



**Formal Negotiations on a  
New Cayman Islands Constitution**

**First Round**

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**Between**

**The Cayman Islands Delegation**

**- and -**

**The United Kingdom Delegation**

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**Monday, 29 September 2008 – Thursday, 2 October 2008**

**Held at**

**The Ritz-Carlton, Grand Cayman**

**The United Kingdom's Delegation**

Mr. Ian Hendry - The Chairman  
Ms. Susan Dickson - Legal Counsellor, Foreign and Commonwealth Office  
Mr. Michael Bradley - Constitutional Adviser, FCO Overseas Territories Directorate  
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**The Cayman Islands Delegation**

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Hon. Alden M. McLaughlin, Jr. JP – Minister of Education, Training, Employment, Youth, Sports & Culture  
Hon. Anthony S. Eden, OBE, JP - Minister of Health & Human Services  
Hon. Charles E. Clifford, JP - Minister of Tourism, Environment, Development & Commerce  
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**The Cayman Ministers' Association** - Pastor Al Ebanks

**The Cayman Islands Conference of Seventh Day Adventists** - Pastor Shian O'Connor

**The Chamber of Commerce**

Mr. Will Pineau – CEO Chamber of Commerce  
Mr. Eddie Thompson, President Elect    Mr. Stuart Bostock, Vice President

**The Human Rights Committee**

Ms. Melanie McLaughlin, Chairperson HRC Constitutional Working Group  
Mrs. Sara Collins, Partner and Head of Specialist Trust Disputes Group

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**THURSDAY, 2 OCTOBER, 2008**  
**2008 CONSTITUTIONAL NEGOTIATIONS**  
**HELD BETWEEN**  
**CAYMAN ISLANDS DELEGATION AND**  
**THE FOREIGN AND COMMONWEALTH OFFICE**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Good morning everybody. Before we start I'd like to invite Pastor Shian to say a prayer this morning.

**PRAYER**

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Let us bow our heads as we praise.

*Our Heavenly Father, we stand indebted to You this morning for Your faithfulness to us as You watched over us as we slept last night, You woke us up this morning, and You have given us yet another opportunity, a brand new day with opportunities and challenges. As we begin this session, this final day, we invoke Your presence here, we ask Your spirit will lead and guide that the goals and objectives that we have today will all be met with a successful session, and at the end we will return the honour and the glory to You. This is our prayer we pray in Jesus' name. Amen.*

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Thank you very much.

**PROPOSAL 4 – BILL OF RIGHTS**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, we've reached the last day of our deliberations of this particular round of discussions, and I think we're in pretty good shape to achieve my much desired objective to have a look at every point in the set of proposals before us.

I think, as I advertised yesterday afternoon, we should start with Bill of Rights, Proposal 4, and we have the benefit of a proposed draft Bill of Rights circulated on Monday. And I invite first the Cayman Islands delegation, if they would like to do so to say some introductory words about it. For our part we have a few questions about it, having studied

the draft, but I'll come to those after any introductory remarks anyone would like to make.

Alden?

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Morning, Mr. Chairman, good morning everyone. I'm going to leave most of the technical discussion on this point to the professor, but I just want to say, by way of introduction, that I think we're all keenly conscious of the various concerns about the implications for a Bill of Rights for these Islands.

This has easily been the most controversial aspect of the whole constitutional modernisation initiative, and a great deal of work has been done on the education front, a great deal of time is spent in consultations both publicly and privately, with a wide range of stakeholders coming out of those discussions, or coming out of the education campaign really I think we now have a much better — as a country we must have a better grasp of what human rights is all about and particularly what a Bill of Rights should aim to achieve.

And the draft that we have prepared ... well, it's one of a number of drafts that we have gone — that we have developed, and we hope this reflects and meets the various objections, the concerns that we've heard first about the possible horizontal application of rights and that it meets the concerns raised by the CMA in particular in that regard, and the concerns about judicial activism or “judicial creep” that we hope that those have been met by the inclusion of a provision which provides that the courts will have the power to declare legislation as incompatible with the Bill of Rights rather than to strike the legislation down outright. Those were the two principal concerns raised, I believe, by most stakeholders in this regard. So, I am hopeful that with continued discussion today and with observations from the FCO team, and obviously everybody else around the table, that we'll be able to come to an agreement about the wording of the Bill of Rights and that we'd be able to leave here being able to say to the country that there is a draft Bill of Rights which we believe the whole country can get behind.

