismissal or retirement of any public officer, or the taking of any disciplinary action in respect of such an officer, the application to any public officer of the terms or conditions of employment of the public service for which financial provision has been made, or the organization of the public service in so far as it does not involve new financial provision.

3.1.3 Activities of the Governor

3.1.3.1 General

1. We are concerned that over the past few years the current governor has not paid particular interest to good governance and may not have been as vigilant as necessary.

2. We further believe that there is room for a greater degree of confidentiality with the governor.

- There have been reports to us and we have personally experienced that all statements made to the Governor is repeated to the elected government verbatim.

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<sup>295</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

- In an environment where many of the business people of our country rely on government approval for work permits, licenses and other operating necessities, there is a general atmosphere of fear and intimidation.

3. We believe that on more than one occasion the actions of the Governor's office has been cause for concern.

We cite the following three direct instances that involve decisions made or not made by the Governor or his office that has raised cause for concern.

### 3.1.3.2 Financial Management

The finance and audit ordinance requires that all expenditure is approved by the House of Assembly. As such The Governor's office was required to submit a supplemental appropriation bill to cover the overages in the years 2005–07 as it relates to the residence that the Governor maintains at the Pinnacle on Grace Bay Beach at some \$8,000 per month. The supplemental bill was never tabled in the House or debated.

### 3.1.3.3 Oversight

The governor has special responsibilities for appointment of members to the Public Service Commission. He appoints in his discretion the Chairman of the Commission. In late 2006 the Government decided to reduce the salary paid to the Chairman of the Commission to pressure the Chairman into resigning from the post. The Governor did not act to stop this sort of abuse by the executive to ensure that the Public Service Commission was free from political interference after the Governors office made the appointments. A case is/was pending in the appeals court regarding the matter.

### 3.1.3.4 General Election Oversight

1. Lastly, the 2007 General Election took place in very awkward set of circumstances. The announcement came on 12 January for a 9 February election, less than 28 days. The elections register was not complete. The elections occurred before a claims and objections process could have been gone through and the Elections Supervisor used an obscure part of the elections ordinance to add names to the register, this part of the register is rightly used to add on persons who were previously on the register, but were imprisoned and before elections they were released from prison.

2. The advice taken by the Governor in circumstances such as these should not be from persons who sit in Cabinet with other Ministers of Government as we believe there could be influence. Furthermore, the leader of the Opposition requested that the post election report published by the Foreign and Commonwealth Office be published and the Governor has never published it or given the Opposition a chance to review it. The FCO should be transparent with all things with Government and Opposition alike as it relates to the matters of the territory.

## 3.2 *The Attorney General*

We are concerned as to whether the Attorney General is able to maintain an apolitical stance and retain his impartiality and objectivity.

In July 2007 Hon Arthur Robinson, an elected member for constituency #3 North Backsalina, was assaulted by the Premier in front of a witness, yet the Attorney General did not see it as in the "public's interests" to proceed with any prosecution.

A camera was stolen from Shaun Malcolm by one of Misick's bodyguards. The camera was later returned to the police. There was an independent witness who gave a statement.

The police decision to not bring charges was a result of advice given by the Attorney General. Our only goal in matters such as these is that a judge or jury make a decision of innocence or guilt based upon the facts presented in a court of law.

## 3.3 *Chief Justice and magistrates*

(a) Pedophilia and courts There was recently a case where a gentleman was convicted of 12 counts of sexual assault on 10 school age girls, all under the age of 11 when the acts occurred. The accused, who happens to be a relative of the premier, was given a seven month suspended sentence as penalty for his actions.

#### 4. THE WORK OF THE OVERSEAS TERRITORIES CONSULTATIVE COUNCIL

It is our opinion that the Consultative Council provides a good opportunity to regain lines of communication between the United Kingdom and her overseas territories and for open discussion on the ever changing dynamics of that relationship.

We encourage the continuation of the consultative council with a greater ability for decisions to be made in that forum.

#### 5. TRANSPARENCY AND ACCOUNTABILITY IN THE OVERSEAS TERRITORIES

##### 5.1 *Self Dealing in Rent of Premises for Government Offices*

There has been a consistent lack of tendering on Government projects, especially in the area of the Housing Projects and the Government Road Projects.

##### 5.1.1 Constituency Offices in Party Headquarters

There is a blatant conflict of interest as it relates to the Government renting Office space at its Party Headquarters in Providenciales.

During this fiscal year (2007–08), the Government included in its Budget constituency Offices for all elected Parliamentarians. The six constituencies in the country's most populous island, Providenciales are held by the Government members. The Offices by its very name denotes that it should in the various constituencies.

The Government is currently renting its entire PNP Party Headquarters located in the Cheshire Hall constituency for all six Parliamentarians, the property is referred to "Progress House".

We see this as just another attempt of the ruling Progressive National Party to funnel funding from the treasury to the party.

##### 5.1.2 Government Offices in Minister's Buildings

The Premier and his wife, Lisa Raye McCoy Misick are erecting a building on the Leeward Highway. We are reliably informed that some Government Departments are being asked relocate its offices there once the building is completed. One such Office is the Small Business Division of the Turks and Caicos Islands Investment Agency.

We are also aware of the fact that the Minister of Finance has acquired a building in Grand Turk commonly known as "Harbour House" and holds same in the name of a company, Whale Watchers Ltd. We are also reliably informed that this building is now being renovated to house the Ministry of Finance.

##### 5.2 *Self Dealing in Crown Land*

##### 5.2.1 Awards to Three Ministers, directly and through Close Relatives

On 13 July 2005, evidenced by action minute 05/558, approved the grant of freehold title over parcels 60000/150 151,152 and 153 (crown land) to the following persons:

1. Jeffrey Hall—Current Minister of Housing and telecommunications.
2. Quinton Albert Hall—the brother of Deputy Premier Floyd Hall.
3. Earlson McDonald Robinson & Brother to Current Minister of Health and Human Services—Lillian Robinson-Boyce.
4. Samuel Been—Ex Husband of Minister of Health and Social Services—Lillian Boyce and current Government backbencher.

The Executive Council has now been renamed cabinet. The membership of the Executive Council was as follows:

1. H E The Governor as Chairman.
2. Chief Minister and all cabinet ministers.
3. The Chief Secretary (post no longer exist).
4. The Attorney General.

On 7 June 2005, a month before they were awarded the freehold title, Quinton Hall, Earlson Robinson and Samuel Been entered purchase agreements with David Wex, in trust for a company to be incorporated. The agreement offered:

1. US\$ 1,355,000.00 to Quinton Hall, Brother of Deputy Premier.
2. US\$ 1,357,000.00 to Earlson Robinson, Brother of Minister Lillian Boyce.

3. US\$ 2,144,000.00 to Samuel Been, Ex-husband to Minister Lillian Boyce and current government backbencher.

Hon Jeffery Hall has received cash and an equity stake in Urban Development Limited, the company that is proposing to develop the aforementioned parcels.

Hon Hall has declared his interest in Urban Development.

#### The Issue

When the current government came to power large tracts of unused land were held by the crown to allow for future development. Successive governments have adopted a policy of awarding crown land to persons that see to develop the property in a manner that is beneficial to the country and its people.

Never before has crown land been awarded for on selling to prospective developers.

Ministers of Government have been able to acquire acres of Crown Land to sell themselves thus using their position for self enrichment.

#### The Conflict

Executive Council, made up of ministers of Government are able to award themselves and their close relatives acres of crown land and then sell the land to third parties thus using their position for unjust self enrichment.

#### Support<sup>296</sup>

1. Appendix 20—Copy of Executive Council Minute.
2. Appendix 21—Copy of Offer to Purchase—Quinton Hall.
3. Appendix 22—Copy of Offer to Purchase—Earlson Robinson.
4. Appendix 23—Copy of Offer to Purchase—Samuel Been.
5. Appendix 24—Development Agreement between Government Urban Development.
6. Appendix 25—Jeffery Hall's declaration where he declares his interest in Urban Development.

#### 5.2.2 Undervaluing of land issued to Premier

In August 2006 the premier took 18.28 acres of beach front crown land in the northwest point area (60000/36) unto himself and had the land valued at 121,444.20 per acre.

Land on the beach in the Blue Hills area, which is less desirable than the Northwest point area has been selling for between 500,000 and 1,000,000 per acre.

In land parcels in the blue hills area, less than a mile from the island's bump site have been selling for in excess of US\$200,000 per acre.

#### Support<sup>297</sup>

1. Appendix 26—Copy of letter from Minister McAllister Hanchell giving the premier freehold.
2. Appendix 27—Details of actual sales in the Blue Hills area.

#### 5.3 Award of Immigration Status

##### The Change Office In The Immigration Department

The Change Office in the Immigration Department is further alarming. This office is staffed and funded by public funds collected by the taxpayers of the Turks and Caicos Islands under authorities created by the Finance and Audit Ordinance, Her Majesty and the TCI Constitution.

Yet the manager of that office is instrumental in the making of public decisions about who should get and who should not get Belongership status and Permanent Residence Certificates.

The Manger in the Immigration Change Office is the Secretary General of the PNP Party and nephew of the Premier.

Mr Gardiner is currently drafting the Immigration Bill for presentation to the House and he still serves in this capacity.

<sup>296</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

<sup>297</sup> See [www.parliament.uk/facom](http://www.parliament.uk/facom).

#### 5.4 *Attach on Oversight in the Legislature*

When the PNP Government came to office the concept of them having a mandate was in deep dispute. As soon as the Legislative Council Oversight committees were appointed The PNP Government moved a motion and forced through an amendment to standing orders to reduce the number of members on the oversight committees, thus reducing the number of opposition members that could sit on the committees.

The Government proposed and passed a Motion to allow a maximum number of questions to be asked in one sitting. We see this as an attack on the oversight role of the Opposition especially in light of the fact that meetings are held infrequently and when held Ministers oft times disappear and do not make themselves available during question time and also there are situations where Ministers have refused to answer questions.

#### 5.5 *Land and Housing*

##### 5.5.1 Purchase of Premier's residence

Premier declared net worth of 50,000 in 2003. Please find attached the Register of Member's Interest and the Candidate's Declaration made in 2003.<sup>298</sup>

In early 2004 the Premier purchased property valued in excess of 2.3 million<sup>299</sup> with no mortgage. The Premier subsequently built a multi million dollar house on this property in Providenciales.

##### Support<sup>300</sup>

1. Appendix 28—Copy of land registry's register showing date of purchase and date that mortgage was placed on property.
2. Appendix 29—Copy of construction company correspondence confirming construction cost to be in excess of US\$6,000,000.00.

##### 5.5.2 Transparrancy in the issuance of Crown Land

The public are not satisfied that the recent Land Review Committee appointed by the Chief Minister contains sufficient objectivity and detachment from the Government to be able to look properly, carefully, transparently into land dealings which are in the least questionable. A committee composed of allies to the Chief Minister; the brother of the Chief Minister and other close confidants of the Government does not inspire confidence. Furthermore, the bone thrown to the Opposition to function as a minority member of such a committee is an insult to commonsense and democratic practices worldwide.

Essentially the Chief Minister has ensured that his actions will not be scrutinized. Lands are being given away and sold under this new Policy and the Minister is allowed to issue lands and then to bring his decision to Cabinet. Please see a letter of Offer from the Minister of Natural Resources to the Premier evidencing the abuse of this new Policy.

#### 5.6 *Election Year Spending*

The Turks and Caicos Islands held its General Election in February 2007 and there were a number of concerns that were raised for which no satisfactory explanation has been received.

##### 5.6.1 Premier's Entertainment Vote

We raise with concern the expenditure of the premier from his entertainment vote (07-015-34701) during the election year and request that you kindly observe the trend:

1. For the fiscal year 2003–04 expenditure from this account was \$136,311.
2. For the fiscal year 2004–05 expenditure was \$145,887.
3. For the fiscal year 2005–06 expenditure was \$277,008.
4. For the fiscal year 2006–07 expenditure was \$1,381,566.
5. For the fiscal year 2007–08 expenditure was \$559,959.

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<sup>298</sup> Not printed, as publicly available.

<sup>299</sup> Please note that the a financial institution had registered a charge of US\$2.3 million on the said property. There stands to reason that if that property is used for collateral for a mortgage of US\$2.3 million it would have retained a value in excess of that amount.

<sup>300</sup> Not printed, as publicly available.

### 5.6.2 Petty Contracts

During the months leading up to the General Elections of 2008 there were thousands of petty contracts that were awarded by the government to potential voters in an attempt to influence the outcome of the vote.

While we do not discourage the award of contracts for works that are needed we do not believe that in the weeks after an election is called and the date of polling, that the Government should be able to use its function of government to seek to influence the voting population.

### 5.6.3 Grant of Crown Land

During the months leading up to the General Election of 2007 there was a significant spike in the ward of crown land in that there were persons receiving the grant of land in North west Point Providenciales and in West Caicos, that had never applied for or expressed any interest in those Parcels.

While we applaud the grant of crown land to any Turks and Caicos Islander that desires to develop it. We are suspicious of the timing of the grants.

## 6. REGULATION OF THE FINANCIAL SECTOR IN THE OVERSEAS TERRITORIES

We make no comment on this section at this time.

## 7. THE APPLICATION OF INTERNATIONAL TREATIES, CONVENTIONS AND OTHER AGREEMENTS TO THE OVERSEAS TERRITORIES

We make no comment on this section at this time.

## 8. HUMAN RIGHTS IN THE OVERSEAS TERRITORIES

### 8.1 *Attack on Fundamental Constitutional Rights*

We are concerned about the fundamental human rights of the people of the Turks and Caicos Islands and the threats these rights are under by the current Government.

#### Section 75, Turks and Caicos Islands Constitution

We now turn to the basic instrument that guarantees us our freedoms here in the Turks and Caicos Islands. This instrument is the Constitution and in particular section 75 preserves the right to free speech. Section provides inter alia that “except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence”.

#### 8.1.1 Access to the Media

In a modern democracy it is expected that people will differ. Therefore it was provided that people must be free to hold opinions, express them, receive them and impart ideas without interference. In a modern democracy such as ours the section 75 has had free reign.

##### 8.1.1.1 Access by the Opposition

The Turks and Caicos Islands is made up of 40 islands and cays, eight of which are currently inhabited. There are three cable providers in the Turks and Caicos covering the populations of 32 islands. The only media that covers the entire country is Radio Turks and Caicos, a state run radio station that is funded by the tax payers of the country. Therefore in matters of national importance it is critical to gain access to the media through radio Turks and Caicos.

On 8 August 2006, the Official Opposition called a press conference to announce that it had drafted an anti corruption bill and were taking the bill to the house as a private members motion at the following meeting of the house. In the broadcast of that press conference we sort to have radio Turks and Caicos air the broadcast and contracted with them to provide the service.

Less than two hours before the press conference was to commence the radio station indicated that they would not be carrying the conference, but gave no explanation.

On 12 January 2007, the day that the Premier announced the date of elections in the TCI, we sort to give an address responding to the call of the election, no less than the Premier himself gave a directive to RTC to prevent us from having that broadcast aired on Radio Turks and Caicos. In this instance the Governor did intervene and we were allowed on the air, albeit an hour later than the time advertised.



On 10 February the day after the election, the leader of the Opposition visited radio Turks and Caicos and recorded a speech congratulating the government on their victory at the polls and thanking our supporters. This was recorded by staff at the station that had no problem with the speech, but they received a call from the chairman of the broadcasting commission instructing them not to air the speech.

While these breaches of fundamental human rights appear to becoming common place with this government, not one media house in the Turks and Caicos Islands saw this as a story worthy of coverage.

When the national media has become so intimidated, so compromised and so biased that the infringement of basic civil liberties are not worthy of mention, then we have much to do.

In this instance we followed the prescribed protocol and in March 2007 filed an appeal of the decision of the chairman to disallow the playing of the recording.

To date this appeal has not yet been heard.

In September 2007 there was significant labour unrest in the Turks and Caicos Islands and on 24 September the leader of Opposition recorded a press release that was recorded by staff at the radio station. That press release is yet to be aired, yet the premier was allowed to engage in personal attacks on members of the opposition and those attacks were aired several times a day for in excess of a week, with the opposition never being able to respond on that same media.

#### 8.1.1.2 Access by Ordinary Citizens

Under the previous PDM administration section 75 was alive and well. There was a radio talk show called "Voices" which aired on Radio Turks and Caicos (RTC) the Government's radio station. This show was funded by taxpayers. It was funded from the Treasury.

People were allowed to call in and bash the PDM Government. Ministers were attacked viciously and verbally by all members of the TCI public. People had a place to vent their frustrations or pleasure with the former PDM Government on the Government's radio station. No PDM Minister ever threatened the talk show. No PDM minister ever attacked the right of the Government's radio station, funded by taxpayer's money to attack the PDM Government. You can say this attack on the PDM for eight years was relentless and inspired mostly by the PNP Opposition. As soon as 7 August 2003 came around, democracy was subverted. The PNP Government took Voices off the air. Can you imagine? The PNP supporters are not calling for its return. I am sure it's not because they want their Government to do what it likes but because they know that no one in the PNP Government is prepared to listen.

#### 8.1.2 Private Sector

It has been brought to our attention that many private sector companies in these islands, confirm privately that they are afraid of doing business with supporters of the Opposition, Peoples Democratic Movement ("PDMS") and people who do not support this Government.

If you are a PDM and chose to exercise your section 75 right to be who you are and what you are in these islands then the right to be so will be attacked by the PNP Government.

There are many instances where investors come to these islands and they are shown the door of the Turks and Caicos Islands Investment Agency. Or they will be shown the letter of the Chief Minister's law firm where his name appears as one of the partners. Therefore one has no choice but to instruct that firm. The message is given out loud and clear was investors must invest. Furthermore, if people are businessmen in these islands and known PDMS come are in business with the persons on work permits that association is soon severed because instructions will be handed down not to deal with that known PDM Supporter despite the presence of section 75 in the Constitution which guarantees to us all basic rights and freedoms.

#### 8.1.3 Plain Talk with Finbar Grant

The most remarkable thing about the Finbar Grant show was that the guests who were on that show were reading from documents sent out by the PNP Government. All those documents said was that the PNP Government ran a US\$12 Million Deficit for most of 2004. No PNP Minister has ever questioned the finding. The country was run by a corrupt Government. Therefore it will run into financial difficulty. Land is being sold to friends and cronies of the PNP so there will be minimal land monies coming in to the Treasury. Therefore there will be a crunch on scholarships. Students will have to return home as they are. But the Chief Minister being well aware of these facts do address them. All he does is attack the person for reading off facts that were handed to them by the Minister of Finance. Is not section 75 at issue? The naked act of a Government attacking people who disagreed with them at the press conference shows an empty minded administration with no agenda except the cause of self enrichment.

