



House of Commons
Foreign Affairs Committee

Turks and Caicos Islands

Seventh Report of Session 2009–10

*Report, together with formal minutes and
written evidence*

*Ordered by the House of Commons
to be printed 24 March 2010*

The Foreign Affairs Committee

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The current staff of the Committee are Dr Robin James (Clerk), Dr Rebecca Davies (Second Clerk), Ms Adèle Brown (Committee Specialist), Dr Brigid Fowler (Committee Specialist), Mr John-Paul Flaherty (Senior Committee Assistant), Miss Jennifer Kelly (Committee Assistant), Mrs Catherine Close (Committee Assistant) and Mr Alex Paterson (Media Officer).

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Conclusions and recommendations

Background

1. We welcome the actions that the Government has taken to address the serious concerns we expressed in 2008 about alleged corruption in the Turks and Caicos Islands. These actions include the appointment of a Commission of Inquiry, the subsequent suspension of parts of the TCI Constitution, and the creation of a Special Investigation and Prosecution Team (SIPT). However, in recent months significant concerns about the speed and effectiveness of the Government's plans to reform and "clean up" the political system in TCI have been brought to our attention. This brief Report focuses specifically on those concerns. (Paragraph 13)
2. Although this Report deals specifically with issues relating to TCI, a number of concerns have been brought to our attention in relation to allegations of corruption and poor governance in other Overseas Territories—for example, in Anguilla. We recommend that the Government should supply us with a memorandum setting out in detail what support is provided by the UK Government to each of the individual Territory governments to assist them in tackling corruption and maintaining standards of good governance. In the event that it is not possible to supply this information to us before the dissolution of the present Parliament, we recommend that the Government should make it available to our successor Committee in the next Parliament when it begins its work. (Paragraph 14)

Issues of concern

Funding of the TCI Special Investigation and Prosecution Team (SIPT)

3. We recommend that, should the need be identified, close protection should be provided to the Special Prosecutor and the members of her team, and that the cost of this protection should be wholly met by the UK Government. (Paragraph 30)
4. We conclude that the failure of the Government to put in place adequate funding arrangements for the work of the Special Investigation and Prosecution Team (SIPT) is of grave concern. This has prevented the Special Prosecutor from beginning in earnest the work of fully investigating the allegations raised during the 2008–09 Commission of Inquiry. Twelve months have passed since Sir Robin Auld produced his interim report, and as yet no decisive action has been taken to proceed against those politicians and others suspected of serious corruption. We further conclude that, the longer this damaging delay continues, the greater the risk that the moves to eradicate corruption from public life in TCI may founder, not least by enabling some of the individuals potentially facing investigation to liquidate their assets and put funds beyond the reach of the authorities. There is also a real risk that the delay may lead to a perception that nothing is being done, thereby resulting in the loss of public confidence, and subsequently the co-operation of the residents of the TCI, both of which are essential in order to pursue successful prosecutions. (Paragraph 31)

5. We conclude that there are, at present, inadequate safeguards to protect the funding of the SIPT post-2011. Given the inability to secure funding thus far, we are not persuaded by the assurances of the Foreign Secretary that adequate safeguards will be put into place to protect the funding in future. We fear that the Government is being naive in relation to the potential financial pressures likely to be faced by future governments in the TCI, and the capacity of wrongdoers on the TCI to impede and frustrate the SIPT's investigations. (Paragraph 32)

6. We note the Government's argument that the UK taxpayer should not fund the SIPT, on the grounds that the former TCI Government was responsible for the present parlous economic state of the Islands, and therefore it is the Islanders who should pay to clean up the mess they have created. We conclude that this argument is flawed, for four reasons. First, on grounds of principle: it ignores the extent to which the UK Government was also culpable in allowing a culture of systemic corruption to develop in TCI unchecked, thereby neglecting its duty of responsible oversight of the Overseas Territories. Second, on grounds of pragmatism: if the funding of the SIPT has to be borne by the TCI Government, diverting resources which would otherwise be spent on healthcare, law and order, or public-sector salaries, it is likely that this will lead to an erosion of popular support for the reform process, which will be eagerly exploited by the opponents of reform. Third, we share the Special Prosecutor's concern that there is an important principle at stake as to who should fund the work of the SIPT. The UK Government, having intervened in the Turks and Caicos Islands, has a responsibility to follow through with the required financial commitment. Not to do so would be to risk the UK Government's credibility in its use of reserved powers. Fourth, it is unreasonable to expect the small population of the TCI to bear the financial burden, through debt or taxation, for funding the investigation and prosecution of corruption for which they were not responsible. We recommend that the UK Government fully fund the work of the SIPT or risk severely undermining its own credibility in its use of reserved powers, both in the TCI and in all the Overseas Territories. (Paragraph 33)

Sir Robin Auld's letter of 23 March 2010

7. We conclude that Sir Robin Auld's comments in his letter to the Foreign Secretary of 23 March reinforce our own conclusions set out in this Report. We urge the Government to commit the resources necessary to ensure that the process of reform in the Turks and Caicos Islands does not unravel, at a great cost to the international reputation of the United Kingdom. (Paragraph 36)

Crime and security

8. We recommend that the Government respond positively to the Governor's requests and fund the required number of additional British police officers for community policing and crime detection through the Department for International Development (DFID) budget. (Paragraph 39)

2011 and beyond

9. We welcome the Governor's efforts to bring about political reform in TCI, and to increase the capacity of the Attorney General's Office and the capabilities of the Police Service, in order to make them fit for purpose. We recommend that urgent action be taken by the Governor, with the support of the UK Government, to set up a properly funded Integrity Commission, and to secure and refurbish safe and suitable court buildings for the trials expected to arise from the work of SIPT, as requested by the Special Prosecutor. We further recommend that the UK Government provide the capital and running costs of the Integrity Commission for an initial period of three years. (Paragraph 45)
10. We conclude that the overriding aim of the current British administration of TCI must be to restore democratic self-government in the Territory as soon as the necessary work of purging its corrupt and dysfunctional political system has been completed and entrenched. However, we note the slow pace of the reform process to date, as well as the delay we have discussed earlier in launching the work of the Special Investigation and Prosecution Team. We therefore further conclude that there are solid reasons for regarding the Government's preferred July 2011 date for the end of direct rule as unrealistic. If elections proceed on this timetable, there is a real danger of a return to the *status quo ante*, and the possibility that politicians against whom serious allegations of corruption are pending could seek to return to power. In such circumstances, it is possible they might seek to use bribery and intimidation to engineer a return to office, and then use the many means at their disposal in office to roll back the reform process and undermine the work of the Special Investigation and Prosecution Team. While we welcome the steps being taken by the Governor to create new constitutional arrangements aimed at fostering probity and good practice, we are not convinced that these can be put unassailably in place within such a tight timescale. (Paragraph 46)
11. We recommend that the Government take all reasonable and necessary steps to reassure the people of the TCI that a new constitution will not be put in place, nor elections held, until there is absolute confidence that the necessary reforms have been fully embedded. We further recommend that, in its response to this Report, the Government set out clear criteria as to what must be achieved by way of these reforms before elections take place. (Paragraph 47)
12. It is essential that the issues identified in our 2008 Report and by the Commission of Inquiry are addressed and resolved to secure the future well-being of the Turks and Caicos Islands. Despite the progress that has been made, the concerns we have raised in this Report suggest that TCI's future is still far from secure. We recommend that our successor Committee in the next Parliament continue to monitor developments in TCI and the Overseas Territories closely. (Paragraph 48)

1 Background

1. In July 2007, we resolved to undertake an inquiry into the United Kingdom’s Overseas Territories. This was the first Foreign Affairs Committee inquiry into the Territories (with the exception of Gibraltar) for over a decade.¹ The inquiry focused on the FCO’s exercise of its responsibilities in relation to the Territories and its achievements against its then Strategic Priority No. 10, “the security and good governance of the Overseas Territories”.²

2. Our Report, which was published on 6 July 2008, contained conclusions and recommendations relating to all the Territories.³ One matter of particular concern to us was the very serious allegations of corruption we had received in relation to the Turks and Caicos Islands (TCI). Members of the Committee visited TCI in March 2008 and had been disturbed to encounter a “climate of fear”. In our Report we commented that “alarmingly 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”.⁴

3. We concluded that the allegations of corruption were:

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.⁵

4. In reviewing the Government’s overall record of discharging its responsibilities for the Territories, we commented 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

1 Foreign Affairs Committee, Seventh Report of Session 2007–08, *Overseas Territories*, HC 147-I, para 2

2 *Ibid.*, para 3

3 Foreign Affairs Committee, Seventh Report of Session 2007–08, *Overseas Territories*, HC 147-I

4 *Ibid.*, para 174

5 *Ibid.*, para 196

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.⁶

5. Although the Government’s formal response to our Report was published in September 2008,⁷ it had taken earlier action in direct response to our representations about alleged corruption in TCI. In May 2008 we sought a private meeting with the then FCO Minister for the Overseas Territories, Meg Munn MP, and impressed upon her our deep sense of unease about the situation in TCI and our belief that urgent action was required. On 10 July the outgoing Governor of TCI, Richard Tauwhare, announced the appointment of a Commission of Inquiry. The Commissioner was the Rt Hon Sir Robin Auld, a retired Lord Justice of Appeal. His remit was to inquire into whether there was “any information that corruption or other serious dishonesty in relation to past and present elected members of the House of Assembly (previously known as the Legislative Council) may have taken place in recent years”.⁸

6. The new Governor, Gordon Wetherell, published the Commissioner’s interim Report on 16 March 2009. On the same day, in a statement to the House, the then FCO Minister with responsibility for the Overseas Territories, Gillian Merron MP, stated that the Commissioner had identified:

a high probability of systemic corruption or serious dishonesty. In his view, this, together with ‘clear signs of political amorality and immaturity and of general administrative incompetence, have demonstrated a need for urgent suspension in whole or in part of the Constitution and for other legislative and administrative reforms’, and change in other related matters.⁹