Thank you, sir.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** If I just may add to that. The — on the technical side the draft Bill of Rights is based on the 2003 Draft, with a number of amendments and additions and simplifications.

Yesterday you mentioned the desirability of plain English, and of course, that is very desirable, but you also mentioned quite rightly that in order to leave no room for doubt and to be clear about the scope of a Bill of Rights things often have to get rather convoluted and complicated.

And I think this draft as opposed to previous drafts that were — that were considered is perhaps more complex and less plain language-y than would have been ideally desirable. And perhaps it can be simplified, I'm sure there are places where this can be done, but for the moment it was thought that in order to be specific to spell out everything, accessibility to the general public might just have to be sacrificed for the moment in favour of these rather difficult definitions of “public official” and so on, in order to meet the concerns that have just been mentioned.

In addition, simply, the — whereas it might have been possible in this kind of draft to follow something like the South African or the Canadian Bills of Rights and have a single-limitation clause, perhaps regrettably again here while rights are limited and qualified, that qualification has been built into every right so people can see that this is the right, but this particular right might be qualified when they look at their particular right rather than looking at a right simply drawn and then going to a separate limitation section, again, sacrificing plain language and accessibility in favour of absolute clarity on these points.

And, finally, it has been called a Bill of Rights, Freedoms and Responsibilities, with this concern — and the Government have thought correctly — have been voiced that it's not only about promoting the rights, culture which it is hoped to do, and — but also to point out that those certain responsibilities on behalf of government and individuals in society.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much for that introduction. Unless anybody else would like to make any general comments at this point, I suggest we use the time by going through, I hope not line by line, but section by section of this draft because we have, as I said, a number of questions. I'm not saying we have — one shouldn't draw any adverse conclusion from that, but there are some questions we have in order to get some elucidation, and we have some suggested — a few suggested amendments here and there which we'd like to throw in.

But would anyone like to make any general remark before we --

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Yes, please Mr. Chairman. Good morning everyone.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, please, Melanie.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** We have obviously received the draft Bill of Rights which was obviously circulated by the Government, but it hasn't unfortunately allowed us sufficient time to formulate a formal position

with the entire Human Rights Committee. It may be difficult, then, for us to contribute meaningfully to a line-by-line analysis. Our initial view was to perhaps speak to our paper in more general terms since we are aware that all the members will — received our formal position in our paper.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Well, I mean, let's be clear. It is — this is a first discussion of a possible draft. It would be — we would be deluding ourselves if we could put a final seal of approval on it or anything like it this morning, and I'm sure everyone will want to monitor it a bit carefully. But I think it would be good, as Alden said, if we can emerge from today with some sort of general understanding that we have a good — a good and sound structure, a basic basis for further detail and consideration at a later date. I mean, it's the main principles that need be focused on, and if anybody thinks in any of the points I raised that I'm being picky, too picky at this stage, then I'll — I'll back off and come — and bring them again later.

So, shall we — shall we start ... Pastor Al, do you want to say something?

**PASTOR AL EBANKS (CHAIRMAN OF CAYMAN MINISTERS' ASSOCIATION):** Just for a matter of clarification in order to avoid any — any doubt and put together any sort of skepticism that any of us may have, both in reference to our opening remarks and also your opening remarks in regard to Her Majesty's government, not having a constitution in place without a Bill of Rights. Can you state emphatically — you've heard two positions put forward: one is for an argument that people like ourselves have made for the potential for it to be enshrined in a separate bill versus — I should say in a separate bill versus enshrined in the Constitution. Maybe it's just my — my mind, but I want to be clear, and for it to be absolutely clear in everyone's mind whether that option is an option or whether HMG's insisting that it be enshrined in the Constitution because I'd like to put that to rest one way or the other.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, there's no doubt about it. Clear policy of British government is that a Bill of Rights must be entrenched in the Constitution and not subject — not put in an ordinary law which could be subject to being amended and changed with every change of government. No, it must be — it must be entrenched in the Constitution.

