



House of Commons
Foreign Affairs Committee

Overseas Territories

Seventh Report of Session 2007–08

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 18 June 2008*

Foreign Affairs Committee

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Conclusions and recommendations

Constitutional relationship

Constitutions

1. We welcome the Government's approach of encouraging Overseas Territory governments to take the lead in reviewing their constitutions and making proposals for reform. We recommend that the FCO should, as far as possible, hold negotiations and consultations with Territory governments on such proposals within the individual Territory concerned so that the process does not appear distant to the local population. We believe that the modernisation of constitutions could also be made more transparent if the FCO published criteria for deciding the degree of self-government that is appropriate for Overseas Territories and we recommend that it does so. We also recommend that the FCO continues to send us draft constitutional Orders in Council at least 28 sitting days before they are made. (Paragraph 30)
2. We conclude that Gibraltar's presence on the UN list of Non-Self-Governing Territories is an anachronism. We recommend that the Government continues to make representations to the UN about delisting the Territory and that it makes clear that it is only sending the UN progress reports on Gibraltar because it is obliged to do so. (Paragraph 41)
3. We conclude that there is a strong moral case for the UK permitting and supporting a return to the British Indian Ocean Territory for the Chagossians. We note the recent publication of resettlement proposals for the Outer Islands by Chagos Refugees campaigners. The FCO has argued that such a return would be unsustainable, but we find these arguments less than convincing. However, the FCO has also told us that the US has stated that a return would pose security risks to the base on Diego Garcia. We have therefore decided to consider the implications of a resettlement in greater detail. (Paragraph 69)
4. On Diego Garcia itself, we conclude that it is deplorable that previous US assurances about rendition flights have turned out to be false. The failure of the United States Administration to tell the truth resulted in the UK Government inadvertently misleading our Select Committee and the House of Commons. We intend to examine further the extent of UK supervision of US activities on Diego Garcia, including all flights and ships serviced from Diego Garcia. (Paragraph 70)
5. We recommend that British Overseas Territories Citizenship should be extended to third generation descendants of exiled Chagossians. We also recommend that the Government should provide more guidance to those Chagossians wishing to resettle in the UK. (Paragraph 74)
6. We conclude that the FCO did raise expectations that rights of property and abode would be granted to those who live and work on Ascension Island. We recommend that the FCO must make greater efforts to restore trust among the residents of the Island. In particular, we recommend that it should try to re-establish the Island Council as soon as possible. We further recommend that the FCO should work with

elected representatives to consider the potential contingent liabilities of a permanent base on Ascension Island, and means of reducing these liabilities, with the ultimate aim of granting rights of property and abode to residents. (Paragraph 82)

Consultation and representation

7. We recommend that Territory governments should be given an opportunity to pass on their opinions of the candidates for Governor before appointments are made. We welcome the appointment of local individuals as Deputy Governors in some Overseas Territories, but urge the FCO to ensure those appointed are not seen to be politically partisan individuals. (Paragraph 87)
8. We conclude that the annual Overseas Territories Consultative Council (OTCC) is a valuable event. However, since it is intended as a forum for Territory governments, they should be given more of a say about the way in which the OTCC is run. We recommend that the FCO consults Territory governments on the improvements they would like made to the OTCC and implements their suggestions. We also recommend that the FCO should consider ways of raising awareness of the OTCC within Overseas Territories, including, as far as possible, making papers tabled for the forum publicly available. We note that Overseas Territories' representatives reported that those issues raised in the OTCC which involved other Whitehall departments were least likely to be followed up and we recommend that the FCO continues to press other departments to take their responsibilities with regard to the Overseas Territories seriously. (Paragraph 98)
9. We recommend that the FCO urges Overseas Territory governments whose offices in the UK are less active to consider ways of raising their profile. The FCO should also encourage this by, when appropriate, making more use of official Territory government representatives, as well as Governors, to liaise with Territory governments. We recommend that the Government also ensures that all new officeholders in Overseas Territories appointed by or on the Government's recommendation are briefed by official Territory government representatives in the UK before they take up their posts. (Paragraph 105)
10. We conclude that the FCO's guidelines on treaties applying to Overseas Territories do not yet appear to be being followed by all of Whitehall and recommend that the FCO writes to remind other Government departments of their existence. We also recommend that the FCO should provide more drafting assistance to Overseas Territories for transposition of international agreements into local legislation. (Paragraph 111)
11. We conclude that it is disappointing that the UK did not properly engage with the government of Gibraltar about its concerns regarding the text of the Lisbon Treaty. We recommend that the FCO must ensure it takes Overseas Territories' interests into account in its relations with the EU. We further recommend that in its response to our Report the FCO sets out the mechanisms it has in place to ensure the Overseas Territories covered by the Overseas Association Decision are informed and consulted about EU legislation that affects them. (Paragraph 118)

12. We recommend that the Foreign and Commonwealth Secretary should consider with the Leader of the House and with representatives of the Opposition parties whether improvements can be made in the ways in which the views of those resident in the Overseas Territories can be made known in the UK Parliament. (Paragraph 126)
13. We are concerned that witnesses from Overseas Territories cannot at present be guaranteed protection against legal action or even intimidation or other abuse arising as a consequence of their giving evidence to select committee inquiries in the UK. We recommend that the Government should introduce legislation to extend the Witnesses (Public Inquiries) Protection Act 1892 to Overseas Territories, or as an alternative, that it should urgently require Overseas Territories to introduce equivalent legislation as a matter of good governance. (Paragraph 131)
14. We conclude that it is wrong for some Overseas Territories to have access to the benefits of International Olympic Committee (IOC) recognition while others do not. We recommend that the FCO should make representations to the IOC about recognition for all the UK Overseas Territories. (Paragraph 136)
15. We recommend that Overseas Territory government representatives from Bermuda, Gibraltar, the Falkland Islands and any other Territory wishing to do so should be permitted to lay a wreath at the Cenotaph on Remembrance Sunday. The Foreign Secretary should continue to lay a wreath on behalf of other Territories. (Paragraph 141)
16. We recommend that the Government should give consideration to whether it would be appropriate to support wider participation of Overseas Territories in Commonwealth meetings and conferences, including the Commonwealth Heads of Government Meeting. (Paragraph 144)

Governance

Allegations of corruption in the Turks and Caicos Islands

17. We are very concerned by the serious allegations of corruption we have received from the Turks and Caicos Islands (TCI). They are already damaging TCI's reputation, and there are signs that they may soon begin to affect the Islands' tourism industry. There is also a great risk that they will damage the UK's own reputation for promoting good governance. Unlike the Cayman Islands, where the Governor has taken the initiative in investigations, the onus has been placed on local people to substantiate allegations in TCI. This approach is entirely inappropriate given the palpable climate of fear on TCI. In such an environment, people will be afraid to publicly come forward with evidence. We conclude that the UK Government must find a way to assure people that a formal process with safeguards is underway and therefore recommend that it announces a Commission of Inquiry, with full protection for witnesses. The change in Governor occurring in August presents an opportunity to restore trust and we recommend that the Commission of Inquiry should be announced before the new Governor takes up his post. (Paragraph 196)

18. On 20 May we held a private meeting with Meg Munn to express our concerns about the allegations we had received during the course of our inquiry. (Paragraph 197)

Other Overseas Territories

19. We recommend that the Government should encourage the Anguillan government to establish an independent inquiry into allegations that Anguillan ministers accepted bribes from developers in the Territory. We also recommend that the Government should urge the Anguillan government to use the opportunity of constitutional review to introduce stronger anti-corruption measures in the Territory. (Paragraph 203)
20. We recommend that the Government sets out in its response to this Report the steps it has taken to ensure that allegations of corruption at the Bermuda Housing Corporation, in the issuing of contracts, and of electoral fraud in Bermuda are properly investigated. We also recommend that the Government should encourage the Bermuda government to strengthen its transparency measures, including by establishing an independent Electoral Commission and ending the practice of Committees of the House of Assembly sitting *in camera*. (Paragraph 214)
21. We recommend that the FCO should strongly encourage all Overseas Territories which have not yet done so to introduce freedom of information legislation. We also recommend that the FCO should review with Overseas Territories what steps they might take to improve their public accounting and auditing capability. We support the Public Accounts Committee's recent recommendations that the FCO should explore how Overseas Territories might make better use of UK expertise and that it should also explore whether those Territories with Public Accounts Committees could make more use of ex-officio members. (Paragraph 233)

Rule of law

22. We conclude that the FCO must ensure there are sufficient measures in place to prevent interference from either the Governor or the local government in judicial decisions in Overseas Territories. We recommend that the FCO should consider transferring the responsibility for Chief Justices' terms and conditions of employment to the Ministry of Justice. We also recommend that the FCO should consider whether judges in Overseas Territories would be less vulnerable to interference if they were on longer non-renewable contracts, with appropriate safeguards in case of incapacity, rather than on renewable short term contracts. (Paragraph 242)

Human Rights

23. We recommend that the Government should take steps to ensure that discrimination on the basis of sexual orientation or gender status is made illegal in all Overseas Territories. (Paragraph 260)
24. We recommend that the Government should closely monitor the conditions of prisoners, illegal immigrants and migrant workers in Overseas Territories to ensure rights are not being abused. (Paragraph 268)

25. We conclude that although extending voting rights to non-Belongers will be politically difficult for Overseas Territory governments, the Government should at least encourage local administrations to review this issue with regard to non-Belongers who have resided in an Overseas Territory for a reasonable period. We recommend that the Government should propose that non-Belongers' rights be an agenda item for the next OTCC. (Paragraph 275)
26. We recommend that the Government should encourage the Bermuda government to move away from conscription and towards the Bermuda Regiment becoming a more professional organisation, with voluntary and paid elements. We conclude that this could make serving in the Regiment more attractive, giving it the staffing resources required to extend into maritime duties. (Paragraph 285)

Environmental governance

27. We agree with the Environmental Audit Committee that the Government does not appear to have carried out any kind of strategic assessment of Overseas Territories' funding requirements for conservation and ecosystem management. We conclude that given the vulnerability of Overseas Territories' species and ecosystems, this lack of action by the Government is highly negligent. The environmental funding currently being provided by the UK to the Overseas Territories appears grossly inadequate and we recommend that it should be increased. While DEFRA is the lead Whitehall department responsible for environmental issues, the FCO cannot abdicate responsibility for setting levels of funding given its knowledge of Overseas Territories' capacity and resources. The FCO must work with other government departments to press for a proper assessment of current needs and the level of the current funding gap and then ensure increased funding by the Government through DEFRA, DFID or other government departments is targeted appropriately. (Paragraph 295)

Contingent liabilities

Regulation of offshore financial services

28. We recommend that the FCO should encourage Bermuda, the British Virgin Islands, the Cayman Islands, and Gibraltar to continue to make progress in improving financial regulation, in particular in arrangements for investigating money laundering. (Paragraph 311)
29. We are concerned by the National Audit Office's finding that the FCO has been complacent in managing the risk of money laundering in Anguilla, Montserrat and the Turks and Caicos Islands, particularly since these Territories are those for which the UK is directly responsible for regulation and therefore most exposed to financial liabilities. We agree with the Public Accounts Committee's recent recommendation that Governors of these Territories should use their reserve powers to bring in more external investigators or prosecutors to strengthen investigative capacity. (Paragraph 312)

30. We also recommend that the FCO should continue to work with DFID to introduce a financial services regulatory regime in St Helena that is appropriate to its local economy and development. (Paragraph 313)

Economic diversification in the Falkland Islands

31. We recommend that the FCO works with the Falklands Islands government and the Ministry of Defence to ensure that the future air service allows the Islands to develop their tourism industry. We also recommend that in its response to this Report the FCO states clearly what, if any, it considers the UK's entitlement would be in respect of potential oil and gas revenue from the Falkland Islands and from other Overseas Territories. (Paragraph 322)
32. We conclude that there are a number of issues to be considered, including cost, practicability, safety and environmental impact, before a decision can be taken on whether to carry out de-mining in the Falkland Islands. We therefore welcome the Government's announcement that it has sought an extension of the deadline to meet the UK's obligations under the Ottawa Convention. We recommend that the Government should discuss the results of its recent feasibility study with Falkland Islanders before coming to any decision about landmine clearance. (Paragraph 328)

Budgetary aid

33. We conclude that the building of an airport and related infrastructure on St Helena could be a significant step towards self-sufficiency for the Territory. However, we are concerned about the potential capital and maintenance costs of the project and we recommend that in its response to this Report the Government provides us with figures to demonstrate that it has selected the most cost-effective option for bringing St Helena off dependency on aid. We also recommend that the Government encourages St Helena's government to include affordable housing in its Sustainable Development Programme and that it sets out in its response what action it has taken with regard to allegations of poaching in St Helena's territorial waters. (Paragraph 342)
34. We recommend that the Government should focus funding on infrastructure in Montserrat on those areas that are most likely to assist the development of tourism on the island. (Paragraph 348)
35. We recommend that the Government should ensure that Pitcairn residents are informed and consulted on proposals for the Island's economic development. (Paragraph 353)
36. We welcome the Government's swift provision of emergency assistance to Tristan da Cunha following harbour damage and an outbreak of illness on the Island. We recommend that the Government continues to provide funding for projects on Tristan da Cunha, focusing on projects that will promote greater self-sufficiency. We also recommend that the FCO makes representations to China to try to open UK-China trade agreements to the sale of Tristan lobster. (Paragraph 360)

Illegal immigration

37. We recognise that immigration policy is a matter devolved to the Turks and Caicos Islands (TCI), but we conclude that given the scale of illegal immigration of Haitians into the Territory the FCO should accept greater responsibility for tackling the issue. We recommend that the FCO should provide a regular Royal Navy presence in TCI's coastal waters to assist with patrols and that it should consider with the Haitian government what further measures could be taken by the Haitian and UK governments in cooperation with each other to prevent Haitians leaving by boat to enter TCI illegally. (Paragraph 374)

Regulation of civil aviation

38. We agree with the Public Accounts Committee that the UK Government should not fund aviation regulation in Territories that are able to pay for this service. However, we recommend that the FCO must ensure that it responds to Territory government criticisms of the designated regulator before moving to charging for the service. (Paragraph 377)

Sovereignty disputes

Falkland Islands

39. We conclude that when the visit by President Kirchner to the UK is rearranged the Government must use this opportunity to raise issues of concern to the Falkland Islands. In particular we recommend that the Prime Minister calls for an end to Argentina's obstruction in relation to use of its airspace and that he also highlight potential logistical issues if Argentine families are allowed to fly in to visit graves. We also recommend that the Prime Minister should press the Argentine President to agree to the establishment of a Regional Fisheries Management Organisation for the South West Atlantic and reiterate the Islands' right to develop a hydrocarbon industry. (Paragraph 386)

Gibraltar

40. We welcome the Cordoba Agreement and the progress being made on cooperation between Gibraltar, Spain and the UK in the Trilateral Forum. We note that the pensions settlement which was part of the Agreement was costly for the UK, but we welcome an end to the "pensions scam" and the removal of other potential liabilities on the UK. We recommend that the Government continues making strong representations to Spain and within NATO at the highest level about the unacceptability of Spain's continuing restrictions on direct naval, army and airforce movements or military communications between Spain and Gibraltar. We further recommend that the Government continues to make strong representations to Spain about its failure to recognise Gibraltar's territorial waters and its objections to international conventions being extended to Gibraltar. (Paragraph 414)

British Indian Ocean Territory

41. We conclude that any resolution to the UK's sovereignty dispute with Mauritius over the British Indian Ocean Territory must take Chagossians' wishes into account. (Paragraph 419)

Seabed claims

42. We conclude that the Government was right to submit a claim to the UN Commission for the Limits of the Continental Shelf for the seabed around Ascension Island. We recommend that the Government should submit a similar claim for the continental shelf around the Falkland Islands and South Georgia and the South Sandwich Islands. We also recommend that the Government should in its response to this Report state its current policy on seabed claims in relation to the continental shelf around the British Antarctic Territory. (Paragraph 427)

HMG's overall approach to the Overseas Territories

43. We conclude that the Government has acted decisively in some Overseas Territories, for example in the investigations and prosecutions that took place on the Pitcairn Islands. However, in other cases which should also cause grave concern, in particular, allegations of corruption on the Turks and Caicos Islands, its approach has been too hands off. The Government must take its oversight responsibility for the Overseas Territories more seriously – consulting across all Overseas Territories more on the one hand while demonstrating a greater willingness to step in and use reserve powers when necessary on the other. (Paragraph 437)
44. We also conclude that the choice of Governor for a Territory, and the levels of training and support they are given, are crucial. We welcome the recent upgrading of the Governor post in the Turks and Caicos Islands. We recommend that the FCO should give consideration to opening up appointments of Governors more frequently to candidates outside the diplomatic service. We also recommend that the Director of the Overseas Territories Directorate should become a more senior post. (Paragraph 438)
45. Finally, the Committee concludes it is deplorable and totally unacceptable for any individual who has assisted the Committee with its inquiry to be subjected to threats, intimidation, or personal sanctions or violence in any form. If the Committee is informed of any such retaliatory measures being taken against any person who has submitted formal or informal evidence to this inquiry, it will take all appropriate steps within its powers. (Paragraph 439)

citizens of Overseas Territories; the appointment of a FCO minister with specific responsibility for the Overseas Territories; the establishment of the Overseas Territories Consultative Council (an annual forum in London for heads of Territory governments); and the extension of the “home” university tuition fee rate to all Overseas Territories students wishing to study in the UK.

3. In July 2007 we decided that another Foreign Affairs Committee inquiry into the Overseas Territories was overdue. We resolved to inquire into the FCO’s exercise of its responsibilities in relation to the Overseas Territories and its achievements against its then Strategic Priority No. 10, the security and good governance of the Overseas Territories,⁴ and announced the following terms of reference:

- 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; and
- relations between the Overseas Territories and the United Kingdom Parliament.

4. We received over 200 written submissions. Many of these are published with this Report, but a significant proportion of submissions have been treated in confidence.⁵ We are very grateful to everyone who contributed evidence to our inquiry. We also held five oral evidence sessions. In December 2007 we heard evidence from all the representatives of Overseas Territory governments who had travelled to London for the Overseas Territories Consultative Council, with the exception of Bermuda. We would like to thank Hon Osbourne Fleming, Chief Minister, Anguilla, Hon Ralph O’Neal, Premier, British Virgin Islands, Hon Kurt Tibbetts, Leader of Government Business, Cayman Islands, Councillor Mike Summers OBE, Member of the Legislative Council, Falkland Islands, Dr Hon Lowell Lewis, Chief Minister, Montserrat, Mr Leslie Jaques OBE, Commissioner, Pitcairn Islands,⁶ Hon Brian W. Isaac MLC, Member of the Executive Council, St Helena and Dr Hon Michael E Misick LLB, MLC, Premier, Turks and Caicos Islands, for appearing before us.

⁴ During the course of our inquiry, the FCO replaced its ten Strategic Priorities with a new strategic framework. The new framework’s four policy goals do not make specific reference to the FCO’s responsibilities with regard to the Overseas Territories.

⁵ See paras 127 to 131, Chapter 2 for further discussion of our reasons for doing so.

⁶ Mr Jacques is not an elected representative, but a Commissioner appointed by the FCO to play an intermediary role between the Governor (who is also High Commissioner to New Zealand) and Pitcairn’s Island Council.

We are also grateful to our other witnesses: Louis Olivier Bancoult, leader, and Richard Gifford, legal representative, Chagos Refugees Group; Hon Joe Bossano MP, Leader of the Opposition, Gibraltar; Hon Peter Caruana QC, Chief Minister, Gibraltar; Mr. Jim Murphy MP, Minister for Europe, James Sharp, Head of Western Mediterranean Group, and Ivan Smyth, Legal Adviser, FCO; and Meg Munn MP, Parliamentary Under-Secretary of State, Leigh Turner, then Director, Overseas Territories Directorate, and Susan Dickson, Legal Counsellor, FCO.

5. In March 2008 we visited four Overseas Territories. We divided into three groups: one delegation visited Bermuda; the second group went to the Cayman Islands and the Turks and Caicos Islands; and the third group visited the Falkland Islands, with a brief stop on Ascension Island. The discussions we had on our visits were very useful and we are grateful to our interlocutors for taking the time to meet us. Full details of our programmes are listed in Annex 1.

6. Our Report is split into two parts. Part One is thematic. We consider the Overseas Territories' constitutional relationship with the UK, including the process of modernising their constitutions and the extent to which they are consulted and represented by the UK on issues that affect them. We also examine the quality of governance in the Territories; the FCO's management of the potential liabilities to which the Territories expose the UK; and progress on resolving sovereignty disputes. Finally we draw conclusions on the Government's overall approach to the Overseas Territories.

7. In Part Two we consider each of the Overseas Territories individually. We summarise their geography, history and constitutions. We also outline the evidence received from each Territory in our inquiry, and highlight relevant recommendations from Part One of our Report. We hope Part Two will be a useful reference point for both the reader unfamiliar with the individual Overseas Territories and for the reader wishing to find all our recommendations on a particular Territory in one place.

8. Our Report is published two months after the Public Accounts Committee reported on the FCO's management of risk in the Overseas Territories,⁷ following a report by the National Audit Office on this issue.⁸ While our Report has a wider focus, we have found the Public Account Committee's and National Audit Office's reports very helpful in informing our thinking on this particular aspect of the UK's relationship with the Overseas Territories.

⁷ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176

⁸ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4

PART ONE

2 Constitutional relationship

9. The Overseas Territories are not constitutionally part of the United Kingdom. They have separate constitutions set out in Orders in Council. All have Governors or Commissioners.⁹ Appointed by Her Majesty the Queen, a Governor's role is to represent the Queen in the Overseas Territory,¹⁰ as well as to represent the Territory's interests to the UK Government.¹¹ The work also brings direct responsibilities for public services. Other key aspects of the job include chairing the Executive Council or Cabinet in most Territories; making a range of public appointments; and explaining HMG's policies to the Territories.¹²

10. Most Overseas Territories have elected governments. These have varying degrees of responsibility for domestic matters, ranging from Bermuda and Gibraltar which have almost complete internal self-government to Tristan da Cunha and the Pitcairn Islands, where the Governor is the law-making authority and there are only advisory councils. In the majority of Territories the Governor has special responsibility for defence, external affairs and internal security (including the police, the public service, and administration of the courts). In Anguilla, Montserrat and the Turks and Caicos Islands the Governor also has special responsibility for financial services. In St Helena the Governor is responsible for finance and shipping.¹³

11. The majority of Overseas Territories' constitutions also provide the UK with certain reserve powers. 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.¹⁴ In most Territories, the Governor also has certain reserve powers, although he must usually first consult or be instructed by a Secretary of State before exercising these powers.¹⁵

12. In 1999 the Government published a White Paper, which set out a "new partnership" between Britain and its Overseas Territories, based on four principles:

- self-determination, with Britain willingly granting independence where it is requested and is an option;

⁹ The British Indian Ocean Territory, the British Antarctic Territory and South Georgia and the South Sandwich Islands have Commissioners rather than Governors. The Commissioner of the British Indian Ocean Territory and the British Antarctic Territory is the Director of the Overseas Territories Directorate in the FCO. 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.

¹⁰ Ev 296

¹¹ Ev 144

¹² Ev 171

¹³ Ev 144

¹⁴ Except Bermuda for which the UK may only legislate by Act of Parliament, or by Order in Council under an Act of Parliament.

¹⁵ Ev 144

- responsibilities on both sides, with Britain pledged to defend the Overseas Territories, to encourage their sustainable development and to look after their interests internationally, and in return expecting the highest standards of probity, law and order, good government and observance of Britain’s international commitments;
- the Overseas Territories exercising the greatest possible autonomy; and
- Britain providing continued financial help to the Overseas Territories that need it.¹⁶

13. In this Chapter we consider two different aspects of the UK’s constitutional relationship with its Overseas Territories. First we consider the constitutions themselves. We look at progress on modernising Territory constitutions, examining the Government’s approach to and the extent of parliamentary scrutiny of such reform. We consider the Government’s policy towards Overseas Territories that might wish to proceed to independence and we examine the Government’s obligations to the Overseas Territories under the United Nations Charter, considering whether Gibraltar’s presence on the UN’s list of Non-Self-Governing Territories is appropriate given its new constitution. We also discuss two special cases - the British Indian Ocean Territory and Ascension Island – whose future constitutional status remains uncertain. Second, we consider the extent to which Overseas Territories are consulted and represented by the UK on issues that affect them, including consultation on Governor appointments and international agreements, the work of the OTCC, and relations with the European Union and the UK Parliament.

Constitutions

Modernisation

Progress on constitutional reforms

14. The 1999 White Paper noted that many Overseas Territories believed that their constitutions needed to be kept up to date and stated that the UK Government would carefully consider any specific proposals from Territory governments to modernise their constitutions.¹⁷ This marked a major shift in approach. Previously, the Government had driven constitutional reviews and reforms, often through constitutional commissions it had appointed.¹⁸ Overall, the UK Overseas Territories Association (UKOTA) told us that the constitutional reviews were “a huge step”. It also added that FCO policy and legal teams had “worked well” with Overseas Territory governments and that there had been “extensive public consultation”.¹⁹

15. Since 1999, new constitutions have come into force in the British Virgin Islands (June 2007), Gibraltar (January 2007), and the Turks and Caicos Islands (August 2006). In the British Virgin Islands (BVI) a local Constitutional Reform Commission published a report

¹⁶ Foreign and Commonwealth Office, *Partnership for Peace and Prosperity: Britain and the Overseas Territories*, Cm 4264, March 1999, p 4

¹⁷ Foreign and Commonwealth Office, *Partnership for Peace and Prosperity: Britain and the Overseas Territories*, Cm 4264, March 1999, para 2.7

¹⁸ Ev 144

¹⁹ Ev 88

after wide public consultation. This was followed by four rounds of talks between the FCO and BVI to agree a draft constitution. The draft was then published for further public consultation, before being debated and approved by BVI's Legislative Council.²⁰ The Premier of BVI, told us that although some further amendments might have to be made to the constitution, the majority of people were satisfied with what had been achieved.²¹ He welcomed the fact that the responsibility for preparing the new constitution had been given to BVI's government²² and described the negotiation process as "very good" and "really [...] one where people throughout the Territory were consulted", adding that three of the four sessions of talks were held in BVI.²³

16. In Gibraltar the constitutional reform process was initiated by a report by a select committee of the then House of Assembly in 2002. There were three rounds of negotiations, which were followed by a referendum.²⁴ The government of Gibraltar told us that its talks with the UK were "lengthy, but constructive and business like (and most often consensual)".²⁵ The Chief Minister of Gibraltar described the final constitution as "a win-win-win" for Gibraltar.²⁶

17. In the Turks and Caicos Islands (TCI) a report by a local Constitutional Review Body in 2002 was also followed by three rounds of negotiations. Both TCI's government and its opposition were invited to attend the third round of talks in London, but the opposition decided not to attend.²⁷ After further public consultation, the Legislative Council debated and approved the new constitution.²⁸ One individual from TCI told us that "insufficient public input, limited discussion time and opportunity for meaningful contribution" had resulted in "a mediocre document [...] wherein the substantive changes were simply changes in official titles and the substitution of the Chief Secretary' position with that of the Deputy Governor."²⁹ TCI's Premier, told us that the new constitution was "working", but that more autonomy should have been granted to TCI's government, including an end to the practice of the Governor chairing the cabinet and the devolution of regional aspects of external affairs.³⁰ We consider the extent of self-government that is appropriate for TCI further in Chapter 3.