7. On the basis of Sir Robin’s interim report and the “accumulation of evidence in relation to the TCI over the past year or so”, the Government accepted the Commission’s view that it was necessary to suspend parts of the TCI Constitution.¹⁰ The Turks and Caicos Islands Constitution (Interim Amendment) Order 2009 was laid before Parliament on 25 March 2009, with the intention that its provisions would be brought into force after Sir Robin’s final report was received.¹¹ That report was delivered to the Governor on 31 May 2009¹² and published on 18 July. The report identified a need for “urgent and wide-ranging systemic change”.¹³

6 Foreign Affairs Committee, Seventh Report of Session 2007–08, *Overseas Territories*, HC 147, para 437

7 *Seventh Report of the Foreign Affairs Committee, Session 2007–08, Overseas Territories: Response of the Secretary of State for Foreign and Commonwealth Affairs*, Cm 7473

8 Governor Richard Tauwhare’s Press Statement, 10 July 2008, www.tci-inquiry.org/tci_inquiry.html

9 HC Deb, 16 March 2009, col 40WS

10 *Ibid.*

11 The Turks and Caicos Islands Constitution (Interim Amendment) Order 2009

12 HC Deb, 2 July 2009, col 25WS

13 Report of the Commissioner, the Right Honourable Sir Robin Auld, *Turks & Caicos Islands Commission of Inquiry 2008–09*, 18 July 2009, para 5.12

8. On 14 August 2009, the UK Government partially suspended parts of the TCI Constitution, for a period of two years.¹⁴ The Order in Council left in place important elements of the Constitution, including the fundamental rights chapter and provisions relating to the Governor, the courts and the public service. It removed the provisions relating to the Cabinet and House of Assembly, and references to ministerial and related powers. It made provision for an interim Government, so that powers currently exercised by Ministers would be exercised by the Governor, acting at his discretion, including in relation to public finances, legislation and necessary regulatory reform. Gillian Merron MP described this as an “act of constitutional significance in order to restore the principles of good governance”.¹⁵ The interim Government took office on the same day.¹⁶

9. In addition to the partial suspension of the Constitution, a Special Investigation and Prosecution Team (SIPT) has since been established in accordance with Sir Robin Auld’s recommendation that provision be made for a special criminal process and civil recovery of assets arising out of any criminal or other investigations prompted by the final report. On 10 August 2009 Ms Helen Garlick was appointed by the Governor as Special Prosecutor, heading the SIPT.

10. In a statement to the House on 2 July 2009, the present Minister for the Overseas Territories, Chris Bryant MP, outlined other steps taken by the Government in response to the Commission’s report.¹⁷ He acknowledged the help and support provided by the “keen eye of the FAC” in highlighting the situation in TCI.¹⁸

11. When the interim Government took office on 14 August 2009, it faced a daunting task. It inherited a national debt of US\$135 million, and a huge challenge in implementing proper financial management and maintaining the provision of public services to the residents of the TCI. At the same time it has been attempting to implement the political and economic reforms required to address the systemic corruption identified by the Auld Commission. The Governor has set out his account of progress to date in quarterly reports, the first two of which were published in November 2009 and February 2010.¹⁹

12. We have closely monitored subsequent development in the Islands. We have received regular briefings from the Governor and the Special Prosecutor, as well as from a number of other interested parties. We have continued to receive a significant amount of correspondence in relation to TCI. We have raised some particular issues of concern with Ministers, and print their responses with this Report.²⁰

14 FCO country profile, via www.fco.gov.uk

15 HC Deb, 16 March 2009, col 40WS

16 First Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 30 November 2009, via <http://turksandcaicosislands.fco.gov.uk>

17 This included the appointment of a number of Advisers in the areas of public service, public financial management, economics, good governance and Crown Land.

18 HC Deb, 2 July 2009, col 25WS

19 First Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 30 November 2009; Second Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 28 February 2010, via <http://turksandcaicosislands.fco.gov.uk>

20 Ev 1–2; Ev 7–10

13. We welcome the actions that the Government has taken to address the serious concerns we expressed in 2008 about alleged corruption in the Turks and Caicos Islands. These actions include the appointment of a Commission of Inquiry, the subsequent suspension of parts of the TCI Constitution, and the creation of a Special Investigation and Prosecution Team (SIPT). However, in recent months significant concerns about the speed and effectiveness of the Government's plans to reform and "clean up" the political system in TCI have been brought to our attention. This brief Report focuses specifically on those concerns.

14. Although this Report deals specifically with issues relating to TCI, a number of concerns have been brought to our attention in relation to allegations of corruption and poor governance in other Overseas Territories—for example, in Anguilla. We recommend that the Government should supply us with a memorandum setting out in detail what support is provided by the UK Government to each of the individual Territory governments to assist them in tackling corruption and maintaining standards of good governance. In the event that it is not possible to supply this information to us before the dissolution of the present Parliament, we recommend that the Government should make it available to our successor Committee in the next Parliament when it begins its work.

2 Issues of concern

Funding of the TCI Special Investigation and Prosecution Team (SIPT)

15. Helen Garlick was appointed as the Special Prosecutor to the Turks and Caicos Islands on 10 August 2009. On 27 August, Ms Garlick visited TCI and gave a press conference with the Attorney General and the Governor, announcing the opening of her investigation. In late September Ms Garlick presented the FCO and Governor with a plan, strategic document and budget; all three documents were accepted.²¹

16. The Special Prosecutor has supplied us with subsequent correspondence between herself and Ministers, which we print with this Report.²² In a letter dated 24 November to the Minister for the Overseas Territories, Chris Bryant MP, and to the Minister for International Development, Michael Foster MP, she expressed anxiety about the funding of her investigation. She estimated that SIPT's budget for the remainder of financial year 2009–10 would be £1.9 million and that for financial year 2010–11 it would be £4.9 million (not including the costs of any prosecutions).²³ She stated that her main concern in accepting her post was that she should be “confident” that she could carry out a “thorough and independent investigation”. She emphasised that the provision of adequate and timely funding was essential in order to enable her to do this.

17. The initial costs of setting up the SIPT have been met by the FCO. This amounted to a total spend of approximately £435,000 to the end of January 2010 (including the fees of the five-strong senior management team, one researcher, the rental costs of offices and associated IT, and telephone and travel costs).²⁴ The FCO “stretched the limited resources” of the Overseas Territories Programme Fund to cover the cost of the core team until 10 February 2010 and agreed to provide an additional £36,000 to allow Ms Garlick to begin to recruit the core intelligence and research unit and to rent more UK office space.²⁵ The Foreign Secretary told us that the FCO have also agreed to fund an analyst for four weeks at a cost of £5,000. He added that “appropriate arrangements” had been made by the Turks and Caicos Islands Government (TCIG) to meet any further costs incurred up to the end of financial year 2009–10.²⁶

18. With regard to the longer-term funding of the SIPT, the Special Prosecutor noted that she signed her contract on the basis of a “distinct understanding” that while the UK Government “would not fund the investigation indefinitely, the most probable outcome would be that it would advance a loan to TCIG”. In her letter to Ministers of 24 November, Ms Garlick commented that:

21 Ev 4–5

22 Ev 6–7

23 Ev 4

24 Ev 8

25 Ev 5

26 Ev 8

In October I learned first, that the UK Government would neither make a loan, nor guarantee a separate line of credit agreed by the TCIG. In the absence of any support from HMG, the only option open to TCIG was to negotiate one or more facilities backed by hypothecation of an identified stream of income. [...] If it is agreed, the facility will be syndicated. I am informed that the facility is close to being agreed and that funds are expected to be in place by early January. In the meantime our initial two-month contracts have been extended to 10 February 2010 and we are being funded by the FCO. As from that date, we will be a charge on the budget of TCIG.²⁷

19. The Special Prosecutor expressed concern at the consequences of her investigation becoming a burden on the budget of the Islands Government. She noted that the budgeted costs of SIPT would amount to between 4.5% and 5% of TCIG's budget, and could well increase beyond that, if charges are brought and there are several trials. Given the financial difficulties that TCIG faces, this raised the "real prospect that there will be months when the SIPT's expenses and salaries will be met, whilst [those of] TCIG government servants [...] will not", and that "other important government expenditure that has a real impact on the well being of the Islanders will be subordinated to the SIPT's needs". Ms Garlick commented that "in my view this is wrong in principle" and that "it is hardly likely to help us to win and maintain essential public support".²⁸

20. Ms Garlick further commented that the failure to agree funding mechanisms for her team, the need for which should have been anticipated when Sir Robin Auld had produced his initial report back in February 2009, meant that there would now be a "considerable and highly damaging delay before the investigation can be started". She added that as a result, the team's capacity to react to some "important and urgent developments" had been "severely limited".²⁹

21. Ms Garlick concluded that she and her team:

are not prepared to continue to work indefinitely, or to be responsible for recruiting others, without the assurance of funding that is sourced and managed on a basis that assures our independence and ability to carry out a full, independent investigation and any trials. At present I am firmly of the view that the only way in which we can be assured of this, without impacting on other important TCIG expenditure, is if separate funding is made available by Her Majesty's Government.³⁰

22. In his response to Ms Garlick, dated 5 December 2009, Chris Bryant said that:

I must make it clear that neither the FCO nor HMG can fund, or provide a loan for, the full cost of the investigation. It has always been our view that the former TCI Government is responsible for its present financial crisis. It is therefore correct that

27 Ev 4

28 Ev 4

29 Ev 4

30 Ev 5

the Territory pays to sort out these matters. It is not appropriate to ask the British taxpayer to do so.³¹

23. Mr Bryant added that the TCI Government could not borrow further without hypothecation, but that he had agreed, in November 2009, that TCI could hypothecate some of its revenues. The Governor was working to agree a loan and the aim was to have a package in place in January 2010.