So, the important — I recognise the importance of that issue, not only for ourselves, but for some — some points of view here. So, it does make it the more important to try to satisfy ourselves that what would be put in the Constitution would be acceptable at this stage of the development to the Cayman Islands, recognising of course that is a big

step — I would say a big step forward. In any event, it's a big step to have for the first time in the Constitution a Bill of Rights.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Please.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Good morning, sir.

The Bill of Rights is one of those — perhaps has caused the most debate on the Constitution, that and the powers of the Governor. And I have just listened to what you had to say and — and to say that we differ as we are clear from what we have found what people would want would be a Bill of Rights separate and apart from the Constitution. And I understand your point about amending legislation, but I don't know, sir, how we could amend legislation, not being a sovereign Parliament, without the UK's assent. And so, therefore, anything that came that the UK would not agree to as far as amending legislation, if that were — were to happen, then, the UK would have the last say anyway.

Do not — do not — let's not be naive here. This is important, much more important than ordinary political views of any government or opposition. It is important on all sides and it is something that I certainly aspire to. One of the first motions I believe you will find in the Legislative Assembly on a Bill of Rights was probably seconded by myself; it certainly had my vote. I know one of the motions that kept — year after year kept getting defeated was either — was seconded by myself. So, it is not something that is new, and it is not something that we should take five months or eight months to put in place in this country.

The UK gave itself several years, and if you — embedded in the Constitution, I believe what was said in the Lancaster House meeting was that it would give time for laws and so on to be amended to take effect. And while I have to accept the UK's position, at the end of the day, if the UK don't change its mind, we would want to know that we have that same ability and time given so that we can look at all the laws that impact upon any Bill of Rights.

Given what we have discussed about the role of His Excellency the Governor in Cabinet and the UK's desire to see His Excellency remain Chairman of Cabinet, even at that point any amending legislation from any Minister .. and we still got some debate left as to how this — how we gonna not be directly in control, or even in any control of the — of an elected government or the government, how it's going to — who's going to be responsible for it at the end of the day. But to continue on what I was saying that His Excellency the Governor, prior to going to the Legislative Assembly for discussion and passage, the Governor would

have that ability to stop any legislation going to the Legislative Assembly, much less going to the point where we're going to ask the UK to assent.

So, the UK has full power here, and one that I agree with for right now that — that they can prohibit amending legislation going to the Cabinet and not getting as far as the House. So, the UK has all assurance that they are in control of what they would like to see. No Minister, no elected government can do anything about it unless the UK agrees. That is the way it is with the vast majority of legislation, much less a law called the Bill of Rights.

And so, I would hope that — that the UK .. the UK would listen, at this point, to our views. The church is not just one side, and I don't believe that the CMA represents any one side of the political divide, and I don't believe that the SDA does either. They have put their case, and the SDA a little bit different, but our point being more in-line with the CMA, we are going by what we understood the people would rather have it.

I have seen other constitutions, and I don't know whether there was any discussion about whether the Bill of Rights should be embedded in those constitutions. I listened as carefully as I could to the debate in the other Territories, and I discussed as much as I could with senior people in the other Territories, other Islands, and I don't — I don't know that there was as much discussion about Bill of Rights in those Territories as has been here in these Islands. So I don't want anybody to draw the reference, well, they gave it to them so you gotta get it too, or they got it so why shouldn't we have it too? Make it clear we support a Bill of Rights.

We believe the Government has not been as forthright as they should be when it comes to a Bill of Rights. They have straddled the political fence on it. Nevertheless, when we get it we will have something. And I certainly — our party want to see a Bill of Rights with the protections that have come — put forth — been put forth from both church — CMA and SDA and the concerns that we have there about.

I will stop there, sir, and ask you to consider what I have said.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** Mister --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. Before giving you the floor again, Pastor Al, may I just make a couple of points in response to what McKeeva has just said?