18. The process of constitutional modernisation has been slower in other Overseas Territories. In Anguilla a Constitutional and Electoral Reform Committee was appointed in 2002, but did not complete its work. A new Constitutional and Electoral Reform

²⁰ Ev 144

²¹ Q 10

²² Ev 220

²³ Q 10

²⁴ Ev 144

²⁵ Ev 296

²⁶ Q 226

²⁷ "Turks and Caicos Islands Conclude Successful Constitutional Modernization Talks", Foreign and Commonwealth Office press release, 10 April 2005

²⁸ Ev 144

²⁹ Ev 168

³⁰ Q 77

Commission was established in 2005 and published a report in August 2006.³¹ A first round of discussions with the FCO was due to take place in July 2007, but this was postponed at the request of the Chief Minister who wanted more time for public consultation.³² In December 2007, the Chief Minister told us that he hoped that constitutional talks would restart in January in London this year.³³ However, they had not yet commenced by May.³⁴ The Chief Minister explained to us that one of the things he was calling for was a fifth minister since, he argued, four ministers could no longer “carry the burden” of a Territory “progressing as rapidly as Anguilla.”³⁵ We also received evidence calling for anti-corruption measures to be enshrined in or introduced at same time as the new constitution (see para 201, Chapter 3).³⁶

19. In the Cayman Islands a local Constitutional Review Commission proposed a draft new constitution in 2002, but talks were put on hold in 2004 pending elections that year. A new constitutional review programme began in March 2007 and the Cayman Islands government published a consultation paper on its proposals for constitutional reform in January 2008. The Leader of Government Business told us that FCO officials had indicated that they were willing to work with the Cayman Islands government at its own pace.³⁷ Revised proposals were published in May 2008 and a referendum on them is due to be held in July, despite opposition criticisms that this gives insufficient time for public education.³⁸ If the government receives a mandate in the referendum it will then begin negotiations with the FCO. During our visit to the Cayman Islands a number of interlocutors questioned why previous talks had taken place in London, arguing that this had distanced the local population from the process.

20. In the Falkland Islands, constitutional review has been led by a select committee of the Falkland Islands Legislative Council. After wide public consultation, the Committee published a report in May 2007 which made a number of recommendations for reform. The Council’s memorandum stated that there had been “little controversy in the review, and not a huge amount of public interest.”³⁹ Councillor Mike Summers told us that he hoped the Committee’s recommendations would be implemented during 2008 and that the first round of negotiations was taking place in the Falkland Islands.⁴⁰ A second round of talks took place in Stanley in February 2008.⁴¹ On 17 June the FCO informed us that it had just agreed a final draft Constitution Order with the Falkland Islands councillors.⁴²

³¹ Ev 247

³² Ev 144

³³ Q 85

³⁴ HC Deb, 9 May 2008, col 1245W

³⁵ Q 68

³⁶ Ev 274

³⁷ Q 9

³⁸ “Referendum in July”, *Caymanian Compass*, 22 May 2008

³⁹ Ev 85

⁴⁰ Q 50

⁴¹ HC Deb, 29 February 2008, cols 2023-2024W

⁴² Ev 373

21. In Montserrat, a Constitutional Review Commission produced a report in 2003, after wide consultation both in Montserrat and its expatriate communities. Since then there have been four rounds of talks, without final agreement. In its written submission, sent to us in October 2007, the FCO told us, “A large measure of agreement has been reached, but some difficult issues remain to be resolved.”⁴³ In December 2007, the Chief Minister told us that further progress had been made and that he hoped it would be possible to come to an agreement over remaining differences by summer 2008.⁴⁴

22. In St Helena, Legislative Councillors made proposals for a new constitution in 2003, on the basis of advice from a barrister funded by the Commonwealth Secretariat. The principles for a new constitution were then agreed with the FCO and a draft new consultation was published. However, the results of a consultative poll on the proposed introduction of ministerial government were negative.⁴⁵ Hon Brian Isaac, Member of St Helena’s Executive Council, told us that the constitution was likely to be reviewed again and that he expected the issue of reform to rise “very high on the agenda” in St Helena within the next couple of years.⁴⁶

23. The FCO did not initially notify us of any constitutional developments in the Pitcairn Islands in its evidence to our inquiry.⁴⁷ However, the Commissioner of Pitcairn, told us that one of his roles was to take forward restructuring “to devolve operational responsibility” to Pitcairn and said he was consulting “very widely” with the local community as part of that process.⁴⁸ We received evidence from a Pitcairn resident, Kari Boye Young, who confirmed that the Commissioner had been consulting on a new charter/constitution for the Islands. Mr Young criticised the fact that the new text had been presented to the Island Council in a closed meeting, adding:

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.⁴⁹

Mr Young also told us that Pitcairn had been ignored in previous consultations, such as on the 1999 White Paper, and that the only HMG presence had been during Operation Unique (see Chapter 3, paras 243 and 244).

24. No progress has been made in modernising constitutions in any of the other Overseas Territories.⁵⁰ Bermuda already has a high degree of self-government and we consider

⁴³ Ev 144

⁴⁴ Qq 83-84

⁴⁵ Ev 144; A resident of St Helena also told us that the constitutional proposals were unsuccessful because the draft constitution’s human rights chapter did not include a right to nationality (Ev 311).

⁴⁶ Qq 41-42

⁴⁷ Ev 144

⁴⁸ Q 31

⁴⁹ Ev 133

⁵⁰ Except Bermuda, whose government established a Constituency Boundaries Commission in 2001. This led to amendments to the constitution in 2003 which replaced the previous system of dual-member constituencies with single-member constituencies.

prospects for its independence later in this chapter. We also consider the constitutional statuses of the British Indian Ocean Territory and Ascension Island separately below.

Negotiating criteria

25. Almost all Overseas Territories governments told us that they had sought or were seeking a greater degree of self-government in their negotiations on constitutional reform.⁵¹ For example, the Leader of Government Business in the Cayman Islands argued:

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.⁵²

The Chief Minister of Montserrat told us that his government sometimes felt that the system was “undemocratic” and the relationship “humiliating”.⁵³

26. We asked Meg Munn and the then Director of the Overseas Territories Directorate, Leigh Turner, what criteria they applied when negotiating with Overseas Territory governments about their proposals for constitutional reform. Neither response suggested that the FCO had publicly available criteria which it applied consistently. The Minister outlined a number of “key issues” that the FCO would take into account including “the size of the Territories themselves, their capacity and what the people of the Territories want to see in terms of their constitution.” She also stated that the FCO would not give up responsibilities where it had legal obligations: “international obligations, defence and, broadly, security”.⁵⁴ Mr Turner told us that the FCO would also consider “specific instances”:

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.⁵⁵

Parliamentary scrutiny

27. Most of the Orders in Council setting out Overseas Territory constitutions are made under statutory powers. The relevant statute for the Caribbean Overseas Territories (except Anguilla because of its then association with St Kitts and Nevis) is the West Indies Act 1962, which was enacted to provide a new governing framework for those Territories in the Caribbean which did not want to go for self-rule. For Anguilla it is the Anguilla Act 1980 and for Bermuda it is the Bermuda Constitution Act 1967. The statutory powers to make Orders in Council for Ascension Island, the British Antarctic Territory, the Falkland Islands, Pitcairn, South Georgia and the South Sandwich Islands, and Tristan da Cunha are

⁵¹ Q 3 and 6 [Hon Kurt Tibbetts], Q 31 [Mr Leslie Jaques], Qq 41 – 42 [Hon Brian Isaac], Q 68 [Hon Osbourne Fleming], Q 70 and 71 [Dr Hon Lowell Lewis], Q 71 and 77 [Dr Hon Michael Misick], Ev 85 [Falklands Legislative Council], and Q 226 [Hon Peter Caruana QC]. BVI was the only Overseas Territory which did not do so.

⁵² Q 3

⁵³ Q 70

⁵⁴ Q 261

⁵⁵ Q 262

contained in the British Settlements Acts 1887 and 1945. For St Helena it is the St Helena Act 1833 (formerly entitled Government of India Act 1833) and for the Sovereign Base Areas of Akrotiri and Dhekelia it is the Cyprus Act 1960.

28. All of the constitutional Orders in Council made under statutory powers, except those made under the Anguilla Act and the Cyprus Act, must be laid before both Houses of Parliament after being made. The Orders in Council for Gibraltar and the British Indian Ocean Territory are made in exercise of the Royal Prerogative and are therefore not subject to any parliamentary procedure.⁵⁶

29. In 2002, the FCO agreed to send draft Orders in Council on Overseas Territory Constitutions to our Committee before they were made, preferably not later than 28 sitting days before, except on those occasions which it deemed “inappropriate”: “occasions of urgency or where confidentiality is imperative”.⁵⁷ We received copies of the draft new constitutions for the Turks and Caicos Islands (in June 2006), Gibraltar (on 30 October 2006), and the British Virgin Islands (on 28 April 2007).⁵⁸ However, our predecessor Committee was not given an opportunity to comment on draft constitutional Orders for the British Indian Ocean Territory, which were made in 2004, the Government arguing that this was a case where it could not follow the agreed procedure “because the sensitivity of the issue meant that confidentiality was imperative until the measures were taken”.⁵⁹ We discuss the introduction of these Orders further separately below.

30. We welcome the Government’s approach of encouraging Overseas Territory governments to take the lead in reviewing their constitutions and making proposals for reform. We recommend that the FCO should, as far as possible, hold negotiations and consultations with Territory governments on such proposals within the individual Territory concerned so that the process does not appear distant to the local population. We believe that the modernisation of constitutions could also be made more transparent if the FCO published criteria for deciding the degree of self-government that is appropriate for Overseas Territories and we recommend that it does so. We also recommend that the FCO continues to send us draft constitutional Orders in Council at least 28 sitting days before they are made.

Independence

31. Since the 1999 White Paper no Overseas Territory government has opted for independence. None of the evidence we received from citizens of Overseas Territories showed a real interest in breaking links with the UK in the short term.⁶⁰

32. Bermuda is the only Overseas Territory whose government favours independence. A referendum on the issue was last held in 1995, and of the 58% of the electorate who

⁵⁶ Ev 144

⁵⁷ Foreign Affairs Committee, Twelfth Report of Session 2001-02, *Foreign and Commonwealth Annual Report 2002*, HC 826, Ev 112 and Ev 144

⁵⁸ We also received an amendment to the draft constitution for the British Virgin Islands in June 2007 (Ev 68).

⁵⁹ Foreign Affairs Committee, *Overseas Territories: Written Evidence*, HC (2004-05) 115, Ev 3

⁶⁰ The only such submission, from the Free Montserrat United Movement, called for independence as an “ultimate” goal (Ev 267).

participated (the now ruling Progressive Labour Party (PLP) boycotted the vote), over 73% voted against independence, while only 25% voted in favour. An opinion poll carried out in July 2007 showed 63% opposed to independence, 25% in favour and 12% undecided. In 2004, the then leader of the PLP established the Bermuda Independence Commission to investigate the issue and possible mechanisms for arriving at independence. The Commission's conclusion was neutral on whether the independence could be achieved via a referendum or could result from an election victory, stating that it was "incumbent upon both political parties to share the merits of each method".⁶¹

33. Bermuda's opposition has argued that independence should only be via a referendum.⁶² An individual Bermudian, Antony Siese, also told us that the Bermuda government's attitude was one of "we know best so you take what we give you". He argued:

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.⁶³

34. We asked Meg Munn whether an Overseas Territory could ever be granted independence without a referendum in that Territory. She told us that the Government's "preferred route" was a referendum, but that other mechanisms, such as the election by a "clear" majority of a political party with a manifesto commitment to pursue independence, might be acceptable.⁶⁴ We probed this further, asking the Minister whether she would consider the election of a party by a tiny majority in low turnout elections to be sufficient. She replied:

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 per cent. of the vote, that would be a different situation from the scenario that you have described.⁶⁵

We welcome this assurance.

Decolonisation

35. Article 73 of the United Nations Charter sets out various binding responsibilities⁶⁶ on Territory-administering powers, including the UK. One of these is to develop self-government in the Territories, taking into account the political aspirations of their peoples. In 1960 the UN General Assembly adopted a Declaration on decolonisation⁶⁷ which called for steps to be taken to transfer all powers to Territories. A resolution was approved⁶⁸

⁶¹ Bermuda Independence Commission, *Report of the Bermuda Independence Commission*, August 2005, p 6

⁶² Ev 270

⁶³ Ev 292

⁶⁴ Q 270

⁶⁵ Q 272

⁶⁶ Above all, the principle that the interests of Territory inhabitants are paramount.

⁶⁷ The Declaration on the Granting of Independence to Colonial Countries and Peoples

⁶⁸ Resolution 1541 (XV)

which set out only three legitimate options for complete self-government: free association with an independent state; integration into an independent state; or independence. In 1962 the Assembly established the Special Committee on Decolonisation, known as the Committee of 24, to monitor and make recommendations on the implementation of the Declaration on decolonisation.⁶⁹

36. Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, Pitcairn, St Helena, and the Turks and Caicos Islands are the UK Overseas Territories on the UN's list of Non-Self-Governing Territories. We did not receive representations about their presence on this list from any Territory government except Gibraltar.

37. Gibraltar's Chief Minister described Gibraltar's new constitution to us as "maximising 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."⁷⁰ Therefore, he argued, the UN's delisting/decolonisation criteria needed to be updated "to reflect the realities" of a "modern relationship [...] with which both are content, and which [...] is not colonial in nature."⁷¹

38. The Leader of the Opposition in Gibraltar, argued that the Second Preamble of the new constitution should have included wording to the effect that the constitution was an act of self-determination which provided for the maximum level possible of self-government.⁷² (The Preamble states that the constitution gives the people of Gibraltar "that degree of self-government which is compatible with British sovereignty of Gibraltar and with the fact that the UK remains fully responsible for Gibraltar's external relations".) He criticised the UK Government for supporting the December 2007 resolution at the UN General Assembly on Gibraltar, which did not mention decolonisation.⁷³ He also argued that the UK should have told the UN that it would no longer be sending progress reports on Gibraltar to the UN since the Territory had already exercised its right to self-determination.⁷⁴

39. However, the government of Gibraltar's submission argued that under the UN Charter and procedures, the UK was obliged to continue submitting progress reports until the UN Assembly voted to remove Gibraltar off the list of Non-Self-Governing Territories. It only

⁶⁹ www.un.org

⁷⁰ Q 226

⁷¹ Ev 296

⁷² Ev 233

⁷³ "The General Assembly, recalling its decision 61/522 of 14 December 2006 and the statements agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland in Brussels on 27 November 1984, and in Madrid on 27 October 2004, and noting the establishment, pursuant to the latter, of the tripartite Forum of Dialogue on Gibraltar, separate from the Brussels Process, under the statement made jointly by the Governments of Spain, the United Kingdom and Gibraltar on 16 December 2004: (a) Urges both Governments, while listening to the interests and aspirations of Gibraltar, to reach, in the spirit of the 27 November 1984 statement, a definitive solution to the question of Gibraltar, in the light of relevant resolutions of the General Assembly and applicable principles, and in the spirit of the Charter of the United Nations; (b) Welcomes the successful outcome of the first package of measures concluded at the tripartite Forum of Dialogue on Gibraltar." (62/523)

⁷⁴ Q 192

asked the UK to make clear when submitting the reports that it was doing so for this reason.⁷⁵

40. Jim Murphy MP told us that Gibraltar’s categorisation as a Non-Self-Governing Territory was a “colonial description” which did “not reflect the modern reality of Gibraltar”.⁷⁶ We asked the Minister for Europe what the Government was doing to get Gibraltar de-listed. He told us that the Government would continue to argue through the UN for a move away from the UN process. He added that “Spain’s voice” was “important” in this.⁷⁷ (We examine the UK’s sovereignty dispute with Spain over Gibraltar further in Chapter 5.)

41. We conclude that Gibraltar’s presence on the UN list of Non-Self-Governing Territories is an anachronism. We recommend that the Government continues to make representations to the UN about delisting the Territory and that it makes clear that it is only sending the UN progress reports on Gibraltar because it is obliged to do so.

British Indian Ocean Territory

42. The British Indian Ocean Territory (BIOT)’s constitutional relationship with the UK is a special case since the most recent Orders in Council relating to the Territory have been successfully challenged in the courts. The case is currently the subject of a final appeal by the Government to the House of Lords.⁷⁸

Recent history and legal challenges

43. In 1965 Britain bought the archipelago which makes up BIOT from Mauritius for £3 million as part of an agreement which led to the latter’s independence in 1968. One of the islands, Diego Garcia, was then secretly leased to the US. Between 1968 and 1973, the British Government cleared the entire archipelago of its inhabitants.⁷⁹ Campaigners claim that many Chagossians were seriously intimidated to encourage them to leave and that they were not told that they were leaving permanently.⁸⁰ Most ended up in the slums of Mauritius, since, lacking formal education and fluency in the local language, they had little prospect of finding work. Mr Bancoult, leader of the Chagos Refugees Group, told us:

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.⁸¹

44. The removal of the Chagos Islanders was formalised by the enactment of the Immigration Ordinance in 1971 which made it illegal for a person to enter or remain in the

⁷⁵ Ev 296

⁷⁶ Q 247

⁷⁷ Qq 247 and 248

⁷⁸ The issue is not sub judice for the purposes of parliamentary debate since it is a ministerial decision that is in question. See Resolution of the House governing matters sub judice, 15 November 2001.

⁷⁹ Q 115 [Mr Gifford]

⁸⁰ www.chagossupport.org.uk

⁸¹ Q 112

BIOT without a permit. In 1998 the Chagos Refugees Group brought a claim for judicial review in the High Court to challenge the legality of this Ordinance.⁸² In November 2000 the High Court dismissed Government arguments that the 1971 Ordinance was immune from judicial review because it was made under the royal prerogative and ruled that the removal of the islanders was unlawful. The judgment effectively granted the Islanders the legal right to return to any of the islands, except Diego Garcia, where the Government argued it had to continue to meet its obligations to the US. Following the judgement, the then Foreign Secretary Robin Cook said that the Government would not appeal:

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.⁸³

45. However, the Government subsequently changed its mind. In 2004 two new Orders in Council were issued to ban the islanders from returning: the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004. The then FCO Minister of State, Bill Rammell MP, explained that one of the Government's main reasons for introducing the 2004 Orders in Council, as well as security considerations, was 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 for an open-ended period – probably permanently.⁸⁴

For many observers, the key change between 2000 and 2004 was that September 11 2001 had made the military base of Diego Garcia a vital launchpad for the wars in Afghanistan and Iraq.⁸⁵ (The UK has undertaken to cede BIOT to Mauritius when it is no longer required for defence purposes. We consider Mauritius' sovereignty claim over BIOT in paras 415 to 419, Chapter 5.)⁸⁶

46. The Chagos Refugees Group launched a legal challenge against the Orders in Council and in May 2006 the Orders were ruled unlawful by the High Court. The FCO decided to appeal the judgement and the appeal began on 5 February 2007. However, on 23 May 2007, the Court of Appeal found in favour of the Islanders. The Government was refused leave to appeal but it decided to petition the House of Lords directly.⁸⁷ The Law Lords agreed to hear the case and it was due to be heard shortly after this Report was agreed.

⁸² Ev 105

⁸³ Ev 105

⁸⁴ HC Deb, 15 June 2004, cols 33-34WS

⁸⁵ "Islanders who wait in vain for justice and a paradise lost", *The Times*, 9 November 2007

⁸⁶ Ev 144

⁸⁷ Ev 105

47. The Government has already spent over £2 million on defending legal challenges from the Chagos Islanders.⁸⁸ The cost of the current appeal has been estimated at another £500,000.⁸⁹ In a letter to the Public Accounts Committee, David Snoxell, former High Commissioner to Mauritius, questioned “the wisdom of this expenditure” arguing that “posts have inevitably had to be closed to fund it.”⁹⁰ We asked Meg Munn why the Government had decided to appeal to the Law Lords. She told us that it had three main reasons for doing so:

First, there were the defence obligations to the US in relation to Diego Garcia [...] Secondly, there is the legal point that [...] 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.⁹¹

48. We consider each of these reasons in turn below, as well as another issue on which we also received evidence – the environmental impact of a resettlement.

Defence obligations to the United States

49. Diego Garcia was initially leased to the US for a period of 50 years. The FCO informed us that the 1966 Exchange of Notes which established the agreement would “continue in force for a further twenty years beyond 2016” unless it was ended by “either government giving notice of termination, in accordance with its terms”.⁹²

50. Regarding the UK’s defence obligations to the US, the Chagos Refugees Group argued that the UK’s agreement with the US on BIOT had never “required” more than the depopulation of Diego Garcia and that the US had only “desired” complete clearance of the archipelago.⁹³ (The Chagossian community are divided about pressing for a return to Diego Garcia at present, with the Chagos Refugees Group appearing to accept that it is currently “not politically practicable” and arguing only for a return to BIOT’s Outer Islands (see para 65 below),⁹⁴ while others told us they would not accept a return to the British Indian Ocean Territory unless it was to Diego Garcia.⁹⁵)

51. In oral evidence to the Public Accounts Committee, Sir Peter Ricketts, Permanent Under-Secretary at the FCO, said that the US had “made clear that resettlement of the islands by the Chagos Islanders would pose security risks to the operation of the base at

⁸⁸ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, Q 17

⁸⁹ “Islanders who wait in vain for justice and a paradise lost”, *The Times*, 9 November 2007

⁹⁰ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, Ev 16

⁹¹ Q 309

⁹² Ev 312

⁹³ Ev 105

⁹⁴ Q 132

⁹⁵ Ev 294

Diego Garcia”.⁹⁶ The Chagos Refugees Group pointed out that Diego Garcia is approximately 135 miles distant from BIOT’s Outer Islands whereas any vessel can freely pass within three miles of Diego Garcia.⁹⁷

Extraordinary rendition

52. As the FCO told us, the terms of the US-UK agreement on BIOT require the US to seek prior approval from the UK for “any extraordinary use of the US base or facilities, such as combat operations or any other politically sensitive activity”.⁹⁸ For a number of years before we announced our inquiry claims had been made that Diego Garcia had been used in the United States’ rendition programme. On 20 January 2006, the then Foreign Secretary, Rt Hon Jack Straw MP, responded to allegations about use of the UK’s territory or airspace for rendition operations, summarising the results of a search of files stretching back to 1997. The search found just four cases of rendition requests by the US, all in 1998. Two were accepted; two were rejected. He told the House that the Government had found “no evidence of detainees being rendered through the UK or its Overseas Territories” since 1998.⁹⁹

53. However, allegations continued and in a Report in 2007 we recommended:

that the Government ask the United States administration to confirm 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.¹⁰⁰

In response, the Government reiterated the statement made by the then Foreign Secretary Jack Straw and argued that, given US assurances, further clarification from the US administration of its policy was unnecessary.¹⁰¹ In its response to our Report the Government also stated:

We are clear that the US would not render anyone through UK airspace (including the Overseas Territories) without our permission.¹⁰²

54. In October 2007 we received evidence from the All Party Parliamentary Group on Extraordinary Rendition and from Reprieve for this inquiry, which claimed that Diego Garcia had been used to land a plane linked to “rendition circuits” and that ships in or near its territorial waters had also been used to hold detainees or otherwise facilitate the United

⁹⁶ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, Q 20

⁹⁷ Ev 105

⁹⁸ Ev 345

⁹⁹ HC Deb, 20 January 2006, col 38WS

¹⁰⁰ Foreign Affairs Committee, Third Report of Session 2006-07, *Human Rights Annual Report 2006*, HC 269, para 80

¹⁰¹ Foreign and Commonwealth Office, *Response of the Secretary of State for Foreign and Commonwealth Affairs to the Third Report from the Foreign Affairs Committee Session 2006-07*, Cm 7127, June 2007, paras 43 - 46

¹⁰² *Ibid.*, para 44

States' renditions programme.¹⁰³ Both organisations urged further investigation of these allegations and argued that the UK was wrong to rely on US assurances to the contrary.¹⁰⁴

55. On 21 February 2008, the current Foreign Secretary, Rt Hon David Miliband MP, reported to the House that the US had now informed him, contrary to its previous assurances, that on two occasions in 2002 Diego Garcia had been used for renditions flights. In both cases a US plane “with a single detainee refuelled at the US facility” on the island. Neither detainee was a British national or British resident. One was currently in Guantánamo Bay and the other had been released. The Foreign Secretary added:

[...] the detainees did not leave the plane, and the US Government have assured us that no US detainees have ever been held on Diego Garcia. US investigations show no record of any other rendition through Diego Garcia or any other overseas territory, or through the UK itself, since then.

He explained that he had asked FCO officials to compile a list of all the flights where the Government had been alerted to concerns regarding rendition through the UK or the Overseas Territories and said he would be sending this list to the US to seek specific assurances about each flight.¹⁰⁵

56. Following the Foreign Secretary's statement, we wrote to ask him a number of questions. One of these was whether the list of allegations being sent to the US would include claims relating to ships serviced from Diego Garcia.¹⁰⁶ In response the Foreign Secretary told us that the Government had “previously received assurances from the US in 2005, 2006 and 2007 that no detainees had been transferred through the territorial waters of Diego Garcia”. However, he did not address the allegation of detainees being held on ships serviced from Diego Garcia.¹⁰⁷ In oral evidence Meg Munn was also unclear as to whether the list being sent to the US would include this particular allegation.¹⁰⁸

57. We also asked the Foreign Secretary whether the list being sent to the US would 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.¹⁰⁹ He told us that his purpose in preparing the list being sent to the US was “to identify whether rendition through UK territory or airspace in fact occurred” and that the Government did “not consider that an empty flight transiting through our territory falls into this category.”¹¹⁰ As part of our Human Rights inquiry we questioned Lord Malloch-Brown about this position. He replied:

I do not think that it is more or less okay, but there is a limit to what we can do effectively to monitor empty planes, whose purposes it is not really reasonable for us

¹⁰³ Reprieve also made claims about stopovers of rendition planes in the Turks and Caicos Islands.

¹⁰⁴ Ev 182 and 203

¹⁰⁵ HC Deb, 21 February 2008, col 547-8

¹⁰⁶ Ev 310

¹⁰⁷ Ev 343

¹⁰⁸ Qq 304-306

¹⁰⁹ Ev 310

¹¹⁰ Ev 345

to investigate. If an American military flight requests refuelling or access and is empty of any passengers, I am not sure that it is possible for us to demand what it might be doing on its return flight.¹¹¹

58. Regarding the announcement that Diego Garcia had been used for rendition flights, Lord Malloch-Brown told us:

Obviously, from the Foreign Secretary downwards, and the Prime Minister as well, we were all pretty shocked that those assurances, given in good faith to the Committee and to the House, had proven inaccurate. That is why, in the Foreign Secretary's conversations with Condi Rice, we secured a commitment that we would submit a list of all flights about which there were suspicions—that is, any flights whose details were given to us by Amnesty, Human Rights Watch and others—to the US and would ask them to give us an assurance that there was not any such activity around any of those flights. I think we should wait for the outcome of that. We have made it clear that we would publish both the list of flights we submitted and the responses that we got. We should wait until that is over to see what, if any, steps are necessary after that.¹¹²

During the evidence session, held on 30 April, the Minister also said the list was “shortly” and “about to be” sent to the US.¹¹³ The FCO later confirmed that it had sent the list to its US counterparts. The FCO also told us that it would lay the list and the US response in both Houses as soon as it had received the response.