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## The Constitution

It follows therefore that the PDM as the official opposition would have made a serious mistake if it had supported this Government in its quest to accrete more power unto itself. It is patently obvious that they do not believe in the basic concept of freedom and the freedom of speech. They cannot be trusted with more power.

### 8.2 *Treatment of Migrants*

There are tents being constructed on the Road to Heaving Down Rock adjacent to the Miniature Golf Course to house migrant workers on squalid living conditions. We are really concerned. This is a nightmare and a tragedy. We ask the Government to retract these decisions in the best interests of our people and economy.

These tents do not bode well for the people of the Turks and Caicos Islands. Cheap labour is not cheap. It represents a number of items which are inimical to a developing nation such as ours.

The low, cheap, poor squalid living conditions give rise to disease and the spread of communicable diseases in the community.

It represents severe living conditions where we are learning that in some other housing areas that men are being forced to live in small rooms of 9 persons to a room. The probability of crime and violence is ever present.

There is serious cause for concern as it is very possible that Ministers of the PNP Government are possible recipients of bribes to allow the Planning Laws to be breached as in the case of the Chief Minister and the Health laws as in the case of the Minister of Health, Floyd Hall.

The project will also cause property values in the area to fall owing to these squalid living conditions.

There is also the concept that the developer was awarded Crown Land long before the project developed. It is clear that this developer has bribed the Minister of Finance, Floyd Hall and Mike Misick with suites two a piece in the seven Stars Project on Grace Bay in exchange for the agreement to allow serious laws of the TCI to be broken.

## Treatment of Prisoners

Prisoners have been kept under the most unsanitary conditions in the Police Lock Up in Providenciales and Grand Turk where the latter is a more permanent situation. The lockup in Grand Turk has no proper ventilation and with the non functioning toilets being a usual occurrence the odor sends a stench through to the Offices on the ground floor. It is roach infested and not suitable for human beings.

A recent article by leading and oldest Newspaper, *Turks and Caicos Weekly* shows the conditions of HM Prison in Grand Turk. This facility continues to be in breach of the rights of remanded individuals who are treated and housed as convicted criminals.

### 8.3 *Treats on freedom of speech*

Subsequent to the FAC's visit to the Turks and Caicos Islands there was a threatening ad that was taken out in the *Turks and Caicos Sun*, seeking to intimidate those that had made submissions to the FAC.

The ad is attached as Appendix 30.<sup>301</sup>

### 8.4 *Human Rights Legislation*

After years of request the Government in February 2007 brought a human rights commission bill to the house for passage. The bill as brought provided the cabinet with appointment of four of the five appointees.

We requested that the commission be formed similarly as the public Service Commission where two members are appointed by government, two by the opposition and the governor appoints an impartial chairman, so as to avoid any politizing of the body.

### 8.5 *Labour Organization*

There are no formally established labor unions in the Turks and Caicos Islands. The government of the day has on more than one occasion expressed their unwillingness to see any form of organized labor and have thus has refused to bring any legislation to enable the proper recognition and governing of any such organizations.

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<sup>301</sup> Not printed, as publicly available.

## 9. RELATIONS BETWEEN THE OVERSEAS TERRITORIES AND THE UNITED KINGDOM PARLIAMENT

We acknowledge and respect varied roles that members of parliament and officials of the Foreign and Commonwealth Office play.

We believe that there is opportunity for an enhancement of the relationship between the Overseas Territories and the United Kingdom through greater dialog and sharing of resources.

We applaud the recent decision to allow citizens of the overseas territories to study in the United Kingdom at the same tuition cost as UK residents.

We however believe that there is room for improvement. For two and a half years the official opposition has sought an audience with the minister with responsibility for overseas territories or a member of her staff. We have tried to go through the proper channels of the Governor's office and have contacted the minister's office directly, yet to date we are yet to be granted an audience.

We do not believe that this form of disengagement where there are areas of serious concern in an appropriate manner of moving ahead with an organization that may be the Government of the Turks and Caicos Islands.

### 9.1 *Opposition access to UK Government functionaries*

The official Opposition has tried on numerous occasions to hold direct discussions with the Parliamentary Secretary with responsibility for the Overseas territories dating back as far as November 2005, to discuss the various issues addressed above, with no success.

In November of 2005 we sought an audience with the then Minister, Lord Treisman, through the governor's office, a request that was rebuffed. We subsequently were able to meet with the minister in 2006 during his visit to the TCI. That meeting lasted less than an hour and the discussions were limited to the process for amending the constitution.

As recently as July 2007 we sought an audience with current minister Meg Munn. Given the response we had received when going through the governor's office and our perception of inaction from that office, we contacted Hon Munn's office directly requesting an audience only to be told that we could not get an audience and that we should address our concerns with the local governor.

## 10. CONCLUSION

The above articulated issues are limited to issues of concern that can be substantiated. There are at least four times as many concerns which we believe to be true, but for which we are unable to obtain documentary evidence.

It is our opinion that any act of inappropriate behavior by those elected to manage the affairs of our country sends a negative image of our country.

Where those claims are legitimate we would expect prosecution. Where those instances are unsubstantiated, we would hope that the good name of those accused are cleared.

However we believe that the only way to get full details of information is the appointment of a commission of inquiry with powers to subpoena and that the full details of all accusations be investigated and put to rest.

We have outlined this request to the Governor of the Turks and Caicos and we now outline same to you.

13 March 2008

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### **Further submission from Colin Williams, Turk and Caicos Islands**

#### 1. INTRODUCTION

Written evidence was provided to the FAC on 30 January as part of the reported UK Overseas Territories' investigation into governance and possible corruption.<sup>302</sup>

Initial evidence focused on the Governor's granting of a mining license and navigation agreement, on behalf of the Queen, along the seabed here. Local concerns then were:

- excessive spoil extraction (> 1m tonnes);
  - environmental chaos;
  - planned destruction of a coral reef (Star Island); plus
  - questionable ethical behaviour in the process.
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<sup>302</sup> Ev 259.

## 2. SUBSEQUENT EVENTS

Hopefully you have been apprised of the Minister's response, media coverage etc:

- early February in TCI (*News Weekly*) and UK (*Telegraph*);
- response from MERC on 27 February suggesting that environmental challenges with regard to Leeward Development were reckless and irresponsible!;
- letter to the Environment Minister raising environmental/planning concerns about millions of tons of sand at Emerald Point and questioning planning process permitting building on Nature Reserve north of Mangrove Cay;
- published letter to the Editor of the *News Weekly* concerning the Mineral/ Navigation agreement and its implications with regard to the protection of Leeward.

In February residents of Leeward Estate and surrounding areas continued to suffer severe noise and dust pollution, unsocial working hours and the destruction of their local infrastructure (damaged roads; broken bridge) which was never designed for commercial development.

## 3. EVIDENCE TO THIS COMMITTEE—12 MARCH

I am pleased to give evidence; applaud measured development and appreciate the opportunity to share our islands "beautiful by nature". However recent events question whether we are pursuing development as part of a rationale economic policy? The benefits (to belongers) are unevenly spread and the beneficiaries of exaggerated development are a variety of ex-patriate construction workers; foreign developers and perhaps politicians—who make statements about environmental protection, sustainable development and professional governance—but to little effect.

As a UK citizen, but permanent resident of TCI, I recognise that we all share responsibility. How can we expect a population of 8,000 souls to control effectively the rate and management of sustainable development in a "top ten" tourist mecca? How do we expect the elected representatives here to resist the temptation to approve seven storey hotels; Dubai style reclaimed reefs and yet give proper consideration to an environment developers are intent on destroying.

How do local politicians maintain a balance between individual needs/rights versus the commercial interests of wealthy developers? How do they balance the benefits of developing Water Cay and Star Island versus the need to protect TCI's unique environment. How do we allow the whole community (not just the belongers) to help form opinion within this global village?

In this situation can the UK influence the distribution of Crown lands; the granting of critical planning approvals and ensure that the value created by these actions benefits all belongers in a way untainted by political intrigue. In this environment as with other Crown colonies what is the role of this Committee, the Governor and the Privy Council.

## 4. REVERTING TO THE MARINA AND STAR ISLAND DEVELOPMENT

So how might this Committee help to resolve these local issues? Leeward residents want Emerald Point rid of its millions of tonnes of sand—preferably by sea to the Atlantic not through Leeward Estate; they want to stop the invasion of their environment and to "renourish" their right to the peace and tranquillity that first brought them to TCI; they want to save the Nature Reserve in Mangrove Cay from the planned invasion by developers and to protect the Leeward channel from mismanaged attempts to change the forces of nature. We need a transparent planning and development process that helps to balance the environment vs development.

This is not about Leeward Marina. The Marina's recent license is nothing more than a navigation agreement with incidental rights for sand extraction. It is not a license to mine millions of tonnes of sand although that is how it has been interpreted by the very Ministers who approved it.

## 6. TODAY'S ISSUES AND QUESTIONS

Today's FAC question appears to be "is TCI biasing local development and the planning process corruptly"? If so can the UK parliamentary process and the Foreign Affairs Committee help to resolve the problem? Investigation of allegations of corruption is a legal, potentially criminal process and it is easy for your committee to initiate that process (perhaps via the UK's CID) should you choose. My concerns are focused less on corruption and more on balancing sustainable development with improved and visible environmental practices. Not a "tree hugger" or a disgruntled resident but a believer that TCI needs help to remain 'beautiful by nature'!!

Major TCI developments in future need far better public consultation; published information and a visible, independent planning process to ensure that contentious projects (such as Star Island) are debated publicly in advance, approved and reported into the public domain. This involves:

- improved oversight—eg of mining licenses and project say >\$5 million;

- regular published information on proposed major projects;
- reports on planning approvals;
- guarantees and appropriate performance bonds for infrastructure restitution etc;
- recognition of an independent role—DOP should not be defending developers!;
- public participation and local ombudsman (perhaps appointed by Governor?); and
- public hearings etc.

Thank you for your interest/attention.

13 March 2008

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**Submission from Shaun D Malcolm, Chairman, People's Democratic Movement, Turks and Caicos Islands**

**THE FOREIGN AFFAIRS COMMITTEE INQUIRY INTO THE GOVERNANCE AND CONSTITUTIONAL ARRANGEMENTS FOR THE TURKS AND CAICOS ISLANDS**

It is a pleasure to have met with your Committee, the Hon Leader of the Opposition and members of the Official Opposition of the Turks and Caicos Islands. I write to your Committee as a way to follow-up, in my official capacity as National Chairman of the Opposition Party and in personal regard. Essentially what follows will highlight matters of high national importance. Sirs, we do believe that the personal freedoms and the finances of the Turks & Caicos are at stake and that the Islands are reaching a critical crossroads in the direction of this country. Before I proceed to list the documents herein attached. I believe that there is urgent need for a Commission of Enquiry at the least when viewed against the background of lesser events worldwide and in particular our immediate Regional Neighbors that have prompted similar investigations. Elliot Spitzer, Governor of New York resigns over allegations of being involved in a prostitution ring, a British Minister being forced to resign owing to his making a call to the Immigration Office in London to check on a work permit, a former Junior Minister in Jamaica was recently arrested and charged with numerous counts of conspiracy to defraud the Government of monies in what is dubbed the Cuban bulb scandal, etc. We have convincing evidence that basic fundamental rights were flaunted, cast aside and breached by our Premier and his Ministers, under the watchful eye of the Governor, who a few weeks ago went on National Television ("Education and You") to attempt to exonerate the Government in the eyes of the public. May I now present my position before this August Committee.

1. I am a trained hotelier with a tertiary level education, former school teacher, choir director and a host of achievements in the private and public sector. It is against this background that I reached assistant managerial status at the Sandals Resort in Providenciales, Beaches well over four years. Owing to my exercise of my basic fundamental right to discuss public issues, be an active campaigner for the Opposition, and appeared on National TV that I was removed from my post. I subsequently met with the Principal Owner and Directors of Beaches Resort, and I was advised by them that my public activity was causing the then Chief Minister, Michael Misick, a lot of "trouble" and that he (Michael Misick) will not do business with them as long as I remained a part of that company as an employee. So I was forced to tender my resignation within a few days, so they can get their business done with the Government. Please note that I was a good employee and that there were no disciplinary complaints against me. My only crime was being an Opposition activist and spokesperson. Yet the fundamental rights provisions of the Constitution, being the right of association and freedom to speak, in their absolute form could not protect my job. Today as I write you sir, with all the resorts in this country and over 10 years in the hotel business, I still don't have a job in my country, because the Government will not do business with any resort if they employ me (I have a wife and two infant children).

2. On 1 June 2007. I wrote to the Minister responsible for Natural Resources dealing with the Minister's dictatorial destruction of my land grant. In this regard, I list the following:

- (i) Letter to Minister 1 June 2007.
- (ii) Emails to and from the Governor, 7 June 2007.
- (iii) Letter to the Governor enclosing Land Grant of 12 February 2003 and related letters from the permanent Secretary Natural Resources.
- (iv) Application forms.
- (v) A copy of my passport.

3. Sirs, I also point out to you a list of the Electors for Electoral District 8, the Constituency of the Premier, there was not allowed any Claims and Objections proceedings required under the Elections Ordinance. Please see list which remains unaltered owing to his appearing at Claims and Objections proceedings and interrupting the meetings. I was present at the Claims and Objections in 2006 when he attacked the Leader of the Opposition, the Hon Derek Taylor, threaten the delegation and caused a row—so that the Supervisor of Elections was forced to cancel the Hearings.

4. Please see also the copy of the DVD which recorded the Premier's recent press conference where he falsely alleged that the Leader of the Opposition and myself forged 500 letters of complaint to this August Foreign Affairs Committee.

5. I am also in a position to advise that the "Let's Talk Politics" program which I used to host on the Local TV Station, WIV, was cancelled owing to direct interference by the Premier.

Sirs, we need this Government and the Governor to be removed from Office without further delay, owing to the numerous serious allegations of corruption and constitutional breaches that have occurred in the past and continue to this day.

Time is of the essence as we as citizens watch helplessly as Her Majesty's Representative, The Governor and PNP Government continue to abuse its citizens' constitutional rights, rape and plunder the limited resources of these Islands. A modern day tragedy that generations to come will have as a legacy. Based on the number of unrelated submissions of various breaches of human rights in the TCI and allegations of corruption by public officials; how can the current Governor who is responsible for good governance continue to sit as chairman of Cabinet and have the confidence of Her Majesty's Government when he publicly said that he has not seen any evidence of these breaches.

Based on your visit here and interviews, you were able to corroborate as true the allegations. What steps will be taken by Her Majesty's Government in the short term to protect the assets and reputation of the Turks & Caicos pending a full commission of enquiry.

13 March 2008

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#### **Further submission from W L Chamberland, Gibraltar**

My most profound apologies for my continuous writing on the same subject ie Gibraltar, but after reading some of the answers given to your committee by the Chief Minister, I like many others take umbrage at his remarks, moreso without a mandate from the electorate.

Julius Caesar's famous saying, Veni, Vidi, Vici, can be translated for Caruana as "I arrived, I lied and I went into my usual tantrum".

How can any person continue to lie in this way,

"Cordoba agreement welcomed overwhelmingly by the people of Gibraltar". Is an election win by a mere 600 votes considered a mandate by him?

Next, when asked by Mr Horam about immigration, answer this is exclusively in the hands of the Gibraltar Government therefore without a mandate he granted this concession to allow Spaniards to bypass Gibraltar immigration controls before taking it to the House of Assembly and we the citizens and owners of the air terminal have to abide by the Laws of Gibraltar.

You saw in his party's Manifesto for 2003 that he was adamant on "safe dialogue" full stop no mention of signing anything, where is his much promised referendum. The much talked about new Constitution which according to him and him alone de-colonises Gibraltar, a constitution which he rush through just before he signed the Cordoba Agreement to placate his Spanish friends. Proof. Wednesday 7 June 2006, The Iranian News Agency in London gave a resume of the proposed talks on a new constitution for Gibraltar and stated that the right to self-determination for the people on the peninsular but conditioned to "existing treaties" this condition is believed to have been included at the insistence of Spain, how convenient that this turns up in Clause 5 of the Despatch and the Referendum for the Constitution is rushed through before the signing of the Cordoba Agreement. NB Results of Referendum—Total Electorate 20,061, 7,299 persons voted YES, 4,574 voted NO and 7,944 persons did not vote. Contrary to established practices, no electioneering allowed day before, Mr Caruana usurped the local TV for a YES campaign and not allowed oppositions to have a say and took out full page adverts on day before referendum and when challenged his excuse was that rules only applied to elections and not to referendum as if Gibraltar had a plebiscite every year.

Because I have not been able to obtain a copy from the internet I shall be posting two articles which appeared in the local press, which after all is what people read.

In regard to the establishing of the "Cervantes Institute" it is precisely the Spaniards who are as usual mixing culture and politics and Mr Caruana's statement leaves much to be desired. In the first instance, he like all of Gibraltar know that English is the official language and Spanish is taught as a "Foreign" one, the language of the Administration, and the Courts is English. It is Spain that has contemplated the appointment of a seasoned diplomat rather than an intellectual with, in their own words try to substitute Spanish for English and furthermore to allow this individual access into Gibraltar's official forum.

If Mr Caruana is not aware of this, then he and he alone is the individual responsible for the situation prevailing, because Spanish diplomatic sources name him as the instigator behind this move. Another very important point is the re-opening of the "Spanish Consulate", something which Spain refuses to do because this would recognise that Gibraltar is a "Foreign" territory. Permit me Sir to bring to your notice and that of your committee the circumstances prevailing up to 1954, when as a result of Her Majesty's visit, the dictator Franco closed the consulate, this incident in contravention of the spirit of Article vi of Utrecht. A

Spanish consulate had existed in Gibraltar since time immemorial and in fact up to the start of the Civil War there were in fact two, one representing the Republican side and the other the Nationalist, in the end Franco won and the republican one closed, in fact I was fortunate enough to know both consuls.

The Cervantes lark is Spain's way of flying their flag without accepting that Gibraltar is not Spanish and no doubt because we know them in all probability three (3) flags will appear, the Spanish, the European and nor forgetting the Andalusian one because in their warped mind Gibraltar is part of Andalusia, within days they will start to flog to the Europeans their theory that Gibraltar is now part of Spain and who is responsible for all this, non other than the Chief Minister of Gibraltar without implied mandate except an election victory by 600 votes.