First of all, it is true that ultimately the UK government could exercise powers to instruct the Governor to block assent to a bill here and ultimately could legislate itself directly by Order in Council for the Cayman Islands to carry through its policy in the field of human rights or anywhere else. That is both of those nuclear options. If we went down that road, I could foresee many bitter battles in the future, no end of trouble. But there's a far more important point, and that is

entrenchment in the constitution means the Bill of Rights is where it should be in the higher law of the constitution, and I don't foresee — I have to be plain with you — I do not foresee any prospect, whatsoever, of the British government agreeing a new constitution for this Territory with what I'm sure would be a number of improvements in other parts of the constitution enhanced a local autonomy, a reduction of the levers of control of the Governor, and ultimately the UK, unless there is an acceptable Bill of Rights in the Constitution. And that is a truth that I have to be absolutely clear about, and I know the sensitivity of it.

The second point is you mentioned the other Territories. In no other Overseas Territory that I have discussed constitutional reform with is this an issue at all. None of them. They are happy to have a Bill of Rights in the constitution, many of them have had one for many, many years. The British Virgin Islands has just agreed one for the first time. The fact of it was not an issue; there was quite a lot of discussion about detail, but principally it was not an issue. It was not a problem.

A new constitution is under discussion for San Marino (phonetic) which at the moment has no Bill of Rights in the constitution. Not a problem as a matter of principle. Quite a lot of discussion about individual details, but that's to be expected so that the provisions suit the circumstances of the Territory. But the principle is not an issue. And in all my career of more than 30 years in the FCO and since, it is only in the Cayman Islands that this is a big, big issue. And I've had explained to me on enumerable occasions why it is an issue, and there seem to me more than one reason why it's thought to be problematic, or in some way fearful of the consequences of doing — taking this step, but that is the truth of the matter. It seems to me a big issue unique to these Islands.

Now, I'm not criticising that, I'm not saying that in a critical way, because different parts of the world have their — have their different history and traditions and culture which has to be recognised. But I think the best thing to do is to see whether the enormous efforts — and I know there have been enormous efforts made by, in particular, Alden and Professor Jowell — to produce a text that gets, as far as it can, everybody on board and take account of the concerns and worries would fly, and the only way we can do that is to test it this morning and see what it looks like. And as I said earlier, we've got a number of questions which, I should say upfront, are not questions we have formulated in a spirit of criticism. A lot of them are simply designed to enable us to try to understand better this unusual, even unique perhaps, form of drafting in order to see whether we can go away with it and ultimately persuade our Minister that it's acceptable.

So, I — I would like to try and test the water to see whether we can — you know whether this would fly as a part of a new constitution. And as I said earlier, no one's position is final on this, you know, we have to take it step by step and consider it very carefully. So, unless anyone

else would like to say anything first, I think we should try and go through it, as I say, not line by line, but section by section.

Pastor Al.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** Yeah, I'll try to be as brief as possible, sir.

One, in relationship to both yours and Mr. Bush's comments, I agree and we understand the dynamics of all of that. I want to say that from the perspective of the CMA, we view this and we've tried to state this as clearly as we could in our position paper. We don't believe that it's not an option, it's just not an option that the UK chooses to give us. So, you know, we — we believe that there are potentially some obligations, again, under the very human rights that we're talking about, but I don't want to belabour that point. We've made that position clear in our paper.

We have also recognised in our paper that ultimately it is Her Majesty's decision, and on the communication from our government, and again in the media, we made the assumption — and the only reason I asked the question that I did was because I wanted to take away any misunderstanding from this. We made the assumption based on the communications that we had that this would be the position of Her Majesty's government, and therefore, the representations that we have made to the community. Our government and or our opposition took into consideration the fact that that may be the only option available to us, and if it was we would be prepared to support that, and we've said that because, again, we don't have an "issue" with human rights as a whole.

So, we have tried to communicate that and really applaud looking at the draft, and I support Ms. McLaughlin's position that not having, you know, complete time to really be able to look at the detail of it, I would just say that from our initial look at this, we really commend them for the excellent job that they've done and taking on board what I want to make clear is just not the arguments of the CMA, but to a large extent the community on this matter.

Let me also say, sir, that as has been intimated, no one should underestimate either the will of the Caymanian people or the desire of the Caymanian people. You mentioned I think at the opening with one of our discussions that independence is always an option for the people. I think we've come into these negotiations hopefully all of us with good will, and I would say that based on the feedback that we've got, not just from the churches in the community, but from the grass roots in the community that we represent, that this is such a critical issue and it is a unique issue we recognise to the Cayman Islands. I think the Government well recognises that issue and I think that's why they tried so hard to incorporate into their document the recommendations that were made.