24. In January 2010 we held an informal meeting with the Special Prosecutor to discuss the state of progress with her investigation. Following this meeting, we wrote seeking further information from the Foreign Secretary. In his response, Mr Miliband reaffirmed the Government's position that "the former TCIG is responsible for its present financial crisis" and that "it is for territory Governments to fund commissions of inquiry and criminal investigations within their jurisdiction". He admitted that the negotiation of the \$85 million loan facility was "proving more difficult than anticipated", but stated "we expect to have the first tranche in place very shortly".³² He acknowledged that the Special Prosecutor "has felt frustrated" as a result of this delay, and that the "inability of the TCIG to assume the full funding of the SIPT from the start has delayed the recruitment by Ms Garlick of her full team".³³

25. In early March 2010 the Special Prosecutor supplied us with further written evidence, and held another informal meeting with us. She wrote that: "I continue to register my extreme concern at the financial position and at the consequences of the fact that, against our wishes, the SIPT is now a major burden upon the budget of the TCIG".³⁴ As of mid-March, the promised loan facility for TCIG has still not been secured.

The present situation and its potential consequences

26. The lack of timely provision of adequate financing has restricted the ability of the Special Prosecutor to establish a permanent presence in the TCI and to open an office there. Ms Garlick stated that questions were already being asked on the Islands about the lack of progress in her investigation. While the Foreign Secretary said that "the decision on the timing of establishing an office in TCI was a matter for the Special Prosecutor",³⁵ we are in no doubt that the financial situation has prevented her from doing so.

27. This has created a very real risk of undermining public support for the SIPT's mission of investigating the serious allegations made in the Commission of Inquiry and, where appropriate, bringing prosecutions. Ms Garlick identified a danger that "public confidence and support for our work will ebb".³⁶ She emphasised that "public support is vital, both to maintain the independence of the investigation against the very real prospect of political interference, once the Islands return to elected Government, but also to encourage

31 Ev 6

32 Ev 8

33 Ev 9

34 Ev 7

35 Ev 10

36 Ev 4-5

potential witnesses and providers of information”.³⁷ In other correspondence, we were told that there is fear of reprisals by those who were engaged in corruption, if the British authorities do not follow through on their promises of firm action. The possibility has been raised that if the Government sticks to its intention of calling elections in TCI by July 2011, without the process of criminal investigation and prosecution being seen to be vigorously under way, some individuals who were the subject of allegations in Sir Robin Auld’s report might be returned to power as a result of bribery and intimidation. One correspondent stated that “the hundreds of residents who aided your Commission of Inquiry have seen no real indications that actions by your Government will assure they will not be persecuted by the return to power of those you removed”.³⁸ (We deal with the question of the timing of TCI’s next elections in paragraphs 41–48 below.)

28. Furthermore, concerns have been raised with us that individuals of potential interest to the Special Prosecutor (including some of those named in the Commission of Inquiry) are liquidating assets in order to put funds beyond the scope of the authorities. The Foreign Secretary told us that he was aware of these concerns, but stated that “we cannot quantify the likely extent of liquidated assets at present”.³⁹ He added that any action must be supported by “reasonable and credible information” not “based on conjecture”.⁴⁰

29. The Foreign Secretary further acknowledged that “inevitably” some members of the TCI public, especially in the civil service, will probably equate cuts with the additional \$10 million expense of the SIPT and civil recovery. While he expected some sections of the TCI public to be “concerned at the cost of the SIPT”, he maintained that this “public displeasure at the cost” needs to be weighed against “strong support (and impatience) for criminal prosecutions to begin”.⁴¹

30. We understand that Ms Garlick and the members of her team undergo regular threat assessments in relation to their personal safety and protection requirements. Should these assessments identify the need for close protection, the relevant personnel would have to be flown in from overseas to the TCI, and this would incur significant additional costs. **We recommend that, should the need be identified, close protection should be provided to the Special Prosecutor and the members of her team, and that the cost of this protection should be wholly met by the UK Government.**

31. We conclude that the failure of the Government to put in place adequate funding arrangements for the work of the Special Investigation and Prosecution Team (SIPT) is of grave concern. This has prevented the Special Prosecutor from beginning in earnest the work of fully investigating the allegations raised during the 2008–09 Commission of Inquiry. Twelve months have passed since Sir Robin Auld produced his interim report, and as yet no decisive action has been taken to proceed against those politicians and others suspected of serious corruption. We further conclude that, the longer this

37 Ev 4–5

38 Published on the Committee’s website
<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmfaff/memo/overseas/contents.htm> as OT 413

39 Ev 10

40 Ev 10

41 Ev 8

damaging delay continues, the greater the risk that the moves to eradicate corruption from public life in TCI may founder, not least by enabling some of the individuals potentially facing investigation to liquidate their assets and put funds beyond the reach of the authorities. There is also a real risk that the delay may lead to a perception that nothing is being done, thereby resulting in the loss of public confidence, and subsequently the co-operation of the residents of the TCI, both of which are essential in order to pursue successful prosecutions.

32. We conclude that there are, at present, inadequate safeguards to protect the funding of the SIPT post-2011. Given the inability to secure funding thus far, we are not persuaded by the assurances of the Foreign Secretary that adequate safeguards will be put into place to protect the funding in future. We fear that the Government is being naive in relation to the potential financial pressures likely to be faced by future governments in the TCI, and the capacity of wrongdoers on the TCI to impede and frustrate the SIPT's investigations.

33. We note the Government's argument that the UK taxpayer should not fund the SIPT, on the grounds that the former TCI Government was responsible for the present parlous economic state of the Islands, and therefore it is the Islanders who should pay to clean up the mess they have created. We conclude that this argument is flawed, for four reasons. First, on grounds of principle: it ignores the extent to which the UK Government was also culpable in allowing a culture of systemic corruption to develop in TCI unchecked, thereby neglecting its duty of responsible oversight of the Overseas Territories. Second, on grounds of pragmatism: if the funding of the SIPT has to be borne by the TCI Government, diverting resources which would otherwise be spent on healthcare, law and order, or public-sector salaries, it is likely that this will lead to an erosion of popular support for the reform process, which will be eagerly exploited by the opponents of reform. Third, we share the Special Prosecutor's concern that there is an important principle at stake as to who should fund the work of the SIPT. The UK Government, having intervened in the Turks and Caicos Islands, has a responsibility to follow through with the required financial commitment. Not to do so would be to risk the UK Government's credibility in its use of reserved powers. Fourth, it is unreasonable to expect the small population of the TCI to bear the financial burden, through debt or taxation, for funding the investigation and prosecution of corruption for which they were not responsible. We recommend that the UK Government fully fund the work of the SIPT or risk severely undermining its own credibility in its use of reserved powers, both in the TCI and in all the Overseas Territories.

Sir Robin Auld's letter of 23 March 2010

34. At a late stage in our discussions on this Report Sir Robin Auld, who had conducted the 2008–09 Commission of Inquiry into allegations of corruption in TCI, sent us a copy of a letter dated 23 March from him to the Foreign Secretary. We print this letter as an appendix to the Report.⁴² Sir Robin is highly critical of the FCO's failure to provide sufficient resources to implement the Commission's recommendations. He comments that:

All or most of the troubles [Governor Wetherell] faces in trying to restore the Territory to good order, efficient governance and financial health—and the increasing chorus of challenge to his conduct of the Territory’s affairs—flow from the British Government’s failure to provide urgently needed financial support.

35. Sir Robin Auld refers to a “failure of the British Government to fulfil its constitutional responsibility for the good governance of the Territory”. He notes the Government’s intention of introducing a new constitution and restoring ministerial and parliamentary government in 2011, and comments that “even if funding could be guaranteed and the Territory’s finances restored to a manageable state by then, it could not be ‘cleansed’ and governmentally and administratively reconstructed so as to meet that timetable.” Sir Robin concludes by saying that:

I have never before considered it my role, after completion of an inquiry, to involve myself in the outcome of my recommendations. But the continued deterioration of affairs in the TCI drives me to do so here. I urge you, as a matter of urgency, to intervene to secure the discharge by the FCO of its moral responsibility and to secure its international respectability by making proper provision for the constitutional good governance and welfare of the Turks & Caicos Islands before ending interim direct rule.

36. We conclude that Sir Robin Auld’s comments in his letter to the Foreign Secretary of 23 March reinforce our own conclusions set out in this Report. We urge the Government to commit the resources necessary to ensure that the process of reform in the Turks and Caicos Islands does not unravel, at a great cost to the international reputation of the United Kingdom.

Capacity of the legal system

37. Despite the suspension of parts of the Constitution and the installation of the interim Government, many parts of the Constitution have remained in place and many individuals have retained key positions, including the Attorney General. While it is not claimed that the Attorney General has himself committed illegal acts, it has been argued that he “turned a blind eye” for five years to all that occurred.⁴³ Furthermore, serious concerns have been raised about the capacity of the Attorney General’s Office to deal with the issues raised both in our 2008 Report and in the Commission of Inquiry. One correspondent stated that “the legal system of the Government, specifically the inability of the Attorney General’s Chambers to demonstrate responsible behaviour be it for the legal drafting of proper Ordinances or the policing of the legal fraternity, much less the undertaking of prosecutions for white collar crimes, makes the country appear to be still operating under the same procedures that led to your mandating the Commission of Inquiry”.⁴⁴

38. In his second quarterly statement, published in late February 2010, the Governor commented that the Attorney General’s Chambers have been under-resourced, and that

43 Published on the Committee’s website
<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmfaaff/memo/overseas/contents.htm> as OT 418

44 Published on the Committee’s website
<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmfaaff/memo/overseas/contents.htm> as OT 413

the staff have had to cope with a “staggering work load”.⁴⁵ The Governor has undertaken a full review of Chambers, which was nearly complete, and which is set to determine the level of resources required by the Attorney General’s Office during the upcoming period of “extensive change”.⁴⁶ However, on 2 March 2010, the Special Prosecutor warned that it was essential that changes were made now “so that the strengthened Attorney General’s Office has had several months to bed in and to establish itself before the [proposed July 2011] elections”.⁴⁷ The Governor also confirmed that the Attorney General would not be seeking a third term of office, and that a vacancy notice for a new Attorney General would be published soon.⁴⁸