59. We also asked the FCO about the extent of UK supervision of activities on Diego Garcia. It replied:

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.¹¹⁴

60. We asked the FCO what discussions it had had with the US on extension of the “lease” beyond 2016. In writing the FCO told us that the UK and US “would of course continue to consult closely on their mutual defence needs and expectations well in advance of that time.”¹¹⁵ However, Meg Munn informed us that the UK had not yet had any discussions with the US about the possibility of terminating the lease in 2016. She also told us that she had not discussed changing the terms of the agreement to increase UK oversight if it did continue beyond 2016.¹¹⁶

¹¹¹ Oral evidence taken before the Foreign Affairs Committee on 7 May 2008, HC (2007-08) 533-ii, Q 59

¹¹² *Ibid.*, Q 60

¹¹³ *Ibid.*, Q 61

¹¹⁴ Ev 345

¹¹⁵ Ev 312

¹¹⁶ Qq 307-308

Legislating for the Overseas Territories

61. John Howell, QC for the Foreign Secretary, expanded on Meg Munn’s “legal” reason for the Government’s final appeal in the 2007 appeal case, arguing that the High Court judges were wrong because their approach would represent a “revolutionary change” in the constitutional law related to Overseas Territories since it had a) asserted jurisdiction over the royal prerogative to legislate in the territories and b) asserted that Her Majesty could not legislate for an Overseas Territory to promote the interests of the UK, including defence and security.¹¹⁷ However, Richard Gifford, legal representative of the Chagos Refugees Group, argued:

[...] 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.” [...]

These poor people, who have been sorely treated for 40 years, have been caught up in the wheels of constitutional nicety.¹¹⁸

Contingent liabilities

62. The number of exiled islanders and their descendants living in Mauritius now totals 3700. There are also about 1,000 in the UK and 500 in the Seychelles.¹¹⁹ In oral evidence, Meg Munn told us that the biggest of the Outer Islands was no larger than Hyde Park, adding:

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.¹²⁰

63. In June 2002, following acceptance of the court ruling by the then Foreign Secretary, Robin Cook, the FCO completed its “phase 2 feasibility study” into resettlement on the Chagos Islands. This concluded that:

[...] 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.¹²¹

¹¹⁷ “Court to decide on families’ right to return to Diego Garcia”, *Independent*, 7 February 2007

¹¹⁸ Q 121

¹¹⁹ Q 112 [Mr Bancoult]

¹²⁰ Q 311

¹²¹ Ev 105

Mr Gifford argued that this conclusion stuck “out like a sore thumb” since it did not follow from the body of the research in the report. He explained that he had therefore requested copies of the draft but had been told that they had been destroyed.¹²² When we questioned the Minister about whether there had been political interference in the study’s conclusions, she told us that she had asked whether the draft report had been altered and had been assured that it had not.¹²³

64. The Chagos Refugees Group also argued that the conclusions of a 2000 preliminary “feasibility study” commissioned by the FCO had been interfered with so that they were heavily qualified in the final report.¹²⁴ The Group sent us a copy of the original page from the draft 2000 report, which it had been given by the FCO, which read:

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 re-settlement.

and had the phrase “Qualify – if” handwritten above it.

65. The Islanders have carried out their own studies. In 2002 they commissioned Jonathan Jenness, a resettlement expert to review the FCO’s Phase 2 study. He found that the Chagos islands had a “benign environment, albeit geographically isolated” and argued that it was “fatuous” to imagine that the islands could not be resettled.¹²⁵ In April 2008 the Chagos Refugees Group and the UK Chagos Support Association launched a proposal for limited resettlement (150 families) on the Outer Islands¹²⁶ funded by a grant from the Joseph Rowntree Reform Trust.¹²⁷ The study was carried out without the benefit of site visits or teams of consultants,¹²⁸ but it estimated initial capital and technical assistance costs of £25 million for a five year period and argued that within ten years the requirement for such support would “show a sharp downward trend” through the development of tourism and fishing and licensing revenues.¹²⁹ Louis Bancoult, the leader of the Chagos Refugees Group, suggested that this should be paid for by the FCO and the Department for International Development (DFID) either from EU or some other funding.¹³⁰ Mr Gifford told us that the Chairman of the European Development Fund had confirmed that a resettled Chagossian community would be eligible to apply to the Fund.¹³¹

¹²² Q 142

¹²³ Qq 310, and 312 - 313

¹²⁴ Ev 105

¹²⁵ Ev 105

¹²⁶ The proposal left open the possibility of pursuit of wider resettlement rights in the future and in oral evidence Richard Gifford, the Chagos Refugees Group’s legal representative, stated clearly that resettlement of Diego Garcia was also considered practically feasible (Q 132).

¹²⁷ Chagos Refugees Group/ UK Chagos Support Association, *Returning Home: A Proposal for the Resettlement of the Chagos Islands*, March 2008

¹²⁸ *Ibid.*, p 10

¹²⁹ *Ibid.*, p 8

¹³⁰ Q 112

¹³¹ Q 145

66. Minority Rights Group International told us that arguments about contingent liabilities were in any case insufficient to release the UK Government from its obligations under the International Covenant on Civil and Political Rights and international customary law.¹³²

Environmental considerations

67. The Great Chagos bank is one of the world’s largest atolls.¹³³ It has “the most pristine tropical marine environment surviving on the planet” and is “Britain’s greatest area of marine biodiversity”.¹³⁴ The Chagos Conservation Trust, a Trust dedicated to the conservation of the Chagos Archipelago’s environment, argued that the issue of human resettlement needed to take full account of the environmental implications.¹³⁵ While it expressed sympathy for the Chagossians,¹³⁶ it argued:

[The lack of human habitation] 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.¹³⁷

Therefore, the Trust recommended:

[...] 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.¹³⁸

68. Mr Gifford told us that consultation was beginning between the Chagos Refugees Group’s resettlement team and the Chagos Conservation Trust and that a joint plan was evolving to pursue the Chagos Management Plan and to train Chagossians as “conservation guardians”.¹³⁹

69. We conclude that there is a strong moral case for the UK permitting and supporting a return to the British Indian Ocean Territory for the Chagossians. We note the recent publication of resettlement proposals for the Outer Islands by Chagos Refugees campaigners. The FCO has argued that such a return would be unsustainable, but we find these arguments less than convincing. However, the FCO has also told us that the US has stated that a return would pose security risks to the base on Diego Garcia. We have therefore decided to consider the implications of a resettlement in greater detail.

70. On Diego Garcia itself, we conclude that it is deplorable that previous US assurances about rendition flights have turned out to be false. The failure of the United

¹³² Ev 115

¹³³ Ev 144

¹³⁴ Ev 95

¹³⁵ Ev 95

¹³⁶ Ev 95

¹³⁷ Ev 95

¹³⁸ Ev 95

¹³⁹ Q 175

States Administration to tell the truth resulted in the UK Government inadvertently misleading our Select Committee and the House of Commons. We intend to examine further the extent of UK supervision of US activities on Diego Garcia, including all flights and ships serviced from Diego Garcia.

Compensation and citizenship rights

71. In 1973 the British Government transferred £650,000 (£5.5 million at today's prices)¹⁴⁰ to the Mauritian government for the Chagossians. This was intended to be used to resettle them on farm land, but there was so much disagreement and so much desperation for money among the Chagossian community, that in 1978 the money was simply disbursed.¹⁴¹ In 1982 a further £4 million (£9 million at today's prices)¹⁴² was allotted to the community as a "full and final settlement". In addition the government of Mauritius made land available to the value of a further £1 million. In 2003 the courts established that the UK had no legal obligation to pay any further compensation, a ruling that was upheld in July 2004.¹⁴³ Mr Gifford told us that the Chagos Refugees Group did not accept the judgment:

[...] 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.¹⁴⁴

72. In May 2002, as part of the extension of citizenship rights across Overseas Territories, Chagossians were granted British Overseas Territories Citizenship if they were born on or after 26 April 1969 and before 1 January 1983 to a woman who at the time was a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory.¹⁴⁵ Subsequently quite a number have come to the UK, with the single largest population based in Crawley, West Sussex. Chagossians who arrive in the UK are currently obliged to pass the Habitual Residence Test before they become entitled to any welfare benefits. The Diego Garcian Society told us that many Chagossians wanted to exert the right of abode in the UK but could not do so because the Habitual Residence Test

¹⁴⁰ HL Deb, 22 May 2006, col 81WA

¹⁴¹ www.chagossupport.org.uk

¹⁴² HL Deb, 22 May 2006, col 81WA

¹⁴³ HL Deb, 22 May 2006, col 81WA

¹⁴⁴ Q 156

¹⁴⁵ British Overseas Territories Act 2002, section 6

prevented them from getting state benefits to start a new life until they could find a job, and fend for themselves.¹⁴⁶

73. Allen Vincatassin, leader of the British Indian Ocean People's Party, has taken legal action on behalf of Chagossians living in the UK to try to establish their immediate entitlement to support. This was rejected by the British High Court in 2006 and the Court of Appeal in November 2007. Mr Bancoult called for a desk to be established in Mauritius to provide detailed guidance to Chagossians wishing to travel to the UK.¹⁴⁷ He argued that Chagossians living in Mauritius should be offered the same support in relation to health issues and training as British citizens.¹⁴⁸

74. British passports are very expensive for native Chagossians.¹⁴⁹ The Diego Garcia Society and the Chagos Islands Community Association also highlighted to us that some families were being split up not just because the cost of passports meant only part of the family could afford to come to the UK, but also because most of the third generation born in Mauritius were not entitled to British Citizenship by descent. The Chagos Community Association told us:

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.¹⁵⁰

The Diego Garcia Society argued that it was unfair that people were unable to satisfy the criteria that the law requires for British Overseas Territories Citizenship because they were born in Mauritius, when this was “as a consequence of exile rather than their own choice.”¹⁵¹ We agree. **We recommend that British Overseas Territories Citizenship should be extended to third generation descendants of exiled Chagossians. We also recommend that the Government should provide more guidance to those Chagossians wishing to resettle in the UK.**

Ascension Island

75. Except for purposes of tourism, it is impossible to stay on Ascension Island without a job contract. There are also restrictions on housing and business ownership. Between 2000 and 2005 expectations were raised on the Island that rights of abode and property

¹⁴⁶ Ev 300

¹⁴⁷ Q 160

¹⁴⁸ Q 161

¹⁴⁹ Q 159 [Bancoult]

¹⁵⁰ Ev 294

¹⁵¹ Ev 300

ownership would be developed, following a decision by the main commercial organisations on the Island that they no longer wanted to be responsible for providing infrastructure and public services (see Part Two). However, in December 2005 the FCO announced that these rights would not be granted. The FCO states that it took this decision because granting such rights would have exposed the UK to an unacceptably high level of contingent liabilities.¹⁵² Meg Munn told us:

It is the Government's view that [...] it would not be sensible to establish a permanent base there [...] The people who are there work for a limited number of organisations, and if they decided to move for any reason [...] sustainability difficulties would arise.¹⁵³

During our stop on Ascension Island we were told that Islanders suspected that the US had also expressed concerns about permanent rights being granted.

76. In March 2007 six out of the seven Island Councillors resigned in protest. The Governor then decided, in consultation with the FCO, to dissolve the Council and call another general election. When only two people came forward as candidates the Governor obtained ministerial approval to suspend the Island Council for a period of up to 12 months. In this interim period, the Governor has continued taking legislative and policy decisions he believes necessary, assisted by an Advisory Group.¹⁵⁴

77. We received a submission from a group of Ascension Island residents, which included members of the Island Council who had resigned. In its evidence the group strongly criticised the FCO's handling of the resignation of the Island Council, calling its suspension a "dictatorship" and arguing that the Advisory Group lacked transparency:

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.¹⁵⁵

The residents' submission also highlighted events which they claimed showed that the Government had changed its mind and had initially planned to grant permanent rights:

- 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";
- in March 2001 the Administrator stated in a press interview that "[...] 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

¹⁵² Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 56

¹⁵³ Q 315

¹⁵⁴ www.fco.gov.uk

¹⁵⁵ Ev 125

the right of abode on Ascension although we will have to decide how we are going to provide for the unemployed, the elderly etc.”;

- the then Overseas Territories minister Bill Rammell had acknowledged a strategic five year plan produced by the Island Council;
- a constitutional advisor invited by the FCO had visited the Island in September 2003 and held public meetings on developing immigration, drafts of which he then sent to Island Council, via the FCO;
- in December 2003 an agreement was signed at Secretary of State level allowing civil aircraft to use Ascension’s airfield and Air Safety Support International (see para 375, Chapter 4) were commissioned to advise on necessary upgrades to enable commercial flights to use the airfield;
- the FCO did not object when five infill plots were identified and agreed to be marked and advertised for freehold sale or when the Island Council agreed to purchase two houses;
- during 2004 the FCO granted the Ascension Island government £70,000 (subsequently raised to £106,000) to employ a Legal Adviser whose terms of reference included aiding the Attorney General in drafting land tenure and immigration legislation;
- 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; and
- in January 2005 the Attorney General produced a timetable for land tenure and rights of abode.¹⁵⁶

78. This version of events was supported in evidence from a former FCO diplomat, now head of consultancy BioDiplomacy, who told us that FCO officials had initially been asked to promote a “huge move to civil society” on the Island, including “legislation providing for right of abode and a local property register”.¹⁵⁷ We also note that in the 1999 White Paper the Government highlighted Ascension Island as an example where consultation on constitutional change was already under way, stating:

We are planning, for example, to consult the people of St Helena and its Dependencies about how to develop the democratic and civil rights of people living on Ascension Island.¹⁵⁸

79. We also received evidence from a former Island Council member, who did not form part of the group which resigned. He told us that the “endless exploitation and manipulation of elected members” had “forced a mass resignation from councillors”. He explained that he had agreed to sit on the unelected Advisory Group because “albeit an

¹⁵⁶ Ev 125

¹⁵⁷ Ev 171

¹⁵⁸ Foreign and Commonwealth Office, *Partnership for Peace and Prosperity: Britain and the Overseas Territories*, Cm 4264, March 1999, para 2.9

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.” He added:

My prime concern is that the [...] Governor [...] 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.¹⁵⁹

80. In late February 2008 the Governor published a consultation document, which made a number of proposals on the future of the Ascension Island Council, including:

- reducing the number of elected members from seven to five;
- reducing the quorum;
- reducing the term of office for Councillors and the qualifying period for standing for election;
- making the period for canvassing short with no reimbursement of costs;
- holding quarterly Council meetings with the Heads of Employing Organisations.¹⁶⁰

The document appears to confirm that the Government has no intention of reconsidering granting rights of abode and property ownership to those who live and work on the Island.

81. During our evidence session with Meg Munn MP we asked her whether the FCO had carried out a U-turn. She replied:

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.¹⁶¹

She told us that she had visited the Island to discuss the re-election of an Island Council:

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 [...] 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.¹⁶²

She noted that there had been a lot of anger, explaining:

¹⁵⁹ Ev 219

¹⁶⁰ Consultation Document on the Future of Ascension Island Council

¹⁶¹ Q 316

¹⁶² Q 315

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.¹⁶³

82. We conclude that the FCO did raise expectations that rights of property and abode would be granted to those who live and work on Ascension Island. We recommend that the FCO must make greater efforts to restore trust among the residents of the Island. In particular, we recommend that it should try to re-establish the Island Council as soon as possible. We further recommend that the FCO should work with elected representatives to consider the potential contingent liabilities of a permanent base on Ascension Island, and means of reducing these liabilities, with the ultimate aim of granting rights of property and abode to residents.

Consultation and representation

Consultation on Governor appointments

83. We asked Overseas Territories about their relationships with Governors. Views were mixed. The Premier of the Turks and Caicos Islands, the Chief Minister of Montserrat, and a Member of St Helena's Executive Council reported good personal relations.¹⁶⁴ Both the Chief Minister and the Leader of the Opposition in Gibraltar also spoke very positively about the present and past Governors of Gibraltar.¹⁶⁵ However, the Falkland Islands' Legislative Council's memorandum to the Committee suggested some areas of tension between the Council and the previous Governor:

The current Governor is fully seized of the importance of democratic development; his immediate predecessor was not.¹⁶⁶

The Chief Islander of Tristan da Cunha's evidence also suggested past difficulties with Administrators of the Island.¹⁶⁷ The Premier of the British Virgin Islands told us that he had not yet quarrelled with the Governor since he had been elected, but that this was inevitable since "there is always a rift between the Governor and those who are governed".¹⁶⁸

84. In 1998 the Government rejected our predecessor Committee's recommendation that local governments should be formally consulted on the appointment of Governors,¹⁶⁹

¹⁶³ Q 318

¹⁶⁴ Q 28 [Hon Brian Isaac], Q 70 [Dr Hon Lowell Lewis] and Q 71 [Dr Hon Michael Misick]

¹⁶⁵ Q 193 [Hon Joe Bossano] and Q 234 [Hon Peter Caruana QC]

¹⁶⁶ Ev 85

¹⁶⁷ Ev 224

¹⁶⁸ Q 2

¹⁶⁹ Foreign Affairs Committee, Second Report of Session 1997-1998, *Dependent Territories Review: Interim Report*, HC 347, para 42

arguing that it carried “the risk that a Governor’s position might be untenable if his or her appointment had not had local support at the selection stage”.¹⁷⁰ Presently the FCO consults Overseas Territory governments before recruitment begins on the characteristics and experience that a Governor should have, but will not accept representations about particular candidates.¹⁷¹

85. A number of Overseas Territory leaders called for the opportunity to express their opinions on individual candidates. The Leader of Government Business in the Cayman Islands told us:

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.¹⁷²

The Premier of the British Virgin Islands agreed:

[...] 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 community¹⁷³

The Falkland Islands Legislative Council told us that “inappropriate appointments might be avoided by more trust and partnership working in the appointments process”.¹⁷⁴

86. A number of recently agreed constitutions have made changes so that Deputy Governors are locally appointed.¹⁷⁵ The current Deputy Governor of Anguilla is also an Anguillan, the first to hold that position. We asked the Chief Minister of Anguilla whether this had marked an improvement in relations between the Governor and local government. In response the Chief Minister told us that his government had been “very pleased” with the appointment.¹⁷⁶ However, Meg Munn told us that local appointments to Deputy Governor did not always improve relations between Territory governments and the UK:

Sometimes it can be the other way around, because [...e]ven the larger overseas territories are still [...] 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

¹⁷⁰ Foreign Affairs Committee, Third Special Report of Session 1997-1998, *Dependent Territories Review: Interim Report Government Response to the Second Report from the Foreign Affairs Committee*, HC 1192, para 10

¹⁷¹ Q 234 [Hon Peter Caruana QC] and Q 273 [Meg Munn MP]

¹⁷² Q 4

¹⁷³ Q 4

¹⁷⁴ Ev 85

¹⁷⁵ Q 21 [Mr Turner]

¹⁷⁶ Q 69

acceptable to, and enjoys the respect of, a range of people, so there is no clear correlation from appointing somebody who is local.¹⁷⁷

87. We recommend that Territory governments should be given an opportunity to pass on their opinions of the candidates for Governor before appointments are made. We welcome the appointment of local individuals as Deputy Governors in some Overseas Territories, but urge the FCO to ensure those appointed are not seen to be politically partisan individuals.

Overseas Territories Consultative Council

88. The Overseas Territories Consultative Council (OTCC) was established in 1999 following a proposal in the White Paper. The FCO's evidence described it as "an annual forum for heads of Territory governments chaired by the FCO Minister with responsibility for Overseas Territory issues".¹⁷⁸

89. In our December 2007 evidence session we questioned Territory government representatives about the usefulness of the OTCC. All were positive about the fact that the OTCC existed.¹⁷⁹ The Chief Ministers of Anguilla and Montserrat spoke of the value of face to face meetings between UK ministers and Overseas Territory government leaders;¹⁸⁰ the Premier of the British Virgin Islands highlighted the fact that the reduction in tuition fees for Overseas Territories students had come out of discussions at the OTCC (but see also para 94 below);¹⁸¹ Pitcairn's Commissioner told us that the OTCC was very valuable for "networking, support and learning" for an island as small and isolated as Pitcairn;¹⁸² and the Falkland Islands Legislative Council argued that the OTCC was a useful way of reminding the FCO and Ministers that the Overseas Territories were not a homogeneous group.¹⁸³

90. However, we also received a number of suggestions for improvement of the forum. The Leader of Government Business in the Cayman Islands, Councillor Summers of the Falkland Islands Legislative Council, and the Premier of the Turks and Caicos Islands called for better follow-up of action points agreed at the OTCC.¹⁸⁴ Other suggested improvements included: greater contact time with ministers and other relevant individuals across Government departments;¹⁸⁵ more consultation with attendee governments on agendas and format;¹⁸⁶ greater decision-making;¹⁸⁷ and a final round up meeting.¹⁸⁸ The

¹⁷⁷ Q 274

¹⁷⁸ Ev 144

¹⁷⁹ Q 13 [Hon Kurt Tibbetts], Q 32 [Councillor Summers], Q 32 [Hon Brian Isaac] and Q 74 [Dr Hon Michael Misick]

¹⁸⁰ Q 72 [Hon Osbourne Fleming] and Q 73 [Dr Hon Lowell Lewis]

¹⁸¹ Q 11

¹⁸² Q 29

¹⁸³ Ev 85

¹⁸⁴ Q 13 [Hon Kurt Tibbetts], Q 32 [Councillor Summers] and Qq 75-76 [Dr Hon Michael Misick]

¹⁸⁵ Ev 88, 171, 186, 220 and 252

¹⁸⁶ Ev 88, 186 and 220

¹⁸⁷ Ev 326

¹⁸⁸ Ev 88

Cayman Islands government also recommended that the OTCC should try to clarify the definition of its associate membership in international organisations.¹⁸⁹

91. The FCO's evidence to our inquiry noted that its decision to allow Governors to participate in the 2003 and 2006 OTCCs had caused concern in Overseas Territories. The UK Overseas Territories Association (UKOTA) told us that "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."¹⁹⁰ The FCO explained that before this year's OTCC Lord Triesman had written to Territory governments suggesting that there should be one day of political talks and one day of operational talks, with Governors invited to the latter.¹⁹¹ It argued that "given the Governors' responsibilities, [...] a meeting on operational issues without the active participation of both Chief Ministers and Governors would not be effective".¹⁹²

92. A number of Territory governments expressed concern about the presence of Governors. The Premier of the Turks and Caicos Islands argued that the attendance of Governors was "not necessary" since they had annual meetings with the FCO.¹⁹³ The Premier of the British Virgin Islands agreed, arguing that sessions without Governors returned "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."¹⁹⁴ The Falklands Legislative Council was alone in saying that it was not currently concerned by the presence of Governors at the OTCC, explaining:

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.¹⁹⁵

93. We also received evidence that the work of the OTCC needed to be more widely publicised in the Territories. Following each OTCC, the UK and the Territories represented agree a communiqué which is announced by the FCO in a press release. However, the record of proceedings of the OTCC, which takes place under Chatham House rules, is not made public. BioDiplomacy, a consultancy led by a former FCO diplomat, argued that "as far as possible, papers that are tabled for discussion should be made available on websites".¹⁹⁶ Kari Boye Young, a Pitcairn resident who sent evidence to our inquiry, said he did not know who would be representing Pitcairn at the OTCC.¹⁹⁷

94. A number of Territory governments highlighted the fact that follow-up of action points was particularly slow when other Government departments were involved.¹⁹⁸ During our

¹⁸⁹ Ev 186

¹⁹⁰ Ev 88

¹⁹¹ Ev 144

¹⁹² Ev 144

¹⁹³ Q 74

¹⁹⁴ Ev 220

¹⁹⁵ Ev 85

¹⁹⁶ Ev 171

¹⁹⁷ Ev 133

¹⁹⁸ Q 13 [Hon Kurt Tibbetts] and Q 32 [Councillor Summers]

visit to the Falkland Islands it was suggested to us that the change in UK policy on tuition fees only occurred because the then Overseas Territories minister happened to move to the then Department for Education and Skills.

95. UKOTA told us that while day to day relations with the FCO were “good”, it was “sometimes surprised at the attitude of other Government departments” which had “a lack of understanding about the status of the Overseas Territories”. It raised two particular issues: the uprating of pensions of UK pensioners living in Overseas Territories; and access to NHS treatment. It also recommended that the FCO should investigate the feasibility of students from the Overseas Territories becoming eligible for student loans.¹⁹⁹

96. During our visit the Bermuda government also expressed concern that OFCOM had not represented its interests properly in relation to the impact of the development of a satellite orbital slot by the Isle of Man on the slot allocated to Bermuda.

97. The Overseas Directorate in the FCO is responsible for liaising with the rest of Whitehall on the Overseas Territories.²⁰⁰ We asked the FCO what steps it was taking to ensure other Departments engaged in issues raised in the OTCC by Territory governments. It told us that it informed other departments of OTCC agenda items relevant to them and invited them to send a representative to lead the discussion. The FCO also stated that it had followed up action points agreed at the last OTCC relevant to other departments through correspondence and meetings at official and ministerial level. However, the FCO agreed that there was “scope for greater engagement”. It explained that in December 2007 the FCO and DFID Permanent Under-Secretaries had written to their opposite numbers in Whitehall “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”. The FCO said that there had been “a limited response so far” and that it intended “to follow this up at Ministerial level to get commitments from UK Departments to work more closely on the Overseas Territories.”²⁰¹

98. We conclude that the annual Overseas Territories Consultative Council (OTCC) is a valuable event. However, since it is intended as a forum for Territory governments, they should be given more of a say about the way in which the OTCC is run. We recommend that the FCO consults Territory governments on the improvements they would like made to the OTCC and implements their suggestions. We also recommend that the FCO should consider ways of raising awareness of the OTCC within Overseas Territories, including, as far as possible, making papers tabled for the forum publicly available. We note that Overseas Territories’ representatives reported that those issues raised in the OTCC which involved other Whitehall departments were least likely to be followed up and we recommend that the FCO continues to press other departments to take their responsibilities with regard to the Overseas Territories seriously.

¹⁹⁹ Ev 88

²⁰⁰ Q 335; except Gibraltar and the Sovereign Base Areas of Cyprus.

²⁰¹ Ev 357

Overseas Territories government representatives in the UK

99. Anguilla, the British Virgin Islands, the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat, St Helena and the Turks and Caicos Islands all have official government representatives in the UK.²⁰² As parliamentarians we have had the opportunity to observe that the level of activity of official representatives varies. Awareness of the Gibraltar and Falkland Islands offices within Parliament is high, but that of other Territories' offices, for instance that of the Cayman Islands, is less so.

