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(British Virgin Islands)

BRITISH VIRGIN ISLANDS' CONSTITUTIONAL REVIEW EXERCISE

DISCUSSION PAPER

BRITISH VIRGIN ISLANDS' CONSTITUTIONAL REVIEW EXERCISE

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Committee: United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

The British Virgin Islands is an internally self-governing overseas territory administered by the United Kingdom. The Territory is a group of 40 islands, islets, cays and rocks situated in the north-eastern arc of the Caribbean archipelago, covering a geographical area of 59 square miles. The Territory is located about 60 miles east of Puerto Rico. The capital city, Road Town, is located on the largest island, Tortola. The other major islands are Virgin Gorda, Anegada and Jost Van Dyke. The BVI has a population of approximately 27,000 (2007 estimate). In 2007 the British Virgin Islands adopted a new Constitution negotiated with the United Kingdom.

Constitutional advancement is, by its very nature, a historic process for the people of the British Virgin Islands (BVI). Constitutional evolution in the Virgin Islands spans some four hundred years, but much of the advancement that the country has seen has taken place over the last half a century.

For us, Constitutional Review is not just another mundane paper writing exercise, but it is fundamentally what defines who we are, how we are governed, and our place in the wider world. That is why the issue of modernising our constitution is so important to the people of the BVI, and why our Government made constitutional advancement one of our highest priorities.

In 2004, our then Chief Minister appointed the first fully local Constitutional Commission comprised entirely of British Virgin Islanders, which after a year-long consultation process with the people of the Virgin Islands and the Virgin Islands diaspora, produced a quality and superb report.

The changes we sought in our new constitution were formulated through a process of public consultation and deliberation. This inclusive and thorough public examination illustrated a fundamental truth: the British Virgin Islands is today a progressive and responsible overseas territory. The institutions of our democracy were modelled after the traditions of the United Kingdom, but are now rooted firmly in BVI soil.

It was in recognition of our deepening institutional stability, and that of our fellow overseas territories, that in 1999, the Partnership for Progress and Prosperity White Paper was drafted. And it is upon the backdrop of that paper that we entered into Constitutional Negotiations.

The British Virgin Islands continues to uphold principles of self-determination, mutual respect for rights and responsibilities, and the continuation of strong democratic institutions. What we

sought in our last Constitutional Review, and what the United Kingdom Government also reiterated, was the desire for “a balancing of obligations and expectations” between the local Territorial Government and its administering power, the UK Government.

The Report of the Constitutional Commissioners of 2005 contemplated that the big question for the BVI was how does a micro-territory position itself in a new global setting to continue to provide its people with an enhanced quality of life and at the same time maintain a posture of dignity and cultural identity? The Commissioners felt that it would not be possible to address this question until Virgin Islanders are prepared to deal with the “bogeyman.” What is the ominous bogeyman? **Independence**. The previous Constitutional Commissioners in 1993 had concluded in their report that there was nothing inevitable about independence and that the general sentiment of the population at that time was “to tell the Queen that we are satisfied.”

Twelve years later, the 2005 Commissioners did not deviate too far from that conclusion that independence was not desired by the people of the British Virgin Islands, but nonetheless opinionated that the time had come for “there to be some significant constitutional advancement for the Territory short of independence.” They further wrote:

“We must seek through this Review, to craft the kind of democratic framework which permits the highest exercise of authority by the Territory and our representatives over its affairs, necessary for the effective conduct of the business of government in an open, accountable and transparent manner, and subject to appropriate and proportionate checks and balances on the exercise of that power and autonomy in order to ensure good governance and respect for human rights and the rule of law.”

The Commissioners recommendations were based on this aspiration to seek constitutional advancement, short of independence and our Government accepted most of their recommendations. At the outset of the Negotiations with the United Kingdom, we (our Government) were eager to carry out the dreams and aspirations of our people, but were mindful of the UK Government’s desire to “have sufficient and effective powers to protect its overall responsibility for ensuring good governance, compliance with international obligations and minimisation of contingent liabilities.”

We strongly believed that these circumstances and eventualities should be clearly defined on a constitutional basis and not bundled in miscellaneous wrappings and general headings. We believed that more clarity would ensure greater transparency in the relationship with the UK and a greater reflection of the democratically governed society that is the BVI. We sought changes that would remove some of the colonial remnants of former structures and enhance the sense of self and nation expressed by the people of the Territory in the Commissioners’ report.

This Review was timely; that is, our current state of maturity demanded another formal right of passage into Constitutional adulthood. Progress and good governance were evidenced in our international financial services sector, one of our main economic contributors, which remained beyond reproach and continued to meet all international standards of prudence and regulation. Our other economic pillar, the tourism sector, continued to be robust, again because of sound

management. Our public institutions, which fall outside the direct constitutional control of the Governor, have functioned efficiently from their inception and some, such as the BVI Social Security Board, were recognized as models in the Caribbean region.

When we looked over the development of the British Virgin Islands, we saw that a strong correlation between constitutional advancement and economic advancement had been clearly demonstrated. Unmistakably evident was that increasing moves toward greater autonomy and self-governance accompanied by the will to self-determination had continued to result in greater economic self-sufficiency, prosperity and the overall maturity of the Territory.

Pivotal in this maturity was the devolution of some of the responsibilities of the Governor, the UK Representative, to the Government elected by the people of the Virgin Islands, and who Virgin Islanders hold accountable on all matters, including those that were the Governor's responsibilities. We, therefore, closely examined the powers of the Governor consonant with the desires of Virgin Islanders for greater autonomy and self-determination.