Crime and security

39. In his first quarterly statement, published in November 2009, the Governor stated that members of the public had consistently expressed concern in relation to crime on the Islands.⁴⁹ We have received a significant amount of correspondence from a range of individuals who have been the victims, not only of violent crime, but of harassment. The Governor noted that he is working with the Overseas Territories Law Enforcement Adviser and is thereby “actively engaged with the police in addressing areas of concern to the public”.⁵⁰ An inspection and review of the leadership, planning, operational and crime management components of the Royal Turks and Caicos Islands’ Police Force, to ensure its effectiveness and efficiency, has been conducted.⁵¹ In his second quarterly statement, the Governor stated that the review’s conclusions were “robust”, and included a number of recommendations and suggestions for improvements.⁵² The Governor also hoped that the recruitment of additional British police officers to increase the capacity for community policing and crime detection would be completed by the end of March 2010.⁵³ **We recommend that the Government respond positively to the Governor’s requests and fund the required number of additional British police officers for community policing and crime detection through the Department for International Development (DFID) budget.**

Political reform

40. The Foreign Secretary told us that the UK Government would shortly launch (and fund) a full review of the constitutional and electoral arrangements in TCI, and will

45 Second Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 28 February 2010, p 2, via <http://turksandcaicosislands.fco.gov.uk>

46 *Ibid.*

47 Ev 7

48 Second Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 28 February 2010, p 2, via <http://turksandcaicosislands.fco.gov.uk>

49 First Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 30 November 2009, p 4, via <http://turksandcaicosislands.fco.gov.uk>

50 *Ibid.*

51 Second Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 28 February 2010, p 3, via <http://turksandcaicosislands.fco.gov.uk>

52 As of the time of his statement, the Governor was awaiting a final text of the review.

53 Second Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 28 February 2010, p 3, via <http://turksandcaicosislands.fco.gov.uk>

forward suggestions for the improvement of both. He concluded that “the end result must be a system which gives the people of TCI, the UK Government and the international community confidence that the basic principles of good governance will be upheld. This will mean a greater degree of oversight by the UK Government than existed before August 2009”.⁵⁴ The Governor noted that these revised electoral and constitutional arrangements must be in place before the 2011 elections, and a team leader, Kate Sullivan, was appointed in January 2010 in order to begin this project. It is expected that the work will be complete before the end of 2010, and that it will result in “a draft constitution Order in Council and draft laws for public consultation in the TCI prior to finalisation”.⁵⁵

2011 and beyond

41. Given the scale of the task facing the interim Government in the TCI, and the delays in implementing some of the key recommendations of the Commission of Inquiry, we have received a number of submissions requesting that the UK Government extend the suspension of part of the TCI’s Constitution and allow more time for the interim Government to complete its work. In his letter of 24 February 2010, the Foreign Secretary acknowledged that while “some criticise the steps we have taken [...] others argue that we should extend the interim Government well beyond 2011”.⁵⁶ He stated that while the situation was kept “under regular review”, it remains the intention that “elections should be held by July 2011, if not sooner”.⁵⁷

42. In his second quarterly statement, published in February 2010, the Governor confirmed that it is still intended to hold elections in 2011 “as scheduled”.⁵⁸ He stated that, on the basis of “remedial work undertaken during the past six months”, and giving “careful consideration” to the views expressed, “the UK Government has concluded that a return to elected Government is still feasible for next year”.⁵⁹

43. While the Foreign Secretary has assured us that “there will be no simple return to the *status quo ante*”, he acknowledged that “we have not yet defined post 2011 arrangements”.⁶⁰ However, he assured us that “steps will be taken to ensure that following the elections in 2011, the new TCIG will not be able to repeat past mistakes, that good financial management will be ensured for the future”.⁶¹ There will be a “greater degree of oversight of the Territory by the UK Government and a greater presence of British officials on the ground than existed before 2009”.⁶² The Governor stated that both the “2011 constitution which emerges” and the “extent of UK oversight” will be kept under review,

54 Ev 9

55 Second Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 28 February 2010, p 1, via <http://turksandcaicosislands.fco.gov.uk>

56 Ev 9

57 Ev 9

58 Second Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 28 February 2010, p 1, via <http://turksandcaicosislands.fco.gov.uk>

59 *Ibid.*

60 Ev 9

61 *Ibid.*

62 *Ibid.*

with the “possibility that it will change again in the future once there is confidence that governance and financial management reforms have been fully embedded”.⁶³

44. The Special Prosecutor has told us that if the Government is indeed intent on returning the Islands to full parliamentary rule in summer 2011, then it is “imperative” that a number of key recommendations of the Auld Commission should be implemented without delay.⁶⁴ The Special Prosecutor wrote that she was “becoming alarmed” at the failure to implement these recommendations. They are:

- Strengthening the capacity of the Attorney General’s Chambers: we discuss this in paragraphs 37–38 above;
- The setting up of an Integrity Commission, with sufficient funds to employ investigators to obtain and analyse financial information relating to past and present public servants (this would be “a valuable partner to the SIPT’s work”);
- Securing and refurbishing safe and suitable court buildings for the trial expected to result from the SIPT’s investigations. The Special Prosecutor comments, “I have insisted that the trials must take place on Providenciales. The safe transportation of witnesses, their housing and the secure handling of evidence will all be impossible to secure on Grand Turk”.⁶⁵

45. We welcome the Governor’s efforts to bring about political reform in TCI, and to increase the capacity of the Attorney General’s Office and the capabilities of the Police Service, in order to make them fit for purpose. We recommend that urgent action be taken by the Governor, with the support of the UK Government, to set up a properly funded Integrity Commission, and to secure and refurbish safe and suitable court buildings for the trials expected to arise from the work of SIPT, as requested by the Special Prosecutor. We further recommend that the UK Government provide the capital and running costs of the Integrity Commission for an initial period of three years.

46. We conclude that the overriding aim of the current British administration of TCI must be to restore democratic self-government in the Territory as soon as the necessary work of purging its corrupt and dysfunctional political system has been completed and entrenched. However, we note the slow pace of the reform process to date, as well as the delay we have discussed earlier in launching the work of the Special Investigation and Prosecution Team. We therefore further conclude that there are solid reasons for regarding the Government’s preferred July 2011 date for the end of direct rule as unrealistic. If elections proceed on this timetable, there is a real danger of a return to the *status quo ante*, and the possibility that politicians against whom serious allegations of corruption are pending could seek to return to power. In such circumstances, it is possible they might seek to use bribery and intimidation to engineer a return to office, and then use the many means at their disposal in office to roll back the reform process

63 Second Quarterly Statement from His Excellency Gordon Wetherell, Governor, Turks and Caicos Islands, 28 February 2010, p 2, via <http://turksandcaicosislands.fco.gov.uk>

64 Ev 7

65 Ev 7

and undermine the work of the Special Investigation and Prosecution Team. While we welcome the steps being taken by the Governor to create new constitutional arrangements aimed at fostering probity and good practice, we are not convinced that these can be put unassailably in place within such a tight timescale.

47. We recommend that the Government take all reasonable and necessary steps to reassure the people of the TCI that a new constitution will not be put in place, nor elections held, until there is absolute confidence that the necessary reforms have been fully embedded. We further recommend that, in its response to this Report, the Government set out clear criteria as to what must be achieved by way of these reforms before elections take place.

48. It is essential that the issues identified in our 2008 Report and by the Commission of Inquiry are addressed and resolved to secure the future well-being of the Turks and Caicos Islands. Despite the progress that has been made, the concerns we have raised in this Report suggest that TCI's future is still far from secure. We recommend that our successor Committee in the next Parliament continue to monitor developments in TCI and the Overseas Territories closely.

Formal Minutes

Wednesday 24 March 2010

Members present:

Mike Gapes, in the Chair

Sir Menzies Campbell
Mr Fabian Hamilton
Mr John Horam
Mr Eric Illsley
Mr Paul Keetch
Andrew Mackinlay

Mr Malcolm Moss
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase
Sir John Stanley

Draft Report (*Turks and Caicos Islands*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 29 read and agreed to.

Paragraphs 30 and 31 read, amended and agreed to.

Paragraphs 32 and 33 read and agreed to.

New paragraphs—(*The Chair*)—brought up, read the first and second time, and inserted (now paragraphs 34 to 36).

Paragraph 34 to 35 read and agreed to (now paragraphs 37 to 38).

Paragraph 36 read, amended and agreed to (now paragraph 39).

Paragraphs 37 to 42 read and agreed to (now paragraphs 40 to 45).

Paragraph 43 read, amended and agreed to (now paragraph 46).

Paragraphs 44 and 45 read and agreed to (now paragraphs 47 and 48).

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 16 December.

[Adjourned till Tuesday 6 April at 5.00 pm]

List of written evidence

FOREIGN AND COMMONWEALTH OFFICE

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|---|---|------------|
| 1 | Written evidence from Chris Bryant MP, Parliamentary Under-Secretary of State | Ev 1; Ev 3 |
| 2 | Letter to Helen Garlick, Special Prosecutor from Chris Bryant MP, Parliamentary Under-Secretary of State | Ev 5 |
| 3 | Letter to the Chair of the Committee from Rt Hon David Miliband MP, Secretary of State for Foreign and Commonwealth Affairs | Ev 7 |

HELEN GARLICK, SPECIAL PROSECUTOR

- | | | |
|---|--|------|
| 4 | Letter to Chris Bryant MP, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office and Michael Foster MP, Parliamentary Under-Secretary of State, Department for International Development, from Helen Garlick | Ev 4 |
| 5 | Letter to Chris Bryant MP, Parliamentary Under-Secretary of State, from Helen Garlick | Ev 6 |
| 6 | Letter to the Chair of the Committee from Helen Garlick | Ev 7 |

SIR ROBIN AULD

- | | | |
|---|--|-------|
| 7 | Letter to Rt Hon David Miliband MP, Secretary of State for Foreign and Commonwealth Affairs, from Sir Robin Auld | Ev 10 |
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Written evidence

Written evidence submitted by Chris Bryant MP, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office

TURKS AND CAICOS ISLANDS SINCE THE SUSPENSION OF PART OF THE CONSTITUTION IN AUGUST 2009

Details of the Government's strategy for reforming TCI's political system

The UK suspended parts of the TCI Constitution in order to restore the principles of good governance, sustainable development and sound financial management to the Territory. This suspension has allowed the interim Government to begin to put in place key reforms to the political system ahead of the planned restoration of elected government by July 2011.