100. The government of Gibraltar has recently purchased new property to house its office at a cost of £3.4 million.²⁰³ The Chief Islander on Tristan da Cunha argued that the Island should have its own UK representative as the St Helena representative focused on representing St Helena's interests, leading to "a continuation of the age-old fact that the majority of resources go to St Helena, leaving Tristan with the leftovers".²⁰⁴ Our predecessor Committee argued that the FCO should consider providing financial help to those Overseas Territories unable to afford permanent representatives in the UK.²⁰⁵ The FCO responded that it was "questionable" whether those without offices would have sufficient business to justify this "very great expense" and that the proper channel for communication had to be Governors.²⁰⁶

101. In a personal submission Albert Poggio, the government of Gibraltar's representative in the UK, argued that that the work of UK official representatives of Overseas Territories would be facilitated if they were issued with parliamentary passes:

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, [...] the representatives are appointed by their governments and very limited in number [...] Given that Westminster is the Sovereign Parliament for the Overseas Territories and members of both Houses have responsibility for speaking on Overseas Territories matters [...] 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.²⁰⁷

Mr Poggio also argued that the status of Overseas Territories' representatives in the UK would be improved if their title was changed to Commissioner.²⁰⁸

102. The Chief Minister of Gibraltar supported Mr Poggio's call for a parliamentary pass, arguing that it would save representatives having to seek Members' assistance for access to

²⁰² www.ukota.org

²⁰³ "New London Office", Government of Gibraltar press release 279/2007, 19 December 2007

²⁰⁴ Ev 224

²⁰⁵ Foreign Affairs Committee, Second Report of Session 1997-1998, *Dependent Territories Review: Interim Report*, HC 347, para 63

²⁰⁶ Foreign Affairs Committee, Third Special Report of Session 1997-98, *Dependent Territories Review: Interim Report Government Response to the Second Report from the Foreign Affairs Committee, Session 1997-98*, HC 1192, para 20

²⁰⁷ Ev 132

²⁰⁸ Ev 132

Parliament and be “a good formal link” between the UK Parliament and the Overseas Territories” (see paras 119 to 125 below for discussion of the Overseas Territories’ relations with the UK Parliament).²⁰⁹

103. However, we note that authorities of the two Houses are trying to reduce the numbers of parliamentary passes issued for security reasons. UK Members of the European Parliament, for example, can only be issued with passes which permit limited access.

104. UKOTA and the British Virgin Islands government told us that there was “a tendency for the FCO to use the Governors as an exclusive channel to Overseas Territories’ governments” when using representatives as well as Governors might be more efficient.²¹⁰ UKOTA also recommended that all office-holders appointed by or on the recommendation of the UK Government should be briefed by the appropriate representative before leaving to begin their post.²¹¹

105. We recommend that the FCO urges Overseas Territory governments whose offices in the UK are less active to consider ways of raising their profile. The FCO should also encourage this by, when appropriate, making more use of official Territory government representatives, as well as Governors, to liaise with Territory governments. We recommend that the Government also ensures that all new officeholders in Overseas Territories appointed by or on the Government’s recommendation are briefed by official Territory government representatives in the UK before they take up their posts.

Consultation on international agreements

106. Overseas Territories do not have the authority to become parties to treaties in their own right, so the UK must extend treaties to them.²¹² This is usually done either when the UK ratifies a treaty or at some later date.²¹³ The FCO’s evidence to us explained that Whitehall departments were supposed to consider whether a treaty should be extended to the Overseas Territories at an early stage in their deliberations on a treaty and ensure that Territories were “fully consulted” and given a “proper length of time” to consider the implications of having any treaty extended to them. Guidelines on the consultation process had been circulated across Whitehall in May 2006.²¹⁴ Susan Dickson, Legal Counsellor at the FCO, told us that Overseas Territories were always consulted before the extension of international agreements and that if a Territory said no to the extension of an agreement

²⁰⁹ Q 237

²¹⁰ Ev 88 and 220

²¹¹ Ev 88

²¹² If Territories want to negotiate an agreement with a sovereign state or international organisation where there is no existing UK treaty or similar instrument, the Crown can formally “entrust” the Governor with the power to conclude the agreement. Entrustments are now also sometimes given to Territory governments for a specific treaty and, more rarely, for treaties within general categories. Bermuda, Gibraltar and the Caribbean Overseas Territories have standing entrustments to negotiate tax information exchange agreements. Bermuda and BVI also have standing entrustments in other specified areas. (Ev 144)

²¹³ Ev 144

²¹⁴ Ev 144

because it did not have the necessary “infrastructure or facilities in place” to have it applied, the relevant treaty would not be extended to it.²¹⁵ She added:

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.²¹⁶

107. We asked Overseas Territory governments about their experiences of consultation on international agreements. Some told us that there had been problems in the past, but that levels of consultation had now improved. The Leader of Government Business in the Cayman Islands told us that his government had raised “holy hell” about the lack of consultation of Overseas Territories on the EU Savings Directive²¹⁷ and that this had spurred recent improvements in consultation.²¹⁸ Pitcairn’s Commissioner also reported:

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.²¹⁹

108. However, others suggested problems were ongoing. The Premier of the British Virgin Islands told us:

[...] 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.²²⁰

The Falklands Legislative Council explained that international agreements caused it difficulties in two respects. The first was when UK Government departments negotiating international agreements failed to take into account their possible effects on Territories, which had led to “potentially serious and embarrassing outcomes” and “onerous” applications after negotiations had been completed. The second was in cases when the Falkland Islands had “no difficulty” with the principle of applying an agreement, but to do so “would use up a disproportionate amount of officers time” for no practical effect.²²¹

109. UKOTA and BioDiplomacy told us that often Overseas Territories were only alerted to the effect of agreements on them at a very late stage in the process of negotiations.²²² UKOTA and the Premier of the British Virgin Islands called for the FCO to create a system whereby Overseas Territory government representatives would be alerted early to

²¹⁵ Q 324

²¹⁶ Q 325

²¹⁷ See also para 114.

²¹⁸ Q 16; The British Virgin Islands’ Financial Services Commission also highlighted the fact that the UK had committed the Overseas Territories to the Directive without prior consultation and argued that the Directive had given Bermuda, which was left out, a competitive advantage over other Territories. (Ev 226)

²¹⁹ Q 40

²²⁰ Q 18

²²¹ Ev 85

²²² Ev 88 and 171

prospective new international agreements.²²³ UKOTA also urged the FCO to take into account the “limited resources” of Overseas Territories when it considered what it expected of Overseas Territories in terms of transposition and recommended that each transposition be taken on “case by case basis” with the FCO always providing assistance with drafting if requested.²²⁴

110. BioDiplomacy also argued that including Overseas Territory government representatives in UK delegations to negotiations might also bring advantages for both the UK and the Territories in terms of “good news stories”. It suggested that the Department of Justice might be asked to co-ordinate consultation on agreements for all sub-national levels of government.²²⁵

111. We conclude that the FCO’s guidelines on treaties applying to Overseas Territories do not yet appear to be being followed by all of Whitehall and recommend that the FCO writes to remind other Government departments of their existence. We also recommend that the FCO should provide more drafting assistance to Overseas Territories for transposition of international agreements into local legislation.

Relations with the European Union

112. With the exception of Gibraltar, Bermuda,²²⁶ and the Sovereign Base Areas of Cyprus²²⁷, the Overseas Territories’ relationship with the EU is governed by the European Council Decision on the association of the overseas countries and territories with the European Community (“Overseas Association Decision”). This is an instrument that is negotiated every ten years between the Commission and Member States. Territories are not involved directly, but are consulted by their “parent” Member State. All Overseas Territories covered by the Decision, and with settled populations, are eligible for European Development Fund (EDF) funding. They also 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. It also established an annual forum for Overseas Territories leaders to meet the EU Development Commissioner and other senior Commission officials.²²⁸

113. Between March 2001 and 31 December 2007 the UK Overseas Territories received €41 million in national allocations, as well as €13 million from the regional EDF pot. However, during our visit to the Cayman Islands, local government ministers told us that they had applied for EU funding after Hurricane Ivan²²⁹ without success and said that they thought UK support for their application would have made a difference.

²²³ Ev 88 and 220

²²⁴ Ev 88

²²⁵ Ev 171

²²⁶ Bermuda is not included at its own request.

²²⁷ The EC Treaty applies to the Sovereign Base Areas of Cyprus only to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base Areas annexed to the Act of Accession of the Czech Republic and others to the EU. (Ev 144)

²²⁸ Ev 144

²²⁹ See Chapter 4 for discussion of the Cayman Islands’ government’s management of this disaster.

114. One of the proposals in the 1999 White Paper was that a First Secretary in the office of the UK Permanent Representative to the EU should be designated as a point of contact for the Overseas Territories covered by the Overseas Association Decision.²³⁰ We did not hear any evidence about how this role had developed in our inquiry. However, the Leader of Government Business in the Cayman Islands did tell us that the FCO's agreement to the EU Savings Directive on the Taxation of Savings Income (which created responsibilities for passing on information about the investments of individual EU taxpayers) without consulting the Cayman Islands had caused a lot of resentment (see para 107 above).²³¹

115. Gibraltar is within the European Community by virtue of the EC Treaty, although it is excluded from four areas of Community policy under the UK's Act of Accession.²³² The UK is ultimately responsible for the implementation of European law in Gibraltar. Progress has been made by the government of Gibraltar and the UK in reducing a backlog of directives from 180-200 in 1997 to about 18 in March 2007. The National Audit Office reported that legislative capacity had been increased both in the Gibraltar government and the Governor's office; that there were now six monthly meetings of a joint Whitehall/Gibraltar Tracking Group for EU compliance; that centralized liaison points had been established in most UK departments for those dealing with EU legislation; and that an improved tracking system had been in place in the FCO since December 2006.²³³ However, the Leader of the Opposition in Gibraltar claimed that a significant proportion of the reduction was due to the EU accepting that the Territory did not have to implement certain law under the terms of its agreement and to Gibraltar increasingly using the "Italian" model for legislation:

we virtually repeat the text of the legislation, and quite a lot of it is meaningless [...For example] we have got a law to make sure that our non-existent chemical plants do not pollute the non-existent oyster beds in [our...] non-existent rivers.²³⁴

116. The franchise for European elections was extended to the Gibraltar electorate in 2003. However, Gibraltar was not directly represented during the Inter-Governmental Conference (IGC) as it is not itself a Member State. Hon Peter Caruana QC told us that Gibraltar was not given the opportunity to influence the negotiations. He explained that in 2004 and in 2007 he had presented the FCO with memoranda expressing concerns about specific areas of text of the draft Constitutional and Lisbon treaties, but had on both occasions been told they were "fait accompli" and could not be renegotiated.²³⁵

117. We asked the Minister for Europe about this in oral evidence. He argued that Gibraltar's status had not been changed by the Lisbon Treaty.²³⁶ He told us that the Chief

²³⁰ Foreign and Commonwealth Office, *Partnership for Peace and Prosperity: Britain and the Overseas Territories*, Cm 4264, March 1999, para 2.16

²³¹ Q 16

²³² The Community Customs Territory and Common Commercial Policy (and thus Community rules on the free movement of goods do not apply); the Common Agricultural Policy; the Common Fisheries Policy; and the requirement to levy VAT.

²³³ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, 16 November 2007, p 51

²³⁴ Q 200

²³⁵ Qq 230-233

²³⁶ Q 249

Minister's first memorandum had only been of relevance to the first constitution²³⁷ and that the second memorandum had arrived after the IGC mandate had been negotiated, adding, "we did not want to reopen the mandate, for well rehearsed reasons, and [because] we felt that there was no requirement to do so because Gibraltar's position was unaffected."²³⁸

118. We conclude that it is disappointing that the UK did not properly engage with the government of Gibraltar about its concerns regarding the text of the Lisbon Treaty. We recommend that the FCO must ensure it takes Overseas Territories' interests into account in its relations with the EU. We further recommend that in its response to our Report the FCO sets out the mechanisms it has in place to ensure the Overseas Territories covered by the Overseas Association Decision are informed and consulted about EU legislation that affects them.

Relations with the United Kingdom Parliament

Formal representation?

119. In 1998 our predecessor Committee urged the FCO to look at what it described as a "democratic deficit" in relation to the Overseas Territories: the lack of a direct way for elected Territory representatives to make representations to Parliament and for Parliament to assess the performance of the Governor or local administration.²³⁹ In its response, the FCO rejected this notion, arguing that Members could ask questions about the performance of Governors or local administrations and that select committees could summon these key officials and visit Overseas Territories. Regarding Overseas Territories' representation in Parliament, the FCO wrote that that a representative for each Territory would not be "practical or equitable in democratic terms", but that the Territories would have difficulties selecting a single representative. It further argued that Overseas Territory representatives in the UK had made it clear that they preferred the existing arrangements and that times of crisis, such as in Montserrat, had shown that the Overseas Territories did not lack champions in Westminster and beyond.²⁴⁰

120. In 1999 our predecessor Committee also recommended that the Royal Commission considering the future of the House of Lords should examine the possible representation of Gibraltar in a reformed second chamber.²⁴¹ The Wakeham Commission did consider the issue and concluded that since all the Overseas Territories had their own governments, there was "no case at present for any of the Overseas Territories to be formally represented or given a voice in the second chamber."²⁴² However, the Commission also noted that in light of the Government's proposal to offer British citizenship to citizens of Overseas

²³⁷ Q 251

²³⁸ Q 250

²³⁹ Foreign Affairs Committee, Second Report of Session 1997-1998, *Dependent Territories Review: Interim Report*, HC 347, para 62

²⁴⁰ Foreign Affairs Committee, Third Special Report of Session 1997-98, *Dependent Territories Review: Interim Report Government Response to the Second Report from the Foreign Affairs Committee*, Session 1997-98, HC 1192, para 19

²⁴¹ Foreign Affairs Committee, Fourth Report of Session 1998-99, *Gibraltar*, HC 366, para 104

²⁴² Royal Commission on the Reform of the House of Lords, *A House for the Future*, Cm 4534, January 2000, para 6.29

Territories (enacted in 2002) there might “be a case for individuals from the Territories to be offered membership” on “a personal basis”.²⁴³

121. In its evidence to our inquiry the FCO argued that the interests of Overseas Territories’ voters were “quite different to those of British voters, and [...] more appropriately served by their own territory legislatures”. It also argued that the setting up of the OTCC and the creation of a Minister with responsibility for the Overseas Territories had already strengthened Overseas Territories’ voice at Westminster.²⁴⁴

122. Territory government leaders had mixed views on whether formal representation was necessary. Councillor Summers said that the Falkland Islands Legislative Council was satisfied with the Falkland Islands All Party Parliamentary Group as its link with Parliament.²⁴⁵ During our visit to the Cayman Islands, the Territory’s Leader of Government Business told us that, on balance, he did not want to see formal representation introduced since it could bring Territories into lot of debates in which they did not need to be involved. The Premier of the British Virgin Islands said that his government had given careful consideration to this issue, but had also decided it preferred 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”. Instead he made a couple of related suggestions, including that Parliament should fund annual visits to BVI under the auspices of the All Party BVI Group and that UK representatives of Overseas Territories governments should be given parliamentary passes (see paras 101 to 103 above).²⁴⁶

123. However, the Premier of the Turks and Caicos Islands (TCI) was in favour of formal representation.²⁴⁷ He argued:

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.

He also pointed out that the French and Dutch Territories had representation in their respective national parliaments.²⁴⁸ Formal representation was also supported by a Belonger in TCI who argued that it would “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”.²⁴⁹ (See following Chapter for concerns about governance in TCI).

124. The Chief Minister of Gibraltar told us that he would “love to have some sort of representation for Gibraltar in Parliament” but that this 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”.²⁵⁰ The Leader of the Opposition in

²⁴³ Royal Commission on the Reform of the House of Lords, para 6.30

²⁴⁴ Ev 144

²⁴⁵ Q 66

²⁴⁶ Ev 220

²⁴⁷ Q 110

²⁴⁸ Qq 110-111

²⁴⁹ Ev 168

²⁵⁰ Q 239

Gibraltar also argued that “a way should be found whereby” Overseas Territories “are involved in Parliament”.²⁵¹

125. Meg Munn told us that the UK had a very different relationship to its Territories to that of France, for example, and argued that she did not therefore think it was appropriate for the UK to have representatives of its Territories in the House of Lords. However, she did not dismiss outright the possibility of membership on a personal basis in the second Chamber.²⁵²

126. We recommend that the Foreign and Commonwealth Secretary should consider with the Leader of the House and with representatives of the Opposition parties whether improvements can be made in the ways in which the views of those resident in the Overseas Territories can be made known in the UK Parliament.

Application of parliamentary privilege

127. At the start of our inquiry, it became clear to us that a number of witnesses, the majority from the Turks and Caicos Islands (see Chapter 3 below), feared some kind of negative consequence as a result of having sent us their submissions. Many therefore requested that their evidence be confidential or published anonymously.

128. “Threatening” a person giving evidence to a select committee or in an way “punishing, damnifying or injuring” them or attempting to do so is an offence under the Witnesses (Public Inquiries) Protection Act 1892.²⁵³ However, the offence can only be committed by persons who commit the prohibited act within the United Kingdom. Both Houses of Parliament also treat the bringing of legal proceedings within the UK against any person on account of any evidence they have given before a Committee of the House as a contempt²⁵⁴ and UK courts have refused to entertain such actions.²⁵⁵ While there are historical precedents for the House condemning action against a witness outside the UK but in UK territory,²⁵⁶ we were uncertain about the extent to which a resolution of the House of Commons could afford actual protection to witnesses in the Overseas Territories. We therefore sought advice from the House authorities.

129. The advice we received was that so far as the Overseas Territories were concerned, it would be necessary to establish what (if anything) was said about parliamentary privilege (rights of immunity) in the Territory’s constitutions. In the case of the Turks and Caicos Islands (TCI), nothing in TCI’s constitution protected the privileges of the UK Parliament. Section 84 of the Territory’s new constitution empowered the Governor to prevent “disciplinary action” but it would be uncertain whether the Governor would prevent action

²⁵¹ Q 201

²⁵² Q 337

²⁵³ Section 2

²⁵⁴ Resolution of the House 26 May 1818

²⁵⁵ Erskine May, 23rd edition (London, 2004), p 152

²⁵⁶ “On the 10th May, 1733, complaint was made that Jeremiah Dunbar, Esq., had been censured by the House of Representatives of Massachusetts Bay, for evidence given by him before a committee on a bill, upon which the house resolved, *nem. con.*, ‘That the presuming to call any person to account, or to pass a censure upon him, for evidence given by such person before this house, or any committee thereof, is an audacious proceeding and a high violation of the privileges of this House.’ ” (*Erskine May* 13th edition (London, 1924), p 131)

against a witness in the Territory or whether the FCO would consider it proper to interfere in his discretion in the matter, particular if such action were well founded within the laws of TCI. It was also uncertain whether the Attorney General of the Territory would be willing to institute proceedings on the basis of evidence given by a witness to the House of Commons or to act to discontinue such proceedings if they were not instituted by him. There was a right of appeal to the Privy Council but in the absence of any directly relevant judgement of the Judicial Committee, the House authorities told us, there was no reliable basis on which they could assess what view the Privy Council might take of the privileges of someone giving evidence to a Committee of the House of Commons.

130. On the basis of this advice, we concluded that the extent to which the House can in practice extend protection to witnesses from Overseas Territories appearing before a select committee is not certain. We therefore decided that we should not publish any evidence where the witness had expressed concerns about the consequences of our so doing. We further decided that publishing evidence anonymously would not offer sufficient protection since we could not guarantee that authors would not be identified from the contents of their submissions. We therefore had to treat a significant part of the evidence we received in this inquiry as being submitted in confidence. We have taken full account of this evidence, but its confidential status has unavoidably imposed constraints on our ability to refer to it in this Report.

131. We are concerned that witnesses from Overseas Territories cannot at present be guaranteed protection against legal action or even intimidation or other abuse arising as a consequence of their giving evidence to select committee inquiries in the UK. We recommend that the Government should introduce legislation to extend the Witnesses (Public Inquiries) Protection Act 1892 to Overseas Territories, or as an alternative, that it should urgently require Overseas Territories to introduce equivalent legislation as a matter of good governance.

International Olympic Committee

132. In 1996 the International Olympic Committee (IOC) amended the Olympic Charter so that Dependencies or Territories of Sovereign States would no longer be allowed IOC recognition unless they became independent. Bermuda, the Cayman Islands, and the British Virgin Island, (also Hong Kong, United States Virgin Islands, Guam, American Samoa and Netherlands Antilles) were permitted to continue to be part of the Olympic movement, but membership was barred for any aspiring new entrants from Dependencies or Overseas Territories.²⁵⁷

133. In 2001 the Turks and Caicos Islands' Sports Commission decided to establish a Turks and Caicos Islands Olympic (Steering) Committee (TCIOC) to investigate IOC recognition. However, TCIOC told us, all its attempts to be heard by the IOC, the British Olympic Association and the FCO had been "unproductive".²⁵⁸ TCIOC pointed out that the lack of IOC recognition prevented its youth from accessing the significant financial

²⁵⁷ Ev 72

²⁵⁸ Ev 72

support given to National Olympic Committees by the IOC.²⁵⁹ It criticised the FCO's approach to the issue as "lackadaisical and unprofessional".²⁶⁰

134. Gibraltar's National Olympic Committee is currently suing the IOC through Swiss courts for IOC recognition.²⁶¹ Ray Carberry, President of the TCIOC, told us that the FCO had said it should wait until the outcome of Gibraltar's case. However, he felt that this approach was wrong since he believed TCI's case had "nothing in common" with Gibraltar's legal arguments.²⁶²

135. The Premier of the Turks and Caicos Islands told us that the lack of Olympic recognition for the Territory was an "injustice" which needed to be addressed. He added:

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 [...] identity more than sport.²⁶³

136. We conclude that it is wrong for some Overseas Territories to have access to the benefits of International Olympic Committee (IOC) recognition while others do not. We recommend that the FCO should make representations to the IOC about recognition for all the UK Overseas Territories.

Wreath-laying at the Cenotaph

137. Currently the Foreign Secretary lays a wreath at the Cenotaph on behalf of all the Overseas Territories at the Remembrance Sunday service. In a personal submission to our inquiry, Albert Poggio, the government of Gibraltar's representative in the UK, argued that Gibraltar should be able to lay a wreath on its own behalf:

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.²⁶⁴

138. We asked the Chief Minister of Gibraltar for his view. He told us that the government of Gibraltar was "very proud" of its contribution in the second world war in particular and that it would be "honoured and privileged" to lay its own wreath.²⁶⁵

²⁵⁹ Ev 242

²⁶⁰ Ev 72

²⁶¹ "Gibraltar seeks recognition from governing bodies", *Reuters*, 16 December 2006

²⁶² Ev 242

²⁶³ Q 106

²⁶⁴ Ev 132

²⁶⁵ Q 241

139. UKOTA argued that it seemed “strange and anachronistic” for Overseas Territory representatives to be excluded from laying a wreath. It argued that many Overseas Territories citizens had “fallen in defence of Britain” and all now had democratically elected governments which sent representatives to many international events.²⁶⁶ We note that in the past the High Commissioner for the Federation of Rhodesia and Nyasaland and, later, Southern Rhodesia, laid a wreath at the Cenotaph and that those Federations had a similar level of self-government to Gibraltar.

140. However, in an oral answer on 20 November 2007, the Minister for Europe said the Government had no plans to change the current arrangements for Remembrance Sunday.²⁶⁷ The Chief Minister of Gibraltar suggested to us that this reluctance to change practice was because the Foreign Secretary’s exclusive function in the ceremony is to represent the Overseas Territories.²⁶⁸

141. We recommend that Overseas Territory government representatives from Bermuda, Gibraltar, the Falkland Islands and any other Territory wishing to do so should be permitted to lay a wreath at the Cenotaph on Remembrance Sunday. The Foreign Secretary should continue to lay a wreath on behalf of other Territories.

Commonwealth Heads of Government meeting

142. The government of Gibraltar’s representative in the UK also argued that the UK should support the attendance of Overseas Territories’ political leaders at 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.²⁶⁹

143. During our visit to Bermuda, ministers called for Bermuda to be given the opportunity to speak at Commonwealth financial conferences, rather than always having to sit behind the UK representative.

144. We recommend that the Government should give consideration to whether it would be appropriate to support wider participation of Overseas Territories in Commonwealth meetings and conferences, including the Commonwealth Heads of Government Meeting.

²⁶⁶ Ev 88

²⁶⁷ HC Deb, 20 November 2007, col 1087W

²⁶⁸ Q 240

²⁶⁹ Ev 132

3 Governance

145. As part of its “new partnership” set out in the 1999 White Paper the Government made clear that it expected Overseas Territories to observe the highest standards of governance (see para 12, Chapter 2). However, a review carried out in 2003 by an FCO official commissioned to assess progress since the 1999 White Paper drew attention to a number of concerns about governance, including:

- problems posed by small populations, particularly in recruiting positions in administrations, resolving conflicts of interest, and managing immigration and residence status;
- governance issues in certain Overseas Territories, including corruption, financial management and regulation of financial services; and
- in some cases, little accountability due to the lack of developed society, strong legislature and/or vibrant press.²⁷⁰

146. At the 2005 OTCC the Government proposed that Overseas Territories should agree “principles of good governance”. This was discussed again in 2006 and a paper was agreed which was published in the Overseas Territories.²⁷¹ However, during our inquiry we received a lot of evidence which suggested that issues raised in the 2003 review still needed to be addressed. In the first part of this Chapter we consider serious allegations of corruption in the Turks and Caicos Islands. We then examine governance concerns expressed in evidence from Anguilla and Bermuda, and wider issues about levels of transparency and accountability raised in some other Overseas Territories. Next we consider two other aspects of good governance: the rule of law and the protection of human rights. Finally we consider environmental governance in the Overseas Territories. This Chapter does not look at standards of regulation of financial services which we consider in paras 297 to 313 of the following Chapter on contingent liabilities.

Allegations of corruption in the Turks and Caicos Islands

147. Since 2000, the Turks and Caicos Islands (TCI) has experienced economic growth among the highest in the world.²⁷² Given this economic success we did not initially expect to receive many submissions from the Islands. However, by far the largest proportion of evidence which we received from any Overseas Territory came from TCI. Over 50 individuals from TCI wrote to us, many alleging corruption, for instance in regard to the sale of Crown land, the distribution of contracts and development agreements, the granting of Belongerships (a status which indicates freedom from any immigration restrictions and also confers rights normally associated with citizenship, including the right to vote²⁷³) and the misuse of public funds. These concerns were further highlighted in meetings we held in

²⁷⁰ www.fco.gov.uk

²⁷¹ Ev 144

²⁷² Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 58

²⁷³ See paras 269 to 275 below for discussion of rights of “non-Belongers” in Overseas Territories.

private with individuals during our visit to TCI. A constant theme across the allegations was concern about freedom of speech on the Islands.

148. We set out the various allegations we have received in detail below, before considering the response of TCI's government to the allegations made and examining the role of the Governor and the FCO. Since it was raised in evidence to us, we also note that at the time of writing the Premier of TCI was being investigated by US law enforcement agencies for the alleged rape of a US citizen. However, we do not consider it appropriate for us to comment on this issue.

149. As we have already explained (see paras 127 to 131 above), many of the submissions we received were sent to us in confidence and so we are not able to quote from them. Where we do quote from individual Turks and Caicos Islanders in this Report, we have received their explicit permission to do so. In what follows we make significant use of a public submission from the Leader of the Opposition in TCI, Hon E. Floyd Seymour. However, we wish to emphasise that many of his allegations were supported by evidence submitted to us in confidence from across TCI's community. Witnesses alleging corruption ranged from Belongers to expatriate work permit holders, from church leaders to representatives of the business community. We also note that allegations did not only relate to the present government. Lee Ingham, a native TCI Islander living in the US who described himself as non-partisan, with friends in both government and opposition parties, told us:

[...] in my opinion, with a few exceptions, members of both [...TCI's political parties], 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.²⁷⁴

Sale of Crown land

150. Crown land is a major resource on TCI, which has built its economic growth on real estate and tourism. Many witnesses expressed concern that it was being sold off in an unsustainable fashion by the government to fund current investment (see management of public money below).