So, I think that it's — it's going to be extremely crucial in this process that as we — that as we look at this, the position that the Government has put forward, as I said not having a chance to study it in great detail, the position that they put forward I believe is representative of the desires and the wishes of a large segment of this population in regard to the content. And I hope in light of that — as I said, they have our support on this, and a part of our job is going to be, again, to encourage the larger community to support the efforts that are being made towards reaching this, so we do look forward to going through this and hopefully we'll be able to offer the support that is needed to achieve the goal that everyone would like to see at this point in time - the stated goal being to have the Bill of Rights enshrined in the constitution.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Mr. Chairman, if I may --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much, Pastor Al. That's extremely helpful.

Yes, Mr. Shian.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** If I may, from our perspective, I just want to make a point of clarity.

As mentioned in our opening statement, in principle, the Seventh Day Adventist Church supports in principle the enshrinement of the fundamental rights of all humans, our concern really lies in what those — what the wording of those rights would have been. And I think — I think that's the fear of many people here in the Cayman Islands, that we — before we commit to an enshrinement, it is only responsible that we know what we're enshrining.

And, of course, we understand the challenges that the Government had in getting the draft out for us, and we're happy that they did, albeit that we were not able to get to discuss it with our community before. But looking over it generally, it seems quite workable to us, and we're interested in going through the details of it. And we have seen where a number of our concerns have been reflected in the draft, but I'm — but just for the record, for the purpose of the record, we are, in principle, in support of it being enshrined, but we are very careful to ensure that we do not suffer the consequences of any undesirabilities that we are enshrining, and for that purpose we are delighted that we have this discussion this mornin.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. That's also very helpful.

Melanie.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Thank you.

On behalf of the Human Rights Committee, of course we would like to add our support on enshrinement of a Bill of Rights as stated in our paper. I would beg the Chair's indulgence however to add one other general point before we move into the line-by-line analysis. It relates to the implementation of the Bill of Rights and bringing of the Bill of Rights into force. This does, to an extent, touch on some of the concerns that have been intimated to the chair in relation to the Bill of Rights itself and how it's going to work in practice, and in that regard we think it's useful for us to at least discuss and outline our view on when and how the Bill of Rights then ultimately takes force.

We would — the HRC would take the view that the implementation of the Bill of Rights ought not to be immediate. We would suggest perhaps a two-year implementation plan for the Bill of Rights to come into force principally as there are, as has been mentioned by the Leader of the Opposition and other NGO's, some practical issues for us to have to address before the Bill of Rights can properly take effect, including training and education of our people, particularly police officers, immigration officers, prison authorities, the judiciary and so on.

We are of course aware that the UK itself brought in its Human Rights Act after — with a two year delay for that reason, so that they were able to address those concerns. Further to that, to ensure and monitor the government's commitment and compliance on that line, what we would also like to see would be a timeline for the training and public education campaign so that there is not an open-ended deadline, if you will, there is a set deadline against which we are working and we can measure our progress on that vein. And, again, as outlined in our discussion yesterday regarding the Human Rights Commission, the Bill of Rights obviously should not be introduced in isolation, and in order to ensure that the Bill of Rights is effective and utilised fully, our people will obviously need education, guidance and support, and we do believe that is a role the commission can ultimately assist with.

Thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. I just thought to make clear and I'm sorry I didn't respond to the point earlier made by the Leader of the Opposition. We did discuss this very point, he's quite right, in 2002, the question of delayed coming

into force of a Bill of Rights, if it finds — if there is a new constitution containing a Bill of Rights. And for the very reasons that you outlined, we were open to that.

It is a big task to examine carefully the whole statute book of the Cayman Islands to look and see whether there might be incompatibilities or problems, and it's very responsible and desirable that there should be training of the — not only the judiciary, but the officials at the sharp end who might be those most likely to commit breaches inadvertently unless they are being properly trained police, immigration, customs in particular, law enforcement officers. But everybody, you're right, there should be public education in that vein. So, just to put any — make that point clear, we would be open to writing in provisions to delay the entry into force for a suitable period.