We have been guided by Sir Robin Auld's Report which identified areas of concern e.g. public financial management, Crown Land, good governance and customs. We have focussed on these priorities. The interim Government is developing structures and frameworks that can be built on in the future. A team of UK Government funded advisers is in place to provide support and guidance to the Governor and to the public service in these areas.

The Auld Report recommended a number of areas for consideration in any proposed revision of the Constitution. These include the possible reform of the franchise, the strengthening of the role of District Commissioners, a review of the distribution and number of electoral districts, consideration of possible constitutional imbalances between the FCO, Governor and Cabinet, and the underpinning of the role of parliamentary oversight committees. We aim to prevent a return to the earlier situation by ensuring that constitutional and other arrangements enable adequate checks and balances.

What exactly will be entailed, step by step, and to what timetable?

It remains our intention that elections should be held by July 2011, if not sooner. We are working hard to ensure this deadline is met, and we will review progress regularly. The Governor's first quarterly statement is attached.¹ This sets out in some detail the interim Government's achievements since August.

We expect that proposals for constitutional and electoral reform will be produced next year for public consultation in TCI, prior to their finalisation in 2011.

An outline work programme has been prepared by the Governance Adviser covering priority governance issues up until June 2011. Support to and relocation of the Attorney-General's Chambers, service delivery agreements, performance contracts and development of the Integrity Commission are on target to be achieved in the first quarter of 2010.

A Public Financial Management Adviser has been working on recommendations in the Auld Report dealing with the need to introduce rigorous internal and external audit systems for all government departments and public and statutory bodies. In the longer term, we will ensure that the oversight functions of the House of Assembly, once it is restored, are strengthened and that both these and the fundamental structure of the public financial management system are adequately protected by appropriate legislation. Many of the discretionary powers formerly given to Ministers (such as disposal of Crown Land, the award of contracts, development approval and the grant of belongingship) will be removed or reduced. The rules surrounding the financing of political parties will also be strengthened.

How does the Government propose to consult the people of TCI and win their support for this strategy?

Following the suspension of parts of the Constitution, an Advisory Council and Consultative Forum were created.

The Advisory Council, appointed by the Governor, consists of seven members who are all Belongers. The Governor, Deputy Governor, Chief Executive, Attorney General and Permanent Secretary (PS) Ministry of Finance are also members of the Council which meets every two weeks.

The Consultative Forum, also appointed by the Governor, currently consists of 12 members, all Belongers. It could be extended to 15 members, who do not have to be Belongers. The Chief Executive, Attorney General, and PS Ministry of Finance are also members. The Forum meets when required to make recommendations on legislative matters, policies and proposals put to it by the Governor and other matters brought to it by its members.

The Advisory Council is composed of leading figures in the community and they, together with the Consultative Forum, play a key role in the public consultation process. The Forum holds open sessions which are broadcast live on local radio and TV. Plans are underway for Forum members to hold public meetings on all the main islands in early 2010.

¹ Available at <http://turksandcaicosislands.fco.gov.uk>

Immediately following suspension of the Constitution, the Governor undertook a series of Town Hall meetings and visited all the main inhabited islands: Salt Cay, South Caicos, Middle Caicos, North Caicos and Providenciales, as well as Grand Turk. This provided the opportunity to explain to the general public what the interim Government meant for them, to answer their questions, and to hear their concerns. The Governor expects to continue this dialogue by holding another series of town hall meetings early in the New Year. The Governor's Office published a leaflet outlining what the interim Government would mean for the general public. A new Government website is being created which will draw together all Government services, including press notices and local Ordinances.

The Governor has just published the first of regular quarterly statements. A new press and public affairs team will be responsible for developing and implementing a comprehensive cross-government communications plan. This will allow proactive as well as reactive media coverage, and will also include briefing the District Commissioners to ensure that the outer islands' voice is heard.

In the interim, what major decisions has the Governor taken, or is he likely to take, which would normally have been taken by the elected TCI government, and what has been the reaction to these decisions on the islands?

Areas that were previously devolved to the elected government where the Governor and his Office have taken a hands-on role include: budget preparation, tourism promotion, bringing into force the National Health Insurance Plan (NHIP—which is crucial to the funding of clinical services provided by two new hospitals), restructuring ministries, negotiating overdraft/loan facility for the government, inward investment/development opportunities, initiating a revenue study, expenditure controls, and appointment of Statutory boards.

The international agenda has also continued. For example TCI will shortly sign Tax Information Exchange Agreements (TIEAs) with France, Denmark, New Zealand, the Nordics and Canada bringing them above the current international standard and onto the OECD white list.

The Advisory Council has been briefed regularly on these issues and made recommendations to the Governor. These include submitting a request to the FCO for the extension of ILO Convention 182 (on the worst forms of child labour) to the TCI, and agreeing that the right of individual petition to the ECHR be extended to the TCI indefinitely.

Understandably, public reaction has been mixed. Whilst the need for austerity is broadly understood, those public servants who have lost jobs created under the political patronage of the former administration, and those whose salaries have been paid late, continue to voice their dissatisfaction.

The NHIP and the completion of two new hospitals (the costliest public sector projects in TCI's history), a project which was started by the former Government and which the interim Government is contractually bound to continue, have attracted adverse comment. This has been countered by providing public access to detailed contract information (which the former Government failed to do). The numbers of people registering for the NHIP are ahead of target.

Is it proposed to redraft the TCI Constitution?

Work is underway to identify and appoint a working group on Constitutional and Electoral Reform who will produce initial proposals for constitutional reform next year. Once the recruitment process is complete the Governor will make a formal announcement.

Have charges been brought against any individuals in relation to corruption allegations? Are they expected to be brought in the near future?

The Governor appointed Helen Garlick as Special Prosecutor in August. She has established a highly experienced senior management team of UK investigators, and is currently recruiting members for an intelligence unit, including a financial adviser and an analyst. They are based in London for now, but visit TCI regularly. A Strategic Oversight Group (SOG) has been set up by the Governor to provide independent oversight of the criminal investigation.

The Special Investigation and Prosecution Team (SIPT) has completed a review of all the material that was gathered by the Commission of Inquiry and has established links with law enforcement agencies in the United States. The team has also opened several lines of inquiry, some arising directly from the work of the Commission, others being new matters. No charges have yet been brought against any individuals in relation to corruption allegations. It is difficult to anticipate at this stage when the SIPT may be in a position to bring charges against any individuals.

Are there any other significant recent developments on the islands of which the Committee should be aware?

As noted above, the Governor's quarterly statement sets out what has been achieved in the three months since the Constitution was suspended.

25 November 2009

**Further written evidence from Chris Bryant MP, Parliamentary Under-Secretary of State,
Foreign and Commonwealth Office**

RECENT DEVELOPMENTS IN THE UK'S OVERSEAS TERRITORIES

This memorandum is provided in response to a request from the Foreign Affairs Committee for information on recent developments in the UK's Overseas Territories in preparation for the Committee's meeting with Overseas Territory leaders on 10 December 2009.

Note by Committee: Only paragraphs 82–83 have been printed as relevant to the Turks and Caicos Islands. The full memorandum can be found on the Committee's website at http://www.parliament.uk/parliamentary_committees/foreign_affairs_committee/foreign_affairs_committee_reports_and_publications.cfm

TURKS AND CAICOS ISLANDS (POINTS IF RAISED BY TERRITORY LEADERS)

82. Briefing is being provided separately for the Committee's meeting with the Governor of TCI on Tuesday, 8 December. The following points are provided in case TCI issues are raised by Territory leaders.

- The suspension of parts of the TCI Constitution was a serious step which the UK Government did not take lightly.
- It was essential to ensure that the principles of good governance, sustainable development and sound financial management are restored, allowing elections to take place as scheduled in 2011, if not earlier.
- The former TCI Government is responsible for the present financial crisis in the Territory. When the Interim Government took over in August, it inherited a Territory debt of \$135 million. Dealing with TCI's financial problems and restoring sound financial management has been its top priority.
- In the three months since the Interim Government took office, an enormous amount of work has been undertaken by the Governor with the help of the public service and with the advice from the Advisory Council and Consultative Forum.
- Since August a number of significant steps have been taken:
 - Full review of TCI Government financial management practices completed. Stabilisation Plan now being implemented (restructuring public service, strengthening government finance management and control systems, revenue study, updating legislative framework).
 - 2009–10 budget completed. Public sector expenditure cut by \$74 million compared to 2008–09.
 - Introduction of strict expenditure controls.
 - Payment of dues and taxes monitored and enforced.
 - Discussions with banks to secure consolidated loan facility to enable Government to manage its repayments over a longer period.
 - Review of existing revenue system started in November.
 - Overall collection efficiency and capability of the Customs Department is being improved.
 - Work begun on new Crown Land Policy and order being restored to Crown Land Unit.
 - Arrears identification exercise completed and procedures put in place to begin proceedings to recover unpaid arrears (over \$3m of arrears for conditional purchase leases).
 - Backlog in Land Registry being processed.
 - New multi-agency Informal Development Task Force to tackle the spread of informal settlements on Crown Land.
 - Working Group on tourism promotion established.
 - Major restructuring exercise of Public Service to improve efficiency and value for money completed.
 - Inspection and review of police force completed.
 - Helen Garlick (ex UK Serious Fraud Office) appointed as Special Prosecutor of the Special Investigation and Prosecution Team, and management team in place.
 - 37 hurricane reconstruction projects totalling over \$3.5 million have been approved.
 - Advisory Council and Consultative Forum created and established regular meetings.