151. Even more seriously, many individuals alleged that land was being sold for the personal benefit of TCI government members and their relatives and supporters. Mr Gibbs, a TCI Belonger and member of a group, the Turks and Caicos Forum, which is calling for improved governance in TCI, told us that Crown land seemed to be "treated as a spoil of political victory".²⁷⁵ The Leader of the Opposition claimed that government ministers had awarded themselves Crown land either directly or through close relatives for selling on to prospective developers for profit. In support of this allegation, he adduced a copy of an Executive Council minute showing the award of freehold titles and copies of offers to purchase from a developer dated a month before the titles were awarded.²⁷⁶ We

²⁷⁴ Ev 241

²⁷⁵ Ev 168

²⁷⁶ Ev 326

also received an allegation from the Chairman of the party in opposition, Shaun Malcolm, that a minister had destroyed Mr Malcolm's award of Crown land as punishment for Mr Malcolm's opposition activities (see freedom of speech below).²⁷⁷

152. It was also suggested to us that Crown land was being undervalued before being sold. The Leader of the Opposition alleged that the Premier had been able to purchase over 18 acres of prime beach front Crown land at a fraction of its market value.²⁷⁸ Mr Gibbs alleged that ministers with significant interest in real estate entities were making grants of land to constituents who had not even made applications, and were then inviting the targeted constituents to accept the grant with the understanding that the minister would sell the land for them and provide them with a fair share of the proceeds.²⁷⁹

153. It was also alleged that abuses of government decision-making have had an adverse environmental impact. For instance, the Leader of the Opposition alleged that zones of national parks had been changed so that land could be granted to ministers.²⁸⁰

Contracts and development agreements

154. We also received allegations of corrupt practices in relation to distribution of contracts. The Leader of the Opposition alleged conflicts of interest in the following areas:

- The contract for the management of the overseas referral programme for health care.²⁸¹ The Leader of the Opposition pointed out that the new provider charged twice as much as the company that had had the contract when the opposition were in power and claimed that the new provider's owner had close links with the government and had made a significant contribution to its party's election campaign.
- TCI's affordable housing programme. The Leader of the Opposition alleged that the Premier's nephew was a "principal" in the company given Crown land at a discount to construct the homes.²⁸²
- Renting of offices for government use. The Leader of the Opposition alleged that some government departments were being asked to relocate offices to a building being built by the Premier and his wife and that the Ministry of Finance was being relocated to a building owned by the Minister of Finance.
- Purchase of property for government use. The Leader of the Opposition claimed that houses of ministers' relatives were being bought by the government, and that this had been "for far in excess of the market value".²⁸³

²⁷⁷ Ev 342

²⁷⁸ Ev 326

²⁷⁹ Ev 168

²⁸⁰ Ev 326

²⁸¹ Due to limited resources and expertise on TCI, many patients presently have to be sent overseas for care.

²⁸² It also drew our attention to a systems audit by TCI's Audit Office which reported that the Housing department did not make any checks to ensure that discounts received by developers as part of the programme were passed on to homeowners.

²⁸³ Ev 326

155. Mr Peter Williams, also a member of the Turks and Caicos Forum, claimed that road-building contracts had been awarded to companies owned by government ministers and that ministers were also using “cronies as surrogates for the purpose of themselves benefiting from both public and private contracts”.²⁸⁴

156. It was also alleged that ministers were accepting and requesting bribes from investors.²⁸⁵ The Leader of the Opposition said that he had heard allegations of telephone companies “being strongarmed for equity” by ministers with licenses delayed until equity was granted.²⁸⁶ Mr Ingham told us:

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.²⁸⁷

157. The Leader of the Opposition told us that the Premier had declared assets worth \$50,000 when he took office in August 2003, but by February 2004 he had “purchased property valued at \$2.3million without a mortgage and built a multi-million pound property”.²⁸⁸ He also told us that ministers who before coming into office had driven borrowed cars and had a very low net worth, had now bought multimillion homes and land.²⁸⁹ Mr Peter Williams suggested that the Premier’s residence had been built by contractors who planned to recoup this cost by being awarded government contracts for the building of two new hospitals on TCI.²⁹⁰

158. Many people also expressed concern that development approvals were being granted without due consideration of their environmental impact. Ms Barrington, a permanent TCI resident, told us that it appeared that agreements were “not based on any reasonable protection of the natural resources which have made this country prosperous” and highlighted “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 [...as] perhaps an indication that the future is of no value to those making these decisions.”²⁹¹

159. Mr Colin Williams, a permanent TCI resident, also expressed concern about the Leeward and Star Island projects arguing that they would cause “environmental chaos”, including excessive spoil extraction and the destruction of a coral reef. He told us:

²⁸⁴ Ev 238

²⁸⁵ Ev 326

²⁸⁶ Ev 326

²⁸⁷ Ev 241

²⁸⁸ Ev 326

²⁸⁹ Ev 326

²⁹⁰ Ev 84

²⁹¹ Ev 323

[...] 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.²⁹²

160. The RSPB told us that Protected Areas had been degazetted to allow for built development.²⁹³ Our attention was also drawn to a recent article in the *National Geographic Magazine* which listed the Turks and Caicos Islands as joint second-to-last in a ranking of 111 islands as tourist destinations, suggesting that overdevelopment in TCI was already beginning to affect its reputation as a high-end tourist destination.²⁹⁴

Granting of Belongerships and Permanent Resident Certificates

161. Becoming a Belonger of the Turks and Caicos Islands is of great importance to individuals on TCI since it is the only status which confers rights usually associated with citizenship, such as the right to vote.²⁹⁵ Those with a Permanent Resident Certificate do not have these rights, although they are also free from immigration restrictions.

162. Under TCI law there are three main ways in which Belonger status can be acquired: by birth (or lawful adoption); after five years of marriage to a Belonger; or by “having made a significant social or economic contribution to the development of the Islands”. Applications via the latter two routes are approved by Cabinet (see “Role of Governor” below for further discussion of this).²⁹⁶ A notice of intention to grant a Certificate of Belonger Status must then appear in a local paper for two consecutive issues before the status is granted.²⁹⁷

163. During our inquiry we received allegations that Belongerships and Permanent Residence Certificates (PRCs) were being granted to individuals outside TCI’s law. The Leader of the Opposition told us that he had heard allegations of people paying bribes to ministers to receive such status. He drew our attention to the case of an individual, Paul Keeble, who had sworn an affidavit that bribes had been paid to government ministers in return for his work permit being denied and that he had then paid an even greater bribe in an attempt to overturn this.²⁹⁸ Concerns were also raised that government members’ spouses were receiving Belongerships after less than five years of marriage.

164. It was also suggested to us that Belonger status was being granted to questionable individuals via the “significant social or economic contribution” route so that ministers

²⁹² Ev 259

²⁹³ Ev 112

²⁹⁴ “Best and Worst Islands Rated”, *National Geographic News*, November/December 2007; available at www.nationalgeographic.com

²⁹⁵ We consider concerns raised in TCI and other Territories about the rights of those without Belonger or equivalent status later in this Chapter (see paras 269 to 275).

²⁹⁶ www.immigration.tc

²⁹⁷ Turks and Caicos Islands Immigration Ordinance 1998, section 3

²⁹⁸ Ev 326

could benefit from business relationships with these people. Witnesses argued that this should be of great concern to the UK government since British Overseas Territories Citizenship can be acquired almost automatically twelve months after an individual has being granted Belonger (or PRC) status.

165. The Leader of the Opposition also expressed concern that the Immigration Change Office responsible for advising Cabinet on the granting of Belongerships and PRCs was the nephew of the Premier and the Secretary General of the governing party.²⁹⁹ Ms Barrington highlighted the fact that, after over five years of failed applications and delays, she and her husband had finally been offered permanent residence status, on payment of fee, four days before the 2007 general election on TCI.³⁰⁰

Management of public finances

166. The National Audit Office's report into *Managing Risk in the Overseas Territories* highlighted the proper management of public finances as a key risk in the Turks and Caicos Islands. Its concerns included the following:

- “expenditure consistently and repeatedly incurred in excess of annual budgets, across most government departments and without prior statutory authorisation” (\$123 million outturn in 2004-05 compared to an estimate of \$108 million), with financial controls “routinely overridden” and projects and programmes “added informally throughout the year”;
- “reliance on unplanned surpluses over budget revenue”, in particular use of proceeds of sales of Crown land to meet current account deficits (land sale receipts 12% of government income in 2004-05);
- rising public sector debt (from \$6 million in 2001 to \$47 million in 2005); and
- “widespread” departures from competitive tendering.³⁰¹

167. During our inquiry witnesses reiterated these concerns. The Leader of the Opposition alleged that there had been a “complete disregard for the tendering process” with contracts awarded for millions above their value, including a road building contract awarded for almost twice the lowest bid.³⁰² The TCI government's budget report for 2007/08 showed an annual deficit of \$38 million and that the government was overdrawn on its bank accounts by \$6 million.³⁰³

168. Witnesses also raised other concerns relating to the management of public finances. The Leader of the Opposition highlighted the conclusions of the 2005 audit of the National Insurance Board which had found that the Board lacked key basic financial controls. The

²⁹⁹ Ev 326

³⁰⁰ Ev 323

³⁰¹ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 58

³⁰² Ev 326

³⁰³ “Opposition walks out of Turks and Caicos budget debate”, *Caribbean Net News*, 24 April 2008

auditors also expressed concerns that financial records presented for the audit had been deliberately adjusted to disguise the Board's true financial position. The Leader of the Opposition told us that the National Insurance Scheme was "the only social security/pension fund available to thousands of Turks and Caicos Islanders" and warned that its misuse or poor management might have "dire effects". He also highlighted that the National Insurance Board was breaching its investment policy in its investments in TCI Bank.³⁰⁴

169. We also received allegations about the misuse of public funds. Mr Ingham told us, "I seriously believe that government funds are being used as personal bank accounts".³⁰⁵ The Leader of the Opposition also argued that millions were being spent on "private entertainment" for ministers. Witnesses also expressed alarm at the latest figures in the Turks and Caicos Islands' budget for expenditure on the Premier's salary and expenses. Questions were also raised about the chartering of a private jet for official ministerial travel. We also received allegations that bribes had been paid in elections, although the Governor told us that electoral observers had found that the elections were fair.

Freedom of speech

170. Many witnesses expressed concern about restrictions on freedom of speech on the Islands. The Leader of the Opposition told us that the government had intervened in broadcasts of its activities by a radio station. The opposition had appealed against the decision not to broadcast a press conference but this appeal had never been heard.³⁰⁶ Shaun Malcolm alleged that his television programme had been cancelled because it criticised the government.³⁰⁷ Ben Roberts, a TCI Belonger and member of the Turks and Caicos Forum, also told us that a niece and nephew of the Premier were now involved in day to day running of operations at TCI's television station.³⁰⁸

171. We were given a DVD of a meeting of the governing party in which the Premier described the opposition as "traitors" for submitting evidence to our inquiry. This is a matter of concern to us, as is the fact that a pro-government newspaper in TCI radically misreported comments made during one of our evidence sessions.³⁰⁹ The Leader of the Opposition also highlighted to us that following our visit to TCI an advert had appeared in this newspaper threatening members of the opposition who had written to our inquiry.³¹⁰

³⁰⁴ Ev 326

³⁰⁵ Ev 241

³⁰⁶ Ev 326

³⁰⁷ Ev 342

³⁰⁸ Ev 129

³⁰⁹ The Turks and Caicos Sun misquoted Susan Dixon, Legal Counsellor at the FCO, as having told us that "the Governor does not have the authority to call a Commission of Inquiry without consulting the Cabinet or the Premier", when she in fact told us that he did have such discretion. See "No Commission of Inquiry", *Turks and Caicos Sun*, 1 April 2008 and Q 284 [Ms Dixon].

³¹⁰ Ev 326; The "500 letter writers of the PDM" mentioned in the advert are a reference to comments made by the Premier at the meeting of the governing party in which he suggested that all the evidence to our inquiry from TCI came from the opposition.

172. The Leader of the Opposition also suggested that the Attorney General and Chief Justice might be subject to political interference.³¹¹ Suspicions were expressed by others about recent arson attacks on TCI's courthouse and the Chamber of the Attorney General. Ben Roberts copied us into an e-mail to the Governor in which he wrote:

This is quite unnatural. Turks & Caicos, and especially its government buildings, has never had fires on such a scale [...]. 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.³¹²

173. The Leader of the Opposition spoke of a “general atmosphere of fear and intimidation” in TCI.³¹³ Lee Ingham told us:

[...] 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.³¹⁴

Ben Roberts also described a “climate of fear” pervading TCI and gave us an example:

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.³¹⁵

174. We witnessed this climate of fear for ourselves when we visited the Turks and Caicos Islands. Alarming for a British Overseas Territory, many individuals expressed great concern about being seen to be talking to British parliamentarians and some individuals declined to meet us altogether for this reason.

175. Although the Leader of the Opposition alleged that the Premier had assaulted a member of the opposition³¹⁶ and some witnesses expressed concerns about intimidation by Special Police Immigration and Customs Enforcement teams, our experience was that as a general rule witnesses did not fear physical reprisals. Rather they expressed concern that they might lose significant investments in the Islands because of the withdrawal of their work permits or damage to their business opportunities; or that their families might fail to benefit from access to scholarships³¹⁷ and overseas healthcare (see above). Shaun Malcolm, the Chairman of the opposition party, alleged that his employer had been forced by the

³¹¹ Ev 326

³¹² Ev 321

³¹³ Ev 326

³¹⁴ Ev 241

³¹⁵ Ev 129

³¹⁶ Ev 326

³¹⁷ Since it does not have its own higher education facilities, TCI pays grants to enable students to study overseas.

government to lay him off.³¹⁸ Richard Sankar, a businessman, claimed that he had put on a list of people that the Immigration Department would not allow back into the country simply for resigning from a business run by the Misick family.³¹⁹ He later told us that his name had been removed from the stop list, but that he was still trying to get a fair review of his application for permanent residence.³²⁰ Mr Barrington Williams, a TCI Belonger, told us:

[...] 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. [...] when you try to get something done through the government, legitimately, there are delays, [...] such as if you are trying to get a liquor license for a restaurant [...] ³²¹

TCI government response

176. We questioned the Premier of TCI about the allegations we had received when he appeared before us in December 2007. He replied:

I have not seen any submissions, but on the general allegation of corruption [...] we categorically deny that there is any corruption at government level [...]

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.³²²

177. TCI's Minister of Finance and Deputy Premier also argued that the concerns about public financial management raised in the National Audit Office's report were "unbalanced" and reflected "a parting blow" to TCI's government by the Chief Auditor on completion of her contract.³²³ He responded to points raised in the report as follows:

- where expenditure incurred in excess of Budget this was to allow TCI "to take advantage of important development opportunities", and was approved by Cabinet in advance and then by supplementary legislation in the House of Assembly;
- some development projects had happened before a budget was agreed and TCI's government planned to address this in future, but there would "always be circumstances when projects will have to be introduced due to emergencies and new opportunities";
- it was "totally incorrect" to say the government relied on sale of public land to meet current account deficits - a "fundamental principle" of the government was not to

³¹⁸ Ev 342

³¹⁹ Ev 239

³²⁰ Ev 243

³²¹ Ev 143

³²² Q 86

³²³ Ev 351

liquidate fixed assets to finance recurrent expenditure, although “on occasion”, due to restrictions on borrowing, the government had use land sale proceeds to meet the cost of capital development programmes;

- rising public sector debt needed to be considered in the context of improving TCI’s infrastructure in order to allow economic growth; all this debt was approved under UK borrowing guidelines and TCI’s borrowing indicators were very low by international standards; and
- TCI “always” observed competitive tendering, but its financial regulations allowed tender requirements to be waived in certain instances, which the government had done “to speed up project implementation”.

The Minister also said TCI was currently assessing offers of assistance from the FCO for carrying out reforms to strengthen financial management.³²⁴

178. As evidence of a commitment to transparency, the Premier pointed out that an anti-corruption Bill was currently passing through TCI’s House of Assembly, and highlighted the fact that TCI had a tenders board, a process for the allocation of Crown land, a register of interests and an independently appointed Attorney General.³²⁵ He also argued that Belonger status was granted by Cabinet, rather than particular individuals, according to the criteria set out in TCI law, and that the Governor could, on the advice of the Secretary of State, choose not to take the Cabinet’s advice if he had concerns (see Role of Governor below).³²⁶ The Minister of Finance and Deputy Premier also told us that as TCI was a small island economy it was “impossible” for the government not to do business with companies owned by family members; but that ministers did declare interests.³²⁷

179. During our visit to the Turks and Caicos Islands the Premier also emphasised that he had introduced a quarterly press conference, that TCI’s Public Accounts Committee was chaired by the opposition, that the Attorney General and the Chief Auditor had powers to carry out investigations, that every single development had to have an environment impact assessment and that a Crown land bill was also forthcoming.

180. The FCO described legislation on anti-corruption and Crown land in TCI as “important steps” which “should significantly improve both the capacity to deter and detect corruption as well as significantly reduce the scope for abuse.” It explained that the anti-corruption Bill would establish an independent standing Integrity Commission, with “extensive” powers to investigate allegations of corruption, which should enable the UN Convention on Corruption and the OECD Bribery Convention to be extended to TCI. It also told us that the Crown land bill would include the creation of a “dedicated unit” within TCI’s government and that it “should ensure transparent, accountable and fair procedures

³²⁴ Ev 351

³²⁵ Qq 86-87

³²⁶ Qq 88-93

³²⁷ Ev 351

for managing all Crown Land issues which should address the primary problem of weak implementation of the agreed policy.”³²⁸

181. However, other witnesses did not express great confidence in the TCI government’s anti-corruption measures. The Leader of the Opposition noted that the government had promised to introduce an anti-corruption bill within three months of coming into office, but had taken three years to do so.³²⁹ Mr Gibbs told us that there was no publicly accessible register of applications for Crown land and no objective standard for their resolution. He also pointed out that TCI’s register of interests was not publicly accessible, and excluded the Governor and Complaints Commissioner.³³⁰ Mr Peter Williams recommended that ministers should be made to publicly state all the companies in which they had any ownership, possibly under oath.³³¹ Mr Gibbs also argued that the powers of the Complaints Commissioner had been “neutered to the point of being ineffective”, because of the number of public officials exempt from its authority.³³² Ben Roberts agreed and suggested that the selection process had also reduced the post’s potency.³³³

182. During our visit to TCI we were also told that there was no prohibition on ministers having commercial business positions while in post and that texts of planning applications and environmental impact assessments were also not publicly available.

Role of Governor

183. Many witnesses to our inquiry argued that as head of TCI’s Cabinet the Governor was in a position to prevent alleged inappropriate grants of Belonger status and Crown land. They also told us that the Governor was failing to use powers available to him to investigate concerns. A minority of witnesses were of the view that the Governor must therefore be involved in alleged corruption. Many others assessed the Governor to have simply been too weak to stand up to pressure from the local administration. Others suggested that he had ignored concerns. The Leader of the Opposition told us that the Governor had “not paid particular interest to good governance” and might not have been “vigilant enough”.³³⁴ The Chairman of the Opposition asked:

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 Government when he publicly said that he has not seen any evidence of these breaches?³³⁵

184. During our visit to Turks and Caicos Islands we discussed his role in approving grants of Crown land and Belonger status with the Governor. He told us that it was constitutionally very difficult for him to intervene when all legal requirements under TCI

³²⁸ Ev 357

³²⁹ Ev 326

³³⁰ Ev 168

³³¹ Ev 238

³³² Ev 168

³³³ Ev 129

³³⁴ Ev 326

³³⁵ Ev 342

law appeared to have been met. He also noted that he had only received two objections to applications to Belonger status during his time in post.

185. With regard to investigation of specific allegations of corruption, the Governor told us that he had persuaded HMG to send two policemen to TCI to investigate a particular case, but that the police had found insufficient evidence for a prosecution. He stressed that he always investigated allegations when evidence was sent to him and that he had advised the opposition to give any evidence to the police.

186. During our visit to the Cayman Islands we learnt that the Governor there had initiated a Commission of Inquiry to look at allegations of misuse of confidential government documents by the former Permanent Secretary without consulting Cabinet.³³⁶ We therefore asked the Governor in the Turks and Caicos Islands if he had considered taking such action. He told us that he had not received sufficient evidence to warrant doing so and also told us that he would need the agreement of the TCI Cabinet to take forward such a Commission. However, in oral evidence, Susan Dickson, Legal Counsellor at the FCO, confirmed that the Turks and Caicos Islands had a Commission of Inquiry Ordinance which gave the Governor complete discretion to set up such a Commission.³³⁷ She explained that while it would be usual for the Governor to consult the TCI Cabinet in advance he did not have to do so under the Ordinance and if he did so and his decision was blocked by Cabinet, the Cabinet could be overruled by the FCO.³³⁸

187. During our visit we also spoke to the Governor and Attorney General about levels of security being provided for the Attorney General following the recent arson attacks. The Attorney General told us that he had requested additional security from the FCO, but had been told that he was not entitled to it since his appointment was local. We raised this with the then Director of the Overseas Directorate in the FCO who told us that the Governor had not reported the issue to him.³³⁹ Meg Munn later provided the following clarification of events:

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.³⁴⁰

³³⁶ Ev 362

³³⁷ Q 284

³³⁸ Qq 285-288

³³⁹ Q 280

³⁴⁰ Ev 357

Role of the UK Government

188. Many submissions argued that the UK Government was failing the Turks and Caicos Islands, because of inaction over allegations of corruption. Ben Roberts told us:

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.³⁴¹

Mr Gibbs highlighted the fact that the UK had implemented an Order in Council to decriminalise homosexuality (see para 254 below) and asked:

Why has the FCO and the Privy Council with similar vigour, not developed and recommended 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.³⁴²

Many witnesses called for the UK Government to use its powers to initiate a Commission of Inquiry (see para 186 above).³⁴³

189. We asked Meg Munn for her view of the allegations we had received. She told us that she was “very concerned” to hear about the “level of worry”. She said she took the allegations seriously and had had discussions with the UK Government about them, as well as raising issues concerning Crown land with the Premier of TCI. Like the Governor, the Minister also told us that police officers from the UK had visited the Turks and Caicos Islands but that there had been insufficient evidence to take the matter forward “despite reassurances about confidentiality and how such things happen”. Meg Munn added:

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 [...] matters [...]. We will need to continue to keep them in mind to see whether they deliver greater transparency and confidence in the systems.³⁴⁴

190. We asked Meg Munn whether she would consider a Commission of Inquiry. The Minister told us that she “a completely open mind” about this, but added:

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 would want to do so on the basis of good evidence.³⁴⁵

In a follow-up letter, she added the following comments:

[...] 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

³⁴¹ Ev 129

³⁴² Ev 168

³⁴³ Ev 326

³⁴⁴ Q 282

³⁴⁵ Q 283

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.³⁴⁶

191. An even more serious option would be to suspend parts of the constitution as happened in 1986 when TCI's ministerial government was suspended by Order in Council following a Commission of Inquiry. Ben Roberts told us:

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.³⁴⁷

192. Anthony Hall also warned:

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 TCI Islanders fully expect will be the case.³⁴⁸

193. Some witnesses also questioned the level of support provided by the UK Government to TCI's Governor. In our oral evidence session the then Director of the Overseas Directorate claimed that he had not been informed by the Governor of difficulties in recruiting a replacement Chief Auditor.³⁴⁹ However, in a follow-up note the FCO told us that the Governor had "been working since July 2007" to fill the post, including securing a salary uplift from the local government for the post, and that he had "kept the FCO in close touch with developments". (The note also informed us that the position of Chief Auditor had now been filled by an applicant with "long experience within the region."³⁵⁰)

194. During our visit, we learnt that the post of TCI Governor had been upgraded to the same level as Governor of the Cayman Islands (which is the second most senior Governorship).³⁵¹ The present Governor, Mr Richard Tauwhare, is due to be replaced in August 2008 by Mr Gordon Wetherell, who was previously High Commissioner to Ghana.

³⁴⁶ Ev 357

³⁴⁷ Ev 129

³⁴⁸ Ev 93

³⁴⁹ Q 280

³⁵⁰ Ev 357

³⁵¹ The first is Bermuda.

The then Director of the Overseas Directorate told us that Mr Wetherell did not have Overseas Territories experience but that he did have “a range of other experience operating in small posts” and was “a very experienced character”.³⁵² We have asked to meet Mr Wetherell before he takes up his post.

195. When we asked Mr Turner why the post had been upgraded his response suggested that the FCO had been aware of the challenges of the post for some time:

[...] 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.³⁵³

We further consider the support and training provided to Governors in Chapter 6.

196. We are very concerned by the serious allegations of corruption we have received from the Turks and Caicos Islands (TCI). They are already damaging TCI’s reputation, and there are signs that they may soon begin to affect the Islands’ tourism industry. There is also a great risk that they will damage the UK’s own reputation for promoting good governance. Unlike the Cayman Islands, where the Governor has taken the initiative in investigations, the onus has been placed on local people to substantiate allegations in TCI. This approach is entirely inappropriate given the palpable climate of fear on TCI. In such an environment, people will be afraid to publicly come forward with evidence. We conclude that the UK Government must find a way to assure people that a formal process with safeguards is underway and therefore recommend that it announces a Commission of Inquiry, with full protection for witnesses. The change in Governor occurring in August presents an opportunity to restore trust and we recommend that the Commission of Inquiry should be announced before the new Governor takes up his post.

197. On 20 May we held a private meeting with Meg Munn to express our concerns about the allegations we had received during the course of our inquiry.

Other Overseas Territories

198. While the most serious allegations of corruption we received originated from the Turks and Caicos Islands, we were also sent submissions expressing concerns from Anguilla, Bermuda, Gibraltar, Montserrat, St Helena and Tristan da Cunha. These concerns varied in gravity. We consider the issues raised in each in turn below, making individual recommendations about Anguilla and Bermuda and then considering how levels of accountability and transparency across Overseas Territories could be improved.

³⁵² Q 275

³⁵³ Q 278

Anguilla

199. Harry Wiggin told us that Anguilla’s “birthright was in the process of being destroyed on the altar of short term gain”, alleging that contrary to previously expressed policy a single developer had now been given permission for three large developments in the Territory. Mr Wiggin argued that this would have “serious social consequences” because of the enormous number of immigrant construction workers who would have to be employed to build the developments. The Royal Society for the Protection of Birds (RSPB) also highlighted concerns raised by an Anguillan economist about the potential impact of over-development on society and the environment.³⁵⁴

200. Mr Wiggin pointed us to allegations that had been made in a blog, removed after they became subject to a libel suit, that the three developments had been permitted because Anguillan ministers had accepted bribes from the developers. He urged the UK Government to strongly encourage the Anguillan government to initiate an independent inquiry, arguing:

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 [...] ³⁵⁵

201. Mr Wiggin also expressed concern about a general lack of “adequate controls in place designed to ensure good government” in Anguilla. In particular he raised

- a lack of proper public consultation and information on government deliberations;
- the fact that Anguilla does not have a Public Accounts Committee;
- a lack of a law requiring legislators to declare assets;
- the exemption of Ministers, MPs and Boards of Statutory Commissions from the Public Service Integrity Board;
- the lack of a Boundaries Commission;
- the lack of a Freedom of Information Act, whistleblower act and Ombudsman law;
- the lack of discussion in House of Assembly before crown lands disposed of;

³⁵⁴ Ev 112

³⁵⁵ Ev 274

- and the lack of a requirement for environmental impact assessments, and the failure to make them publicly available when they were carried out.³⁵⁶

He called for these deficiencies to be addressed within or at the same time as any new draft constitution (see para 18, Chapter 2) and argued that the failure to ensure such anti-corruption measures were introduced might leave the UK “with blood on its hands” if at some point in the future rule of law broke down as a result.³⁵⁷

202. Mr Wiggin also expressed concerns that Governors of Anguilla had “been known to permit and endorse actions [...] publicly known or recognised to be improper”. In particular he claimed that Governors had not condemned members of government holding commercial positions, such as the Chief Minister’s position as Chairman of a leading commercial bank in Anguilla.³⁵⁸

203. We recommend that the Government should encourage the Anguillan government to establish an independent inquiry into allegations that Anguillan ministers accepted bribes from developers in the Territory. We also recommend that the Government should urge the Anguillan government to use the opportunity of constitutional review to introduce stronger anti-corruption measures in the Territory.