Traditionally, the Governor held responsibility for the Public Service, defence, external affairs, the administration of the courts and internal security (including the police). The Governor had "responsibility" for these matters, but as I stated before, the people hold the people who they elected "responsible" for these matters. When our people are perturbed by rising crime, public service inefficiencies, police ineptitude, and foreign governments maligning the BVI, they call and expect us their elected representatives, not the UK's representative to respond.

Accordingly, we aligned our priorities and asked that in our new Constitution that:

1. The Governor's responsibilities be scaled back.
2. The BVI adopt a Cabinet System of Government, in which the Cabinet would serve as the chief policy-making body for the Territory.
3. The prosecutorial function be separated from the office of Attorney General through the establishment of the constitutionally protected post of Director of Public Prosecutions.
4. A National Security Council be established with responsibility for internal security.
5. Allow for the establishment of a Sixth Ministerial post, and as an extension of that step, that Legislative Council be expanded by two seats.
6. A Human Rights Chapter finally be included that would precisely detail and forever guarantee the fundamental rights and liberties of all persons in the BVI.
7. The definition of Belonger status be changed to clarify the position of second generation of children born outside the BVI to belonger parents.
8. Eligibility requirements for Legislative Council be amended to include a requirement for members to be a belonger by birth or descent.

These were the issues around which we coalesced. The BVI Constitutional Negotiating Team was led by the then Chief Minister, the Hon. Dr. D. Orlando Smith and comprised other members of the Government (myself included), members of the Opposition (including the current Premier, the Hon. Ralph T. O'Neal) and members of the Constitutional Commission. Over the course of a year the BVI Team met with the UK Team comprised of officials from the UK Foreign and Commonwealth Office.

The Constitutional Talks, which started in 2006, consisted of three rounds of intense constitutional negotiations held in the BVI and a similarly intense concluding round in London in early 2007. At this final round, the UK Team was led by Lord David Triesman, then the Parliamentary Under Secretary in the Foreign and Commonwealth Office with responsibility for relations with Africa, Latin America, the Caribbean and the Overseas Territories.

The BVI Negotiating Team (Government, Opposition and private citizens) started out on a unified foot with a firm resolve to stand strong in our determination to secure the legitimate rights of our people. But as elections were imminent, political expediency prevailed on the members of the opposition and they diverged from the previously supported position of seeking to considerably scale back the Governor's powers and responsibilities.

We expected the negotiations to be difficult and we expected to have to fight hard with the UK to bring our aspirations to fruition, but what we didn't expect was dissension and defection in the BVI Team. Ultimately, this discord weakened the BVI Team's overall position and provided fertile ground for the UK Government, which wielded the power to grant the desired wish list, to be disinclined to significantly shift the balance of power in the BVI's Government favour. The UK Government seemed reluctant to part with some of its responsibilities in the BVI, although it had similarly devolved with Bermuda some 40 years earlier.

In spite of the circumstances, the BVI Team was able to boast success in achieving most of its objectives in the Constitutional Negotiations. Our new Constitution came into force on 15 June 2007 and some of the key provisions include:

1. A preamble that recognizes from the outset who we, the people of the British Virgin Islands, are.

We, the people of the territory of the Virgin Islands have over centuries evolved with a distinct cultural identity which is the essence of a Virgin Islander.

Our Constitution further recognizes that the people of the Virgin Islands have a free and independent spirit, and that we have developed ourselves and our country based on qualities of honesty, integrity, mutual respect, self-reliance and the ownership of the land engendering a strong sense of belonging to and kinship with these islands.

2. A Chapter on Fundamental Rights, which outlines that the fundamental rights and freedoms are to be enjoyed without discrimination of any kind, whether sex, race, color, language, religion, political or other opinion, national, ethnic or social origin, association with a national minority, property, family relations, economic status, disability, age, birth, sexual orientation, or marital or other status.
3. A Cabinet Style of Government replaces the Executive Council and the Premier replaces the Chief Minister. The Premier has shared responsibility in setting the agenda
4. The Separation of the Duties of the Attorney General and the Director of Public Prosecutions.

5. A National Security Council – This allows the Governor to share the responsibility for internal security and the police with the BVI Government, by bringing them together to form the Council.
6. Delegation to the BVI Government responsibility for external affairs on matters that fall within all Ministerial portfolios.
7. Limits the Governor’s Reserve Powers to matters which are urgently necessary “for the purpose of complying with any international obligation applicable to the Virgin Islands.
8. A House of Assembly with more status and responsibility replaces the Legislative Council.
9. A defining who is a Virgin Islander and who is qualified to hold elected office in the House of Assembly and appointment to high offices of Deputy Governor and Cabinet Secretary.

The British Virgin Islands Constitutional Review Exercise, which resulted in the Virgin Islands Constitution Order 2007, was a process that took a full three years and included broad consultation and input. The new Constitution represents progress for the people of the British Virgin Islands. It enshrines basic fundamental rights and freedoms that everyone is entitled to enjoy. It rebalances the relationship between the Government of the British Virgin Islands and our administering power, the United Kingdom. Although it did not call for independence, it gave the people of the Virgin Islands greater autonomy and self-determination, helping us to shake of some of the remnants of colonialism. The new Constitution represents significant advancement, although not short of independence as the Commissioners aspired, that puts the British Virgin Islands and its people a few steps closer to the independent eventuality, or some other more advanced mutually agreed acceptable status.