83. But much work remains to be done. To support the efforts of the TCI public service the UK has provided a number of UK funded advisers: experts in tackling the types of challenges TCI is currently facing (e.g. customs, Crown Land, good governance). Their appointment is part of the UK's commitment to assist TCI.

30 November 2009

**** Asterisks denote that part of the written evidence below that has not been reported because it was provided to the Committee in confidence.*

Letter to Chris Bryant MP, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office and Michael Foster MP, Parliamentary Under-Secretary of State, Department for International Development, from Helen Garlick, Special Prosecutor, Turks and Caicos Islands

I was appointed as Special Prosecutor to the Turks and Caicos Islands Special Investigation and Prosecution Team (the SIPT) on 10 August.

Before accepting the appointment and to date my main concern has been that I should be confident that I can carry out a thorough and independent investigation. Prior to 10 August my distinct understanding was that, although the British Government would not fund the investigation indefinitely, the most probable outcome would be that it would advance a loan to TCIG. It was on this basis that I signed my contract. I was initially appointed for two months. My principal task was to review the material collected by the Commission of Inquiry and to draw up an Investigation Plan, Strategy and Budget. For this purpose a small Senior Management Team was assembled. It consists of a Deputy Special Prosecutor, a barrister named Lee Marler, who is the former Head of the External Investigations and Integrity Division at the World Bank, a Senior Investigating Officer, Keith Chamberlain, who is a former Detective Chief Superintendent and Assistant Chief Constable of Cambridgeshire and his deputy, John Briggs, who is a former Detective Superintendent of Derbyshire Police Force. We are assisted by an experienced former Detective from the Metropolitan Police, who is acting as the Case Manager.

On 27 August I visited TCI and gave a press conference with the Attorney General and the Governor, announcing the opening of the investigation.

In late September I presented the FCO and the Governor with the Plan, the Strategy Document and the Budget. The contents of all three documents were accepted. A Strategic Oversight Group has been appointed within TCI, to have superintendence of the Investigation, the documents were also presented to it and accepted without qualification.

In summary, our budget for the remainder of this financial year totalled £1.9 million and for the next financial year it is £4.9 million. These figures do not include the costs of any prosecutions. ***.

The preparation of all three documents was dominated by the Senior Management Team's acute awareness of the need to keep costs to the minimum consistent with conducting an impartial and thorough investigation. Every aspect has been thought through with care and can be justified on those grounds.

In October I learned first, that the British Government would neither make a loan, nor guarantee a separate line of credit agreed by the TCIG. In the absence of any support from HMG, the only option open to TCIG was to negotiate one or more facilities backed by hypothecation of an identified stream of income. (***). If it is agreed, the facility will be syndicated. I am informed that the facility is close to being agreed and that funds are expected to be in place by early January. In the meantime our initial two month contracts have been extended to 10 February 2010 and we are being funded by the FCO. As from that date, we will be in charge on the budget of TCIG. The TCIG's financial priorities will be first, the protection of human life, safety and the avoidance of suffering; second, servicing of government debt; third, other essential expenditure; fourth, salaries; and fifth, desirable public expenditure. I have been told that, to ensure the SIPT's funding requirements are met, it will be placed at the top of priority three. My comments, that I have made in meetings and in writing to the Governor and the FCO are as follows:

1. The budgeted costs of the SIPT will amount to between 4.5% and 5% of the TCIG's budget and could well increase, if charges are brought and there are several trials.
2. There is a real prospect there will be months when the SIPT's expenses and salaries will be met, whilst TCI Government servants, including police officers, with whom we may be working, will not. There is also a distinct possibility that other important government expenditure that has a real impact on the well being of the Islanders will be subordinated to the SIPT's needs. In my view this is wrong in principle. Furthermore, it is hardly likely to help us to win and maintain essential public support.
3. We now face a considerable and highly damaging delay before the investigation can be started. In recent weeks, we have needed to react to some important and urgent developments. This is very much in the nature of major criminal investigations but our capacity to deal with them is severely limited. ***. However, I cannot begin to interview and offer permanent posts to any new staff until I am certain that the facility is in place. You will understand that I also have a responsibility to assure staff that they will have a proper measure of job security and also that they will be paid in full and on time. ***. On my current understanding, that the facility will be agreed by the beginning of December, I am unlikely to be able to have a full team in place until March 2010.
4. There is a risk that public confidence in and support for our work will ebb. Questions are being asked about the apparent lack of progress and the failure to establish a presence in TCI. Public support is vital, both to maintain the independence of the Investigation against the very real prospect of political interference, once the Islands return to elected government but also to

- encourage potential witnesses and providers of information. You will recall that the Foreign Affairs Select Committee and the Public Inquiry both recorded evidence of intimidation and a climate of fear.
5. It is disappointing in the extreme that funding for the SIPT's work has taken so long to be resolved. Sir Robin Auld's Interim Report was published at the end of February. I think it is fair comment that by that date at the very latest, it was plain that the cost of a substantial criminal investigation would have to be met.
 6. I have asked the question why a separate source of funding from HMG cannot be found for the SIPT. I have been told that it is impossible. My understanding is that the FCO has no budget for this type of expenditure and that there is no other realistic government source of funding, with the exception of DFID, to which I will return below.
 7. I have also raised my concern at the position that the SIPT will be in, if a new government seeks to remove or reduce financial support for the SIPT when the Constitution is restored in full and elections take place in the summer of 2011. ***.
 8. I have also been told that an approach has been made to DFID for a financial support but that there is no assurance that this will be forthcoming and that in any case, any grant (I understand that DFID do not provide loans), would be for economic restructuring. I am told that there is no question of a grant for the purposes of good governance, including the the SIPT.
 9. I am aware that there is a traditional objection to providing support for a prosecution, I assume because DFID and other government departments do not wish to appear to be adopting a partisan stance. If that is a material objection in this case, then I would comment that larger issues are at stake here than simply securing convictions against particular individuals. The Public Inquiry was initiated by Her Majesty's Government, as a direct result of the recommendations of the Foreign Affairs Select Committee and it was also Her Majesty's Government that decided upon the partial suspension of the Constitution and my appointment. Through no fault of their own, the TCI police and the Attorney General's office lack the experience or the capacity to conduct this investigation and in the case of the former, largely because of the size of the population and family interrelationships, they do not have public confidence. The principles that will lie at the heart of this investigation and of any trials are those of good governance and the corruption free conduct of public office and the lessons that will be learned from a properly conducted investigation could be of lasting and international value.
 10. I have made it clear that although the Senior Management team are fully committed to the investigation and have complete confidence in the Governor's support, we are not prepared to continue to work indefinitely, or to be responsible for recruiting others, without the assurance of funding that is sourced and managed on a basis that assures our independence and ability to carry out a full, independent investigation and any trials. At present I am firmly of the view that the only way in which we can be assured of this, without impacting on other important TCIG expenditure, is if separate funding is made available by Her Majesty's Government.

I have told the Governor, who has in turn briefed the FCO, that I am writing to you.

I urge the Government to adopt a principled and constructive approach to the funding of this investigation, I would be happy to take part in any discussions aimed at achieving this, to attend meetings, or to answer any questions you have.

24 November 2009

**Letter to Helen Garlick, Special Prosecutor, Turks and Caicos Islands, from Chris Bryant MP,
Parliamentary Under-Secretary of State, Foreign and Commonwealth Office**

TURKS AND CAICOS ISLANDS (TCI): SPECIAL INVESTIGATION AND PROSECUTION TEAM (SIPT)

Thank you for your letter of 24 November introducing yourself and your team members.

I am very pleased that you have agreed to undertake this important work and have assembled such a strong core team to support you. The details of the work that you have carried out to date are impressive. It is important that the team has a strong and dedicated leader, and you have set out a clear path and objectives for your team.

As you are aware, the Governor has inherited some extremely difficult circumstances in TCI. The financial situation, as you note, is dire. TCIG cannot borrow further without hypothecation. I agreed in November that TCI could hypothecate some of its revenues, in accordance with the Ordinance. The Governor and his public finance management advisers are working to agree a loan with regional banks. They aim to have a package in place in January. In the meantime, the Overseas Territories Directorate (OTD) have stretched the limited resources of the Overseas Territories Programme Fund to cover the proposal which you and your

team put to us in October. This covers the costs of your core team until 10 February 2010. In addition we have agreed to fund a further £36,000 to allow you to start to recruit the core intelligence and research unit, and to rent more UK office space.

I understand that a Strategic Oversight Group has been set up by the Governor to provide independent oversight of the criminal investigation and meets regularly. As you are aware, it is important that our systems are transparent and will bear public scrutiny.

I understand your concerns about the future security of funding for the SIPT. I hope that by January 2010, TCIG will have a loan arrangement in place which will enable them to cover the anticipated costs of the SIPT, as detailed in your original project proposal. I know that the Governor and his team of specialist advisers are working hard to achieve this and to ensure that the costs of the SIPT will continue to be met when a democratically elected government is in place.

I must make it clear that neither the FCO nor HMG can fund, or provide a loan for, the full cost of the investigation. It has always been our view that the former TCI Government is responsible for its present financial crisis. It is therefore correct that the Territory pays to sort out these matters. It is not appropriate to ask the British taxpayer to do so.

However, the UK has a responsibility to the people of TCI to ensure that those responsible for the corruption and/or other serious dishonesty in recent years are held to account for their actions. We remain committed to this course of action.

5 December 2009

*** *Asterisks denote that part of the written evidence below that has not been reported because it was provided to the Committee in confidence.*

**Letter to Chris Bryant MP, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office,
from Helen Garlick, Special Prosecutor, Turks and Caicos Islands**

I refer to my first letter to you of 24 November 2009 and to your reply of 5 December.

The Governor has kept me informed on the progress of his negotiations to secure the facility needed to cover the financial commitments of the TCIG. On the understanding that a loan in the sum of \$85 million was on the verge of being concluded, I have held interviews with investigators and lawyers and have assembled a full team, that has started to work and should be fully operational with a permanent presence in TCI by Easter. As you know, this will be at least four months after I submitted and obtained approval for an Investigation Plan and Budget to cover the costs of the SIPT until the end of the next financial year 2010–11.