Bermuda

204. We received evidence alleging government improprieties in Bermuda. Alan Gamble, an Assistant Project Director of an office and retail development in Hamilton, called for more accountability on public spending, arguing:

We can only guess at the level of debt in which this Government has placed us and [...] 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.³⁵⁹

Another businessman, Antony Siese, an optometrist in Hamilton, alleged that contracts had been issued without tender to the “party faithful”.³⁶⁰ The Voters Rights’ Association agreed, alleging that major construction contracts had been given to “personal friends” of the Premier.³⁶¹ Mr Siese also alleged that no action had been taken against members of Bermuda’s governing party for breaking planning and other laws.³⁶²

205. Mr Siese and the Voters’ Rights Association also expressed concerns about the lack of transparency in respect to the issuing of three Special Development Orders.³⁶³ The Voters’

³⁵⁶ Ev 274

³⁵⁷ Ev 274

³⁵⁸ Ev 274

³⁵⁹ Ev 266

³⁶⁰ Ev 292

³⁶¹ Ev 280

³⁶² Ev 292

³⁶³ Ev 280 and 292

Rights Association told us that most projects approved by these Orders had been “to the detriment of Bermuda's environment and prospects for sustainability”.³⁶⁴

206. Bermuda's opposition referred to the Auditor General's reported concerns about the “growing culture of opportunity for dishonesty” within government. In particular, the opposition highlighted allegations of corruption at the Bermuda Housing Corporation.³⁶⁵ The Bermuda police investigated corruption allegations at the Corporation in 2002. The investigation concluded with no criminal charges, with officials finding that the incident demonstrated “unethical, but not illegal” behaviour under Bermuda law.³⁶⁶ In May 2007 confidential police investigation documents were leaked to a newspaper which showed that suspects had included key members of the governing party, including the Premier. This leak provoked an angry response from the Premier, who, according to the *Daily Mail*, accused the then Governor in a televised address of not doing enough to secure the police file and warned that Bermuda's government would “suspend further relations” with the Governor unless he got to the bottom of the leak.³⁶⁷

207. The Auditor General, who is appointed by the Governor, had his office raided as part of the investigation into the leak and was also arrested for a day and questioned.³⁶⁸ Many submissions to our inquiry expressed concern about his treatment.³⁶⁹ Mr Gamble argued, “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.”³⁷⁰ During our visit to Bermuda, the Governor told us that his predecessor had objected strongly to the Bermuda government at the time.

208. The Premier and the Attorney General sought a Privy Council order that the media could not print further documents from the leaked police files, but the Privy Council ruled in favour of publication. Bill Zuill, the Editor of the *Royal Gazette*, which ran the initial story, told us in his evidence to our inquiry that the paper was running a freedom of information campaign in Bermuda. He argued:

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.

Mr Zuill acknowledged that the Bermuda government had said it was working on a Public Access to Information Act, but called for this legislation to be given “a higher priority”.³⁷¹

³⁶⁴ Ev 280

³⁶⁵ Ev 270

³⁶⁶ “Scotland Yard brought in as Bermuda swerves away from crisis”, *Daily Mail*, 8 June 2007

³⁶⁷ *Ibid.*

³⁶⁸ Qq 326-327

³⁶⁹ Ev 292

³⁷⁰ Ev 266

³⁷¹ Ev 270

Mr Gamble also told us that there was a “catalogue of secret reports and enquiries which remain hidden”.³⁷²

209. During our visit in Bermuda, we were also told that the media were subject to intimidation by politicians. In March the Royal Gazette reported that its sport’s editor had been criticised by members of both the opposition and governing parties in Bermuda for an opinion piece he had written on cricket, with a Bermuda Works Minister calling for the journalist to be deported.³⁷³

210. Both the opposition and the Voters’ Rights Association called for a Royal Commission into the allegations of corruption at the Bermuda Housing Corporation.³⁷⁴ The Voters’ Rights Association also called for a number of anti-corruption measures including:

- the creation of an Ombudsman with power to investigate the activities of all members of government;
- the removal of the Office of Attorney General from direct political influence;
- reform of Bermuda’s laws on corruption to mirror UK legislation and comply with the United Nations Convention Against Corruption;
- enhancement of the powers and independence of the Auditor General;
- legislation to ensure fiscal accountability by civil servants, the government, the Premier, the Cabinet and all parliamentarians;
- the establishment of an independent committee or commission to oversee government purchases and contracts;
- improvements in the Bermuda Police Service, including reducing perceived political influence; and
- the introduction of “whistle blowers” legislation.³⁷⁵

211. The opposition called for measures to increase transparency in Bermuda’s House of Assembly too. It argued that it was “unacceptable” that committees of the House continued to sit *in camera*. It also argued that rules governing the asking of parliamentary questions were outdated - the requirement being that they are submitted 10 days in advance. The Speaker has also ruled that no Minister can be asked more than three questions on any sitting day. The opposition also highlighted the lack of a “written code governing the behaviour of Members of the House” and the lack of an “established independent mechanism for oversight and enforcement when it comes to disclosure of relevant interests and any conflicts that may arise as a result”.³⁷⁶

³⁷² Ev 266

³⁷³ “One step from totalitarianism”, *The Royal Gazette*, 18 March 2008

³⁷⁴ Ev 270 and 280

³⁷⁵ Ev 280

³⁷⁶ Ev 270

212. We also received allegations of irregularities in the electoral process in Bermuda. Sonia Grant, a candidate in the October 2006 mayoral by-election for the Corporation of Hamilton, alleged that companies' nominees on the electoral list were changed by the registering officer after threats from the returning officer.³⁷⁷

213. The Voters Rights' Association highlighted an average inaccuracy of 8% in the electoral register in Bermuda's December 2007 general election, and also alleged fraud:

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.³⁷⁸

The Association called for an independent audit of voting "to determine the number of illegal voters in each constituency in which candidates won by small margins". It recommended that 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 held after the removal of illegal voters from the electoral register. It also recommended the following electoral reforms:

- a Voters' Bill of Rights to be enshrined in Bermuda's Constitutional Order;
- reforms to the Parliamentary Election Act, in particular to voters' registration;
- the establishment of an independent Election Commission;
- fixed parliamentary term elections;
- introduction of absentee balloting; and
- reform of broadcasting legislation to prevent the governing party gaining an unfair advantage in elections.

214. We recommend that the Government sets out in its response to this Report the steps it has taken to ensure that allegations of corruption at the Bermuda Housing Corporation, in the issuing of contracts, and of electoral fraud in Bermuda are properly investigated. We also recommend that the Government should encourage the Bermuda government to strengthen its transparency measures, including by establishing an independent Electoral Commission and ending the practice of Committees of the House of Assembly sitting *in camera*.

Gibraltar

215. The Rock Firm (War Veterans) Group claimed that the media in Gibraltar was under the Chief Minister's "complete financial control".³⁷⁹ We also received a submission from Clive Golt, Editor of The New People, newspaper of the opposition party, which claimed

³⁷⁷ Ev 162

³⁷⁸ Ev 280

³⁷⁹ Ev 249

that the Chief Minister had banned him from press conferences, denied him access to government information and ensured funds spent on public advertising did not include his newspaper.³⁸⁰

216. In response the Chief Minister told us:

We have not withdrawn advertising from any newspaper. [The New People] 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.³⁸¹

Montserrat

217. Mr Rhys Williams, of Montserrat, told us all matters dealt with by the government of Montserrat were “shrouded in secrecy” and asked why the UK had not extended the Freedom of Information Act to the Overseas Territories.³⁸² He also suggested a lack of accountability in how budgetary aid (see paras 343 to 348 below) was being spent:

Why [...] does DFID provide [the government of Montserrat] with Grant-in-Aid funds and then say “We have provided seventy percent 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.

He added:

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 judgement, the private contractor, has been able to walk away without repaying a penny!³⁸³

218. James Skerit, a UK citizen of Montserrat origin whose parents had returned to Montserrat to retire, expressed concerns about lack of transparency in planning in the Territory.³⁸⁴

St Helena

219. We received a number of submissions from St Helena expressing concerns about governance. The Speaker of St Helena argued that there was “a need to strengthen democracy and trust” on the Island. He recommended that the FCO and DFID should help to establish an Ombudsman and a Scrutiny or Standards Committee on the Island, arguing that the former was “a must” if the good governance of the Island was “to be taken

³⁸⁰ Ev 247

³⁸¹ Q 243

³⁸² Ev 255

³⁸³ Ev 255

³⁸⁴ Ev 246

seriously”.³⁸⁵ St Helena’s Citizenship Commission called for an inquiry to examine governance in St Helena.³⁸⁶

220. There were two main areas of concern with regard to auditing arrangements: management of St Helena’s shipping service (see paras 333 to 342, Chapter 4) and the contract for the Bulk Fuel Installation, St Helena’s only fuel supply. On the former, the Speaker highlighted the fact that freight charges and passenger fares had increased despite an increase in the UK subsidy for the service. He questioned why shipping management accounts were not being audited by the St Helena Government (SHG) Auditor when the subsidy formed part of the Island’s budget.³⁸⁷ St Helena’s Citizen Commission also questioned the lack of auditing, arguing “lack of transparency in this core sector of government administration raises public concerns and speculation”.³⁸⁸

221. The Speaker and Andrew Bell, director of a company formerly engaged for ship management, suggested that St Helena Line, which owns the ship on behalf of the Island, was appointed without tender,³⁸⁹ although the Company Secretary of St Helena Line later wrote to us to explain that the company had been created at the request of HMG and SHG and that it would therefore have been “difficult to envisage a situation in which [it might have been...] required to bid for the very service for which it was established”.³⁹⁰

222. Mr Andrew Bell also claimed that the company presently engaged for ship management had had its contract extended without competition until St Helena’s new airport (see paras 333 to 342, Chapter 4) was built, despite the expressed interest of the “largest ship management company in the world” in bidding. He alleged that the Governor of St Helena had been wrongly advised that “there was no one interested in quoting”. He added that the National Audit Office had said they had no powers to audit or question this and described the contract as “truly a milch cow with its own ringed fence”. Mr Bell also questioned the use of non-shipping specialists as consultants by DFID on behalf of SHG and claimed that their reports revealed “few strategic recommendations”.³⁹¹

223. On St Helena’s Bulk Fuel Installation, the Speaker argued that its contract had “never been advertised” and that there was a “conflict of interest” in SHG being “involved in a commercial Company and representing the people of the Island”.³⁹²

224. We also received concerns about a lack of transparency within St Helena’s Executive Council. St Helena’s Citizenship Commission expressed concerns about lack of public consultation on SHG’s land disposal policy (see para 338, Chapter 4). It argued that “important policies for changes” were being driven by a government administration “disproportionately weighted with FCO/DFID appointees”, and expressed particular

³⁸⁵ Ev 97

³⁸⁶ Ev 102

³⁸⁷ Ev 97

³⁸⁸ Ev 102

³⁸⁹ Ev 97 and 180

³⁹⁰ Ev 260

³⁹¹ Ev 180

³⁹² Ev 97

concern about the membership of the Corporate Management Group (CMG). The Commission told us that the public had not yet seen any terms of reference for the CMG even though it appeared to prepare most of the papers for Executive Council, and argued that this led to “public distrust” and called into question “the whole democratic process and transparency of government”. The Citizenship Commission also questioned why the post of Chief Secretary had not been substantively filled and why the Dutch government had been permitted to lay claim to a wreck in the Island’s main harbour.³⁹³

225. BioDiplomacy pointed out that the UK’s Freedom of Information Act had been disappplied to St Helena. It argued that this was “against the wishes of many Saints” and that there was no sign of promised local legislation. It argued that freedom of information legislation was “particularly needed” because of the air access project (see paras 333 to 342, Chapter 4):

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.³⁹⁴

226. St Helena’s Chamber of Commerce argued that Legislative Council Members who were not SHG Members had been “effectively, disfranchised from the decision making process” because St Helena’s various Committees consisted of two Executive Council (ExCo) Members (government) and two non-government Legislative Council Members with one of the ExCo Members having a casting vote. It also argued that most ExCo discussions were “unnecessarily held in secrecy and [...] not open to the public” and that this simply promoted “the current distrust” of SHG.³⁹⁵

227. However, we later received a submission from St Helena’s Legislative Council which explained that there had been a positive development on this issue: ExCo had agreed to its Chairman making a broadcast summarising the Council’s discussions following each meeting and to ExCo papers being distributed to all Councillors rather than just those on ExCo. The Legislative Council told us:

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.³⁹⁶

228. St Helena’s Chamber of Commerce also expressed concern that vacancies for appointments to various Boards on the Island were not being “openly advertised with the appropriate skills and experience of potential applicants being taken into account” and argued that it was currently “simply who the Governor wants to appoint”.³⁹⁷

³⁹³ Ev 102

³⁹⁴ Ev 171

³⁹⁵ Ev 164

³⁹⁶ Ev 252

³⁹⁷ Ev 164

Tristan da Cunha

229. The Chief Islander of Tristan da Cunha called for the Island Council “to see and be able to respond to all political correspondence between London and Tristan”. He told us that previous administrations had “made premature decisions and sometimes given incorrect information to councillors and heads of departments” and that this had resulted in a declining economy and disillusioned workforce (see paras 354 to 360 below). He argued:

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.

[...] 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.³⁹⁸

FCO response

230. In its evidence to our inquiry the FCO acknowledged that formal scrutiny in most Overseas Territories was “significantly less comprehensive or effective than in the UK”. It described a number of key “limiting factors” including: small size of legislatures entailing that there were not enough members to staff committees; members of the governing parties not wanting to appear disloyal, creating difficulties with quorums and production of agreed reports; low expertise; lack of (public) Committees of Public Accounts; and little investigative journalism for fear of government retribution. The FCO told us that “the Governor and the public service in Overseas Territories therefore “had an important role to play” in public accountability. It also pointed out that one aspect of the principles of good governance agreed at the 2006 OTCC was that information should be freely available and directly accessible to those affected, including provision of the appropriate level of information to the public and media.³⁹⁹

231. In its recent report, the UK Public Accounts Committee concluded that the FCO should “explore how Territories can better use the expertise available in the UK to support the development of their own capability, and whether more use could be made of ex-officio members in individual Public Accounts Committees.⁴⁰⁰

232. BioDiplomacy suggested that the FCO might want to consider introducing or applying freedom of information legislation to all Overseas Territories, and gave the Cayman Islands as an example which might provide a “good model” for others.⁴⁰¹

³⁹⁸ Ev 224

³⁹⁹ Ev 144

⁴⁰⁰ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, p 6

⁴⁰¹ Ev 171

233. We recommend that the FCO should strongly encourage all Overseas Territories which have not yet done so to introduce freedom of information legislation. We also recommend that the FCO should review with Overseas Territories what steps they might take to improve their public accounting and auditing capability. We support the Public Accounts Committee's recent recommendations that the FCO should explore how Overseas Territories might make better use of UK expertise and that it should also explore whether those Territories with Public Accounts Committees could make more use of ex-officio members.

Rule of law

Appointment of judges

234. A critical part of good governance is an independent judiciary. All Overseas Territories have their own Chief Justice, except for: Anguilla, Monserrat and the British Virgin Islands, which are under the jurisdiction of the Eastern Caribbean Supreme Court; South Georgia and the South Sandwich Islands and the British Antarctic Territory, whose cases are heard by the Chief Justice of the Falkland Islands; and the Sovereign Base Areas of Cyprus, in which Senior Judges are appointed as required.⁴⁰² During the course of our inquiry we asked the FCO for details of the terms and conditions of judicial appointments in Overseas Territories in which UK ministers were involved.⁴⁰³

235. Our interest was sparked by the suspension of the Chief Justice of Gibraltar, Hon Mr Justice Schofield. Four leading law firms had sent the Governor of Gibraltar a 25-page file of allegations about Mr Justice Schofield which demanded the Chief Justice's removal. In September 2007, the Governor decided to suspend the Chief Justice on full pay while appointing a Tribunal to advise on whether he should refer the question of whether to remove the Chief Justice to the Judicial Committee of the Privy Council, the highest British court for Gibraltar.⁴⁰⁴ It was claimed by some witnesses that this might have been a political move since the Mr Justice Schofield's suspension had followed a constitutional row in which he had argued that the new constitution (see para 16, Chapter 2), gave too much power to the executive.⁴⁰⁵

236. One of Gibraltar's opposition's manifesto commitments in the October 2007 elections was to reinstate the Chief Justice as head of the judiciary and to reverse aspects of the Judicial Services Act, changing aspects of the constitution if necessary to do so.⁴⁰⁶ The Leader of the Opposition told us that his party's concerns revolved around elected politicians having too much involvement in the administration of justice.⁴⁰⁷ He also told us that he was concerned about the head of Gibraltar's judiciary being based outside the Rock

⁴⁰² HC Deb, 5 March 2008, col 2565W

⁴⁰³ As the FCO pointed out to us, constitutionally Her Majesty and the Secretary of State are acting in right of the Territory concerned, and not on behalf of the United Kingdom Government.

⁴⁰⁴ The Tribunal is set to open its substantive hearing on 7 July 2008.

⁴⁰⁵ For example, Ev 296.

⁴⁰⁶ "A slap in the face for justice from judicial commission", *Vox*, 31 August 2007

⁴⁰⁷ Ev 296

and suggested that the constitutional changes might have been made to address issues of status.⁴⁰⁸

237. We asked the Chief Minister of Gibraltar about the Chief Justice’s suspension. Hon Peter Caruana told us that the Governor had acted fully in accordance with constitutional procedure (section 64) in his handling of the Chief Justice’s case. He explained:

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.

The Chief Minister also emphasised the government of Gibraltar’s complete distance from the process.⁴⁰⁹

238. We also asked the Minister for Europe about the case. He told us:

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.

The Minister added that there was “a legitimate debate as to whether [...] London should have a smaller or greater role”, but that the UK Government had judged that it was appropriate for Gibraltar to have this additional power in its new constitution.⁴¹⁰

239. G E Harre, former Chief Justice of the Cayman Islands, highlighted the “great variety” of judicial appointment procedures in his evidence to our inquiry. He did not express a strong preference as to whether the UK or local government should have a greater role in appointments. However he did call for greater transparency in appointments, arguing that this was “particularly important in a small jurisdiction where suspicion of an outsider may exist” and that it might also “serve to assuage feelings of disappointment in any other member of a small bench who was also a candidate for the post”.⁴¹¹

240. The former Chief Justice also called for the terms and conditions of employment of judges in the Overseas Territories to fall under the responsibilities of the Secretary of State for Justice and Lord Chancellor, as they do in England. He argued:

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.⁴¹²

⁴⁰⁸ Q 198

⁴⁰⁹ Qq 227-228

⁴¹⁰ Q 253

⁴¹¹ Ev 184

⁴¹² Ev 184

He added that “judges should never feel that if they do not please the government their salaries may be at risk”. He claimed that a change in executive had affected his own retirement package and that his benefits had also been “adversely affected” by his “lack of rapport” with the Governor who approved them.⁴¹³

241. We also received evidence which expressed concerns about the independence of the judiciary in Bermuda and in the Turks and Caicos Islands.⁴¹⁴ During our visit to Bermuda the Chief Justice highlighted the fact that appointments for his position were for five years at a time and suggested that this could make Chief Justices seeking contract renewal vulnerable to interference.

242. We conclude that the FCO must ensure there are sufficient measures in place to prevent interference from either the Governor or the local government in judicial decisions in Overseas Territories. We recommend that the FCO should consider transferring the responsibility for Chief Justices’ terms and conditions of employment to the Ministry of Justice. We also recommend that the FCO should consider whether judges in Overseas Territories would be less vulnerable to interference if they were on longer non-renewable contracts, with appropriate safeguards in case of incapacity, rather than on renewable short term contracts.

Operation Unique

243. In 2004 six Pitcairn men, one of whom was the Island’s mayor, were found guilty of a series of sex charges, including rapes, sexual assaults and indecent assaults involving children. Their appeal to the Privy Council was dismissed in 2006.⁴¹⁵

244. Meg Munn told us that the government had acted “decisively” to investigate the allegations and ensure prosecutions took place.⁴¹⁶ We agree. We consider the impact of the prosecutions on the Island’s economic situation in paras 349 to 353, Chapter 4.

Human rights

245. The FCO told us that it had an objective to extend every key international human rights convention to all the inhabited Overseas Territories.⁴¹⁷ The European Convention on Human Rights has been extended to all populated Territories except Pitcairn (see para 23, Chapter 2 on proposals by the Commissioner to extend the ECHR to the Island).⁴¹⁸ However, a few core international human rights conventions have yet to be extended to some of the Overseas Territories (see table provided to us by the FCO at Ev 162). One witness also told us that the Overseas Territories were “woefully absent” on a new global

⁴¹³ Ev 260

⁴¹⁴ Ev 280 and 326

⁴¹⁵ www.fco.gov.uk

⁴¹⁶ Q 296

⁴¹⁷ Ev 144

⁴¹⁸ Ev 144

convention on the International Recovery of Child Support and other Forms of Family Maintenance which gave “practical effect to the rights of the child.”⁴¹⁹

246. The UK is responsible under international law for ensuring Overseas Territories meet their obligations arising from international human rights conventions which have been extended to them.⁴²⁰ In this section we consider the FCO’s general work with Territory governments on implementing human rights conventions. We then look at five specific issues on which we received evidence that human rights were being infringed: homosexual rights; conditions of migrant workers; rights of prisoners and illegal immigrants; rights of “non-Belongers”; and conscription.

Compliance with human rights treaties

247. The FCO’s evidence to our inquiry stated that, “Governors, where necessary, remind Overseas Territory Governments of the need to address any areas of human rights where deficiencies have been identified.” It also pointed out that human rights had been on the agenda for discussion at recent OTCCs and that, together with DFID, it was funding a £1 million four-year programme to build human rights capacity in the Overseas Territories.⁴²¹

248. The FCO also told us that it was working with DFID on “particular areas of concern, including protection of children, to improve the situation where problems occur”.⁴²² However, during our visit to the Cayman Islands we were informed that two aspects of the Convention of the Rights of the Child (CRC) had not yet been implemented in local law. We were told that Baroness Symons had been alerted to both this deficiency and to two offences which still carried the death penalty. It was claimed that she had acted very quickly on the latter but had failed to act on implementation of the CRC.

249. The Equality Rights Group argued that the lack of periodic EC reporting by the UK on Gibraltar issues had led to a “blind spot” preventing EC institutions carrying out their supervisory role with regard to human rights obligations in Gibraltar.⁴²³

250. The FCO explained that it was encouraging Overseas Territories to include “comprehensive fundamental (human) rights provisions” in their constitutions (see chapter 2 above for progress on modernising constitutions) and said that it had provided Territories with a model human rights chapter for this purpose.⁴²⁴ It pointed out that the British Virgin Islands had introduced a human rights chapter for the first time in its new constitution, which gave people in the Territory the option to take a case to the local courts if they felt their rights were being violated.⁴²⁵ In its submission to us, the government of Gibraltar highlighted that Gibraltar’s new constitution contained chapters codifying human rights in Gibraltar, which brought them “right up to date” with the ECHR.⁴²⁶

⁴¹⁹ Ev 263

⁴²⁰ Ev 144

⁴²¹ Ev 144; the programme began in July 2007 and is managed by the Commonwealth Foundation.

⁴²² Ev 144

⁴²³ Ev 81

⁴²⁴ Ev 144

⁴²⁵ Ev 144

⁴²⁶ Ev 296

UKOTA also noted that the Turks and Caicos Islands had introduced such a chapter in its constitution.⁴²⁷

251. The Leader of Government Business in the Cayman Islands told us that he “anticipated that a significant outcome” of the process of modernising the Islands’ constitution (see para 19, Chapter 2) would be “the promulgation of a Bill of Rights for the Islands that will be compatible with the rights contained in the European Convention.”⁴²⁸ However, Meg Munn told us that there had been concern when she travelled to the Cayman Islands that signing up to a human rights chapter in its constitution would automatically mean it had to introduce civil partnerships (see discussion on homosexual rights below).⁴²⁹

252. The FCO told us that the Cayman Islands Human Rights Committee had encouraged the Cayman Islands government to take human rights seriously, although when we met Members of the Committee ourselves during our visit to the Cayman Islands they did not seem aware of having influenced government policy.⁴³⁰ Committee Members raised a number of issues with us, including prisoner rights, which we discuss later below.

253. We also met the Chair-designate of the new Human Rights Commission in the Turks and Caicos Islands. She also told us that the Commission lacked teeth since it did not have investigative powers (see para 181 above for similar concerns raised about the Office of the Complaints Commissioner in TCI) and because its terms of reference excluded prisons. The Leader of the Opposition in TCI also told us that four of five appointees on the Commission were appointed by cabinet.⁴³¹

Homosexual rights

254. The FCO told us that “different cultural traditions” in the Overseas Territories had led to conflict between the FCO and the Territories in the past. One such issue was the decriminalisation of homosexual acts between consenting adults in private,⁴³² for which the UK ended up legislating by Order in Council in 2000.⁴³³

255. We received a number of submissions to our inquiry expressing concern about homosexual rights in some Overseas Territories. Brenda Lana-Smith, a postoperative transsexual from Bermuda, claimed she had faced abuse. She told us that Bermuda’s Human Rights Act failed to criminalise discrimination on the basis of sexual orientation or presented gender status and also called for legislation to recognise a postoperative transsexual’s presented gender.⁴³⁴ Jonathan Suter, a Bermudian, and the Two Words and a

⁴²⁷ Ev 88

⁴²⁸ Ev 186

⁴²⁹ Q 264

⁴³⁰ Ev 144

⁴³¹ Ev 326

⁴³² The other main such issue was the abolition of the death penalty on which the UK legislated by Order in Council for the Overseas Territories in 1991.