17 March 2008

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**Submission from Mr W L Chamberland, Gibraltar**

Sorry once again for being such a pest, but when you are going to be visited by none other than the Chief Minister of Gibraltar further material will not be amiss.

I am enclosing diverse papers and documents,<sup>303</sup> not all mine but very pertinent in destroying Spain's arguments as to territorial waters, our right to enjoy living, without having to look over one's shoulder and a little piece taken from Mr Caruana's party manifesto of 2003 which talks about his famous phrase, ie reasonable and safe dialogue, please observe no mention of signing anything.

We in Gibraltar have per force all become "Foreign Secretaries", and therefore scrutinise every minute detail, but when you have a neighbour who even in the 21st century is out to take your homeland, tell me what to expect. Please bear in mind that throughout history appeasement has never achieved anything, except make matters worse.

For Spain the world stopped in 1713 (Utrecht), so anything after that is either invalid or illegal, please analyse papers.

18 March 2008

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**Submission from Joe L Caruana, Chairman, Integration with Britain Movement, Gibraltar**

My submission will be dealing with the Option of Devolved Integration for Gibraltar. I shall attempt to make this brief and to the point.

1. Devolved Integration is the only Option that is at present legal and acceptable for Geographical and Historical reasons and in accordance with well-known UN Resolutions on Decolonisation.

2. The application of this Option closes the door on the Spanish Claim to the territory of Gibraltar and therefore should remove all animosity between Britain, Spain and Gibraltar, so that a normal and friendly coexistence can prevail between us. The Option does not change anything yet it perpetuates the Treaty of Utrecht breakaway clause; this is because Gibraltar would be restored to being a Region of the U.K. and Dominions as it was of old. It would also enhance Gibraltar's present position within Europe by virtue of the fact that Gibraltar votes like all other European Countries do in the European Elections.

3. All political parties in Gibraltar have stated at some time or other that the New Constitution is not incompatible with the Option for Integration.

4. Our Movement opposed the New 2006 Constitution because it considered that it (a) did not decolonize Gibraltar and (b) it created a Banana Republic. The Referendum held in 2006 was politically disastrous and shameful. There were undeniable abuses in the normal procedure in the process of Campaigning. 4,500 persons voted against the Constitution and over 8,000 abstained from voting, or 12,500 votes were not for the passing the Constitution, out of an historical electorate of about 18,000, something hereof unheard of in Gibraltar. Only 37% voted in favour of it! There was also clear manipulation of the agreed schedule for the Political broadcasts on Television. In practice Britain has lost out in being responsible for the Police Authority, and Internal Security, the Judicial Question is in disarray, following objections by the Chief Justice of the then wording of the proposed Judicial Service commission. There are weakness in the checks and balances between many local authorities and the Executive. The police stopped an individual when he attempted to demonstrate when the first Iberia flight arrived in Gibraltar being told clearly that demonstrations were not allowed that day. The Cordoba forum has had no input other than Peter Caruana's, Opposition and the general public have been brazenly ignored, a promised Referendum on such delicate decisions has not materialized. I leave it to your good selves, representatives in the Mother of Democracy in the world to judge what is happening.

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<sup>303</sup> Documents not published as are publicly available.

5. I appeal that justifiably, after 300 years of Britishness and tradition, Gibraltarians should be able to vote in the UK General Elections and have direct representation at Westminster in the Arruba and Antilles style.

6. The adoption of Devolved Integration to Gibraltar would do away with all the ambiguity surrounding the question of whether or not Gibraltar has been decolonised by the coming into effect of the New Constitution.

#### CHIEF MINISTER PETER CARUANA'S PREVIOUS SUBMISSION TO FAC

I respectfully bring to your recollection the various written and oral evidences given by Peter Caruana to your illustrious Committee on various occasions between 1997 and 1999, extracts of which are enclosed and which you will, no doubt, have available to substantiate my evidence. The Chief Minister wrote to your committee on 6 January 1998 saying the following *"I speak not only for my government but also for the majority view among the political parties in Gibraltar when I say that Gibraltar's first preference for constitutional change and decolonisation is integration with the UK". What better eloquent and solid statement do we require? This preference has been shown time and again in virtually every single opinion poll done on the subject of Options.*

And orally he made statements in the following vein, taken from extracts from the 4th Report in 1999:— Commenting on the overseas White Paper he said, *"Denial of the integration option was regrettable and disappointing". That there would be "considerable benefit to Gibraltar in no longer having to duplicate work being done in London, to take for example 'Data Protection Registrar's remit, no staff equipment and overheads'. In the new geometry of the UK, with different levels of self government for Scotland, Wales, Northern Ireland, London and the English regions Gibraltar could form another part of this picture".*

In your report in section 104 your report says *"Integration would bring Gibraltarian representation directly in to the House of Commons. We note the chief Minister's support for a right for the government of Gibraltar to petition at the bar of the House".*

Labour government Minister Joyce Quin assured your Committee that both appendices are attached.

I also bring to your attention a more historical meeting that took place between Chief Minister Robert Peliza and Prime Minister Harold Wilson on the 9th Integration for Gibraltar. It went as follows: *"The Prime Minister asked Major Peliza to explain more fully his views on the integration of Gibraltar into the United Kingdom. The Prime Minister emphasized that he himself had not come to any conclusions on this question and was only seeking information. Major Peliza said that the incorporation of Gibraltar into the UK would be an answer to the treaty of Utrecht because there would be no change of sovereignty and should avoid trouble in the UN as one form of decolonisation. More important than these considerations, integration would remove a major problem in the United Kingdom/Spanish relations".*

Since 1969 the question of Integration has changed significantly given that France, Holland, Spain, Denmark and Portugal all integrated their Overseas Territories with the Principal Country and share totally equality. Only Britain has not integrated its few and small remaining overseas territories, with Gibraltar specifically being totally and unjustly treated especially because of developments within the European Union and because of the Spanish Dimension.

We have uncovered, from disclosed Secret Documents, the Blue Print of something uncunningly similar to the Cordoba Agreement, set out by the foreign office in November 1969. In it, it emerges; the UK government was secretly telling Spain that it did not preclude transferring sovereignty. It said *"A statement by us on the line proposed could be defended as being consistent with our commitments (which are eg in the preamble to the constitution, to the Gibraltarians and not to the territory)".* It also emerged that as early as 1966 Britain was offering Spain joint use of the airport.

The Integration with Britain Movement and I hope that the above will assist you in coming to your deliberations positively and in favour of the question of Devolved Integration for Gibraltar.

18 March 2008

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**Letter to the Chairman from Rt Hon David Miliband MP, Secretary of State,  
Foreign and Commonwealth Office**

Thank you for your letter of 28 February concerning the new information that we have received from the US on rendition through Diego Garcia. I agree that this new information and the Government's response to it are relevant to your broader inquiry into the Overseas Territories.



Your questions cover a range of issues that officials in my Department are currently working on. The US Government recognises the absolute imperative for the British Government to provide accurate information to Parliament and we are working closely with our US allies on the details and implications of this new information. This process will take some further time and therefore, at this stage, I will not be able to provide all the details you seek.

However, I am pleased to be able to provide you with a response to the specific points on which we do have clarity. I will write to you again when officials have concluded their work on this issue.

#### DIEGO GARCIA

- The Government has no record of any request having been made by the US regarding the rendition of the two individuals through Diego Garcia.
- The Government previously received assurances from the US in 2005, 2006 and 2007 that no detainees had been transferred through the territorial waters of Diego Garcia. These assurances were given at the annual Diego Garcia political-military talks.
- I enclose copies of the initial agreement of 1966 and the subsequent agreement of 1976,<sup>304</sup> a note explaining UK supervision of activities on Diego Garcia and details of UK military personnel stationed on the island.

#### TURKS AND CAICOS ISLANDS

- The Government had received assurances from the US in respect of rendition through all UK territories or airspace (ie including the Turks and Caicos Islands) in November 2005.
- We will be referring all flights where concerns have been raised to the US. This includes flights through the UK and its Overseas Territories (ie including the Turks and Caicos Islands).

#### LIST OF ALL FLIGHTS BEING SENT TO THE US

- The list of flights where the Government has been alerted to concerns about rendition is nearing completion. I will forward a copy to you as soon as possible. The list is based on information provided by my Department, the Department for Transport, the Ministry of Defence, the Home Office, Members of Parliament, members of the public and non-governmental organisations. Once complete, it will be sent to the US as a matter of urgency.
- The list contains all specific flights where concern has been raised about rendition, but not more general allegations that lack sufficient data to be verified. The flights on the list include instances where concerns have been raised that planes may have been on their way to or from a rendition operation. However, our purpose here is to identify whether rendition (ie of an individual) through UK territory or airspace in fact occurred. We do not consider that an empty flight transiting through our territory falls into this category.
- Although the list contains the names of individuals who are alleged to have been renditioned on specific flights, we are seeking clarification on the flights and not the individuals at this stage.

I hope that I have addressed most of your concerns. I would be glad to receive any follow-up questions you may have. However, I must state again that officials are still analysing the implications of the new information received from the US and I may have to defer any further questions until we have established more of the detail surrounding this issue.

#### EXTENT OF UK SUPERVISION

UK personnel on Diego Garcia provide Customs and Immigration cover, Policing and a range of other civil functions including Magistrate, Coroner, Development Control and Registration of Births, Deaths and Marriages, in order to ensure that UK Law, supplemented by specific BIOT ordinances, is upheld.

A wide range of activities are conducted by US personnel on Diego Garcia which are routine in nature and are covered by entries in the Exchange of Notes. These activities are not normally supervised by UK personnel, nor at 42 personnel is there capacity to do so. Any extraordinary use of the US base or facilities, such as combat operations or any other politically sensitive activity, requires prior approval from Her Majesty's Government and would attract a greater level of involvement by UK personnel both on Diego Garcia and in the UK.

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<sup>304</sup> Not printed, as publicly available.

## BRITISH FORCES IN THE BRITISH INDIAN OCEAN TERRITORY

Rank/Rate	Job Title and <i>Relevant Additional Roles</i>
Commander, Royal Navy	Commissioner's Representative and Commander British Forces
Major, Royal Marines	<i>Magistrate &amp; Principal Immigration Officer</i> Executive Officer and Chief of Staff <i>Officer Commanding Royal Marines &amp; Security Officer</i>
Lieutenant, Royal Navy	Logistics Officer
Sergeant, Royal Logistics Corps	Movements and Mail Officer
Sergeant, Royal Signals	Communications Technician
Leading Seaman (CIS)	Communicator
Leading Logistician (Personnel)	CBF's Secretary
Warrant Officer (2), Royal Marines	Detachment Sergeant Major
Sergeant, Royal Marines	Training Sergeant
Corporal, Royal Marines	Storeman
Corporal, Royal Marines	Vehicle Maintainer
Corporal, Royal Marines	Driver
Lance Corporal, Royal Marines	Armourer
Corporal, Royal Marines	Senior Coxswain
Lance Corporal, Royal Marines	
Marine	
Marine	Coxswains
Marine	
Leading Marine Engineering Mechanic	Outboard Engine Maintainer
Chief Marine Engineering Mechanic	Senior Customs and Immigration Officer
Corporal, Royal Marines	Assistant Senior Customs and Immigration Officer
Leading Medical Assistant	
Leading Medical Assistant	
Leading Logistician Catering Services	
Leading Logistician Catering Services	
Leading Engineering Technician (Mechanical)	
Marine	Customs and Immigration Officers
Marine	
Marine	
Marine	
Marine	
Marine	
Master At Arms	Chief of Police & Superintendent of Prisons <i>Assistant Unit Security Officer</i>
Regulating Petty Officer	
Regulating Petty Officer	
Regulating Petty Officer	
Corporal, Royal Military Police	
Corporal, Royal Air Force Police	Royal Overseas Peace Officers
Lance, Corporal, Royal Marines	
Lance, Corporal, Royal Marines	
Leading Regulator	
Leading Regulator	

All Rates are Royal Navy unless otherwise stated.

All Royal Marines are part of the Island Security Force.

18 March 2008

#### Submission from Julian Griffiths, Bermuda

The term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. (UN definition).

The UN defines racism as, among other things, discrimination based upon national origin. The EU uses similar language and I believe that the UK government has supported both these definitions.

If one applies these definitions the laws and regulations of Bermuda are racist as they allow the Bermuda Government to discriminate against a large part of its population by denying them status or equality; even to British citizens who have been in Bermuda for 20 or 30 years or longer. These people are denied basic human rights including, but not limited to:

1. The right to vote.
2. The right to be treated equally under the tax system.
3. The right to own a home on an equal footing (basically denying the vast majority of them the right to own a home).
4. The right to own a business.

Worse, all these rights are denied to children born in Bermuda after August 1989 if their parents are not Bermudian even though they may have lived all their lives in Bermuda. By extension this situation could lead to stateless people in the next generation.

Past British Governments are complicit in this discrimination as they are responsible for the Governor who signed the laws that permit these inequities to happen and because they had and have the authority to ensure that it does not happen.

The British Government gave Bermudians full British citizenship including the right of abode and, as a result, equal status in Europe without ensuring that other British citizens are treated equally in Bermuda.

19 March 2008

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#### **Further submission from Ray Carbery, President, Turks and Caicos Islands Olympic Committee**

We note with great interest that your next Foreign Affairs Committee meeting is being held on 28 March and that Ms Meg Munn will be in attendance. Perhaps you will extend the courtesy of asking Ms Munn why she has not replied to the email outlined below which deals with Caribbean Overseas Territorial issues. We have been informed by somebody within her riding that we are not to contact her in the future about these issues . . . in a rather rude attitude. Further more the Rt Hon David Miliband's office has informed us that the email reply from her riding . . . was . . . somewhat not politically correct and that it was being investigated.

But here is our challenge again . . . it seems that the FCO can just arbitrarily not respond to important questions that directly disenfranchises the youth of the TCI. By not answering the question at hand they hide behind their screens and say/do nothing to assist these Islands. When is somebody in high a position going to realize that in today's world . . . issues have to be solved not swept under the table and hope we go away!!! maybe years ago that was the norm . . . but not today!!!

Ms Munn in her capacity of being Under Secretary of State to the Commonwealth Foreign Office of which the Caribbean falls under her jurisdiction should make her thoughts known to the TCI people on where she stands and is she going to assist us? Again thank you for your ongoing assistance in our quest for the TCI youth.

19 March 2008

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#### **Further submission from Sonia P E Grant, Bermuda**

1. In what is my third submission to the Foreign Affairs Committee, I wish to draw your attention to what the American Bar Association ["ABA"] is doing with respect to the Rule of Law. For well over the past decade plus, the ABA has given considerable thought and deliberation to the concept of the Rule of Law. [www.abanet.org]

2. At its mid-year meeting held during the first week of February 2008 in Los Angeles, California, in the United States of America, The president of the ABA, William Neukom announced the development by the ABA of "The Rule of Law Index For Justice".

3. President Neukom was very deliberate in stating that the Rule of Law is not the Law of lawyers or judges . . . but is JUSTICE.

4. The Rule of Law Index for Justice is four-pronged.

5. In the first instance, there must be a Government which is accountable under a set of laws.

6. Secondly, the Laws must be clear, coherent, publicized, stable and fair by Universal standards.

7. Thirdly, the laws should be enacted, administered and enforced in an open, efficient and fair process, and the process should be accessible to all.

8. The process depends on a cohort of law enforcement; advocates and judges who have to be ethical, competent, and diverse, and independent of private influence.

9. Having established the Rule of Law Index For Justice, the ABA will apply the said Rule of Law Index For Justice in their own country the United States of America, and Chile, India and Nigeria.

10. The objective of the ABA in looking at its own government, and the governments of Chile, India and Nigeria is not to shame and blame, but to create reliable and accessible information.

11. When the Rule of Law Index for Justice is transposed to the operation of the Corporation of Hamilton, with respect to municipal elections, it could be argued that aspects of the laws relating to municipal elections are not coherent. Of late, by way of one example, there has been great concern about the meaning of an “occupier”. Now it is being mooted that one has to be a “beneficial occupier”. What is a “beneficial occupier”, a landlord is heard to say!

12. Furthermore, it could be said that the laws relating to the Corporation of Hamilton are not fair because they over seven hundred residents of the City of Hamilton are not permitted to register or vote.

13. More importantly, under the third prong of the Rule of Law Index for Justice, the law as it relates to municipal elections and in particular, the election of 26 October 2006, cannot be said to have been administered and enforced in an open, efficient and fair process, with the process being accessible to all. Some nominees of Municipal electors did not know of the change of nominee that would be permitted if the registered nominee was abroad.

14. A Returning Officer, who usurps the role of the Registering Officer by making pronouncements that the Registering Officer will be changing the names of nominees of Municipal electors, without the knowledge of the Registering Officer is blatantly wrong, and diminishes the efficiency and fairness of the process.

15. A Returning Officer, who on the eve of a municipal election, tells the Registering officer, who has not changed the names of any nominees, that if potential nominees of municipal electors come to the polling station intending to vote and he [the Returning Officer] deems that they should be on the municipal register, and they are not, that he will give them a ballot paper, annihilates the administration of the election process in an open, efficient and fair process, and the rule of law is thrown out the window.

16. The Returning Officer, who in the week of a municipal election, tells even one potential [change of] nominee of a Municipal Elector that if their name is not put on the municipal register, and that if they come to the polling station and their name is still not on the register, and it is deemed by the Returning Officer that the missing name should be on the municipal register, they will be given a ballot paper, annihilates the openness, efficiency and fairness of the election process, thereby resulting in the Rule of Law being thrown out the window.

17. The Registering Officer, who makes no public announcement as to whether or not changes of the names of nominees of municipal electors will be permitted, annihilates the administration and enforcement of the municipal laws in an open, efficient and fair process;

18. The Registering Officer, unable to make a decision until the wee hours of election morning, as to whether or not changes of the names of nominees of municipal electors will be permitted, and without telling anyone except the person(s) assisting her, again annihilates the administration and enforcement of the municipal laws in an open, efficient and fair process, and as a consequence the Rule of Law is tossed out of the window.

20 March 2008

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#### **Submission from David Northcott, on behalf of Two Words and A Comma, Bermuda**

Please find attached the submission from the non-governmental organisation Two Words and A Comma in Bermuda regarding the lack of protection for Bermuda residents against discrimination based on the grounds of sexual orientation.

We attended and spoke recently at the public meeting held at the Mt St Agnes Academy and this document is a revised and expanded version of the one given to the MP's at that meeting and this comprises our formal submission.