Sorry, you've been very patient.

**MR. CLINE A. GLIDDEN, JR., JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION, DEPUTY SPEAKER OF THE HOUSE):** That's fine, Mr. Chairman.

Mr. Chairman, just continuing on with the clarification that has been so helpful in terms of what is acceptable and what is not acceptable.

And while we've heard the rationale now, there was a bit of confusion in understanding as to the reason of enshrinement and the non-enshrinement and the concerns of the UK having, as you referred to, the nuclear options available for the control that they require. So now that we've gotten the fact that that is an option out, you made reference to the — to the rightful place of the Bill of Rights being in a higher level of law, that being the constitutional law, and based on that — that assertion, then, can we hear where clearly — whether the UK is — would be agreeable in principle to the — to the method that is being proposed in the document, where I think there is an agreement around the table that if it has to be enshrined that — that I guess a compromise could be that we would take away or not give judicial powers for the striking down of legislation as is expressed in section number 21 in the Declaration of Incompatibility. So, now that we recognise that the UK has other options in terms of the nuclear options, with lack of assent or Orders in Council, can you clarify the position of the UK in terms of the way that the UK is willing to allow conflicting domestic legislation to be dealt with in terms of incompatibility?

## **DEFINITIONS**

### **“GOVERNMENT”**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes thank you very much.

Well, I must start with a caution. I have no direct instructions from our Minister on that particular point. In general, I believe that she would want us to be open minded and intelligent in discussing an arrangement in this matter which would be acceptable when taking this step for the Cayman Islands, acceptable to the people of the Cayman Islands given their concern about this matter, but at the same time it needs to be acceptable to her in her responsibility to the UK Parliament. And so that's my caution, we shall have to report to her and explain if we — our team believe that it's — it can fly and can fly locally and that it would be beneficial, it will be a good step forward, it may not be an ideal step forward in our view. And bearing in mind that it is the UK government that at the end of the day that gets hauled before the European Court in Strasbourg, it's not the Cayman Islands government, it's the UK government, for things that happen in the Territories, so she will have to bear that in mind as well. But I do on the other hand want to assure you that we are trying our very best to approach this with an open mind and look at novel drafting, novel solutions and novel effects of drafting.

It would be very easy for me to come here and say there is a well established model of fundamental rights chapters in OT constitutions, and with some differences in detail to suit particular circumstances of a Territory, that is the only thing we'll discuss and that's what we're going to have to have, but I'm not saying that. We're really going to try very hard.

Now, at my level — at our level, official level, I think that the scheme of a Declaration of Incompatibility in section 21 of this draft is workable and defensible, and that will be my advice to my Minister. And it has the great advantage because of the cleverness of the people who put the draft together, to reflect, to quite a large extent, not only on that point, but on other points, the UK Human Rights Act itself. So that, I think, is about as big an assurance that I can give you at the moment because I can't commit to my Minister completely until she's seen the whole — the whole picture. But we're — look, we're in — we're prepared to discuss this from a positive point of view, and I'm not going to raise a difficulty about that section, okay?

Let's go — shall we — shall we, without further ado, try and go through the sections?

My first question, if I could, is — and I hate starting off with definitions, but they are actually very important to understand the — the way the thing will operate. And in the very first section there is — it says in this part: **government shall include public officials as defined in section 27 and Parliament, but shall not include the courts -- shall not include the courts — except in respect of certain named sections.** And I have two questions, really.

One is, why exclude the courts except for these sections? That's my first question, is perhaps a technical matter. But, for example, among the sections that the courts would be free from would be the one on non-discrimination in 15. Why should the courts, for example, be free from an obligation to respect the right not to be discriminated against except as permitted by that section? It's really a point of clarification rather than anything else.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** The reason for the exclusion of the court is that if the courts are included as being subject to the rights from which they have been excluded in this draft, there is the possibility of horizontal application. In other words, they would have to apply these values that arise from these rights in — not only in cases with where the government is a party, but in cases between two private parties, and that is the reason why the courts have been included in the UK legislation. They are not included in other Bills of Rights. It doesn't insist upon horizontal application, but it can lead to horizontal application, and there have been various learned articles on that subject.