In my view the Governor has been handed an exceptionally difficult task, of conducting complex negotiations for a syndicated loan on behalf of a British Dependent Territory that is in acute financial trouble, without being able to assure prospective lenders that there will be any support from Her Majesty's Government.

I have to repeat my belief that placing the SIPT in a position where it is a substantial charge upon the TCIG's budget is wrong in principle and likely to be seriously harmful to our need to obtain the support and good will of the public.

Since my November letter, the SIPT has had to assume responsibility for a prosecution in the TCI, where the monies at risk total \$200 million. The investigation has been carried out by the Royal Turks and Caicos Police (RTCIP) Financial Crimes Unit, essentially by two officers, Acting Detective Superintendent Mark Knighton and Detective Sergeant Willin Belliard, with very little assistance and their dedication and skill is wholly commendable. However, as I have said before, these cases far exceed the capacity and previous experience of the RTCIP and the Attorney General's Chambers. As a result, the SIPT has had to devote considerable additional resources to the Smith case, including briefing Leading Counsel, to review the evidence and to conduct the prosecution case.

A reliable gauge of public opinion can be found in the *Turks and Caicos Weekly News*. A sizeable proportion of the February 13–19 edition was devoted to leaked reports of the negotiations for the facility. The comment is based on the assumption that the full amount of \$85 million would be forthcoming and if it has not been brought to your attention, may I urge you to call for a copy? The editorial commented as follows, "In recent days we have noted with concern that a large proportion of this new loan will not be used to retire old debt but to pay for the Special Prosecutor and her team, any future court actions and recovery costs...."

I continue to be assured that the interim government is absolutely committed to supporting the SIPT. Our loyalty to the Governor is undiminished and I accept his assurances without question but as I hope I have made clear by now, in my opinion that is not the point.

In your reply of 5th December, you stated that "... the UK has a responsibility to the people of TCI to ensure that those responsible for the corruption and/or serious dishonesty in recent years are held to account for their actions". However you also made it plain that in your view the British taxpayer should not be required to "sort out these matters" and that accordingly Her Majesty's Government would not provide further funding to the investigation. As you know, upon receiving your reply, I sent a copy of my letter to the Foreign Affairs Select Committee and I was asked to appear before them. Because of the urgency, on this occasion I am copying my letter simultaneously to it.

1 March 2010

**Letter to the Chairman of the Committee from Helen Garlick, Special Prosecutor,
Turks and Caicos Islands**

Thank you for agreeing to see me tomorrow. I have forwarded a copy of a letter I sent yesterday to the Minister. As you will see, on this occasion I have decided not to wait for his answer before copying it to you.

I continue to register my extreme concern at the financial position and at the consequences of the fact that, against our wishes, the SIPT is now a major burden upon the budget of the TCIG. In addition I am becoming alarmed at the failure to implement some of the key recommendations made by Sir Robin Auld, the more so, since it appears that Her Majesty's Government are intent upon returning the Islands to full Parliamentary rule by the summer of 2011. If that is so, then it is imperative that the key recommendations are implemented without further delay. From my viewpoint these are:

45. "The Attorney General's Chambers should be strengthened with adequate numbers of high quality staff of a disposition to withstand political and other pressures ... (with) suitable and secure premises." To my knowledge, nothing has been done to take this forward. I believe that it is essential that these changes are made now, so that the strengthened AG's office has had several months to bed in and to establish itself before the elections.

55. Early implementation of the Integrity Commission Ordinance. My understanding is that although a Chairman and Commission members have been selected, there are no funds to employ investigators to obtain and analyse the financial information that the Commission may demand of past and present public servants. If the Commission was in operation, it would be a valuable partner to the SIPT's work. More important, an effective Integrity Commission will provide lasting and vital support for clean public life in the TCI, long after the work of the SIPT is done. As with the reforms to the AG's Chambers, the Commission needs to have had time to become embedded in TCI national life and to have established its reputation as a force to be reckoned with, before the return to elected rule.

I must also mention the importance of securing safe and suitable court buildings for the trials that will result from our investigations. I have insisted that the trials must take place on Providenciales. The safe transportation of witnesses, their housing and the secure handling of evidence will all be impossible to ensure on Grand Turk. The Chief Justice and his Deputy agree with me on this and have added their concerns that the current Supreme Court building is insecure and overcrowded. A secure and suitable building needs to be identified now and plans need to be made for its refurbishment.

I look forward to meeting you tomorrow.

2 March 2010

**Letter to the Chairman of the Committee from Rt Hon David Miliband MP, Secretary of State
for Foreign and Commonwealth Affairs**

Thank you for your letter of 28 January in which you requested further information on issues relating to the Turks and Caicos Islands (TCI) which have been brought to the attention of the Foreign Affairs Committee.

We are well aware of the difficulties created by the fiscal problems in TCI and their impact on the work of the Special Investigation and Prosecution Team (SIPT). We are doing all we can to stabilise the fiscal position so that the work of the SIPT and all the systemic reforms required can proceed as swiftly as possible.

Ms Garlick and other members of the SIPT are in regular contact with the Governor and his office in TCI and the Overseas Territories Directorate (OTD) in the FCO. She has been kept up to date on the situation in TCI including the level of the TCI Government's debt (US\$135 million) and our efforts to stabilise the situation. We are aware of her concerns about the funding of the SIPT. However, it was made clear to Ms Garlick at a very early stage that the costs of the criminal investigation into the findings of the Commission of Inquiry report would fall to the TCI Government (TCIG). It has always been our view that the former TCIG is responsible for its present financial crisis. It is for territory governments to fund commissions of inquiry and criminal investigations within their jurisdiction.

The circumstances against which the SIPT has been established by the Governor have been very difficult. Nevertheless, good progress has been made to date. Inevitably, the time needed to conclude the criminal investigations and prosecutions will last well beyond 2011. However, steps will be taken to ensure that following the elections in 2011, the new TCIG will not be able to repeat past mistakes, that good financial management will be ensured for the future, and that key funding commitments such as the SIPT will be met.

You asked a number of specific questions, please find below.

1. *What funding has been provided by the FCO to the Special Prosecutor for the TCI? When was this funding provided, and what specifically was it for?*

The Government agreed to provide the initial funding needed to set up the SIPT until TCIG finances were stabilized by an US\$85m loan being sought by the TCI Government.

Accordingly, my Department has funded the SIPT's work since its creation in August. We have spent approximately £435,000 to the end of January. This includes the fees of the five members of the senior management team (approximately 60% of the total cost), one researcher, the rental costs of London offices and associated IT and telephone costs, as well as travel by the team to TCI and to the US. In October, Ms Garlick put a proposal to the FCO for additional funding of £36,000 to allow the SIPT to start to recruit an intelligence and research unit and to rent additional UK office space. This was agreed in November, and four new members of the SIPT have been employed (two intelligence managers and two financial investigators). The FCO has also agreed to fund an analyst for four weeks at a cost of £5,000.

The FCO extended this start-up funding until 10 February 2010. Funding has now reverted to TCIG. Appropriate arrangements have been made by TCIG to meet any further costs incurred up to the end of this financial year. Though negotiation of the \$85 million loan facility is proving more difficult than anticipated, we expect to have the first tranche in place very shortly.

2. *Why has the UK Government refused to advance a loan to the Special Prosecutor and the Special Investigations and Prosecution Team (SIPT)? Why was the UK Government unwilling to guarantee a separate line of credit to be agreed by the TCIG?*

Officials in the FCO and the Governor and his team made clear to Ms Garlick from the outset that the costs of the criminal investigation into the findings of the Commission of Inquiry report would fall to TCIG and that the Government would not provide a loan for the full cost of the investigation. Additionally, Chris Bryant wrote to Ms Garlick in December 2009 to explain that TCIG were working hard to get a loan agreement in place with a regional bank which would enable TCIG to pay some of its outstanding debt and to restructure the remaining debt. I expect the first tranche of this loan facility to be in place later this month.

DFID has not directly provided loans as an aid instrument for more than twenty years and does not have the capacity for such an approach. They are a grant funding organisation. Nor is DFID able to guarantee loans or lines of credit. The costs of the SIPT are part of TCI's recurrent budget obligations. They should not be seen as a separate funding line.

3. *The budgeted costs of the SIPT will amount to approximately 5% of the TCIG's budget. What is your assessment of the impact of this on other TCIG expenditure? If other government expenditure has to be reduced as a result of the TCIG's support for SIPT—what impact will this have on public support in the TCI for the work of the Special Prosecutor?*

The cost of funding the SIPT will be one of the most significant payments the TCI will face over the coming years and will have a considerable impact on TCI finances. The costs of the SIPT, civil recovery, and loan will be included in TCIG's 2010–11 budget and any payments due to the SIPT will be given very high priority. Similarly an appropriate amount will be included by the current Government in the 2011–12 budget. This will necessitate further measures to reduce expenditure and raise revenue.

To help close the gap between expected revenue and expenditure, steps to further reduce expenditure are being developed. This is likely to include reductions in public service emoluments. Inevitably some members of the public, and especially of the civil service, will probably equate any cuts with the additional \$10m expense of the SIPT and civil recovery. In fact significant further steps will be needed to cut expenditure and raise revenue if TCIG is to balance its budget. But public displeasure at the cost of the SIPT needs to be weighed against strong support (and impatience) for criminal prosecutions to begin. When the 2010/2011 budget is published in a few weeks, we expect that some sections of the TCI public will be concerned at the cost of the SIPT.

4. *Is it right in principle that the Special Prosecutor is funded by the TCIG?*

It has always been the UK Government's view that the former TCIG is responsible for the present financial crisis. It is for territory governments to fund commissions of inquiry and criminal investigations within their jurisdiction.

You are aware of the extent of the former TCIG's financial mismanagement and the level of debt it incurred. Repayment of these debts and stabilizing TCI's finances have been the current TCIG's priority since 14 August. UK-funded technical experts in the TCIG are working hard to help the Territory return to sound financial management and to restore good governance.