#### **A BRIEF HISTORY OF TWO WORDS AND A COMMA**

The Two Words and a Comma group was formed in April 2007 by a group of Bermuda residents with the express intent of having “the Human Rights Act 1981 amended to explicitly include the protection of all residents of Bermuda from discrimination on the grounds of sexual orientation”.<sup>305</sup> The group came together because of a common concern at the continued lack of action of the Bermuda Government in continuing to exclude sexual orientation from the Human Rights Act. Two Words and a Comma is run completely by volunteers in their own time and has a working group of around 20 people and a support list of over 500.

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<sup>305</sup> Two Words and a Comma Mission Statement (see Appendix).

The title of the group is a simple reminder of (just about) all it would take to ban discrimination on the grounds of sexual orientation in Bermuda; by adding those two words (sexual orientation) and a comma into the list of protected categories in the Human Rights Act 1981.

The group decided that they should carry out this mission by:

- Lobbying Members of Parliament, Senators and other political figures.
- Consulting with the Human Rights Commission and other relevant Government agencies.
- Working in partnership with other non-governmental organisations.
- Raising awareness, educating and informing the general public about Bermuda's Human Rights legislation and discrimination based on sexual orientation.

And in carrying out the mission they committed to:

- Create open, honest and respectful dialogue in the Community.
- Encourage and promote the values of diversity and inclusion.<sup>306</sup>

The Human Rights Commission in Bermuda has twice recommended the amendment of the Act to include sexual orientation as a specific category or group against whom it would be illegal to discriminate (in 2001 and 2005<sup>307</sup> and again in 2006).<sup>308</sup> The Commission has on a number of occasions received complaints from the public against discrimination on the grounds of sexual orientation (the latest being in 2006)<sup>309</sup> but has been able to act on the complaints because sexual orientation is not covered under the Act. The Chair of the Human Rights Commission, Ms Venous Memari has publicly confirmed this.<sup>310</sup> Despite this, statements have been made by both the then Premier Alex Scott, the current Premier Ewart Brown and the then Opposition Leader Wayne Furbert asserting that sexual orientation is already covered in the Human Rights Act.<sup>311</sup> Quite clearly Bermuda suffers from a climate of homophobia as well as a climate of misinformation.

In 2006, the Hon Renee Webb MP, JP presented a private member's bill to Parliament to amend the Human Rights Act to include sexual orientation, but apart from Ms. Webb, only one other Member of Parliament spoke on the bill, and therefore under the rules of Parliament, it could not progress any further. The debacle in the House of Assembly that was the cowardice on the part of our elected officials to speak out on the issue (whether for or against the issue) was quite stunning, and there was a major demonstration the following week outside Parliament to protest the MP's silence, which received good coverage in the local press. In the Throne Speech of November 2007, the Government committed to bringing the Human Rights Act to international standards, but again, there has been little movement on the matter, "despite the Human Affairs Department undertaking a comprehensive review of the Human Rights Act which involved consultation with community stakeholders during summer 2007. (This report has yet to be published). So, 14 years on from the decriminalisation of consenting sex between adult men (the Stubb's Bill, 1994), and seven years on from the Human Rights Commission first recommending the amendment to the Human Rights Act, the Government has yet to act. In addition, the main body charged with responsibility for human rights issues, has in the opinion of Two Words and a Comma not adequately fulfilled its mandated role in public education. Two Words has been formed to fill that void and to counter the climate of homophobia and misinformation with lobbying and public education.

Two Words and a Comma have been very active in carrying out their stated mission. Since forming nearly a year ago, the group has:

- Run a six week public education campaign in the local print media highlighting the lack of protection in the Human Rights Act for all persons on the grounds of their sexuality.
- Held a public movie night and discussion on discrimination on the grounds of sexuality attended by more than 200 people at the members of the public (including the Minister responsible for the Human Rights Commission, and the same Ministry's Permanent Secretary).
- Created a website as a resource for information and communication which has received well in excess of 1000 unique hits during the public education campaign.
- Organised six lobbying meetings island-wide for ALL candidates in the lead up to December 2007 General Election to meet with members of the public. Nearly half the candidates attended along with a total of some 100 plus members of the public.
- Made a detailed submission to the Human Affairs Department's Human Rights Review.

The group wishes to capitalise on the momentum of last year's work and intends to continue the work this year. We have already met with the new Minister responsible for the Human Rights Commission, and are awaiting a written reply to our concerns about the lack of progress.

<sup>306</sup> Two Words and a Comma Mission Statement (see Appendix).

<sup>307</sup> Human Rights Commission Annual Reports 2001 and 2005.

<sup>308</sup> *The Royal Gazette*, 5 and 11 May 2007.

<sup>309</sup> *The Royal Gazette*, 20 October 2006.

<sup>310</sup> *The Royal Gazette*, 27 July 2007.

<sup>311</sup> *The Royal Gazette*, 1 September 2006 and 20 October 2006.

We also have planned the following work for 2008:

- Running a new (part two) public education campaign in the media.
- Holding dialogue sessions with clergy and other prominent members of the different religious denominations, particularly with those who have publicly opposed the inclusion of sexual orientation in the Human Rights Act.
- Following up with all the candidates and subsequently elected MP's with information packs and lobbying, as well as holding meetings with the Premier, the Opposition Leader, Attorney General and members of the Senate.
- Building a strong relationship with the new members of the Human Rights Commission.
- Continuing to work with the Human Affairs Department.
- Working with Amnesty International (we are the invited speaker at their AGM in April 2008).
- Holding additional movie nights with discussion sessions and other educational events.

In the view of the members of Two Words and a Comma, the progress on the inclusion of sexual orientation into the Human Rights Act has been painfully slow. Whilst we prefer to see an amendment made by the Bermuda Government that is domestically driven, voluntary and inclusively supported, rather than having change imposed upon by the UK, we nonetheless wish to highlight the situation in Bermuda to the UK Foreign Affairs Committee.

Thank you for your interest. We are more than happy to make ourselves available for further discussion or information at any time.

22 March 2008

## APPENDIX

### MISSION STATEMENT

Our mission is to have the Human Rights Act 1981 amended to explicitly include the protection of all residents of Bermuda from discrimination on the grounds of sexual orientation.

We will carry out this mission by:

- Lobbying Members of Parliament, Senators and other political figures.
- Consulting with the Human Rights Commission and other relevant Government agencies.
- Working in partnership with other non-governmental organisations.
- Raising awareness, educating and informing the general public about Bermuda's Human Rights legislation and discrimination based on sexual orientation.

In carrying out our mission we will:

- Create open, honest and respectful dialogue in the Community.
- Encourage and promote the values of diversity and inclusion.

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**Submission from Floyd B Hall, MHA, CPA, Minister of Finance and Deputy Premier,  
Government of the Turks and Caicos Islands**

### FOREIGN AND COMMONWEALTH OFFICE/MANAGING RISK IN THE OVERSEAS TERRITORIES—REPORT BY THE NATIONAL AUDIT OFFICE

The Government welcomed the visit of the members of the Foreign Affairs Committee to the Islands last week and trust that you found the visit productive and enjoyable. Whereas the above captioned report formed the backdrop to many of the meetings in the Islands, I am writing you to offer additional clarifications on the issues covered in the report as they relate especially to the section on the Turks and Caicos Islands.

The Government of the Turks and Caicos Islands readily embraced the opportunity to participate in the national Audit Office report on Managing Risk in the Overseas Territories during 2007. We welcomed this review as it provided a chance to assess the roles of both the Territories and the United Kingdom governments in managing and mitigating wide ranging risks in the framework of evolving governance relations and internationalization of risks, where territories operate financial centres.

We have reviewed the Report, which addresses risk management in the most critical areas such as disaster management, law enforcement and national security, public financial management, regulation of financial sectors and transport safety and security.

Correctly the report noted diversity in the Overseas Territories due to their geography and economic performance. It also noted varying levels of performance in managing and mitigating risks. It is observed that the more well-off a territory is economically the better it was at managing and mitigating risk; and some success stories from the territories were reported in areas such as disaster management, transport safety and security and regulation of financial centres.

The report highlighted some concerns regarding public financial management and good governance in several of the territories. The government of the Turks and Caicos islands is very concerned that in most instances it had been singled out as an example of poor public financial management and governance. This in spite of progress we made in growing our economy and lessening our dependence on UK financial assistance. We are very pleased that the main economic indicators in our economy are favourable. I would therefore like to share with you some of our plans and information on our commitment to improving good governance and public financial management, which are integral to our quest for nationhood. I would also respond to some of the specific issues raised in the Report as they relate to the Turks and Caicos Islands.

The government fully subscribed to good government principles. Over the years we have adequately provided financial input to related areas such as expansion of the judiciary and law enforcement. We have in place disaster management plans. We are also committed to proper functioning of committees of the House of Assembly. As part of our legislative agenda, since the Report was published, we have taken steps to ensure disclosure of interests by public officials, including members of the House of Assembly. In this regard you would be pleased to note that we are in the process of piloting an Integrity in Public Office Ordinance through the House of Assembly. This bill has already been debated as it has gone through its first and second readings and is now in the Committee of the Whole House for further scrutiny.

The government of the Turks and Caicos Islands is committed to a progressive development strategy, which would promote balanced development across and impact every island in our archipelago. We have completed preparation of a Ten Year Development Plan to serve as a road map to guide future development in the Islands.

During the last few years we have been able to promote economic growth and expansion through expansionary fiscal policy, on both recurrent and capital programs, as this is integral to our development strategy. We note the observation that expenditures are routinely incurred without reference to the legislature and that there has been instances of expenditure in excess of annual Budget. While this might have been the case this has only occurred to allow us to take advantage of important development opportunities. It is also important to note all such expenditure were approved by the Executive Council in advance and later on by the legislature by supplementary appropriation as has been the case with previous administrations.

We acknowledge that in some instances development projects have been brought on during the year, following approval of the budget, but this is consistent with our budget management regulations. This point has been noted in several audit reports and we are committed to addressing this in the future, but note that there will always be circumstances when projects will have to be introduced due to emergencies and new opportunities for us to embrace.

Due to the growth, which our policies has ushered-in it is true that the government has benefited from windfall revenue in some instances. However, the suggestion that the government has had to rely on the sale of public land to meet current account deficits is totally incorrect. Due to the restrictions of borrowing guidelines imposed by the UK government on occasion the proceeds from land related transactions have been used to meet the cost of capital development programs only. A fundamental principle of our government is not to liquidate fixed assets to finance recurrent expenditure.

We strongly believe that the reference to rising public sector debt is unfounded. It is important to put this in its proper perspective and note the low level of infrastructural development which is in place in the Islands and the negative implications this has on the overall level of development. Accordingly over the last few years we had to increase public sector borrowing to finance infrastructure to give our economy a chance to grow. It is also important to note that all our debt has been approved under the borrowing guidelines agreed with the UK Government and that all of our borrowing indicators are very low by international benchmarks.

You would be aware that the Turks and Caicos is a small island economy. It is therefore impossible for the government not to undertake transactions with companies owned by family members of Ministers and officials, if these companies are to be allowed to exercise their constitutional rights to participate in the economic life of the country. Notwithstanding this, Ministers do regularly and routinely register their interests.

We have always observed competitive tendering and sort to achieve value for money in all transactions. Our financial regulations allow for waiver of tender requirements in specific instances and we have used these provisions to speed up project implementation and absorption. This in part has allowed us to expand infrastructure provision on all islands as we strive to promote balanced development in our country.

Our programs in the areas of scholarships and providing medical care for our citizens are consistent with expanding our national productivity over the long term. It is worthwhile noting that our investments in these areas are consistent with giving our citizens the opportunity to competitively participate in the growth and

development of our economy where a majority of professional and skilled positions are held by non-nationals. In fact a Poverty Assessment Report, which was undertaken with the UK assistance by the Caribbean Development Bank during 2000, noted that investments in education and health were essential to ensuring the Belongers are not marginalized due to the development of their economic space. We are satisfied that the investments in these areas are justified and have had the required impact. Due to this we have now introduced new policies which should contain these costs within acceptable limits in the future, as they will need time to take effect.

In the area of medical costs containment we are determined to reform our health sector. As part of our planned reforms we are constructing two modern hospitals, which were procured through a very transparent Public Finance Initiative which was modelled on your experience in the UK. This procurement took over two years and involved local technical experts in law, finance, health and public administration working along with UK based advisers. The Foreign and Commonwealth Office (FCO) was always kept informed of developments regarding this procurement. These hospitals should be commissioned in two years and should result in a significant reduction in overseas medical care costs.

Additionally, as part of our health sector reform program, the government is also committed to and has publicly announced plans to introduce a mandatory national health insurance program by April 2009, which should also assist in containing medical cost and sharing the burden between citizens and the state.

As part of our overall commitment to strengthening public financial management, we have introduced a Fiscal Stabilization Program and a Ministry of Finance Change Project. These projects will introduce a number of reforms over the medium term to foster sustainable development. Important reform areas are: review of the revenue regime; modernization of public financial ordinances, regulations and procedures; introduction of results oriented budgeting and sustainable debt management. As part of our plans we would also be undertaking capacity building initiatives. We would welcome UK assistance in these reforms and we are currently assessing offers of assistance from the FCO.

We note the suggestion that resourcing of instruments of scrutiny are not protected in the Constitution. Whilst this might be the case, we are very pleased and satisfied with our record of providing adequate funding for these important institutions of our democracy.

In the end, I must point out the Public accounts is made up mainly of members of the opposition so it really is a matter for them to decide how to conduct their business. Notwithstanding this, civil servants fully comply with requests from the Public Accounts Committee and we would be supportive of efforts to improve the effectiveness of this committee.

In concluding, we are concerned that the section of the report on the Turks and Caicos focused only on information provided by the Chief Auditor in the National Audit Report and did not take into consideration the views of many other persons who were interviewed. This made this section very unbalanced and did not take into consideration the progress we have made in other areas of risk. We are convinced that the former Chief Auditor was well aware of many of the answers we have provided in this correspondence which would have impacted favourably on our audit, yet she failed to take them into consideration in the compilation of our national audit report. It is our opinion that she never intended to be objective in her reporting with our audit and decided to use her office to give a parting blow to our Administration on completion of her contract with the Turks and Caicos Islands Government.

We trust that the foregoing information will assist you in putting into proper perspective the various infractions outlined in the Chief Auditor's report. Whilst we do accept that we have confronted many challenges in disposing of our fiscal responsibilities over the years because of our geography and other economic realities, we believe that the harsh nature of the Chief Auditor's contribution on the government's accounts was grossly unwarranted and spiteful. We remain committed to good governance and in this regard to showing progress in future audit reports.

25 March 2008

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**Letter to the Chairman of the Committee from Meg Munn MP, Parliamentary Under-Secretary of State,  
Foreign and Commonwealth Office**

Further to my oral evidence session with your Committee on 26 March, I wanted to let you know that the Foreign Secretary has written to Secretary Rice to seek clarification on a number of specific issues relating to the 2002 renditions through Diego Garcia. This is part of the Foreign and Commonwealth Office's ongoing work on the details and implications of the information passed to us on 15 February.

I am afraid that, due to the confidential nature of our dialogue with the US on these matters, there is no further information that I can provide at this time. However, once we have received a response from the US and concluded our work, we will update the Committee.

3 April 2008

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### Letter and submission from Chagos Conservation Trust (CCT)

#### BRITISH INDIAN OCEAN TERRITORY

Thank you for your letter of 27 March 2008. You kindly agreed that if the Chagos Conservation Trust (CCT) would send by 30 April a further written submission, with more specific proposals for BIOT environmental governance, this should arrive in time to influence the Committee's considerations. The further submission is enclosed.

The CCT invites the FAC to recommend to the Government that it gives high priority to the environmental protection of BIOT and responds to the more specific proposals for BIOT environmental governance which emerge from current discussion among significant organisations, as outlined in the attached submission. These proposals for governance are aimed also to be compatible with security requirements and with possible outcomes for the case of the Chagossian people.

BIOT is considered to have the most pristine tropical marine environment surviving on the planet and to be by far the richest area of marine biodiversity of the UK and its Overseas Territories. It has the world's healthiest coral reefs and its largest coral atoll. The Government acknowledges this in undertaking to manage the whole BIOT area "as if" it were a natural World Heritage site (that is "a site of outstanding universal value for the world's natural heritage"). BIOT also provides a scientific benchmark as a rare area which is not ecologically degraded; this is very valuable for finding solutions on issues such as pollution, species extinction and climate change.

However, adequate measures to manage the BIOT area accordingly and on a sustainable basis have not yet been implemented. By way of example, only 3% of the shallow water area, which is the richest in biodiversity, is protected and virtually none of the deep sea is protected. (An indication of the pressure on Indian Ocean marine life is the fact that the shark population is some 90% smaller than 40 years ago).

The CCT Executive Committee includes representatives of RSPB, the Universities of Wales and Warwick, the Zoological Society, Coral Cay Conservation and The Nature Conservancy. The attached proposals for BIOT environmental governance will now be discussed more widely with the Royal Society, the Pew Trusts and other organisations with an interest in the Chagos environment.

#### SUBMISSION

The British Indian Ocean Territory (The Chagos) has the most pristine tropical marine environment surviving on the planet. Its quarter of a million square miles is Britain's greatest area of marine biodiversity by far. The attached Chagos Conservation Trust draft "discussion paper" summarises reasons why the Chagos natural environment is so important and makes specific proposals for its protection.

The UK Government and the British Indian Ocean Territory (BIOT) Administration are committed to managing BIOT as if it were a World Heritage site and have enacted significant legislation to protect this globally important environment. However a more robust and extensive framework for conservation is needed to meet future challenges. The existing environmental safeguards should be strengthened to create a long-term conservation framework with the maximum international support. It would be a world class natural conservation area and a major contribution to "saving the planet". Elements of the policy framework (most of which are not new) might include:

- The existing Ramsar Area should be extended (as already agreed by the Government in principle) first to the territorial waters and then to the whole Chagos Archipelago, with strict reserve areas for the priority biodiversity sites. The BIOT Environment Zone (created in 2004) should be completed.
- A comprehensive Chagos marine and fisheries management and conservation system should be established, to include a "no-take" fishing zone, initially covering at least one third of the Territory's coastal and lagoonal waters (as already provided for in the Chagos Management Plan). This would increase Indian Ocean fish stocks and thus benefit people in neighbouring countries.
- A small, fixed scientific research facility should be established, perhaps on a northern Chagos island.
- A sustainably funded, small organisation (perhaps a Public Foundation) should be established by the Government to manage and conserve, with effective support from other organisations, the natural marine and terrestrial environment and biodiversity of BIOT, as well as the related science, research, education and protective visiting. Experience should be drawn from best practice in other comparable protected natural areas in the world.