⁴³³ Ev 144

⁴³⁴ Ev 251

Comma group also called for discrimination on the grounds of sexual orientation to be included in Bermuda's Human Rights Act.⁴³⁵

256. In Gibraltar witnesses also expressed concern about the lack of protection against discrimination on the grounds of sexuality, as well as the unequal age of consent (18 for gay men) and lack of legal recognition for same sex partners.⁴³⁶ Peter Tatchell also told us that Gibraltar's Equal Opportunities Commission only covered race equality.⁴³⁷ In oral evidence, the Leader of the Opposition in Gibraltar criticised the Chief Minister of Gibraltar's New Year message, arguing that it had implied that some areas of complaint with regard to homosexual rights "were an attempt to bring in extraneous standards from other places in Europe that are causing the breakdown of the family and society".⁴³⁸

257. The Chief Minister told us that Gibraltar's implementation of the European Convention of Human Rights was "complete" and argued:

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.⁴³⁹

On equalisation of the age of consent, he informed us:

[...] 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 [...] therefore it seems probable that we will have to equalise our ages of consent. If that is the case, we will do so.⁴⁴⁰

258. We asked the Chief Minister of Gibraltar whether Overseas Territories should be expected to meet UK/EU norms on homosexual rights. He replied:

[...] if you are asking whether I think that the Overseas Territories, as part of being part of the club, [...] 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

⁴³⁵ Ev 242 and 349

⁴³⁶ Ev 81, 165 and 264

⁴³⁷ Ev 165

⁴³⁸ Q 206

⁴³⁹ Q 243

⁴⁴⁰ Q 243

intrusive and interfering to export UK culture to some physically remote places that have different cultures, such as the Caribbean and elsewhere.⁴⁴¹

259. When Meg Munn appeared before us, she confirmed that the UK had no plans to impose the introduction of civil partnerships in the Overseas Territories.⁴⁴²

260. We recommend that the Government should take steps to ensure that discrimination on the basis of sexual orientation or gender status is made illegal in all Overseas Territories.

Conditions of migrant workers

261. Some witnesses to our inquiry also expressed concerns about the pay and living conditions of migrant workers in certain Overseas Territories. Mr Barrington Williams, told us that the Islands were “now home to modern day slavery”, explaining:

[...] 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.

He added that some migrant workers were even being paid on a commission basis, again contrary to Turks and Caicos law. Mr Williams also argued that workers were living in accommodation that was “not up to standard” and that some were having to pay for their own accommodation, when this was their employers’ responsibility under TCI law. He added that the treatment of workers on TCI was currently being investigated by the International Labour Organisation.⁴⁴³ Peter Tatchell drew our attention to the conditions in a government hostel for Moroccan workers in Gibraltar.⁴⁴⁴

262. BioDiplomacy argued:

[...] 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. [...] However, when such development relies heavily on cheap imported labour there are also dangers of human rights abuses.⁴⁴⁵

Prisoners and illegal immigrants

263. During our visit the Human Rights Committee in the Cayman Islands expressed concerns about the lack of mechanisms for independent review of parole decisions, the

⁴⁴¹ Q 243

⁴⁴² Q 265

⁴⁴³ Ev 143

⁴⁴⁴ Ev 81, 165, and 264

⁴⁴⁵ Ev 171

lack of a statutory framework for the Islands' Parole Board and the lack of parole possibilities for those on life sentences. The Committee also claimed that there was a mentally ill person in the Cayman Islands prison who had been detained for nine years without charge and without review.

264. We also heard from the Committee that there was a lack of proper juvenile detention facilities on the Islands. The Committee highlighted a case of a girl under 18 who was being held with adult prisoners. The Governor told us that the local government had recognised the need for a juvenile facility and had plans to build a separate juvenile prison next to the adult prison. We also heard that the Turks and Caicos Islands currently sent its juvenile prisoners abroad, but was also building its own facility.

265. Gordon Barlow, a former member of the Cayman Islands Human Rights Committee, sent us an article in which he claimed that the refusal of drinking water to Cuban migrants arriving on boats on the Islands' shores was a breach of the UN Convention Relating to the Status of Refugees.⁴⁴⁶

266. Some of the evidence we received also identified poor conditions in prison and immigration detention facilities in some Overseas Territories. The Leader of the Opposition in the Turks and Caicos Islands told us that the police lock ups in Providenciales and Grand Turk were "unsanitary", and that the latter lacked proper ventilation. He also argued that the prison in Grand Turk was breaching the rights of remanded individuals by treated them as convicted criminals.⁴⁴⁷

267. Having examined the detention facilities on the Turks and Caicos Islands during our visit there, we raised concerns about conditions with Meg Munn when she appeared before us. She told us that the FCO also had "some general concerns" and that a regionally based prisons adviser had recently visited TCI.⁴⁴⁸

268. We recommend that the Government should closely monitor the conditions of prisoners, illegal immigrants and migrant workers in Overseas Territories to ensure rights are not being abused.

Rights of "non-Belongers"

269. As we have already seen in the Turks and Caicos Islands, a number of Overseas Territories have a special immigration status, not granted to all permanent residents, which confers rights usually associated with citizenship, including the right to vote.⁴⁴⁹ In some of these Overseas Territories this is called becoming a "Belonger".⁴⁵⁰ In others an equivalent

⁴⁴⁶ "Everybody's Business: Not worth water", *Caymanian Net News*, 9 May 2008

⁴⁴⁷ Ev 326

⁴⁴⁸ Q 289

⁴⁴⁹ Gibraltar is an noteworthy exception, since anyone from the UK is entitled to live in Gibraltar, to be entered on its electoral register and to stand for elections, after six months, provided they intend to stay permanently. Q 201 [Hon Joe Bossano]

⁴⁵⁰ Anguilla, the British Virgin Islands, and the Turks and Caicos Islands.

status exists by another name.⁴⁵¹ For ease of reference we use “Belonger” throughout this section.

270. We received many submissions about rights of non-Belongers. Of most concern was the lack of voting rights.⁴⁵² Jonathan Suter, who has Belonger status, described the fact that Permanent Resident Cardholders in Bermuda did not have the vote as an “absolute embarrassment” and called for the UK Government to advise Bermuda to extend the franchise.⁴⁵³ He argued:

The current Government will argue that by giving PRC holders the right to vote, you would be opening the flood gates, [...] 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!⁴⁵⁴

271. Julian Griffiths from Hamilton, Bermuda told us that the Territory’s immigration laws were “racist” and discriminatory and questioned why the UK Government had permitted them to continue. As well as lack of voting rights, he pointed out that non-Belongers, some of whom had lived in Bermuda for over 20 or even 30 years, were also not given equal treatment under the tax system, or equal rights of property or business ownership. He added:

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.⁴⁵⁵

Mr R David of Bermuda also highlighted the issue of lack of rights for children of non-Belongers in the Territory and argued that it effectively made some children “second class citizens in their own land of birth”. He added:

⁴⁵¹ The Cayman Islands and Bermuda.

⁴⁵² Ev 162

⁴⁵³ Ev 258

⁴⁵⁴ Ev 258

⁴⁵⁵ Ev 347

Strangely this denial of basic human rights upon such individuals continues to be endorsed by the silence of the FCO on this matter.⁴⁵⁶

272. Susan Parsons, a former Bermuda resident now living in Canada, explained the impact non-Belonger status had had on her family to us:

I am married to a Bermudian and have been for 10 years we have 2 children together born in Bermuda who hold full status. I had 3 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 3 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?⁴⁵⁷

273. Many submissions from the Turks and Caicos Islands (TCI) argued that it was wrong that the majority resident population were being denied the right to vote.⁴⁵⁸ Correy Forbes, a TCI Belonger, also pointed out that children born to Belonger fathers but non-Belonger mothers in the Turks and Caicos Islands could only gain Belonger status at 18 and argued:

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.⁴⁵⁹

274. However, during our visit to the Cayman Islands, the Leader of Government Business argued that the Islands' indigenous population would not agree to extending the franchise because it perceived the wider population as not being concerned about the long-term interests of the Islands. In the Turks and Caicos Islands, Belongers expressed fears of being swamped by illegal immigrants from Haiti (see paras 367 to 374, Chapter 4). The Speaker of St Helena also called for Belonger status to be reintroduced in St Helena to protect the rights of children born on St Helena against those who had acquired St Helena status by application after five years of residence.⁴⁶⁰

275. We conclude that although extending voting rights to non-Belongers will be politically difficult for Overseas Territory governments, the Government should at least encourage local administrations to review this issue with regard to non-Belongers who have resided in an Overseas Territory for a reasonable period. We recommend that the Government should propose that non-Belongers' rights be an agenda item for the next OTCC.

⁴⁵⁶ Ev 322

⁴⁵⁷ Ev 263

⁴⁵⁸ According to statistics provided by the TCI government to the FCO the resident population figures for 2006 were 11,750 Belongers and 21,452 non-Belongers. HC Deb, 22 October 2007, col 54 W

⁴⁵⁹ Ev 71

⁴⁶⁰ Ev 97

Conscription

276. The Bermuda Regiment was established in the late 1890s so that Bermuda would have a local militia. When the British garrison withdrew in the 1950s, conscription was introduced. Most of the Regiment's work is ceremonial, although it is also on call for disaster or internal security emergencies and can be deployed overseas, as when it assisted the Cayman Islands with relief following Hurricane Ivan (see para 364, following Chapter). The Regiment is currently around 600 strong.

277. Conscripts in the Regiment are selected by a random ballot of males between 18 and 33 and must serve for three years and two months. We received five submissions concerned about conscription. David R McCann, a selectee whose service has been deferred for medical reasons, described it as a “a 21st century form of slavery” adding:

[...] 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.⁴⁶¹

278. Brian Swan from Bermuda argued that the law should cover everyone and not just a random selection of the population and told us that people had left the island for good just to avoid being conscripted. He also argued that teaching to kill should not be part of service.⁴⁶² Robert Masters of Bermuda agreed, asking what the purpose was of “teaching young men how to use a gun in peacetime”. He called for the Bermuda Regiment to become a volunteer organisation, which encouraged both sexes to join.⁴⁶³

279. Sergio Lottimore, a recent selectee, told us that his human rights were being violated through “forced labour, sexism and ageism”. He also argued that the conscription scheme was what was “standing in the way of upgrading the Bermuda Regiment into a 21st century organization”. He believed that the Bermuda Regiment did not currently carry out the right functions and argued that carrying out marine patrols and more civil crisis response services, and eliminating many of its “redundant” military components, would make it a more attractive organization to civilians.⁴⁶⁴

280. Bermudians Against the Draft (BAD) argued that disproportionate numbers of black men were being conscripted. The organisation also claimed that abuse was taking place in the Regiment's training camps and called for a board of inquiry. During our visit it made a number of specific allegations, including that recruits had been forced to watch pornography. BAD also drew attention to very low rates of pay of conscripts and the fact that shackling and incarceration were being used as a penalty for objectors.⁴⁶⁵ The organisation has also brought a legal challenge against the Regiment on the basis of gender discrimination, but the Bermuda Supreme Court judged that the ballot of young males only was not illegal.

⁴⁶¹ Ev 77

⁴⁶² Ev 79

⁴⁶³ Ev 248

⁴⁶⁴ Ev 68

⁴⁶⁵ Ev 232

281. According to the National Audit Office, the Bermuda Regiment is under the Governor's overall control, although it is funded and managed by the Bermuda government.⁴⁶⁶ However, when we asked the FCO about conscription it told us that responsibility for the Bermuda Regiment had been delegated to the government of Bermuda in 1989, and that recruitment policy was therefore a matter for the elected Ministers of Bermuda. It also argued that there were "no grounds" for the Governor to intervene in the 1965 Bermuda Defence Act which sets out the conditions of liability for military service.⁴⁶⁷ In a written answer, the FCO has also pointed to cross-party support for conscription and a 2004 survey which showed it is favoured by a majority in Bermuda.⁴⁶⁸

282. We also asked the FCO about the allegations of abuse we had received. It replied:

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.⁴⁶⁹

283. During our visit the Premier told us that the Bermuda government was proposing to introduce a broader concept of community service for both sexes, which might include the option of service in the Bermuda Regiment. The FCO also told us that Bermuda was considering how more male and female volunteers might be attracted to serve in the Regiment.⁴⁷⁰

284. Bermuda's Premier also suggested that the Regiment might move into maritime duties. However, the Regiment's Commanding Officer told us significant infrastructure and staffing resources would be needed if the Regiment was to begin patrols. The FCO also pointed to the potential difficulties:

[...] 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.⁴⁷¹

285. We recommend that the Government should encourage the Bermuda government to move away from conscription and towards the Bermuda Regiment becoming a more

⁴⁶⁶ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 44

⁴⁶⁷ Ev 357

⁴⁶⁸ HC Deb, 17 January 2007, col 1209W

⁴⁶⁹ Ev 357

⁴⁷⁰ Ev 357

⁴⁷¹ Ev 357

professional organisation, with voluntary and paid elements. We conclude that this could make serving in the Regiment more attractive, giving it the staffing resources required to extend into maritime duties.

Environmental governance

286. The Overseas Territories are rich in biodiversity. Pitcairn, for example, supports more world endangered species than its human population.⁴⁷² One of the proposals in the 1999 White Paper was that Environment Charters should be negotiated between the Government, Overseas Territory governments, the private sector, NGOs and local communities to clarify the roles and responsibilities of stakeholders in environmental management.⁴⁷³ By 2003 Environment Charters had been signed with most Territories.

287. In 1999, a new £3 million Overseas Territories Environment Programme (OTEP), a joint programme of DFID and the FCO, was designed to support the implementation of Environment Charters, and environmental management more generally, in the UK Overseas Territories. This was then extended with an annual budget of £1,000,000, FCO and DFID each providing £500,000. It is a ringfenced commitment from the Global Opportunities Fund.

288. In 2007 the Environmental Audit Committee (EAC) produced two Reports which commented on environmental governance in the Overseas Territories. In its Report on the UN Millennium Ecosystem Assessment, published in January 2007, the EAC expressed concern about the continued threat of extinction of around 240 species in the Overseas Territories and argued that it was “distasteful” that the FCO and DFID had said that the Territories should fund protection of these species from their own resources.⁴⁷⁴ The EAC urged the Government to increase funding for conservation and ecosystem management in the Overseas Territories and to give DEFRA joint responsibility with the FCO for delivering this.⁴⁷⁵

289. The EAC returned to the issue in its Report on Development and the Environment: the Role of the FCO. The Report argued that the current funding situation appeared to be based on what the FCO and DFID could spare, rather than a strategic assessment of need, and reiterated its previous call for increased funding.⁴⁷⁶ It recommended that DEFRA should be involved at the highest level in reviewing the Environment Charters.⁴⁷⁷

290. We received evidence from a number of environmental organisations which told us that they strongly supported the EAC’s conclusions.⁴⁷⁸ The RSPB argued that many

⁴⁷² Ev 112

⁴⁷³ Foreign and Commonwealth Office, *Partnership for Peace and Prosperity: Britain and the Overseas Territories*, March 1999, Cm 4264, para 8.15

⁴⁷⁴ Environmental Audit Committee, First Report of Session 2006-07, *UN Millennium Ecosystem Assessment*, HC 77, 3 January 2007, para 133

⁴⁷⁵ *Ibid.*, para 140

⁴⁷⁶ Environmental Audit Committee, Fifth Report of Session 2006-07, *Trade, Development and the Environment: the Role of the FCO*, HC 289, 23 May 2007, paras 76 and 78

⁴⁷⁷ Ev 112

⁴⁷⁸ Ev 112, 139 and 171

Overseas Territories lacked capacity and resources to carry out effective environmental governance, but that the FCO was nevertheless “abdicating responsibility” to them. It argued that annual funding of £16 million was needed and warned that if increased funding was not found endemic species would “certainly” become extinct and ecosystems “continue to deteriorate”.⁴⁷⁹

291. The Overseas Territories Conservation Forum told us that despite their particular vulnerability to the loss of biodiversity, the Overseas Territories lagged behind the UK in terms of environmental protection. It argued that this was due to a number of causes, including low political status, confusion over responsibilities, “muddled” departmental responsibility and “confusion” over the role of Governors.⁴⁸⁰

292. The Joint Nature Conservation Committee highlighted that there had been 39 recorded extinctions in the Overseas Territories and called for better co-ordination of environmental initiatives both in the UK and between Overseas Territory governments, including for the Departmental Ministerial Group for Biodiversity to “meet regularly and provide strong leadership and support for the Overseas Territory governments”.⁴⁸¹ BioDiplomacy alleged that Whitehall officials from all the different Departments with responsibility for Overseas Territories appeared to be playing:

“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.”⁴⁸²

293. When we were in the Cayman Islands, members of the Cabinet showed us an 80-foot waste mountain, the highest point on Cayman. They called for UK technical assistance with waste management. We asked Meg Munn whether the Government would be willing to provide this. She replied:

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.⁴⁸³

294. However, when we asked the FCO whether it had any proposals to increase funding of the Overseas Territories Environment Programme (OTEP). It told us that it had “no plans” to do so. The FCO repeated the statement, criticised by the EAC, that “responsibility for environmental issues has been devolved to the individual Territories”. As well as the OTEP, it also highlighted insignificant sums provided to Overseas Territories via DEFRA-funded programmes, which did not come anywhere near the RSPB’s assessment of required funding. The FCO also told us:

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

⁴⁷⁹ Ev 112

⁴⁸⁰ Ev 135

⁴⁸¹ Ev 135

⁴⁸² Ev 171

⁴⁸³ Q 334

engagement in Overseas Territory issues by other Whitehall Departments, including by DEFRA.⁴⁸⁴

295. We agree with the Environmental Audit Committee that the Government does not appear to have carried out any kind of strategic assessment of Overseas Territories' funding requirements for conservation and ecosystem management. We conclude that given the vulnerability of Overseas Territories' species and ecosystems, this lack of action by the Government is highly negligent. The environmental funding currently being provided by the UK to the Overseas Territories appears grossly inadequate and we recommend that it should be increased. While DEFRA is the lead Whitehall department responsible for environmental issues, the FCO cannot abdicate responsibility for setting levels of funding given its knowledge of Overseas Territories' capacity and resources. The FCO must work with other government departments to press for a proper assessment of current needs and the level of the current funding gap and then ensure increased funding by the Government through DEFRA, DFID or other government departments is targeted appropriately.

⁴⁸⁴ Ev 363

4 Contingent liabilities

296. The FCO's management of the risks to which Overseas Territories expose the UK was considered in detail in the Public Accounts Committee's and National Audit Office's reports. We therefore do not propose to consider the full range of contingent liabilities here. Instead we focus on a number of key issues on which we received significant amounts of evidence: regulation of offshore financial services; economic diversification and de-mining in the Falkland Islands; budgetary aid; crime and disaster management; illegal immigration; and regulation of civil aviation.

Regulation of offshore financial services

297. The UK has strong reasons to ensure that Overseas Territories' financial industries are well regulated. They present serious risks to the UK's reputation as well as potential financial liabilities, including compensation costs where the UK has direct responsibility and, in the worst case scenario, aid dependency should a sector collapse.⁴⁸⁵

298. Seven of the Overseas Territories currently have financial services industries. The National Audit Office found that they all faced a challenge in responding "adequately to growing pressures to reinforce defences against money laundering and terrorist financing".⁴⁸⁶

299. Bermuda, the British Virgin Islands (BVI) and the Cayman Islands are the largest financial centres. Bermuda is the international leader in insurance, BVI is a leading global player in licensing international business companies and the Cayman Islands are a leading world player in financial services, particularly banking and hedge funds. We received mixed evidence about the quality of financial regulation in these Territories. The Leader of Government Business in the Cayman Islands told us that the Territory had "a very strong compliance culture, [...] underpinned by modern legislation [...] which complied] with international best practice" and emphasised the Cayman Islands Monetary Authority's independence from government.⁴⁸⁷ During our visit to the Cayman Islands, ministers also called for the Territory to be listed in the UK Treasury's list of equivalent jurisdictions for anti-money-laundering. We were also told that the UK's Financial Services Authority had initially objected to the Cayman Islands Monetary Authority (CIMA) joining the International Organisation of Securities Commissions), but that CIMA now had the support of the FSA and had signed a Memorandum of Understanding with the agency.

300. The Premier of BVI emphasised that since BVI's Financial Services Commission had been set up in 2002 it had "enhanced the financial services in the Territory and gained worldwide recognition for running a very good regime". He told us that laws and regulations were frequently updated:

⁴⁸⁵ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC 4, 16 November 2007, p 7, and Public Accounts Committee, *Seventeenth Report of Session 2007-08, Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, p 20

⁴⁸⁶ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 5

⁴⁸⁷ Q 27

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.⁴⁸⁸

301. BVI’s Financial Services Commission itself argued:

[...] often the claim is unfairly made that the so-called offshore centres [...] 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.⁴⁸⁹

The FCO provided some support for this view in its evidence to our inquiry:

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.⁴⁹⁰

302. Mike Hardy, a financial professional in Bermuda, told us that insufficient emphasis had been placed by regulators in Bermuda on the investigation of licensed companies, managers and executives with regard to suspicious activities. He pointed out that the Bermuda Monetary Authority (BMA) had not made one significant “official” Criminal Complaint (or Suspicious Activity Report) to the Police Fraud Unit in 25 years and argued:

[...] 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 [...]

Mr Hardy called for proactive investigation of suspicious activities to be an object of the BMA, as well as a separate investigative branch to work closely with the police.⁴⁹¹ However, the National Audit Office’s report pointed out that Bermuda’s main financial product was corporate reinsurance which was lower risk and therefore less likely to generate suspicious activity reports.⁴⁹² During our visit to Bermuda we met the CEO of the Bermuda Monetary Authority who told us about the steps being taken by the Territory to improve anti-money-laundering standards.

303. Gibraltar’s financial services industry is not large by international standards, but it provides a wide range of services, including banking, insurance, fund management, trusts and advisory business⁴⁹³ and is increasing its share of this market.⁴⁹⁴ For many years,

⁴⁸⁸ Q 27

⁴⁸⁹ Ev 226

⁴⁹⁰ Ev 144

⁴⁹¹ Ev 80

⁴⁹² Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 23

⁴⁹³ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 21

Gibraltar was the object of allegations of financial impropriety—mostly but not only from Spain. Its firm rebuttals of these allegations were not helped by the opacity of its system of financial regulation. However, in 1989, the government of Gibraltar overhauled its regulatory framework and set up a Financial Services Commission. Gibraltar received very good assessments for compliance from the International Monetary Fund in 2001. The Leader of the Opposition told us that in his experience in the past “the UK gave bad advice, things turned out wrong and they subsequently blamed us.”⁴⁹⁵

304. The financial services industries of Anguilla, Montserrat and the Turks and Caicos Islands, for which the UK retains direct responsibility, remain small.⁴⁹⁶ The National Audit Office found that Bermuda, BVI, the Cayman Islands, and Gibraltar, were “leaving in their wake the weaker regulatory capacity” of these three financial centres.⁴⁹⁷ The Public Accounts Committee concluded that the FCO, the Financial Services Authority, the Treasury and the Serious Organised Crime Agency, needed to “deploy their expertise and capacity jointly to manage the risks better”. In particular it highlighted a lack of investigative capacity properly to scrutinise suspected money laundering activity. The Committee found that the Governors in the three smaller financial centres had not used their reserve powers fully and described it as “complacent” for the UK to allow these Territories to manage the risk themselves. It recommended that the FCO and UK agencies should bring in more external investigators or prosecutors to bolster capacity until the Territories could be self-sufficient in this area.⁴⁹⁸

305. We asked the leaders of these Territories for their assessments of standards of regulation of their financial sectors. The Chief Minister of Anguilla told us that Anguilla was trying its “best to put all the regulations and Acts in place” and stated that the Minister of Finance had brought many measures to Anguilla’s House of Assembly.⁴⁹⁹ The Chief Minister of Montserrat told us that his Territory had “almost completed putting into place and enacting the legislation” that would bring it “up to date with the rest of the international community” and explained that Montserrat had also received expert advice and shared resources from CARICOM (the Caribbean Community) and other countries.⁵⁰⁰

306. The Turks and Caicos Islands’ financial sector is small by international standards, but significant, behind tourism, within its local economy.⁵⁰¹ The Premier of the Islands told us that a lot of it was “tied to the construction boom of condominiums and second homes, and the persons and trusts that use the jurisdiction for estate planning”. He said that TCI believed in operating a “clean and high-quality” financial services industry and emphasised that the Territory had an independent financial services commission and had recently introduced a series of laws, including proceeds of crime and anti-money-laundering

⁴⁹⁴ Ev 144

⁴⁹⁵ Q 202

⁴⁹⁶ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, pp 20-21

⁴⁹⁷ *Ibid.*, para 5

⁴⁹⁸ *Ibid.*, paras 3 and 4

⁴⁹⁹ Q 104

⁵⁰⁰ Q 104

⁵⁰¹ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 21

legislation.⁵⁰² However, during our inquiry we received allegations of investments into TCI from businessmen with links to criminality (see para 164, previous Chapter).

307. When we visited the Turks and Caicos Islands we met the Managing Director of the Financial Services Commission and the Chairman of the Board. They called for help with drafting regulations. Another issue they raised was staff training. They explained that TCI had difficulties persuading speakers to come to the Islands. They claimed that the Commission had received an offer of assistance from the United States but the UK had failed to respond quickly when the Commission asked whether it could accept this offer.

308. The Public Accounts Committee noted that the FCO had accepted that standards needed to improve and had employed a financial services adviser based in the Caribbean and provided assistance in drafting legislation to allow the Territories to retain and reinvest the confiscated proceed of crime, but argued that it was “improbable” that a single specialist was “sufficient to address the scale of the risk”.⁵⁰³

309. We also received evidence from St Helena’s Banking Supervisor, Alan Savery, who had a contract with DFID to draw up a financial services ordinance for the Island. He warned:

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”.

Mr Savery told us that he had been trying to introduce financial services legislation for almost three years but that delays had “largely been with the FCO and DFID”. He explained:

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.

[...] 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

⁵⁰² Q 105

⁵⁰³ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, p 3

context. This results in measures being proposed which are out of proportion to the problem being addressed.⁵⁰⁴

310. St Helena’s Legislative Council told us that a draft Financial Services Bill and a Money Laundering Bill were published in December 2007 and argued that enacting such legislation was important both to protect St. Helenians from “falling victim to unscrupulous financial service providers” as the economy begins to develop in preparation for tourism and to ensure the Territory complied with its international obligations.⁵⁰⁵

311. We recommend that the FCO should encourage Bermuda, the British Virgin Islands, the Cayman Islands, and Gibraltar to continue to make progress in improving financial regulation, in particular in arrangements for investigating money laundering.

312. We are concerned by the National Audit Office’s finding that the FCO has been complacent in managing the risk of money laundering in Anguilla, Montserrat and the Turks and Caicos Islands, particularly since these Territories are those for which the UK is directly responsible for regulation and therefore most exposed to financial liabilities. We agree with the Public Accounts Committee’s recent recommendation that Governors of these Territories should use their reserve powers to bring in more external investigators or prosecutors to strengthen investigative capacity.

313. We also recommend that the FCO should continue to work with DFID to introduce a financial services regulatory regime in St Helena that is appropriate to its local economy and development.

Economic diversification in the Falkland Islands

314. According to economic data for 2006, the GDP of the Falkland Islands is £75 million and GDP per head £25,380. Up until now the Falklands have been highly dependent on fishing license revenue, but in the long term catches are expected to decline.⁵⁰⁶ The National Audit Office’s report found that the Falkland Islands government (FIG) had “shown commendable fiscal responsibility by building up its financial reserves to some £170 million by 2006”, which would cushion the Falklands’ finances for several years, but argued that it was important to diversify the Islands’ economy, with tourism and oil exploration being the main opportunities.⁵⁰⁷ We consider progress made on developing these industries below.