5. *What impact has the delay in resolving issues around funding had on the ability of the Special Prosecutor to get her office "up and running" and to begin investigations?*

I understand that the Special Prosecutor has felt frustrated, considering the very difficult set of circumstances the current TCIG inherited and has had to resolve. The inability of the TCIG to assume the full funding of the SIPT from the start has delayed the recruitment by Ms Garlick of her full team. Nevertheless, I am pleased to report that the SIPT has made good progress since it was appointed in August 2009. They first visited TCI in August and continue to visit TCI regularly. Their London offices were taken on in September. They prepared a project proposal which has been agreed by the Governor. A website has been set up and a mailbox created to take inquiries. Some members of the team have visited the United States on a number of occasions to follow up lines of inquiry and to interview witnesses. Additionally, officials from my Department went to TCI in October to assist the SIPT with the recording of data seized from the offices of former TCI Ministers. Several promising lines of inquiry have been followed up.

Ms Garlick has reported that the team has made initial enquiries with a number of people in TCI who might be able to offer credible and substantial evidence to the investigation. They continue to receive information and telephone calls offering assistance.

The Senior Investigating Officer (SIO) and Deputy SIO (DSIO) visited the US in December 2009 to carry out a detailed interview of a highly significant witness which directly impacts on two development projects in TCI. Significant progress was made in respect of these two projects as a result of the visit to US. Enquiries are being made with US counterparts and the Dominican Republic where it is believed former Premier, Michael Misick has assets. Recent meetings have been held with Federal Agencies and agreement has been reached in respect of sharing evidence and information on key individuals/projects. The DSIO and two other members of the SIPT were in TCI in January to interview key individuals who have come forward and to make priority follow up enquiries.

Arrangements are being made to take on office and living accommodation for the SIPT in TCI.

6. *Given the delay in establishing the office of the Special Prosecutor, what is your assessment of the likelihood of any criminal cases being concluded before July 2011?*

It would not be appropriate to speculate on how long any individual criminal trials might take. But we accepted that the criminal process could last many years. It was certainly never envisaged that any major criminal trials would be concluded before July 2011. The Commission of Inquiry's work was extremely thorough and wide ranging. However, it was only charged with the duty to recommend whether full criminal investigations should take place. Criminal and civil proceedings have different and far stricter rules of evidence. The SIPT needs to undertake a fresh investigation, including in other jurisdictions. Any charges brought will have to meet the criminal standard of proof of guilt beyond a reasonable doubt.

7. *What consideration, if any, has been given to extending the proposed dates for elections in TCI in 2011, in order to allow sufficient time for any investigations and court cases to be concluded?*

While we keep the situation under regular review, it remains our intention that elections should be held by July 2011, if not sooner.

We have not yet defined post 2011 arrangements. We will do so in consultation with the people of TCI over the next nine months or so. I am aware that there are many views on this, both in TCI and elsewhere. Some criticise the steps we have taken. Others argue that we should extend the interim government well beyond 2011 to ensure all the necessary reforms can be embedded. One thing is clear. There will be no simple return to the *status quo ante*. There cannot be a repeat of the sort of systemic failures noted by the FAC Committee and picked up in more detail by Sir Robin Auld in his Commission of Inquiry report.

To this end, the UK Government will shortly launch a full review of the constitutional and electoral arrangements. A UK-funded constitutional and electoral reform team leader will start work later this month. The team will consider the current constitutional and electoral system and, following wide consultation, will put forward suggestions to improve both.

The end result must be a system which gives the people of TCI, the UK Government and the international community confidence that the basic principles of good governance will be upheld. This will mean a greater degree of oversight by the UK Government than existed before August 2009.

8. *Concerns have been expressed to us that many of the individuals identified in Sir Robin Auld's Report have already liquidated assets in order to put funds beyond the scope of the authorities. What is your understanding as to the extent of this type of activity in the TCI?*

We, and the SIPT, are aware of these concerns, though we cannot quantify the likely extent of liquidated assets at present. That is why co-operation with the relevant authorities in third countries is an important strand of the SIPT's work. Any action to restrain assets must be supported by reasonable and credible information. It can not be taken based on conjecture, no matter how well founded.

9. *What steps, if any, are being taken to secure funding of the SIPT following a potential change of government in 2011?*

Arrangements will be put in place to ensure that funding continues after the 2011 elections and the restoration of elected ministerial government.

10. *In your assessment, what impact has the delay in the Special Prosecutor establishing a presence in TCI had on public support for and confidence in both the role and work of the Special Prosecutor and in the role of the UK Government in TCI?*

Whilst the public are, no doubt, frustrated that progress has not been swifter, support for the Special Prosecutor remains strong. There is impatience for criminal prosecutions to begin. The public are also fully aware of all of the work that has been done over the past few months to stabilize TCIG's finances, which should enable the SIPT to increase the pace of the criminal investigation. The decision on the timing of establishing an office in TCI was a matter for the Special Prosecutor. We understand that the SIPT will shortly open an office there. The continued presence of the team should reassure the public that the UK Government and TCIG remain committed to completing the criminal investigations and prosecutions.

The Governor will shortly publish his second quarterly statement providing an update on the work of the TCIG since August. He will also undertake a second series of "town hall meetings" on each of the inhabited islands, to meet the TCI public, update them and answer their questions.

I remain grateful to you and other Members of the FAC for the attention and interest they have shown to TCI.

24 February 2010

Letter to the Secretary of State for Foreign and Commonwealth Affairs from Sir Robin Auld

I write to you having regard to your ultimate ministerial responsibility on behalf of the Queen for the governance of the Turks and Caicos Islands and because of my concern for the well-being of its people.

As you know, in 2008–09 I conducted an Inquiry into possible corruption of its Ministers and other Members of its House of Assembly.

By February 2009 my inquiry had shown that the Territory was without an effective government or legislature, and was near financial collapse. I, therefore, submitted an Interim Report to the Governor recommending:

- (i) temporary suspension of its Constitution and return of executive and legislative control to Westminster, acting through the Territory's Governor;
- (ii) urgent appointment and funding of Special Prosecution and Civil Recovery Units to investigate and, if appropriate, institute criminal and civil proceedings to bring to justice Ministers and others for corruption, and to retrieve Crown Land and other assets alienated as a result of any such corruption; and
- (iii) strengthening of the Attorney General's Chambers to support the considerable forensic processes necessary to give effect to the work of both Units.

My recommendation, confirmed in my Final Report submitted on 31 May 2009, was adopted by an Amending Order in Council of 18 March 2009. Following litigation, this was put into force in about August 2009.

Over a year has passed since I first reported on the parlous financial state of the Territory and the fragility of its sinews of governance and of its finances. During that time, for want of sufficient income of its own and of adequate financial support from Westminster, that fragility has increased—despite stout efforts of its Governor, Gordon Wetherell, to overcome the dire shortage of resources. All or most of the troubles he faces in trying to restore the Territory to good order, efficient governance and financial health—and the increasing chorus of challenge to his conduct of the Territory's affairs—flow from the British Government's failure to provide urgently needed financial support.

This state of affairs follows decades of the FCO's stewardship, or lack of it, in the exercise of its ultimate constitutional responsibility for the probity and efficiency of the Territory's governance. The FCO now has direct control, yet seemingly considers that that does not carry with it financial responsibility to lift its charge out of the administrative and financial mire into which it has allowed it to fall.

The Special Prosecutor was not appointed until August 2009. On her appointment your Department informed her that HMG would not fund or provide any financial support for her investigation, and that it expected the Governor to do so by negotiating a commercial loan to cover the investigation and, indeed, all the Territory's needs. I understand that the Special Prosecutor objected to that stance, indicating that she was unable to recruit staff until funding was in place.

Only in December 2009 did the Special Prosecutor learn that the Governor was on the verge of concluding negotiations for a loan facility, and she thereupon began to recruit a team of lawyers and investigators, whilst continuing to object to the principle of the costs of the investigation being a charge on the Governor's budget. She also rightly expressed concern about the vulnerability of the whole exercise if, as your Department indicated, restoration of the Territory's Constitution with full ministerial and parliamentary government, is to take place in 2011.

In the course of recent representations by the Special Prosecutor to your Minister of State, Christopher Bryant, he firmly refused on behalf of the FCO to provide or guarantee any further funds to enable the Units to complete their work, notwithstanding the extreme difficulties that the Governor continues to face in finding money to run the Territory's affairs on a day to day basis. As far as I know, the same applies to the recently appointed firm of London lawyers charged with the responsibility of advising the Governor on civil law remedies, including recovery of Crown assets.

Contrary to recommendations in my Interim and Final Reports, the Attorney General's Chambers have not been materially strengthened to deal with the considerable forensic criminal and civil processes required to bring those guilty of corruption to justice and to retrieve their likely considerable ill-gotten gains. As far as I know, no arrangements have been made for the appointment and pay of additional judiciary, court and enforcement staffs, or to provide additional court and supporting office accommodation, necessary to enable speedy and otherwise efficient proceedings engendered by the work of the two Units. Even if most of the criminal proceedings can be tried without jury, the period from start to finish of preparation and conduct of the main trials is likely to be measured in years rather than months.

Despite this failure of the British Government to fulfil its constitutional responsibility for the good governance of the Territory, I understand that it now proposes to introduce a new constitution for the Territory next year and to return the Territory to ministerial and parliamentary government. Even if funding could be guaranteed and the Territory's finances restored to a manageable state by then, it could not be "cleansed" and governmentally and administratively reconstructed so as to meet that timetable.

I have never before considered it my role, after completion of an inquiry, to involve myself in the outcome of my recommendations. But the continued deterioration of affairs in the TCI drives me to do so here. I urge you, as a matter of urgency, to intervene to secure the discharge by the FCO of its moral responsibility and to secure its international respectability by making proper provision for the constitutional good governance and welfare of the Turks and Caicos Islands before ending interim direct rule.

Because of its similar concerns, I copy this letter to the House of Commons Foreign Affairs Committee, which, I believe, is shortly to report.

23 March 2010