- The issue of human habitation should take full account of the environmental implications. The conservation and scientific frameworks proposed in this paper could be organised to offer financially viable and sustainable balanced employment opportunities for a limited number of new inhabitants.
- Wider international support should be promoted for a comprehensive Chagos nature reserve framework (eg Ramsar, IUCN, UNESCO World Heritage).

13 April 2008

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**Submission from Ben Roberts**

This catalogs my interaction with the FCO and its officials in regard to the matter of the Chief Auditor in Turks & Caicos, which MPs on your Foreign Affairs Committee questioned the FCO on. I think it is pertinent.

*Chief Auditor in Turks & Caicos*

Dear Ms Blacker,

Thank you for getting back to me on this issue of the Chief Auditor that I contacted Hons David Miliband and Meg Munn about. The way the interaction was handled tells me that there needs to be some serious overhaul on how the British Government and its FCO deals with Overseas Territories, of which my home of Turks & Caicos is an entity. My emails to both individuals was returned saying that it was sent to the wrong individual despite the fact that the email addresses were gotten from their FCO sites. Both, or one, of the returned emails indicated that this contact was restricted to being a resident of that MP's constituency. The response also stated that the emails would be discarded and I was given an alternate email pool to send to. This is quite disconcerting. Granted those constituents should have access to their MP's because they are represented by them. But at the same time another portfolio of these individuals involves overseeing and being responsible for places like Turks & Caicos. Yet when such a person as myself decides to contact them it is made clear that they are inaccessible to me. This leaves a lot to be desired. Are you telling me that under no circumstances should I expect to interact with any of these individuals on matters regarding my home, when their portfolio says they are responsible for matters having to do with this location? I now understand why there is a call for submissions by your Parliament on matters of governance both locally and regarding oversight by Britain, and most especially your FCO agency.

As far as local matters go, this lack of inaccessibility exists in microcosm. Not very long ago I had some vexing problems dealing with the local government. I contacted the Overseer and Governor to try to resolve the problem. I made about six calls. The Governor never got back to me. If you don't know, it is the norm for your Governors to not respond to local concerns. This has to change. It, like my contact with your FCO, suggests that concerns of Dependent Territories citizens are inconsequential. Your contact with me, and the subsequent contact by Governor Tauwhare is appreciated as a small change in how concerns are dealt with, despite the fact that what he had to report on this matter was not well received. Be that as it may, I am encouraged by this new change of responding to concerns. However, there needs to be more of this. As you can see from his response HE Governor Tauwhare is suggesting a discussion meeting. I applaud this and plan to do my best to see that this happens! But there needs to be more. We, in the OT's should be able to meet with and discuss issues with the principals in the FCO charged with overseeing our lives. There should be no debate on this. In fact, if it is really progress we want, there should be some consideration for an individual, or individuals from the OT's to sit in your Parliament as representatives on issues related to their respective territories. The pathetic position of Complaints Commissioner in T&C might be such an office whose duties can entail sitting in your Parliament on occasion, in this regard. Sending one Governor after another who is not chosen by the people he oversees, and who does not really represent them, is not a very progressive system in this day and age. Anyway, as stated earlier, thank you for responding to me and requesting a follow-up response on this issue, which I consider very important.

Yours truly

E-MAIL TO RICHARD TAUWHARE

*Re: Chief Auditor in Turks & Caicos*

Your Excellency Governor Tauwhare,

Thank you for taking the time from your schedule to reply on this matter. I am quite displeased with the outcome. Mr Gibbs application materials was sent sometime prior to last year October. He was told it was received. After some time he heard nothing and made a follow-up inquiry before the year ended as to the status of the position and was told by someone in authority that a suitable candidate was being sought in England. Other than the initial call to say that his application materials had been received, no one contacted Mr Gibbs at all. I imagine there would have been a whittling down of the applicants in stages to a short list

of eligible candidates, like a final four interview or something. You mean to tell me that Mr Gibbs at no time in this process qualified for a second look in choosing the best of the best. Considering the level of work that he does in his profession, his place of birth, and the fact that he is quite familiar with T&C finances from having worked at the Development Board which is now TCInvest, it is unbelievable that we have such an outcome. No one even called Mr Gibbs to say a selection had been made. What kind of professionalism is this?

The applicant takes up office next month. Was Mr Gibbs only supposed to know the status of his application and that the position was filled when he saw or heard the individual was in office at the job? I am quite displeased that a T&C citizen can be handled in such a manner. Years ago, before your term of office, the British Government commissioned something called The Kairi Report that evaluated the elements for long term progress and development for Turks & Caicos. Prominent was the recommendation that T&C make a point of employing the skills of its citizens, local and abroad. In fact at an important seminar connected with that undertaking, Mr Gibbs was the featured speaker. Imagine that. So you can see my reason for feeling the way I do on this matter. This situation leaves a lot to be desired, and as such, given the handling of this matter, I would humbly request even at this eleventh hour that you give it a second look.

Thank you for your interest in the Turks & Caicos Forum. I appreciate your offer of a meeting, and think it would be a good avenue for exchange of substantive ideas between our citizens and yourself, and others in the FCO hierarchy as well. The group is trying to take time from our schedules to meet among ourselves. At this meeting we will definitely discuss your offer of meeting with you and see if our schedules can be synchronized to do just that. I assure we would welcome such an event. Thank you once again.

Yours truly

E-MAIL FROM RICHARD TAUWHARE

Dear Mr Roberts,

*Chief Auditor In Turks & Caicos*

Thank you for this email. I have been asked to reply.

The position of Chief Auditor has been offered to a highly-qualified individual from St Kitts and Nevis. He has accepted the offer and will start work in May. The application of Mr Gibbs was carefully considered alongside those of the other applicants but the successful candidate was judged by the selection panel to be the best for the position.

I was very interested to hear of the Turks and Caicos Forum and would be keen to meet with its members to hear their concerns and ideas. If they would like a meeting, I would be happy to set one up.

E-MAIL TO MEG MUNN AND DAVID MILIBAND

*Chief Auditor In Turks & Caicos*

Dear Honourables David Miliband Secretary of State for Foreign & Commonwealth Affairs, and Meg Munn, Parliamentary Undersecretary

This email is being sent to you in regard to the position of Chief Auditor of Turks & Caicos, a territory which comes under your portfolio. As you know from your own sources, along with your recent questioning by the Parliamentary Foreign Affairs Committee, things have very much deteriorated in this territory that is my home that you are charged with overseeing. If that were not enough, the leader of the T&C government is now facing serious allegations of impropriety and assault of a sexual nature. But I digress. My correspondence has to do with the position of Chief Auditor in T&C. This position has been vacant for some time now after an expatriate completed her term and left late last year, I believe. Before she left I am sure a number of applications had been received for the position. I will speak about one in particular.

Mr Alpha Gibbs, a certified Public Accountant who is self-employed man who operates his own Accounting and Financial management company, filled an application for the position prior to the incumbent leaving the post. He got confirmation from the T&C government that his information was received and was being reviewed. This was about October or November of last year. Some weeks later he followed up as to the status of the position. He was told by a local government official having to do with the matter that the position had not been filled and the job was being advertised in Britain for prospective applicants. If that is the case then it seems highly possible that your Foreign & Commonwealth Office might have had, or has, something to do with that advertisement in England. Here is what I have to say on this matter. It seems preposterous to me that the previous holder of this position had to be hauled halfway across the world from a British territory to fill this post,!! and that a prospective replacement is being sought in England when we have a qualified and capable applicant in Mr Alpha Gibbs, a man born, raised and educated in Turks & Caicos prior to his tertiary education.

Mr Gibbs, as stated, is a certified Public Accountant. Before embarking on his tertiary education he was employed by the Development Board, a quasi-government small business lending institution. Since completing his tertiary education, Mr Gibbs has done audits for a number of business and government financial institutions, including the United States Treasury Department. Now will you explain to me why a

man, a Turks & Caicos Islander of such a caliber, is being ignored for such a position while we are hauling people from halfway across the world and beating the bushes in England for a suitable candidate? If your office has anything to do with filling this post you should have been beating down this individual's door for him to take up this position yesterday. We are in dire need of this man's talents. And if your office does not have anything to do with this position it is such an important facet of T&C government, in terms of transparency and financial propriety, !! that you should make it a priority that your Overseer in T&C, and the people he manages, give this individual's application immediate attention. To do anything otherwise would be a travesty, and not in the best interest of the Turks & Caicos.

I can say what I have said about Mr Alpha Gibbs because I know him from our early secondary school education in Turks & Caicos. Since then our tertiary education and beyond, has seen our lives parallel each other in our respective fields. That being the case, I feel that I know something about his moral principles and can attest to his academic and professional abilities. But you do not have to take my word for it. You can contact him or simply find his application. Thank you.

Yours truly

PS: The deterioration that has befallen Turks & Caicos is quite appalling. A number of professional individuals, including myself, are part of a loose-knit NGO called "Turks & Caicos Forum". We would be most interested in being received as a delegation in England by you and the leadership of your Foreign & Commonwealth Office, and possibly members of the Parliamentary Foreign Affairs Committee, to discuss constructive alternatives to this distressing situation in our home.

22 April 2008

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**Letter to the Second Clerk of the Committee from the Head, Parliamentary Relations Team,  
Foreign and Commonwealth Office**

**FAC OVERSEAS TERRITORIES INQUIRY—ORAL EVIDENCE FOLLOW-UP**

A number of follow-up action points arose from Meg Munn's oral evidence to the Committee on 26 March. We provide below some further answers referring to the transcript, together with some wider points raised including on Turks and Caicos Islands (TCI) issues and the Bermuda Regiment.

The action points in relation to Mr Murphy's oral evidence on Gibraltar will follow shortly.

*Q 280/281/282: Update on security measures to protect the Attorney General following an arson attack, and on a replacement for the Chief Auditor in TCI. Further comment on allegations and concerns in written evidence referred to by the FAC.*

We can assure the Committee that we take all allegations of corruption in an Overseas Territory extremely seriously. The further development and promotion of good governance is a key objective. But it is vital that any action be based on substantive evidence. Party loyalties run deep in TCI and opinions about corruption on each side of the political divide are highly polarised. We continue to encourage anyone in the Turks and Caicos Islands who has evidence of corruption to bring it forwards. All allegations are looked into thoroughly, as appropriate, by the Governor's Office, by the Audit Department (whose reports are subsequently taken up by the Public Accounts Committee, which is chaired by the Leader of the Opposition) or by the police Financial Crime Unit, which is headed by a retired UK police officer. A number of allegations are currently the subject of on-going enquiries. But so far there has been insufficient evidence to justify either a prosecution or a Commission of Enquiry.

For the longer term, two important steps are about to be taken, which should significantly improve both the capacity to deter and detect corruption as well as significantly reduce the scope for abuse. By the end of April, the House of Assembly is likely to adopt a Bill which will establish an independent, standing Integrity Commission, with extensive powers to investigate allegations of corruption. The implementation of this legislation should enable the UN Convention on Corruption and the OECD Bribery Convention to be extended to TCI.

Work is well advanced on legislation and other measures to radically improve the management of Crown Land, which has been identified as an essential element for assuring the sustainable economic and social development of TCI. This will include the creation of a dedicated Unit within government and a Bill which should ensure transparent, accountable and fair procedures for managing all Crown Land issues which should address the primary problem of weak implementation of the agreed policy. Questions over the granting of Crown Land lie at the root of many of the current allegations, as indeed has been the case under previous administrations.

## ARSON ATTACK ON THE ATTORNEY-GENERAL'S CHAMBERS

The Attorney General did not request assistance from the FCO with his security following the arson attack on his office in March. However, he did ask the Governor last year whether an assessment of the security of his office and house could be carried out. The Governor advised him that an effort would be made for that assessment to be done during one of the routine visits to TCI by an FCO Overseas Security Adviser. This was recommended to the FCO by the Governor's Office but they were informed by the FCO that the Adviser's remit was limited to reviewing security arrangements in place for FCO staff. Following the arson attack on his office, the Attorney called a meeting of senior Government Officials (including the police) during which a plan was developed which resulted in urgent and visible improvements in the security of government offices in general, including the newly re-located Attorney General's Chambers.

The Attorney General has seen this clarification of events and has confirmed its content.

## REPLACEMENT FOR CHIEF AUDITOR

A substantive replacement for the Chief Auditor will be in place in May. The successful applicant is well-qualified and has long experience within the region. The Governor has been working since July 2007 to fill this post and has kept the FCO in close touch with developments. He sought and secured a salary uplift from the local government to attract well-qualified candidates and, since it continued to prove difficult to find a suitable candidate before the former Chief Auditor left, he arranged for an experienced Auditor from the UK Audit Commission to fill the post on a temporary basis to ensure that there was no gap following the departure of the former Chief Auditor in November 2007. The Acting Chief Auditor had to leave post in March and efforts to find another temporary auditor were unsuccessful. But the gap has been kept down to two months and the Governor has invited the former Acting Chief Auditor to return to TCI in May to provide a comprehensive handover to his successor.

*Q 302: Advise on action we are taking with the Haitian Government about illegal immigration into TCI.*

We remain deeply concerned about the continuing tragic trade in illegal migrants from Haiti to the Turks and Caicos Islands, and we continue to work closely with the Turks and Caicos Islands Government on this issue on a number of fronts:

- through the Governor, we support an on-going programme to build co-operation at both official and Ministerial level between the Turks and Caicos Islands Government and the Government of Haiti. Plans to formalise this through the signing of a Memorandum of Understanding between the TCI and Haiti in May have had to be postponed due to recent events in Haiti but it is hoped that it can be taken forward as soon as possible. The MOU will focus on the need to improve the interdiction of illegal migrants and other areas of mutual interest including promoting trade, closer political co-operation and the sharing of intelligence on smuggling drugs and firearms from Haiti. Our Ambassador in Santo Domingo also raised this issue during a meeting with the Haitian Foreign Minister in January;
- the Governor has initiated a process to build further on the existing co-operation between the US, The Bahamas and TCI in combating drug trafficking and to extend this to cover illegal immigration. A tripartite group has been established which is working on improving real time co-operation between law enforcement agencies in all three countries. The US Ambassador is convening a further meeting in Nassau in May to take forwards this process;
- the Governor commissioned a comprehensive review of the TCI Police Marine Branch, which is in the front line in the effort to interdict illegal immigrants arriving in TCI. The recommendations from the review call for significant increases in staff, equipment and training. The key recommendation is to appoint a highly skilled and experienced new commander of the Branch, possibly from the UK, who will have responsibility for implementing the other recommendations. A priority recruitment process is underway. HMG has provided training for the Marine Branch for many years; the possibility of basing a new HMG-funded Regional Training Co-ordinator in the TCI, together with an inshore patrol boat, is also being considered;
- by judicious routing and in the absence of higher defence priorities, Atlantic Patrol Task (North) (a Royal Navy frigate and Royal Fleet Auxiliary tanker) has managed to increase port visits to TCI over the past year. Additionally, at the request of the TCI Police Marine Branch, specialists from the ships' crews have exceptionally provided training and use of their helicopters to work with the TCI police in finding illegal immigrants living in the bush. Although not a core defence responsibility, the ships' presence is perceived to have provided a temporary, but effective, deterrent to the would-be people traffickers;
- the TCI Government will shortly be bringing forward revised immigration legislation which, amongst other things, should help to reduce the "pull" factor to TCI by more effectively implementing work permit regulations and clamping down on illegal working; and

- the UK Government makes a significant contribution to tackling the situation on the ground in Haiti. The UK will pay £21 million towards the assessed costs of the United Nations Stabilisation Force in Haiti (MINUSTAH) in 2007/8. The challenge for the UN in Haiti goes beyond traditional peacekeeping to include capacity building and development.

The responsibility for immigration in the Turks and Caicos Islands is delegated to the local government. The Immigration Department has provided figures that show that 2,028 illegal migrants were detected and subsequently repatriated to Haiti in 2006 and that the numbers had decreased to 856 in 2007. The TCI Government estimate that roughly the same number of illegal migrants enter the Territory, evade detection, stay illegally and find work. We understand that the annual cost to the local government is estimated at some US\$ 1 million, which represents a significant pressure on local resources. We do have some concerns about the accuracy of the figures provided, but the local government has assured us that they are correct.

*Q 333: Bermuda Regiment*

GENDER DISCRIMINATION IN CONSCRIPTION

Responsibility for the Bermuda Regiment was delegated to the Government of Bermuda in 1989; recruitment policy is therefore a matter for the elected Ministers of Bermuda. The Bermuda Defence Act 1965 specifies that “every male commonwealth citizen who possesses Bermudian status . . . while is over the age of 18 under the age of 23” is liable for military service. That is the law of Bermuda and there are no grounds for the Governor to intervene. However, the Regiment is giving consideration to how more male and female volunteers might be attracted to serve in the Regiment (but see below).

COMPLAINTS OF ABUSE

The Commanding Officer of the Regiment is satisfied that abuse does not occur, and has assured us that that any report of abuse would be investigated vigorously and, if substantiated, dealt with appropriately. The Regiment is subject to periodic, independent, assessment by an officer from the Defence Adviser’s staff at the British Embassy in Washington. In September he will visit Bermuda again to closely observe the Regiment in action during a joint services exercise. The Assistant Defence Attaché from Washington visited the Regiment, during its annual training camp in Jamaica this month.

A NEW ROLE?

The Bermuda Regiment will continue to play two vital roles which best serve Bermuda’s needs; to support the Bermuda Police Service in times of national emergency, and to undertake a post disaster relief role both at home and elsewhere in the region (as it did after Hurricane Ivan in the Cayman Islands in 2004 and Grenada in 2005). There is no intention to change the role of the Bermuda Regiment to make it part of the British Army, along the lines of the Royal Gibraltar Regiment (with individuals and small contingents serving in operational theatres), but the Government of Bermuda is considering the scope for increasing the number of full time staff within the Regiment to enable it to take on more responsibilities, for example an enhanced maritime role. These discussions are at a preliminary stage and will require input from the Regiment, the Bermuda Police Service, the Bermuda Fire Service, Government House, and other stakeholders.