Tourism

315. The Ministry of Defence operates the only direct air service (“airbridge”) from the UK to the Falkland Islands (via Ascension), with the only alternative a weekly commercial route via Madrid and Chile run by LAN Airlines (see following chapter for discussions of

⁵⁰⁴ Ev 71

⁵⁰⁵ Ev 252

⁵⁰⁶ During our visit to the Falkland Islands we were told that this was because the main species, the Ilex Squid, is very vulnerable to changes in ocean temperature and currents.

⁵⁰⁷ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 49

Argentina's obstruction to flights across its airspace). The National Audit Office's report identified the "perceived cost and unreliability" of the airbridge as a constraint in increasing tourism. It explained that cruise-ship visitors were projected to treble, but that spend per passenger was low compared to tourists arriving by air. It noted that Falkland agencies had called for more certain booking arrangements, more reliable flights and the ability to offer a business class service and recommended that FIG should commit to a set number of seats, in return for enhanced influence and guarantees regarding the service.⁵⁰⁸

316. In October 2007, the Ministry of Defence (MoD) agreed a new contract with the operator Omniair, which guaranteed up to 29 seats southbound and 39 seats northbound for FIG, and 20 commercial seats each way between the UK and Ascension Island, as well as up to 10 premium economy seats on each flight. The FCO is now liaising with the MoD, FIG and Ascension Island on negotiations for the future service, including seat costs, advance payment and booking mechanisms.⁵⁰⁹ The Public Accounts Committee recommended that:

As the new operator contract is taken forward, costs, risks and rewards should be apportioned between the partners so that reliable public access to the Islands is provided, and the requirements of all parties (such as a set number of premium seats) are met.⁵¹⁰

317. In its written evidence to our inquiry FIG told us that it had begun discussions with the MoD and the FCO, but that these had "been slow to yield results" and that "political confirmation of the UK national interest in a joint service" might be "required in due course."⁵¹¹ In oral evidence Councillor Summers confirmed that the negotiations were at a sensitive stage and explained:

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.⁵¹²

318. Meg Munn told us that she had discussed the airbridge "at length" with the Falkland Island councillors during a recent visit to the Islands.⁵¹³ During our own visit we were told about possible options to replace the airbridge, including flights via Brazilian airspace if Brazil could be persuaded to permit this; or via St Helena if the new airport (see paras 333 to 342 below) was long enough for wide-bodied aircraft. Some Islanders also suggested that oil reserves (see following section below) might increase the possibility of a commercial airline being willing to operate a north-south service.

⁵⁰⁸ *Ibid.*, p 50

⁵⁰⁹ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, para 17

⁵¹⁰ *Ibid.*, p 6

⁵¹¹ Ev 85

⁵¹² Qq 63-64

⁵¹³ Q 322

Oil exploration

319. Possible oil fields have been identified in the Falkland Islands, although further exploration is needed to test their commercial viability.⁵¹⁴ The FCO has already given permission to the Falklands to license certain areas of hydrocarbon development.⁵¹⁵ Rockhopper Exploration has now said it will shortly be ready to drill up to four wells in the North Falkland basin and could also participate in a further four wells planned by Desire Petroleum.⁵¹⁶

320. One potential issue is who should benefit from hydrocarbon revenues. During our visit Councillors expressed concern that the then latest draft of the new Falklands Constitution (see para 20, Chapter 2) did not include a reference, found in the present Constitution, to the Governor's duty to consult the Legislative Council about decisions in respect of mineral rights. The Legislative Council explained that its position was that oil revenue taken by HM Treasury would be a propaganda gift to the Argentines, who would say it proved that Britain had an exploitative, colonial attitude to the Falklands. They argued that FIG should keep any oil revenue, but then offer voluntarily to reimburse the UK for the current cost of defending the Islands, and possibly also the capital cost of building Mount Pleasant Airport, with the option of providing further contributions to the UK Exchequer.

321. We asked Meg Munn and the then Director of the Overseas Directorate in the FCO, whether the fact that FIG had to seek permission from the UK before licensing hydrocarbon development mean that the UK owned the rights to hydrocarbons. Mr Turner replied:

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.⁵¹⁷

We pressed this further and asked whether the UK would demand an income from any revenues. Meg Munn told us

That would be part of negotiations with the Falkland Islanders. They have not found any so we have not had that discussion.⁵¹⁸

322. We recommend that the FCO works with the Falklands Islands government and the Ministry of Defence to ensure that the future air service allows the Islands to develop their tourism industry. We also recommend that in its response to this Report the FCO states clearly what, if any, it considers the UK's entitlement would be in

⁵¹⁴ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 49

⁵¹⁵ Q 266 [Mr Turner]

⁵¹⁶ "Argentina to protest over Falkland oil exploration", *Financial Times*, 1 May 2008

⁵¹⁷ Q 267

⁵¹⁸ Q 269

respect of potential oil and gas revenue from the Falkland Islands and from other Overseas Territories.

De-mining in the Falkland Islands

323. The National Audit Office's report also highlighted the cost of clearing landmines laid by Argentine forces in the Falklands during the 1982 war as a significant contingent liability on the UK, which is obliged to carry out the clearance under the terms of the 1997 Ottawa Convention. There were about 25,000 landmines laid in the conflict and they affect about 13 square kilometres of land. The National Audit Office's report suggested that de-mining could cost many millions of pounds, but stated that a clearer estimate would not be possible until a trial phase has been completed.⁵¹⁹

324. Under the terms of the Ottawa Convention the UK was required to destroy all mines in its jurisdiction by 2007, but it has not yet faced any international pressure to clear landmines in the Falklands. The Falkland Islands government (FIG) has expressed no wish to have these areas de-mined, instead emphasizing their value as wildlife conservation areas. In a recent press statement, it argued:

We are satisfied that all mined areas are safely fenced, and present no long term social or economic difficulties for the Falklands.

Whilst we would not obstruct any efforts HMG wished to make to fulfil its international obligations, FIG would have to pay close attention to the environmental implications of complete clearance [...]⁵²⁰

During our visit we were also told that there had been no deaths or injuries to civilians or tourists caused by landmines. The only injuries had been to armed forces personnel involved in mine clearance in the 1980s, after which a ministerial decision had been taken to halt this work. We were also informed that mines lying in peat or beach sand sometimes move adding to the risks of injuries.

325. FIG also argued that the UK Government would have to consider "the possible negative effect on UK public opinion of high levels of expenditure for little practical purpose" and said that it would prefer the money to be spent on removing landmines from needier parts of the world.⁵²¹ However, the National Audit Office's report pointed out that the Ottawa Convention does not allow for funds allocated for removal of mines in low risk areas to be "vired" to fund the removal of mines in higher risk areas, such as developing countries.⁵²²

326. Meg Munn told us that the UK was "aware" of its obligation under the Ottawa Convention, but that it was also "aware of the difficulties that there are" and the views of

⁵¹⁹ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 50

⁵²⁰ "Landmine Clearance", Falkland Islands Government, 9 May 2008

⁵²¹ *Ibid.*

⁵²² Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 50

the Falkland Islanders. She said that the UK had carried out a feasibility study to see how practicable de-mining would be and that it now had:

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.⁵²³

327. As we were considering this Report, the Government announced that it had decided to submit a request for a ten year extension of the deadline to fulfil its obligation under the Ottawa Convention to clear mined areas in the Falkland Islands. This request will be considered by State Parties to the Convention in November 2008.⁵²⁴

328. We conclude that there are a number of issues to be considered, including cost, practicability, safety and environmental impact, before a decision can be taken on whether to carry out de-mining in the Falkland Islands. We therefore welcome the Government's announcement that it has sought an extension of the deadline to meet the UK's obligations under the Ottawa Convention. We recommend that the Government should discuss the results of its recent feasibility study with Falkland Islanders before coming to any decision about landmine clearance.

Budgetary aid

329. St Helena, Montserrat and Pitcairn are in receipt of budgetary aid from the UK. The National Audit Office's report commented that the majority of the UK aid programme to these Territories went on meeting their recurring budgetary deficits, leaving little to invest in new infrastructure or other development projects and therefore retarding their pace of growth. The report noted that DFID had agreed in principle to move away from an approach which minimised aid incentives for achieving savings, but that it still needed to work out a funding mechanism to ensure aid was based on need and not just availability of resources.⁵²⁵

330. St Helena's Legislative Council told us that in March 2007 it had reached an agreement with the UK which would allow it to retain and reallocate any budgetary savings in the recurrent budget made from efficiency measures and/or higher domestic revenues within its three-year framework.⁵²⁶

331. The National Audit Office also commented on the fact that the FCO and DFID each maintained separate teams, totalling some 60 staff, with responsibility for the Overseas Territories, when, in practice, the DFID team had limited involvement outside St Helena, Pitcairn and Montserrat.⁵²⁷ It recommended that there should be additional pooling of

⁵²³ Q 324

⁵²⁴ "UK seeks 10 year extension of deadline for mine clearance in the Falklands", Foreign and Commonwealth Office press release, 4 June 2008

⁵²⁵ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, pp 34-37

⁵²⁶ Ev 252

⁵²⁷ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, pp 34 - 37

resources at working level between FCO and DFID, with a further extension of joint working and use of mixed teams, deployed flexibly to meet needs across the Territories.⁵²⁸

332. In its submission to our inquiry BioDiplomacy argued there was “a tendency in Whitehall” for Overseas Territories issues “to be treated as a matter for the FCO as the ‘lead Department’”. It argued:

In fact the Department for International Development (DfID) has a major statutory responsibility for the territories under the International Development Act 2002. In budgetary terms, DfID is responsible for far more direct expenditure in the territories than the FCO.⁵²⁹

In this section we consider progress on DFID’s aim that all Overseas Territories achieve self-sufficiency. We examine the air access project in St Helena, progress on rebuilding infrastructure in Montserrat following volcanic devastation and the situation in Pitcairn. We also consider the recent emergency assistance provided by the UK to Tristan da Cunha.

Air access project in St Helena

333. The current sole means of access to St Helena is by sea. RMS St Helena provides the main link to Ascension Island and is heavily subsidised by DFID. The Speaker of St Helena told us that St Helena’s economic situation had now reached a “crisis”. He pointed out that almost half the local the working population now worked offshore (often unaccompanied by their families) resulting in “adverse social consequences and a strain on the running of essential services”, with personnel from other countries having to be imported to help run the medical and education services and for other key public sector posts. He blamed the UK for the economic situation arguing that it had reneged on an agreement not to increase shipping freight fares and other local charges, including delaying the completion of an electricity project which would have benefited the Island until full-cost recovery was agreed.⁵³⁰ A recent visitor to St Helena also highlighted to us that some people on St Helena were “working for less than half the UK minimum wage, with sporadic pension provision and a relatively high cost of living”.⁵³¹ Basil George, the present chairman of a Social Enterprise Company, also explained that a declining population was squeezing St Helena’s tax base and that it was proving very difficult to recruit staff from overseas, with the Island again without a Chief Secretary.⁵³²

334. The UK Government has now decided to end its subsidy for the shipping service and to instead provide funding for the construction of an airport, with the aim of helping St Helena graduate from aid dependency within the next 25 years by attracting inward investment, more tourism and arresting the current population decline.⁵³³ In May 2006

⁵²⁸ *Ibid.*, p 6

⁵²⁹ Ev 171

⁵³⁰ Ev 97

⁵³¹ Ev 268

⁵³² Ev 311

⁵³³ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 56

DFID issued an invitation to tender but later that year all three bidders pulled out. The National Audit Office reported that this was due to “concerns about their exposure to risk”. In May 2007 a new invitation to tender was put out, with DFID agreeing to take on more of the risk and contribute towards design costs. Two bids were submitted to build the airport and related infrastructure by November 2007. Procurement of an air service provider will be carried out once construction of the airport begins.⁵³⁴ The planned completion date has shifted from 2010 to 2012-13.⁵³⁵

335. We received very different views of the air access project in evidence to our inquiry. Hon Brian Isaac, Member of St Helena’s Executive Council, told us that he was “very hopeful” that the airport would be built since it would benefit both the island and Britain by helping St Helena move towards being more self-sufficient.⁵³⁶ In its written submission to our inquiry the Legislative Council told us that the project was

[...] probably the most important venture ever undertaken on the Island and [...] the cornerstone of our dual desire to achieve financial independence and put an end to the problems of depopulation.

The Legislative Council explained that the airport formed a key element of St Helena’s Sustainable Development Plan, published in November 2007, although St Helena also hoped to improve the productivity of its fishing and agriculture.⁵³⁷

336. However, a recent visitor to St Helena told us that she was “unconvinced” that the airport would benefit Islanders and argued that it would damage the Island’s “unique character”.⁵³⁸ BioDiplomacy pointed out that no official cost estimates costs for construction and for maintenance of the service had yet been provided to the public in St Helena or the UK.⁵³⁹ Andrew Bell suggested that the costs would be over £1 billion and argued that there would also need to be massive spending on infrastructure:

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.

[...] This isn't like extending Luton Airport; this is in the middle of the Equatorial South Atlantic.

Mr Bell recommended that instead the FCO should investigate whether the B609, an aircraft with a vertical take-off and landing capability, could be used, arguing that this aircraft would only require “minimal” facilities, could be built on the side of the Island never subject to reduced visibility, and would have “a pay-back aspect for Anglo-US relations”.⁵⁴⁰ It was also suggested to us that another option might have been to establish a

⁵³⁴ Ev 252

⁵³⁵ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 56

⁵³⁶ Q 55

⁵³⁷ Ev 252

⁵³⁸ Ev 268

⁵³⁹ Ev 171

⁵⁴⁰ Ev 180

faster boat service between St Helena and Ascension Island, and that this could have been discounted because of the FCO's decision not to grant permanent rights on Ascension Island (see paras 75 to 82, Chapter 2).

337. The NAO noted that the scale of this project was beyond St Helena's capacity and needed DFID leadership as well as other agencies' involvement. It also warned that the airport would not in itself be sufficient to bring St Helena out of aid dependency – supporting infrastructure would also need investment.⁵⁴¹ The St Helena Legislative Council told us that it recognised that capital investment in infrastructure needed “to be speeded up in order to allow for the completion of agreed projects in a shorter timeframe than would ordinarily be possible”. It therefore called for “front-loading” by HMG of capital investment in certain infrastructure. However, it expressed nervousness over the “the utilisation of the phrase ‘full cost recovery’ especially in the light of the poorer members of our society”.⁵⁴²

338. St Helena's Citizenship Commission also expressed concern that “basic needs for Islanders”, such as housing, were being “neglected” because of the focus on the air service and told us that a new land disposal policy had increased the price of land “by some 2,000%” putting affordable housing “out of reach of the majority of Islanders earning a living on St Helena”. It also stated that action had not been taken against foreign vessels poaching fish in the Island's territorial waters and recommended that an inquiry should be carried out into the question of staffing and conditions of service for essential services on St Helena.⁵⁴³ Mr George also warned that these issues needed to be addressed before St Helena's economic transition. He called for affordable “family house plots” to be made available and for the UK to set up an inquiry into poaching, obtain relevant data obtained from fisheries organisations and satellite surveillance and then take a case against the companies and nations concerned to the appropriate international body.⁵⁴⁴

339. While he did not mention the airport, St Helena's Speaker said that he felt the Territory's future was being “threatened by HMG imposing conditions on the Island's development aid projects and reneging on signed agreements” through the increase in freight charges and passenger fares on the shipping service (see para 220, Chapter 3). He claimed that the UK had allowed St Helena's economy to contract between 1996 and 2000 by a real fall in aid⁵⁴⁵ and recommended that St Helena's current economic position should “seriously be investigated”.⁵⁴⁶

340. The RSPB also expressed “serious concern” about the potential environmental impact of the airport and called for an urgent strategic environmental assessment on the land

⁵⁴¹ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 56

⁵⁴² Ev 252

⁵⁴³ Ev 102

⁵⁴⁴ Ev 311

⁵⁴⁵ The Speaker also claimed that a Commission of Inquiry set up in 1997 into the Building Authority of which he was Chairman was a “deliberate attempt” by the Acting Governor to “silence and discredit” him because of his “efforts to address the financial shortcomings of the Island's economy” through judicial review of the grant-in-aid figure. (Ev 100)

⁵⁴⁶ Ev 97

development control plan to ensure “the cumulative impacts of development” were avoided.⁵⁴⁷

341. We asked the FCO about its cooperation with DFID on the air access project. It told us:

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.⁵⁴⁸

342. We conclude that the building of an airport and related infrastructure on St Helena could be a significant step towards self-sufficiency for the Territory. However, we are concerned about the potential capital and maintenance costs of the project and we recommend that in its response to this Report the Government provides us with figures to demonstrate that it has selected the most cost-effective option for bringing St Helena off dependency on aid. We also recommend that the Government encourages St Helena’s government to include affordable housing in its Sustainable Development Programme and that it sets out in its response what action it has taken with regard to allegations of poaching in St Helena’s territorial waters.

Montserrat

343. Since Montserrat’s volcanic crisis in 1995/6 (see para 501, Part Two), the UK has provided the Territory with £250 million in development assistance, plus ongoing programme funding of £15 million per year.⁵⁴⁹ In oral evidence the Chief Minister told us that Montserrat had once been “ahead of Anguilla and the British Virgin Islands” and running with a surplus, but was now “a struggling economy”, reliant on budgetary aid for 70% of revenue.⁵⁵⁰

344. The National Audit Office’s report estimated the ongoing aid liability to Montserrat to be £149 million over the next ten years, and even greater if volcanic activity became more serious. It found that progress on a sustained reduction in Montserrat’s budget deficit had “met with more difficulties than expected” with tourist numbers down 30% from 2005 to 2006, despite the opening of a UK funded airport.⁵⁵¹

⁵⁴⁷ Ev 112

⁵⁴⁸ Ev 357

⁵⁴⁹ Ev 144

⁵⁵⁰ Q 70 and 109

⁵⁵¹ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 54

345. We asked the Chief Minister of Montserrat whether Montserrat was receiving sufficient support for its recovery. He told us, “[a]lthough we have had a lot of help, a lot more is needed” and told us that he thought the UK “had finally” agreed with this assessment. He argued “basic items”, namely “essential infrastructure”, were still not in place. In particular he highlighted the need for a port, courthouse, hospital, library, and Parliament building.⁵⁵² He also told us that Montserrat had received “little or no” financial support for sporting facilities.⁵⁵³

346. The National Audit Office pointed out that Montserrat had received funding for some long term projects linked with the government of Montserrat’s Sustainable Development Plan, including a pledge of £1.5 million for a Tourist Development Board.⁵⁵⁴

347. Mr Rhys Williams, a Montserrat resident, called for either DFID or the FCO to take responsibility for providing assistance to Montserrat:

[...] it is patently wrong to have two funding department cuts supplying monies to the island. It makes for bad governance. The FCO or DIFID 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.⁵⁵⁵

As with regards to St Helena, we asked the FCO to outline how it worked with DFID to provide budgetary aid to Montserrat. The FCO gave us the following examples:

[...] 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

- 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.⁵⁵⁶

⁵⁵² Qq 110-111

⁵⁵³ Q 108

⁵⁵⁴ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 54

⁵⁵⁵ Ev 255

⁵⁵⁶ Ev 357

348. We recommend that the Government should focus funding on infrastructure in Montserrat on those areas that are most likely to assist the development of tourism on the island.

Pitcairn

349. Pitcairn has only 47 residents. At the time of Operation Unique (see paras 243 and 244 in Chapter 3 above) there were questions over whether a settlement on the Island could remain viable if six men were jailed.⁵⁵⁷

350. Mr Leslie Jaques, Pitcairn’s Commissioner, told us that the impact on the small community of six of its members going to prison had perhaps been underestimated, but that since the trials, social workers and community police had been on the Island and there had been a lot more consultation and communication with the community. He added:

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.⁵⁵⁸

351. Mr Jacques praised FCO and DFID staff for their work with the local community, saying that they had cooperated well with each other. He also told us that DFID had “been superb in terms of the infrastructure support” that it had provided.⁵⁵⁹ However, Kari Boye Young, a Pitcairn resident who sent evidence to our inquiry, called for Pitcairn to “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”.⁵⁶⁰

352. The FCO told us that both it and DFID were “working closely to return Pitcairn to self-sustainability”. It explained that FCO and DFID ministers had had discussions on future policy for Pitcairn and produced “an internal joint development strategy paper”. It added that DFID and the Governor’s office also worked jointly “on various aspects of the governance and economic development of Pitcairn”, including work on a new “more frequent and regular” shipping route involving Auckland and French Polynesia, for which the Governor’s office was negotiating with France.⁵⁶¹

353. We recommend that the Government should ensure that Pitcairn residents are informed and consulted on proposals for the Island’s economic development.

Tristan da Cunha

354. Tristan da Cunha is financially self-sufficient. However, that position is precarious, as Tristan da Cunha’s Chief Islander described:

⁵⁵⁷ “Pitcairn sex trial men sentenced”, *BBC News Online*, 29 October 2004

⁵⁵⁸ Q 51

⁵⁵⁹ Q 53

⁵⁶⁰ Ev 133

⁵⁶¹ Ev 357

South Africa is the nearest landmass: 1500 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. [...] Ovenstones Agencies (Pty) [...] 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.⁵⁶²

The National Audit Office estimates the cost of Tristan da Cunha coming in to budgetary aid to be £1.75 million.⁵⁶³

355. Over the last twelve months the Government has had to provide emergency assistance in two different cases. In December 2007, following a viral outbreak which led to a potential shortage of asthma and flu drugs, the FCO had to deliver a contingency supply of drugs by a Royal Navy Royal Fleet Auxiliary. In February 2008 it sent Royal Engineers to undertake emergency work, funded by DFID, on the island's harbour. A previous temporary solution, which had been carried out because neither DFID nor Tristan da Cunha had been able to afford a full refurbishment, had made things worse and resulted in significant wave damage in 2004. The FCO told us that plans for further work were now "under review given the high quality of the Engineers' work".⁵⁶⁴

356. On 13 February 2008 a fire destroyed the Island's fish-processing factory (as well as the generators that provide the island's power). This was potentially a major problem as the proprietors, Ovenstones Agencies, are the Island's only employer, except for the government. However, it is hoped that a new factory will be ready for operation for the start of the 2009/10 fishing season, although there is a risk that this deadline will slip due to some logistical difficulties.⁵⁶⁵

357. In the last year DFID has provided Tristan da Cunha with funding of £60,000 for "off-island training activities and a review of options to diversify its economy and increase its revenue", as well as £107,000 from the Overseas Territories Environment Project budget (see para 287 above) for a number of small-scale development projects. DFID also provides a resident doctor, and a visiting dentist and optometrist under its health programme for St Helena.⁵⁶⁶ DFID has also recently commissioned a review of "options for Tristan to diversify its economy and increase its revenue".⁵⁶⁷

358. In his evidence to our inquiry, the Chief Islander of Tristan da Cunha told us that Islanders sometimes felt "like the ugly duckling – neglected, out in the cold and having to

⁵⁶² Ev 224

⁵⁶³ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 31

⁵⁶⁴ Ev 357

⁵⁶⁵ See www.tristandc.com.

⁵⁶⁶ HC Deb, 13 December 2007, col 836W

⁵⁶⁷ HC Deb, 21 February 2008, col 832W

fend for themselves”. He called for more support from the UK in the following areas: teacher and management training; upgrading of hospital building and facilities; and a new supermarket building.⁵⁶⁸

359. In a later submission the Chief Islander also urged the FCO to take steps to enable Tristan lobster to be included in the UK’s reciprocal trade agreements with China, describing this as a “golden opportunity” to give the Island greater self-sufficiency.⁵⁶⁹ The Managing Director of Ovenstones Agencies supported this call in his evidence. He explained that Tristan lobster’s current primary export markets, the United States and Japan, were “subject to cyclical fluctuations” in demand and price and that the Japanese market was also contracting. If opened up to Tristan lobster, he believed the Chinese market could account for up to 35% of sales within two years. He told us that Ovenstones had been raising this issue with the FCO since 2004 but had made “very little progress”.⁵⁷⁰

360. We welcome the Government’s swift provision of emergency assistance to Tristan da Cunha following harbour damage and an outbreak of illness on the Island. We recommend that the Government continues to provide funding for projects on Tristan da Cunha, focusing on projects that will promote greater self-sufficiency. We also recommend that the FCO makes representations to China to try to open UK-China trade agreements to the sale of Tristan lobster.

Crime and disaster management

361. During our inquiry concerns were raised from both Anguilla and the Turks and Caicos Islands about rising levels of crime. The Chief Minister of Anguilla drew our attention to “unprecedented” murders in the Territory, as well as stealing and larceny, and expressed concern about its potential impact on tourism:

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.⁵⁷¹

He put in a strong plea for assistance:

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 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.⁵⁷²

362. In the Turks and Caicos Islands, Mr Alpha Gibbs told us that unsolved murders and missing persons continued to “escalate” in TCI without successful police investigation and

⁵⁶⁸ Ev 224

⁵⁶⁹ Ev 242

⁵⁷⁰ Ev 246

⁵⁷¹ Q 102

⁵⁷² Q 101

prosecution.⁵⁷³ John Redmond expressed “deep concern [...] with regard to violent crime and the lack of police resources to deal with it”.⁵⁷⁴

363. The Public Accounts Committee highlighted the fact that the FCO had acknowledged that policing standards fell short of its expectations, but noted that the FCO had only used external inspection by HM Inspectorate of Constabulary three times. It concluded:

Territory citizens should not have to accept less efficient use of police resources, nor less professional oversight than citizens in the UK. The Department should lay down the policing standards expected of the Territories, and test whether they are met on a more consistent basis.⁵⁷⁵

364. The Cayman Islands suffered a devastating hurricane in 2004⁵⁷⁶ and, as we witnessed for ourselves during our visit, made an impressive recovery largely by its own efforts. A new disaster management agency, Hazard Management Cayman Islands (HMCI), was launched in January 2007. The Cayman Islands has also developed a multi-agency national Threat Assessment, which was championed by the Governor, and which the National Audit Office’s report highlighted as a good practice example which could be shared with other Territories.⁵⁷⁷ During our visit to the Cayman Islands we visited HMCI and were given a demonstration of some of the computer technology it was using for disaster management.

365. However, the Public Accounts Committee raised the fact that not all Territories had comprehensive disaster management strategies and called for the FCO, DFID and Territory governments to “draw up disaster management strategies where they do not exist, setting out the responsibilities of each party and the minimum requirements for the frequency of disaster plan tests”.⁵⁷⁸

366. Governors have responsibility for managing the risk of crime and disasters, but funding is provided by Territory governments. In its recent report, the Public Accounts Committee argued that the FCO should be “more prepared to require money from Territory governments” for the police and disaster management and also to publicise where standards are not being met.⁵⁷⁹ We support this recommendation.

Illegal immigration

367. Many of the submissions we received from the Turks and Caicos Islands (see Chapter 3 above) also raised concerns about levels of illegal immigration from Haiti, including

⁵⁷³ Ev 168

⁵⁷⁴ Ev 293

⁵⁷⁵ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, p 5

⁵⁷⁶ Although there were only 2 fatalities in Hurricane Dean, 70% of the Cayman Islands was under water at one point and 80% of buildings destroyed or damaged. The damage was estimated at over \$3.4 billion.

⁵⁷⁷ Report by the Comptroller and Auditor General, *Foreign and Commonwealth Office: Managing risk in the Overseas Territories*, HC (2007-08) 4, p 47

⁵⁷⁸ Public Accounts Committee, Seventeenth Report of Session 2007-08, *Foreign and Commonwealth Office: Managing Risk in the Overseas Territories*, HC 176, p 6

⁵⁷⁹ *Ibid.*, p 5