During Meg Munn’s visit to Bermuda last month she met several senior officers of the Regiment to discuss these issues. They impressed her with their enthusiasm for the Regiment and willingness to work at shaping it to adapt to changing times. But they did not underestimate the challenges that they might face. For example, given the thriving Bermuda economy and virtually full employment there, attracting more fulltime staff to the Regiment will not be easy. It is increasingly difficult for the police and fire services to recruit and retain Bermudian staff while the thriving private sector can offer more attractive rewards. In attempting to recruit more staff the Regiment would be competing directly with the police and fire services. Already some 40% of police officers in Bermuda are recruited from overseas.

*Q 335: How do you ensure that decisions and discussions at the Overseas Territories Consultative Council are followed up by other Government Departments?*

The FCO informs other UK Government Departments of the Overseas Territories Consultative Council agenda items relevant to them and invites them to send a representative to lead the discussion.

At the most recent meeting in December 2007, the Attorney General, Baroness Scotland, Jane Kennedy (HM Treasury), Jim Fitzpatrick, (Department for Transport) and John Hutton (Department for Business, Enterprise and Regulatory Reform) all participated. We believe this is a good example of the importance many UK Departments attach to Ministerial dialogue with the Territories.

But, as the Minister said in her evidence session, there is scope for greater engagement on the Overseas Territories by other Whitehall Departments and Ministers. The FCO and DfID Permanent Under-Secretaries wrote jointly to their opposite numbers in Whitehall in December last year reminding them that

the Territories are a shared Whitehall responsibility and asking each of them to set out their arrangements for dealing with the Territories. There has been a limited response so far. We intend to follow this up at Ministerial level to get commitments from UK Departments to work more closely on the Overseas Territories.

A number of action points were agreed at the Overseas Territories Consultative Council including measures to take forward work on the extension to the Territories of international conventions on human rights and corruption, constitutional modernisation, sustainable development and climate change. Since then, the FCO has followed up on these issues with the UK Departments concerned through correspondence and meetings at both official and Ministerial level. For example, Baroness Scotland has just chaired the annual conference of OT Attorneys General in the Turks and Caicos Islands at which criminal justice issues raised at the December Consultative Council were followed up.

Officials have also been engaged with a cross-section of Whitehall partners in order to progress other agenda items, including financial services regulation, access to healthcare, disaster management and development.

The FCO also continues to work with other Whitehall Departments outside of the context of the OTCC on issues as they arise. Examples include working with the Department for Transport on air safety, with DFID as described elsewhere in additional evidence, and with MoD on a number of issues not least in relation to the Falklands and BIOT. There are two excellent examples of co-operation between the FCO, DFID and MOD when asked for emergency assistance on Tristan da Cunha. In December 2007 we responded quickly to information we received of a potential shortage of asthma and flu drugs on the island. A contingency supply of drugs was delivered on a Royal Navy Royal Fleet Auxiliary within 12 days. Also, in February 2008 the MOD sent a party of Royal Engineers to Tristan to undertake emergency work on the harbour, the only access point for the island, following a request for emergency assistance from the Island. DFID funded the work. The Engineers completed their work, securing the harbour over the austral winter. Plans for further work are under review given the high quality of the Engineers' work.

*Q 336/337: FCO's relationship with DFID in relation to delivering the aid programmes in Montserrat, St Helena and Pitcairn.*

The Foreign and Commonwealth Office leads in Whitehall to ensure the security and good governance of the UK's Overseas Territories. Other Whitehall departments have a shared responsibility for the Overseas Territories in their specific areas of competence. The FCO and DFID are working closely together in Montserrat, St Helena and Pitcairn to help the Territory governments towards eventual graduation from budgetary aid to self-sustainability.

#### MONTSERRAT

In Montserrat, the FCO and DFID are also working together to mitigate against the effects of ongoing volcanic activity. Examples include:

- through budgetary aid, DFID funds the Government of Montserrat's day to day monitoring of the volcano, with the help of external expertise; this is supplemented by twice yearly visits, funded by the FCO, by an independent Scientific Advisory Committee which provides a strategic assessment of volcanic activity. Together, this provides the information necessary for the Governor to work with the territory government in assessing the risk level of volcanic activity; and
- as part of the Constitutional Review process underway in Montserrat, the UK constitutional team (led by the FCO) has ensured that any provisions negotiated in the new Constitution are consistent with Montserrat's sustainable development plan, which is supported by DFID assistance.

Officials from both Departments are in touch on a daily basis about the development programme. The Governor is exploring with DFID colleagues the feasibility of FCO and DFID co-locating in Montserrat. There are logistical challenges that will have to be addressed. But it is a clear indication of the two Departments' commitment to strengthening on-island operational collaboration.

#### ST HELENA

The FCO works closely with a number of other government departments on St Helena. This is particularly the case with DFID, given the level of budgetary support provided to the island and the ongoing work on the air access project.

A UK Government team, comprising officials from DFID and the FCO, visited St Helena in March 2007 to review the use of budgetary aid. During their visit, the team agreed a three-year package of development assistance. The team also reviewed the draft Sustainable Development Plan (SDP) and departmental business plans as well as discussing a framework for monitoring progress towards implementing national and departmental reform programmes.

The close working relationship is maintained throughout the year by individual and team meetings. Officials from DFID and the FCO hold joint weekly telephone conferences with the Governor, his staff and the DFID representative on the island. These conference calls are used to review programmes on the island, plan future activities and discuss all issues of importance to the Governor, FCO and DFID. FCO and DFID officials have sat on recruitment panels with the Governor for the appointment of senior posts for St Helena Government, including the Chief Secretary, Financial Secretary and Attorney General.

Given the significant levels of work and investment involved in the air access project, FCO and DFID officials are constantly in contact about this project. An FCO official is a member of the DFID Air Access Team and participates in the regular meetings between officials and the Access Team on St Helena. FCO and DFID have together supported the preparatory work on island in terms of legislative, administrative, organisational and other changes.

These formal contacts are supplemented by ad hoc discussions, exchanges and meetings at all levels, including PUS and Ministerial, and including by teleconference with the Governor and his staff.

#### PITCAIRN

FCO and DfID Ministers have had discussions on the future policy for Pitcairn and an internal joint development strategy paper has been produced. Both Departments are working closely to return Pitcairn to self-sustainability.

Because of the relationship between Commissioner and Governor, DFID and the Governor's office work jointly on various aspects of the governance and economic development of Pitcairn. At present the Commissioner is on the island pushing forward a restructuring of Pitcairn's governance in close consultation with the Governor's Office in Wellington. Given the size of the island population, and the complete lack of a civil service, the Governor's Office is involved in the day-to-day running of the island. This does not happen to the same extent in other territories.

A further example is the work on new shipping routes. DFID are looking to set up a new, more frequent and regular, shipping route involving Auckland and French Polynesia for passengers and freight. Negotiations with the French authorities in Paris and French Polynesia are being undertaken by the Governor's office. Without this, the new service could not be implemented, so co-operation between the FCO and DFID is essential.

25 April 2008

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**Letter to Richard Cook, Head, Parliamentary Relations Team, Foreign and Commonwealth Office  
from the Second Clerk of the Committee**

Thank you for your letter of 25 April.

There were a number of questions which the Committee did not have time to ask Ministers during their recent evidence session on Overseas Territories. I have listed these questions below. The Committee would be most grateful if the FCO could provide a response to these questions by Friday 23 May.

#### GIBRALTAR

1. What did the pensions deal in the Cordoba Agreement cost the UK? Was it a good settlement?
2. What is the UK's position on the immigration arrangements that will apply at Gibraltar's new terminal?

#### OTHER OVERSEAS TERRITORIES

3. Does the Government have any plans to increase the funding available for environmental management in the Overseas Territories?

4. Has Manfred Nowak, UN Special Rapporteur on Torture, provided you with any evidence regarding allegations that detainees may have been held on Diego Garcia between 2002 and 2003?

2 May 2008

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**Letter from the Parliamentary Relations Team, Foreign and Commonwealth Office to the  
Second Clerk of the Committee**

FAC OVERSEAS TERRITORIES INQUIRY: CAYMAN ISLANDS

I am writing to update you on recent events in the Cayman Islands which are relevant to your ongoing inquiry.

On 27 March the Governor announced that he had sent three senior police officers (including the Commissioner) on compulsory leave in the wake of an investigation into allegations made against one of the Deputy Commissioners and a newspaper editor. He confirmed that these allegations had been found to be false following a covert investigation led by officers from the Metropolitan Police. In the course of this investigation other matters emerged which have led, after very careful consideration and legal advice, to three officers being sent on compulsory leave pending further enquires. An Acting Commissioner (also on attachment from the Metropolitan Police) has been appointed.

The Governor has undertaken an extensive and pre-planned series of briefing meetings to reassure both the general public and wider international business community that the Cayman Islands remains a safe, law-abiding country with an effective police service. The Leader of Government Business has indicated his support and the Governor has received endorsement of his actions from all sections of the community.

By unfortunate coincidence the pre-planned publication of the Commission of Enquiry Report happened the following day. The Commissioner concluded that Charles Clifford, Minister for Tourism, wrongly took official documents when he resigned from the Public Service (although he commented that Mr Clifford's conduct may be seen to be understandable having regard to the view of some senior Cayman civil servants that this was acceptable practice), and that he was not acting as a whistleblower but rather in pursuit of his own political ambitions when he made these documents public. He did not recommend taking any action against Mr Clifford, as he found that the most commercially sensitive information was not disclosed, the unauthorised disclosure did not cause any damage, and the public did have a legitimate interest in the information disclosed. He said that this information was of a kind that the public would have a right of access to when the new Cayman Freedom of Information Law came into force. While the Governor has confirmed that he will take no further action against Mr Clifford, he said publicly at the time of the report's release that Mr Clifford's actions were regrettable and not in line with the standards expected of public servants, and he has made this clear to Mr Clifford.

In addition, the Commissioner made several recommendations aimed at improving the governance of the Cayman Islands, which the Governor is reviewing with the Chief Secretary and the Attorney General. We hope these will be swiftly implemented after, as appropriate, consideration by Cabinet and the Legislative Assembly.

9 May 2008

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**Letter from the Parliamentary Relations Team, Foreign and Commonwealth Office to the  
Second Clerk of the Committee**

FAC OVERSEAS TERRITORIES INQUIRY—ORAL EVIDENCE FOLLOW-UP

Two follow-up action points arose from Jim Murphy's oral evidence to the Committee on 26 March. You also wrote to me on 2 May with some additional questions from the Committee regarding Gibraltar. We provide these further answers below, referring to the transcript.

FOLLOW-UP ACTION POINTS

*Q254–255: On the term of office of the Chief Justice of Gibraltar*

The current Chief Justice was appointed under the old Constitution by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State. Under that Constitution, the Chief Justice is appointed to office until he reaches 67 years unless he is removed from office sooner following the procedure in the Constitution. The appointment may be extended beyond 67 years in accordance with the Constitution. The new Constitution provides that the appointment of the Chief Justice is made by the Governor acting on the advice of the Judicial Service Commission. Under the new Constitution the Chief Justice may still hold office until he attains the age of 67, with the possibility of extension beyond that age. However, the new Constitution also provides that a Chief Justice may be appointed for such term as may be specified within his instrument of appointment and that the office of a person so appointed will become vacant on the day on which the specified term expires.

Q260: Clarification on negotiations concerning military transit restrictions into Gibraltar, and whether an equivalent of the Cordoba understandings is intended in the military sphere.

The Cordoba understandings were a result of trilateral negotiations between the UK, Spain and Gibraltar. They also form part of the ongoing trilateral process which has great potential and a far-reaching future agenda. However, that process does not cover military issues which are a bilateral matter between the UK and Spain. Efforts to resolve differences in the area of military transit restrictions are therefore separate to Cordoba and the trilateral process.

The UK government has raised the issues of restrictions with the Spanish government directly and will continue to do so. Spain is an important NATO ally and we are therefore determined to work closely with Spain to find a constructive solution.

#### ADDITIONAL QUESTIONS FROM THE COMMITTEE

*What did the pensions deal in the Cordoba Agreement cost the UK? Was it a good settlement?*

The pensions settlement was a good settlement for the UK as it removed a substantial financial liability from the UK tax-payer.

As part of the settlement Spain agreed not to claim back from the UK the healthcare costs for the affected Spanish pensioners. Secondly, following the settlement, the European Commission also closed infraction proceedings against the UK for alleged discrimination against affected Spanish pensioners.

The exact cost of the settlement to the UK will depend on mortality and inflation rates, however the various figures the Committee has heard reflect the complexity of the pensions settlement.

At Cordoba there were three estimated costs:

- The cost of paying ongoing frozen pensions was estimated at £49 million. These frozen payments would have been paid regardless of whether we had reached the Cordoba agreement.
- The second component was an estimated £48 million for future up-rating of the pensions.
- The third component was an estimated, £25 million to be paid as lump sum payments. These were not pension payments or compensation, but incentive payments for the Spanish pensioners to leave the Gibraltar Social Insurance Fund.

The Committee has previously heard figures from the report of the National Audit Office which put the cost of the pensions settlement at approximately £100 million. So this report has amalgamated the cost of the frozen and up-rated pension payments as the NAO were looking at pension liabilities.

*What is the UK's position on the immigration arrangements that will apply at Gibraltar's new terminal?*

The UK is content that the immigration arrangements at the new terminal have no implications for sovereignty and jurisdiction or control. The airport remains on exclusively British territory and under British control and no Spanish Officials are present on British territory as a result of the agreement. The Cordoba airport arrangement is clear on these points.

12 May 2008

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#### **Letter from the Parliamentary Relations Team, Foreign and Commonwealth Office to the Second Clerk of the Committee**

#### FAC OVERSEAS TERRITORIES INQUIRY: FURTHER QUESTIONS

There are two outstanding questions on other Overseas Territories from your letter of 2 May that require a reply. The Gibraltar questions were answered in my letter of 12 May.

Q3: *Does the Government have any plans to increase the funding available for environmental management in the Overseas Territories?*

The Government has no plans at present to increase the funding available to the Overseas Territories for environmental management. Responsibility for environmental issues has been devolved to the individual Territories. However, some Territories lack the financial and technical capacity to deliver effective and sustainable environmental management. The Foreign and Commonwealth Office (FCO) and Department for International Development (DfID) each provide £500,000 annually to the Overseas Territories Environment Programme to support the Overseas Territories on sustainable environmental management. The FCO element of the Overseas Territories Environment Programme is a ring-fenced allocation within the Department's Overseas Territories Programme Fund, a £6.5 million programme that can also be used to support environmental projects in the Overseas Territories beyond those funded by the Overseas Territories

Environment Programme. One example is FCO funding of an environmental impact assessment evaluation of the risks to agriculture and the environment on Pitcairn associated with proposed new routes of supply ships for Pitcairn through French Polynesia.

The Department for the Environment, Farming and Rural Affairs (DEFRA) funds a number of programmes from which several Overseas Territories have benefited. The Darwin Initiative funds UK expertise to work with local partners on biodiversity projects in developing countries. It has provided more than £1.5 million for biodiversity projects in the Overseas Territories since it was set up in 1992. The International Sustainable Development Fund supports the delivery of the UK's World Summit on Sustainable Development commitments and has funded £69,000 for projects in the Overseas Territories since 2006. The Flagship Species Fund, a joint DEFRA and Fauna and Flora International initiative, provides practical support for the conservation of endangered species and habitats in developing countries. It has provided over £29,000 for projects in the Overseas Territories since 2001.

DEFRA is the Whitehall lead on environmental issues. As Meg Munn said in her oral evidence session to the Committee on 26 March, there is scope for greater engagement in Overseas Territory issues by other Whitehall Departments, including by DEFRA.

*Q4: Has Manfred Nowak, UN Special Rapporteur on Torture, provided you with any evidence regarding allegations that detainees may have been held on Diego Garcia between 2002 and 2003?*

Lord Malloch-Brown spoke to Manfred Nowak in the margins of the UN Human Rights Council on 5 March. He asked Mr Nowak to provide the Government with any information on allegations regarding detention on Diego Garcia so that it could be followed up with the US authorities. To date, Mr Nowak has not provided us with any evidence regarding these allegations.

21 May 2008

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#### **Submission from Charles Laurence, Turks and Caicos Islands**

THE TURKS AND CAICOS ISLANDS, BWI:  
DEVELOPMENT AND CORRUPTION ON SALT CAY

Salt Cay is the smallest settled island in the TCI. Population 63. It covers about 2.5 square miles. It has a pristine beach making up the north coast of an island shaped like an arrow head, with the point to the south. The island is known as the History Island: probably the best preserved, least developed Caribbean plantation community left. It was a hugely profitable centre of the Bermudan salt trade, founded in the 1680s. It boasts a number of historic treasures: The unique Bermudan White House plantation house of the Dunn family which still owns it; the restored Brown House plantation; the Government House now owned by the TCI National Trust; the stone walls, canals, engineering works and windmills of the plantation salt beds. The island also has a pristine reef. For many years the plan under HMG had been to preserve this character while carefully planning economic projects.

It is now the subject of one of the most ambitious developments of the archipelago. This is widely believed to have been conducted within the pattern of corruption now prevalent on the islands. The developers have acquired all the land they demanded through corrupt use of compulsory purchase of property and requisition orders for leased Crown Land, making substantial payments to PM Michael Misick and his ministers. They have also circumvented all government procedure for planning and development control through the same channels.

When I visited the Building and Planning departments last year to peruse their records, there were entries for every known project from new sheds to cottages, but not a line about a project which will cover almost half the usable land mass! This was while the coraling of Crown Land for the development was at its height. Legal channels were clearly being circumvented.

The developers are a Slovakian consortium: they have registered Salt Cay DevCo Ltd for their TCI project. They are based on Providenciales with an on-island manager in Stefan Kral. The entrepreneur and chief investor is Mario Hoffman.

This is the project (bear in mind the size of the island): 320 hectares of land; 130 condominiums; 75 luxury beach front residences, \$7 million-up; an 18-hole golf course; five restaurants; two sports centres; a spa; a marina for 80 ocean-going yachts; conversion of the "puddle-jumper" airstrip to accommodate Lear jets; barracks for Chinese construction workers and then immigrant service labour; jetty for deep water access; paved highway to replace unpaved track from jetty to project. Construction of power station with monopoly of energy production for whole island; construction of water desalination plant. Estimated cost, \$600 million.

Misick has cast this as a “green” project of sustainable tourist development. Examples of corrupt dealings. 1) a local entrepreneur—American with a “belonger” partner—had built two new villas for sale near North Beach; Misick forced sale to DevCo through threats of compulsory purchase. 2) The Windmills Plantation, a small scale luxury hideaway and the only development on the key asset of North Beach: owners resisted sale so Misick facilitated requisition of neighbouring lots while DevCo announced that they would destroy their business with encroaching buildings, cut off access through DevCo’s private property, and deny monopoly electrical power. The owners sold. 3) Crown leases held by belongers for family housing needs requisitioned in exchange for small payments and alternative lots created around the rubbish dump and existing power plant.

Kral and Hoffman have flatly told dissenters on the island that they now control all development, building and planning permits.

Company background; Hoffman and his associates are “gangster capitals” from the era of privatization of the economies of the old Soviet bloc. Hoffman owns and operates a holding company/bank called Istrokapital, holding 95%. It is based in Bratislava but has recently been registered offshore in Cyprus. The other two partners are Penta and J and T. Local media lists Hoffman as worth \$750 million, with one partner, Peter Kellner as the richest man in Czech Rep/Slovakia at about \$7.5 billion. All are secretive and little is written about them.

A Czech contact tells me: Hoffman was the first registered stockbroker in free Czechoslovakia and made his money through the system of “privatisation vouchers”. Government granted these to stakeholders in state-owned enterprises: Hoffman and his ilk bought them up pennies-on-the-pound, using strong arm tactics when necessary. His first coup was privatizing the national post office, developing it into a mail-order business. Penta, meanwhile, acquired the national steel works.

My contact writes: “All three are known to have considerable political clout and willingness to use physical muscle to take over companies that resist. Of the three, Istrokapital is believed to have the strongest ties to the underworld and is known to draw its muscle (literally) from former officers of the Slovak intelligence service, particularly those who were implicated in the 1995 kidnapping of the Slovak president’s son.”

There is also suspicion that all three businesses are conduits for Russian money and used as fronts for money laundering. This makes sense for their operation in Salt Cay—invest funny money and sell legitimate property. Misick is also working with Russian entrepreneurs on other projects.

It is remarkable how little of this is known in the TCI.

Opposition politicians and the odd dissenting lawyer tell me that the money should be easily traced through the local branches of off-shore banks by forensic accountants empowered by a Royal Commission. The moneys paid illegally to government ministers and officials are believed to have been channelled through these banks to accounts in Florida. I have also heard that Misick and other ministers have been paid in Miami property.

Development records should equally be found through the offices of prominent lawyers on the islands who have, perhaps innocently, been involved in processing deeds, Crown leases and so on. You know, of course, about the burning of the court records on Grand Turk. The lawyers have inevitably been ensnared by fees out of all proportion to their expectations before the development boom.

All this adds up to a gross violation of good governance. I am sure you recall the imposition of direct rule from Whitehall through the Governor’s office in 1986 when a former PM, Norman Saunders, was “busted” in Miami for involvement in the cocaine trade. I first saw these island while covering that extraordinary story for the Daily Telegraph. I have kept in touch with them ever since. Last year, I bought a cottage on Salt Cay which I am now renovating. This would in theory give me an interest in seeing the development proceed, raising property values, rather than the other way around as the rule of law is enforced. But my involvement in reporting corruption and violation of proper authority lies outside my financial interest, just as I used to report in London while owning a house there!

The Salt Cay reaction: It is very important to bear in mind that the belonger families which remain are in favour of development. To them it is an opportunity to gain financially from an island which has only existed through the sweat and very considerable pain of their forebears. I believe that the white expats who to this day own most of the capital and business enterprises understand this and accept the belongers’ vote. It is particularly sad that they are being shortchanged.

There is currently a crisis, however, which has stripped the scales from many an eye. As part of the package illegally agreed between Misick and DevCo, the company is to cut an access channel to their proposed marina through the Caribbean reef, the western beach of the island and Victoria Street which is the main thoroughfare linking the North and South Settlements of Balfour Town. Incredibly, there is no plan to build a bridge. The access channel will cut the island in two, making the traditional way of life no longer sustainable and killing the community once and for all. A construction barge appeared off-shore in the week of May 11 to sink exploratory piles.

The population has woken to the fact that DevCo always intended to see the existing island destroyed in order to become a lot for their upscale, European-orientated, strictly-private island.

So now all—belongers and expats—are opposed to the access channel and seek means to impose an injunction.

It is clear that emergency intervention with the Governor's existing and proper authority is necessary. Salt Cay is a potentially priceless long term asset to the future of TCI within BWI and HMG's plans for economic viability. But it faces destruction for the illegal gain of local Ministers and undesirable investors.

The recent history of the Salt Cay development plan will also provide vital evidence for a Royal Commission should you determine one to be necessary. I will be very happy to co-operate with such a Commission and hope that you will be able to forward this material.

As a last point, I will of course be continuing my reporting of this story, and believe it will make a considerable splash in the near future.

22 May 2008

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**Submission from Gordon Barlow, Cayman Islands**

Dear Sirs,

The attachment is my Word copy of an essay published in the Cayman Net News last weekend, in print and online.<sup>312</sup> It reported the fears of some of our private lawyers that the rule of law in Cayman is being undermined by certain actions of the Foreign & Commonwealth Office's local agents. The essay has created a bit of a fuss in legal circles here. Its predecessors on the same general topic have been quoted in letters between the local Law Society and the FCO's Attorney-General; those of you who are lawyers will not need reminding of how offensive it is to quote a non-lawyer's opinions on legal matters. . .

It seems to some observers that the FCO may be orchestrating the take-over by the Attorney-General's Office of the entire administration of justice. Police, Prosecution, Defence and Judges will all be on the same team. (Locally appointed judges are allowed to retain their close attachment to their law firms, as you will be aware.)

Some of the current fuss centres around the possibility that the FCO is, unannounced, pulling the plug on Cayman's tax-haven operations. I myself would have thought that these operations helped the UK's national interests, in one way or another, but maybe I am quite wrong. There is the raw material for a Parliamentary Question on the issue, and a PQ would not be in Britain's national interest, surely. In any case, the matter is one that your Committee might want to enquire into, before things get totally out of hand.

2 June 2008

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**Submission from Benjamin Roberts, Turks and Caicos Island**

**FOLLOW-UP MEMORANDUM IN RESPONSE TO CALL FOR COMMENTS FROM TURKS & CAICOS ISLANDERS BY BRITISH GOVERNMENT AND FCO**

Legend: p) problem r) resolution

Once again, I am Benjamin Roberts of Turks and Caicos Islands. This document is my second submission, subsequent to the close and extension of your initial call for information, and subsequent to the groundbreaking and never-before-done presence and availability of British Government Members of Parliament in Turks & Caicos for the express purpose of cataloging oral submissions from concerned citizens. I wish I could say that since this call for information and close scrutiny by the British Govt that things have improved in Turks & Caicos. I absolutely cannot. In fact they have deteriorated to an appalling and alarming state of affairs that begs for some type of intervention such as a Commission of Inquiry that would usher in a necessary overhaul of how business is done in this place that is my home. The apparent willful neglect by your British Govt, most especially its Foreign and Commonwealth Office, coupled with the unaccountable, do-as-they-like behavior of Turks & Caicos Govt officials, has the country, like a ship, headed for the jagged shoals. If this situation is not addressed soon I fear Turks & Caicos will suffer irreparable damage. That being the case, this submission will not only outline problems, but will also make recommendations for how those problems may be solved. Here goes:

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<sup>312</sup> Not printed as publicly available.

## ISSUE NO.1

p) The most glaring problem in T&C that sticks out like a sore thumb and needs to be addressed immediately is the matter of the Complaints Commissioner. Had this matter been attended to years ago we would not be having, or needing, a call for submissions by your British Govt. An earlier document of the T&C Constitution outlines this position in detail. It sits front and center in the governance of T&C. In its description the holder of this post is unhindered by local British authorities such as the Governor and Attorney General in performing their duties, which encompass investigating abuse and violation of citizens rights by elected officials. A necessary function to guard against heavy handedness and excess by such officials, whilst ensuring a transparent and corruption-free local government that respects the rights of its citizens. Yet, over the years this post of Complaints Commissioner has been systematically defanged and gutted by successive T&C govt administrations, in concert with local British officials charged with looking out for the interests of the Crown. Without fail this position has been held by a series of retired career civil servants collecting their monthly pensions. Does anyone seriously expect such an individual, up in years after a long life of govt service and collecting their monthly pension and emolument for the post, to aggressively investigate an official in this system on which they rely for their disbursements? This post should be occupied by young energetic charges not needing to be mindful of receiving their pension checks, in deciding to pursue an investigation. In the summer of 2001 a colleague and I conducted a symposium in T&C, and one of the matters we delved into had to do with the Complaints Commissioner position. The findings were shocking. No one in our audiences throughout the Islands knew who the Complaints Commissioner was, had no idea where his/her office was located, or ever heard of any case having been processed by this official. It was absolutely appalling. I assure you that very little has changed, in this regard, in the seven years since then. This matter needs to be attended to immediately if a better more responsible government is to be had in T&C.

r) My recommendation is that your British Govt vigorously address this problem. First and foremost, the position should not be a one man office, as it now is. Instead it should have a Commissioner or Director who has access to two small units. One would be a unit of investigators with some degree of legal knowledge and understanding of the Constitution. The second unit would have knowledge and abilities in auditing, enhancing the office's ability to handle matters having to do with fraud and financial corruption. The office could possibly be modeled after Human Rights Commission offices in county jurisdictions in the United States. These offices are quite a deterrent to big corporations in those jurisdictions getting away with violating the rights of their employees. In this setting, nothing brings an all-powerful company to heel more than knowing they have to appear before such an agency to answer charges brought by a wronged employee or former employee. Once the Commission panel concludes its findings the way is cleared for legal action to proceed in the courts by the issuance of what is termed a Right to Sue letter. If the findings are in favor of the employee, then the employer is in big problems facing the courts, because the judicial system will, more often than not, rule against him. This is familiar to me because I went up against an influential employer in this process and they lost. Such a system would work wonders for cleaning up the political lawlessness in Turks & Caicos govt. As I see it, once an investigation by the Complaints Commissioner's office has been concluded and a finding of wrongdoing is established then the matter is sent to the Attorney General for prosecution.

In addition, this Complaints Commissioner position should be upgraded by the Foreign & Commonwealth Office (FCO), such that the office at intervals would submit a report to, or be audited by, FCO officials. In this way the FCO would know what is going on from the Turks & Caicos perspective, instead of being left stumbling around in the dark in the event that their Overseeing representative, namely the Governor, chooses to keep them in the dark. As is the case now. Hence the predicament we now see in this territory.

## ISSUE NO.2

p) What is taking place in regards to Turks & Caicos Crown Land is disastrous and criminal. Recently, a TC govt Minister composed a list of Crown Land recipients, made up mostly of family and cronies. The recipients were called in to sign a document accepting their land acquisition and signing it over in exchange for from \$30,000 up to \$100,000 in cash from the Minister via his designated paymaster. In accepting the monies, these individuals were turning their claim for the land over to the Minister and his cohorts. When combined this land amounted to some serious acreage of top dollar real estate on the island of West Caicos. This bundled acreage now became the property of that Minister and his cronies, which they have sold, or are now poised to sell for millions of dollars. Like money laundering, this is Crown Land laundering, where citizens are lured into transferring public property into a private asset to make a Minister and his associates wealthy. There is no question that this happened. Local businessmen in the constituency where this took place know about it because their customers showed up suddenly doing business with more money than usual at their disposal, and in many instances confiding the circumstances surrounding their new found fortunes. The recipients of this money never applied for any land, cannot show an application outlining a development proposal for such land, cannot show receipts that they had the land surveyed or made installment payments of any kind and, having never seen the land, cannot show anyone the physical location of the property. All of these things are required in Crown Land acquisition. This is criminal. The money recipients are unwitting partners in this robbery by the Minister and his cohorts. In fact the Minister and

his associates have essentially robbed them, and all the people of T&C to which the land belongs, in the name of helping them. A case of reverse Robin Hood. At least he did what might be thought of as admirable in stealing from the rich and giving it to the poor. These characters steal from the poor, give them back some loose change making them feel fortunate, while they themselves become ridiculously wealthy at these people's expense. How callous. What is shocking about this is that it took place even while the Parliamentary Foreign Affairs Committee was, and still is, inquiring into matters of governance in T&C and inviting submissions. It took place even as leader of T&C Govt, Michael Misick, was appearing before that very Committee making assurances of representing a transparent and corruption-free government.

r) For this, the Crown Land thieves should go to jail. For this to happen there needs to be an investigation and Commission of Inquiry by the British Govt. The findings will show that this is just a single incident of many such Crown Land abuses by a variety of TC govt Ministers. The question came up about whether or not the Governor would call for a Commission of Inquiry. The FCO indicated that it was up to him to do so. This is an outrage for them to take such a Nero position, and it reinforces their ineptitude. They have admitted that the Governor, their Overseer, had not kept them informed of developments in T&C. They have admitted that he was not as qualified as most in such postings. Yet they are saying that the choice for Inquiry is his? Taking such a position seems to be a face-saving measure by them to cover their embarrassment and ineptitude. But this is not about the FCO. This is about the people of Turks & Caicos and their being dispossessed and taken advantage of by an ungovernable T&C govt, facilitated either by the cluelessness or the complicity of their designated Overseer of the interests of the Crown. A Commission of Inquiry must be undertaken irrespective of the wishes of the FCO or their Governor. To do otherwise would be a grotesque disservice to the people of Turks & Caicos.

### ISSUE NO.3

p) We live under the notion that the citizens of Turks & Caicos live in a society where their rights to property, ideas, equal justice, and freedom of expression are protected. The reality, however, is not even close. I recently contacted the news media in T&C about doing a radio commentary on the appalling manner in which the govt went about hiring a Chief Auditor to oversee the country's finances. Honorable MP Meg Munn, of the FCO, with responsibility for Overseas Territories that include T&C, was featured in a recent local newspaper, Turks & Caicos Weekly News, last month singing the praises of the selection. I begged to differ with this and contacted the main private WIV-TV station with a request to comment on the issue on their radio network. I also contacted our own government and citizen funded radio station, Radio Turks & Caicos, to do the same thing. The outcome was that both entities used a combination of deception and avoidance to ensure that this commentary did not take place. In the case of the people's radio station it was even more blatant, where the official in charge told me it could not be done because I was intending to say something about the govt. It is appalling that the people's money pay to run a station, but the govt officials and their yes men make sure that those same people get to hear nothing, or only what they want them to hear. How can we ensure corruption-free govt and accountability of elected officials when there is such a chokehold on free expression of opinion and ideas? How can the British govt allow this to continue? Is it not ridiculous that an overseeing FCO official can access our local media to say what a great selection had been made in this hiring, but when I, a citizen of that country, desire to comment on how atrocious the selection was, and how a supremely qualified T&C citizen had been thoroughly ignored in the selection process, I have limited avenues to do so?

Continuing on with the issue of freedom of expression, or more accurately the lack thereof. Members of your Foreign Affairs Committee were rather appalled at the political climate in T&C in regard to reluctance to expression for fear of intimidation, reprisal, and victimization. In fact one of members of your Committee likened the situation to China. Often it is argued that no one can provide proof of such corrupt behaviour. This argument gives ample cover to the perpetrators of these irregularities and the overseers, namely the FCO and their chosen Governor, who would rather pretend that nothing is amiss. What I am about to reveal is a personal incident that will leave no doubt about T&C Govt attempts to coerce, intimidate, bribe, and limit free speech. I do contract work with T&C Govt, providing Health Education presentations in the school system throughout the Islands. I have completed the second year of that contract, and it is up for renewal and adjustment next year. The Minister whose portfolio this project comes under asked for a copy of my contract so he could review it for renewal and adjustment. I provided it to him, and recently saw him in an informal setting where he pulled me aside and asked to speak with me privately. He told me he and his Cabinet reviewed the proposal and concluded that it was a very good project that was beneficial to T&C and its student population, and that they said they had no problem renewing and adjusting it provided that I tone down and stop writing and talking about them so much. It appeared they wished him to convey this message to me. When I asked him who specifically told him this he told me who they were. They are two of the most senior members in the T&C Govt, in which this Minister is a member. One of them sat in your Parliamentary Foreign Affairs Committee questioning period late last year and assured you that Turks & Caicos Govt was a shining example of transparency and boasted a total absence of corruption of any kind. This personal incident says otherwise. It is a clear cut case of an attempt to control, bribe, intimidate, violate right to free speech, and limit dissent. And it is not rumor. It is a personal encounter and involves a revelation by no less than a Minister of Cabinet in the Turks & Caicos Government. This incident flies in the face of all those who would have us believe all is well in T&C and that there is no need for investigation or a

Commission of Inquiry into the affairs of Turks & Caicos. In no way am I intimidated by this, nor would I dream of considering succumbing to the wishes of these pathetic individuals. I told that Minister to tell them as much. If anything, I am incensed at their audacity and deviousness. With that in mind, I am requesting that the FCO and, or, your Foreign Affairs Committee conduct an oral evidence interview with me on this matter. Not doing so would prove your Committee member right in concluding that we are not much different from what transpires in China. No Commission of Inquiry into governance in Turks & Caicos? This incident says otherwise.

When it comes to rights of protection of personal property, Turks & Caicos is a cesspool of cronyism, plagiarism, and a total disregard for the concept of intellectual property. The situation is sickening and epidemic, and needs to be immediately addressed. I know of three people in my immediate circle who, not very long ago, sent T&C Govt individual proposals for land or projects they wanted to undertake. In one case the T&C citizen assembled a venture capital group and approached T&C Govt with a profitable development proposal that had incorporated into its plan civic spin-offs for the community in which the development was proposed. When the Govt was approached with this project two Cabinet Ministers in particular attempted to undermine the citizen by telling his partners that they would be better off being aligned with themselves since, given their positions of influence, they could offer more incentives that would give the project a better chance of success. If this is not influence peddling and abuse of office then I don't know what is. Another individual in my circle discussed and provided a high grade and very worthwhile contract proposal to T&C Govt. Within weeks a family member of the Minister to whom the proposal was sent was on a T&C Govt contract conducting a program that uncannily fit the individual's proposal like a glove. In the third instance, a T&C citizen sent in a proposal requesting Crown Land outlining an upscale apartment building development project in a much sought after area in Providenciales. He never got a response on his proposal, but not long after a few cronies of a senior T&C Govt Minister were awarded the land to do an apartment building project that is a mirror image of what was submitted by this individual. What is more is that those awarded the land, unlike the individual in my circle, possess little in the way of business acumen. This last case is depressing and it involves someone in my immediate circle who, I must add, sent in their submission to you regarding their take on the state of governance in T&C. This individual is quite knowledgeable about livestock and animal rearing. They were in conversation with a family member who was trying to convince them to send in a proposal to T&C Govt for Crown Land for a particular livestock project that would prove very profitable. The individual agreed that the undertaking would prove quite lucrative but decided against it. His reasoning was that he was not prepared to labour over and send in such a proposal to T&C Govt only to have it ignored, but shortly thereafter see a Minister, or one of his friends or family, appear from nowhere doing a project that is a carbon copy of his submitted proposal. Such dependency is not good, and is bound to have a negative impact on the economic progress of T&C. It is all because of the sickening parasitic behaviour of T&C Govt and their total disregard for property, be it real or intellectual property. For such pathetic behaviour I will coin a special new phrase. "*Chronic vulturism.*" Yes. Chronic because it is an insidious and far-reaching problem. And "vulturism" because these elected officials and their cohorts seem to lack the ability to generate an original idea even if their lives depended on it. Yet as soon as any thoughtful and unsuspecting citizen provides them with an idea, insight, or intellectual property for approval they fall upon it like vultures in a free-for-all. It is appalling. If I could easily cite three cases of individuals in my immediate circle who have recently been impacted by this corrupt practice, then imagine how pervasive it must be in the wider environs of T&C society. This needs to be addressed. The standard bearers at the FCO touting tough new Crown Land policies and an upgrade to the Governor's position with a more qualified individual this time around are quite mistaken if they think such measures are the answer to this and other problems. There needs to be much more.

r) This matter of the hijacking of T&C citizens property by T&C Govt officials and their cronies is not new to the sitting government. It is entrenched and a hallmark of previous Administrations. The difference here is that, like everything else, this sitting gov't seems to have taken it to new heights and perfected it to an art form. This behaviour is detrimental to T&C in that it stifles the local entrepreneurship necessary for true development. In addition, because those cronies handed someone else's project on a silver platter had no ability to conceive a proposal of their own, it is highly unlikely that they will succeed with the hijacked intellectual property. The result is that their undertaking will fail. One has only to look at the high rate of Crown Land take backs and repossessions by financial institutions for project loan defaults in T&C to see that this is the outcome. This is not a good prescription for entrepreneurial progress and development in T&C. The British Govt needs to see to it that progressive and effective copyright laws are put in place to counter these prevalent practices in T&C. Laws are a good first step, but in T&C all too often laws are on the books but are never enforced. There are no consequences for breaking those laws. Penalties and legal action need to be enforced when such laws are broken.

In this matter a vibrant and effectively functioning Complaints Commissioner's office would go a long way in curbing this problem. If a citizen's intellectual property is appropriated by corrupt T&C Govt officials and awarded to family and friends, the wronged person should be easily able to file a complaint with this Complaints official. As it stands now that is next to impossible, given the fact that the current T&C local phonebook lists only a fax number but no phone number for the Complaints Commissioner. This is so feeble.



ISSUE No.4

p) Last month our neighbour, the Dominican Republic held their elections. I was amused to hear that one of the premier candidates approached T&C Govt, or possibly your own British Govt, about having their expatriate population in T&C, which by some estimates top 12,000, vote in T&C in absentee balloting that would count in their home country. I was amused by this because I and others have been proposing for years to have T&C citizens abroad vote in absentee balloting that would count in our home country's elections. The Dominican Republic is supposedly not as advanced and sophisticated as the more North American focused and Anglo Saxon raised possession called Turks & Caicos. Despite that these people are smart enough to realize their people abroad are an asset and should matter in important affairs in their country. T&C citizens abroad are allowed to vote in their country's elections only after fulfilling a 12 out of 24 month residency requirement in the Islands prior to election date. This is unexplainable. In a country with the small size of T&C where every vote should matter, their many citizens abroad are essentially barred from voting yet the British, who hold possession of T&C, allow themselves the ability to vote in absentee balloting. In the United States Iranian citizens, whose homes are halfway across the world, get to vote in their country's election by absentee balloting, as does the Iraqis. T&C is an hour and 20 minutes flying time from the US mainland but it is made impossible for their citizens to vote in their country's elections. This 12 of 24 month residency requirement for eligibility to vote in T&C is not a requirement. It is nothing more than a ridiculous impediment. Your British Govt in their call for information specifically asked for information from T&C citizens regarding human rights issues. This is most assuredly a human rights violation against segments of the T&C population.

r) This non-progressive 12 out of 24 month residency requirement needs to be changed immediately. If the British Govt can magically intervene in T&C law regarding homosexuality matters to make themselves, and their included entities, more acceptable as far as falling into OECD and EU guidelines, then they most surely can change the T&C voting residency requirement law so it can be in line with a lot of the world, while at the same time ensuring this basic right of their dependent territories T&C citizens.

ISSUE No.5

p) Often in T&C it is unclear on whose authority elected officials are making decisions. Decisions which all too often have far reaching implications. It was recently brought to my attention that the Provo Power Company, PPC, has suddenly and quietly been exempted from paying its standard \$100,000 duty cost per shipment of fuel delivery into T&C. This is strange. As far as I know there was no exhaustive Legislative Council debate on this matter. They routinely paid and then suddenly they were exempted without explanation. How can this company, the major electricity supplier to Providenciales, be suddenly exempted from paying such a substantial amount to our gov't Treasury without explanation. And this takes place as their rates to consumers continue to go through the roof, and as T&C Gov't raises revenue by soaking T&C citizens with increasing duties and licensing and service fees. Have Ministers been granted financial favors to make this happen?

r) T&C Gov't need to explain this change to its citizens. It seems illegal for this to have taken place without any Legislative Council discussion and debate. Such departures from procedure only serve to facilitate corruption and prove costly and ruinous to the citizens in general. We need to know how this exemption, a substantial amount in terms of T&C Treasury collectibles, was arrived at and by whom. A proper investigation incorporated into a Commission of Inquiry will shed much needed light on this matter and determine if, how, and by whom the people of T&C have been robbed of a substantial amount of their money.

ISSUE No.6

p) There needs to be comprehensive Electoral Reform in T&C. Individuals vying for political office can, on registering as a candidate to the Elections Commission, declare their net worth to be \$40,000, and within two years be reported to be worth millions. A current senior Minister in T&C Gov't actually did this. This is outrageous. And we wonder why there is so much rumors of corruption in T&C. There is a lack of oversight. Financial entities in T&C can throw money around to candidates and their parties to bring about the desired outcome for their business interests. And no one has to account for such windfalls. Such behaviour fosters a climate of corruption in such ventures as money laundering, narcotics trafficking and even human trafficking, to name a few. This negatively affects the social, moral, and financial well-being of the T&C populace, and often leads to a deterioration of law and order.

r) The Elections Commission in T&C should routinely require prospective election candidates to provide documents outlining financial statements, business affiliations and interests, a police record, and evidence of citizenship. Once provided the Elections Commission should then be able to pass this on to an agency that would be able to do an investigative check for any irregularities or omissions. If any are found that are not properly explained then this should impact the individual's ability to offer themselves as a candidate. Just prior to the election the candidates and their parties should once again submit financial statements of donations they have received and given. Donations received and given above a certain dollar amount should disclose the name of the donor or recipient. Below that amount should not require such disclosure. Then

somewhere halfway through the term of office this should be done again. In this way we would have some tool for keeping our elected officials free from corruption, conflict of interests, and manipulation and hijacking. Investigative entities in T&C are unable to carry out such an undertaking. This is where an agency like Scotland Yard could be very helpful in providing a presence or service to help with this. As it stands now it is a mismatch, where the party in power sells its influence for financial donations which allow them to win hands down while the other side, having little influence to offer, is woefully out of the running. The situation was the same when the other side was in power and enjoyed this privilege of influence. The result is distorted elections that, instead of reflecting the will and aspirations of the people, demonstrates the power of the dollar. This is not good for democracy and the people of T&C.

#### ISSUE NO.7

p) This closing section covers a roundup of some of the issues from my earlier submission that continue to fester at this time. T&C Belongships continue to be dispensed like candy at a kids convention by the British Overseer and Governor. The classified section of local newspapers displaying those being considered for approval has only expanded since your Foreign Affairs Committee initial call for submissions. The majority of them continue to be granted on the same baffling premise that the individuals applying have made significant economic and social contribution to T&C, even though the places they are coming from are notoriously economically and socially depressed. Of special note has been the appearance of the spouses of two T&C Govt Cabinet Ministers in the classified section, being considered for Belongship. This is appalling that, in the face of a British Govt call for submissions from T&C citizens on their concerns and opinions of good governance, the spouses of two Ministers are attempting to be granted a T&C privilege of Belongship, especially since this was one of the main issues of concern to your Parliamentary Foreign Affairs Committee. I did make my objections to this known to the FCO and their local Overseer in T&C.

Illegal Immigration continues to rage in T&C, as does legal Immigration where Ministers and their family and cronies, at a whim, get to import laborers from halfway across the globe whether or not there is a necessity for these laborers. These individuals almost never return home once their labor commitments are complete in T&C. This is creating a detrimental social and economic “stretched elastic band” effect on T&C society. The British Govt needs to promptly address this matter.

Since my earlier submission the leader of T&C, Mike Misick, is fending off allegations of rape by an American tourist. Though this remains only an allegation at this point in time, investigators from another country, namely American FBI agents, have been in T&C conducting forensic investigation into this matter. This allegation is not surprising and falls right in line with other excesses displayed by TC Govt elected officials in this current Cabinet. These excesses include documents showing Ministers awarding Crown Land to family and friends, sometimes repeatedly. They include a Minister listening to a job idea from a citizen, appropriating that idea and summarily creating such a position for a family member. They include a Minister travelling abroad with an inordinate sum of money far over and above the allowed limit, and being detained by American Customs authorities. They involve a Minister, the leader of T&C Govt, reported to have physically assaulted an Opposition member of T&C Govt, with the help of a foreign national, for doing nothing more than photographing his entry into the country. In the process the camera of Opposition member was illegally confiscated and later returned with the film erased. In all of these instances there have been no consequences as a result of these actions. In fact in the latter case the Attorney General concluded that the incident did not merit judicial action. With such unchecked behaviour is it any surprise that T&C citizens are now sharing in the embarrassment of the leader of their Govt being accused of, and investigated for rape allegations? This clearly points to a lack of accountability in T&C Govt. With little local checks and balances in place to deter wrongdoing, and with those in place reluctant to do so, what is there for these T&C Govt elected officials to fear? And with the overarching authority of the FCO and their local Overseer, the Governor, woefully inadequate in this area, what is there for them to be concerned about? The result is do-as-I-like elected officials that sooner or later bring national embarrassment to the country. This has to change.

The T&C Govt Opposition recently presented an Anti-Corruption Bill to the T&C Legislature. This Bill had stipulations and penalties that would go a long way to curb corrupt practices by elected officials. It is a mockery of what transpired. Because of their majority in Govt, the sitting party was unhindered in being able to water down just about every resolution making the Bill equivalent to a dog with no teeth. The British Govt needs to look immediately into this travesty if it is good governance you desire in T&C.

Not long ago I had reason to be in contact with the FCO on a matter related to T&C Govt and its Chief Auditor selection, and my disaffection with the process. I visited their website and was able to get contact information for two of their leading officials, Honourable MP David Miliband and Honourable MP Meg Munn, the latter heavily responsible for Overseas Dependent Territories that include T&C. I forwarded both of them emails describing my concerns in this matter. Imagine my consternation when I got back emails from both individuals saying my email had been sent to the wrong individuals who were MP's. It said that the email would not be sent anywhere but would be discarded. It was suggested that if I desired the FCO to get the email I should forward to an address which was provided and appeared to be an email pool of some kind. Responses from both individuals said the email address I had sent to was reserved for constituents of that MP's particular district in contacting them. In the case of Honourable MP David Miliband it requested that I provide my home address in his constituency of South Shields. I was quite put off by this response

and communicated as much to the person who sent me the notice. Here is his response in part: "It would be simpler for the Foreign Office to include an email address which went direct to them—they have been asked to do so." Clearly the respondent did not think much of the FCO system of contact either, and thought it needed fixing. This contact with the FCO clearly outlined how behind the times and ill-prepared they are to deal with issues crucial to Dependent Territories such as T&C, which they are charged with overseeing. It is inconceivable that top level officials such as Honourables Munn and Miliband, but especially the former, have special responsibility in their portfolio for matters relating to T&C, but when contacted they are inaccessible. In addition these "colonials" attempting contact are made to understand that they are outsiders who enjoy no such preferential treatment as members of the MP's constituency. Clearly they have little or no representation. This is despite the fact that these officials hold portfolios and are paid for their duties of overseeing matters in the Dependent Territories. How ridiculous. This is so antiquated, archaic, and antithetical to good governance. This FCO modus operandi is a throwback to colonial times in West Indian history where there existed a system of "absentee plantation ownership," in which the plantation owner retired to the European capitals of France and London for long periods at a time, fleeing the tropical inconveniences of heat, humidity, malaria, dengue fever and such, leaving Overseers to manage their holdings. I would venture a guess that many of those in the FCO charged with overseeing Overseas Territories have never even set foot on those territories. This means that your Parliamentary Foreign Affairs Committee can say that it is ahead of the FCO in this regard, since members of your group have gone to the Overseas Territory of T&C and taken oral evidence from its citizens. This interaction with the FCO does not show good governance by them, and indicates the need for drastic overhaul in the way they do business.

r) The breakneck speed of Belongership giveaways must stop. The fact that the spouses of two TC Govt Ministers suddenly submitted requests for Belongership as soon as your Committee began inquiries into T&C and as soon as there was news of recall of the Governor clearly shows the free-for-all nature of this enterprise, and an attempt to get in under the radar before things got tighter. The Governor, an extension of the British Govt, should not be doling out the T&C privilege of Belongership as his heart desires. There needs to be an immediate moratorium on this practice. This should be followed by a comprehensive overhaul of this system once we know how pervasive and deep-rooted it is. In order to know this we must conduct a Commission of Inquiry in Turks & Caicos.

The ongoing disaster of illegal Immigration is appalling. Despite FCO heads like Hon Meg Munn attempting to lay the blame at the feet of T&C, it must be stressed that, as a British colony, the territorial integrity, security, and protection of T&C is the responsibility of the British Govt. They need to promptly implement naval patrols to ensure this. If they can conduct regular air patrols at the end of the earth to protect their territory of the Falkland Islands, then why the neglect of the much closer territory of Turks & Caicos? Why the double standard?

The legal Immigration into T&C is having a detrimental effect across the board in T&C society. I will mention one effect that, believe it or not, has to do with Crown Land acquisition. A number of legal immigrants come to the Islands as contract employees of T&C Govt. In short order these individuals gain Belongership and then promptly apply for, and are awarded, Crown Land. This is absolutely appalling. Crown Land should be reserved for T&C indigenous citizens. With the explosion in immigration to T&C, coupled with the static birth rate of indigenous Islanders, this policy will quickly ensure that the indigenous T&C citizens become homeless at the expense of the new immigrants. In a recent local newspaper FCO official, Hon Meg Munn touted tough new Crown Land laws to be implemented in T&C. Does she even know of this particular insane Crown Land practice? I doubt it very much. She and her agency wants to put in new laws when they have no idea what laws have been circumvented, ignored, or the extent of abuse of those laws. This is not sound. A Commission of Inquiry is a must for any such new developments to work.

In the matter of excesses by elected officials, there needs to be more accountability, and checks and balances put in place in T&C. My discussion above of the office of Complaints Commissioner addresses this issue.

The watered-down fate of the Anti-Corruption Bill says a lot about transparency and accountability in T&C Govt. It is a travesty that the sitting govt, with its overwhelming majority, was able to render this Bill so inconsequential. Allowing this outcome to stand will indicate that the British Govt does not care one whit about good governance in T&C. The British need to either put implementation of this corruption-friendly modified Bill on hold pending further discussion and overhaul, or decree implementation of the original Bill in its entirety. If the British Govt can decree homosexuality laws on T&C to make itself more acceptable and in line with OECD and EU requirements, as they did some years ago, then the latter option should not be too difficult for them to pull off.

If it is truly good governance that is desired by the British for its Overseas Dependent Territories then the glaring first place to start is with the FCO. This agency is the authority charged with overseeing the affairs of these territories. However, their performance of this duty leaves a lot to be desired. By their own utterances they admit to being uninformed. Hear. Hear. Not only are they uninformed. They display a moribund and antiquated disposition, have poor lines of communication with the jurisdictions, and do not seem to answer to anyone, least of all the people who they supposedly oversee. This is seen quite clearly in their conclusion that no Commission of Inquiry is warranted in T&C, and one could only be carried out at the wishes of the Governor. The same Governor, their chosen Overseer, who they admitted kept them in the dark about events in T&C. Total nonsense. This is about T&C citizens and how they have been

victimized and abused by their leaders. They were allowed to do this because the ultimate overseers, the Foreign & Commonwealth Office, have not carried out their duties of oversight, such as implementing accountability and enforcement mechanisms so as to ensure good governance. As a result the territory is awash in corruption, victimization, lawlessness, reluctance to freely express opinion, and fear of reprisals. It is imperative that a Commission of Inquiry be conducted post haste if there is to be progress in this territory of Turks & Caicos. Thank you.

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**Letter to the Chairman of the Committee from Meg Munn MP, Parliamentary Under-Secretary of State**

As the Committee is aware, we have been negotiating a new constitution with the Falkland Islands over the last few months. This follows on from our commitment in the 1999 White Paper on the Overseas Territories to review constitutional frameworks across the Territories. A select committee on the constitution was subsequently set up in the Falkland Islands and it published its final report in May 2007.

I am pleased to be able to tell you that negotiations have taken place in a constructive and open way and that rapid progress has been made. As a result, I have just been able to agree a final draft Constitution Order with the Falkland Islands councillors which I believe is a good outcome for all involved. It enhances local democracy whilst retaining sufficient powers for the UK Government to protect UK interests and ensure the overall good governance of the territory.

Falkland Island Councillors will now begin a period of public consultation on the Islands, which will culminate in a debate in their Legislative Council. Assuming a resolution in favour, I will then be in a position to recommend the new Constitution Order to Her Majesty in the Privy Council in October.

In line with the commitment made by Jack Straw to Donald Anderson in 2002, I am therefore forwarding a copy of the draft Falkland Islands Constitution Order 2008 to you. Given the upcoming recess, I thought it was better to forward it to you at this point rather than to wait for final confirmation from the Falkland Islands Legislative Council that they have passed a resolution approving the order.

*17 June 2008*

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