Now, you mentioned the discrimination clause; that was thought about very carefully. Of course the court is included in the rights that have to do with fair trial, for example, that direct itself at a court or a tribunal. As far as the discrimination clause is concerned, the courts, in any event, are subject to very well established principles of equal access to the court. The rule of law requires that, and so that's fundamental in any event and not necessary, and could lead again to equality — the equality clause being applied between private parties. That's the only reason for that.

### “PUBLIC OFFICIAL”

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Thank you. That's very helpful. And then if we could just turn to — the other definitional point is “public official” turning to the very — the very end of the part in section 27.

I think our conclusion was that this was pretty comprehensive in covering public authorities, but we did think ‘little 3’ was (a) curiously worded because public official is not a power or function. But leaving that aside, we don't think that — we don't think it right to pick out the Governor, bearing in mind that the Governor is definitely covered under 2 as a person carrying out a public function or duty. I mean the Governor is *par excellence* carrying out public functional duties, so I

think it would be unnecessary to have 3, and we would — we would delete it.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** The reason for putting in 3 was really for the avoidance of doubt, for the avoidance, if I may say, of the kind of argument that was put up on Monday that the Governor was an emanation of the Crown and therefore in some way above the law. That argument was put up in respect of Her Majesty's powers.

And there is a — a question in some of the functions that are performed by the government, I suppose, as to whether he is an emanation of the Crown. He is — there is a lot — again much law on this and the law has moved on in recent years; this, by the way, speaks to that previous discussion as well.

In effect, you're absolutely right, the Governor is not an emanation of the Crown, the Governor is, to use the technical language, an agent of the Crown under the *M v. Home Office* case, so he is a public official. But there still is a lingering doubt which you yourself, sir, expressed a couple of days ago as to whether as an emanation of Crown, in her personal capacity, he was somehow — would perhaps be above the law, and the Government takes a very firm view that in his powers he should be subject to the Bill of Rights as any other public official.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, I mean there's no question that acts and omissions of the Governor must be subject to the Bill of Rights as they are in any other Territory, and there have been cases in other Territories brought against the acts of a Governor under their Bills of Rights.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Well if you're saying — if you have a belt but braces aren't necessary, that's fair enough as long as it's clear that there is a belt.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Yes. No it's a matter of drafting really because there's no difference between us in substance. Good, okay.

Would anyone else like to say anything about draft section 1?  
[pause]

I wonder if it would be — I mean I haven't picked to go through this sequentially 1, 2, 3, et cetera, but if it would — if anyone would prefer it, we could leap over the description of “substantive rights” until — and then go to the 21 following which are, you know, very

fundamental as to how it would work. I don't know what the meeting would prefer.

Pastor Al?

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** Mr. Chairman, we have no problem with that as, again, we have no problem with the — with the text of the rights. I think from our perspective it would be just a matter if you had particular issues of concern, we would like to know what those --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** What those would be.

## SECTION 2

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, shall we just go through sequentially then? I hope it won't take very long as far as we're concerned, but others may have points as we go through.

Section 2, I think has now been corrected from the very earlier draft because it originally said "defence of property" and that's gone now, so I think we don't have a problem there anymore. The "defence of a person from violence" is what is self-defence basically.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** The expression in the European Convention is unlawful violence and that may be considered.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** Mr. Chair, I don't know if you're interested in typos, but the first lines —

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Indeed there is one.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yeah.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** I don't know — I think it would be important.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** We'll pick those up.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** Yeah, I was going to say it's important that if you're going to pick those up that we just ignore them.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Just ignore them.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** Thank you, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** You can rely on us to pick them up, I hope. But if it looks like a typo which could be a substantive thing, you'd be better safe to say so.

Yes, well, the next point, unless anyone has anything on section 2, is that we had a section 3. Now, section 3 is - —

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Sorry. Yes, Julianna.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** In section 2 I took note that in the BVI or Turks, I don't quite remember, it says that every person has a right to life which shall be protected by law. And because of the shortness of time, I must say right upfront I have not had an opportunity to go through in as detail as I would like to, so I reserve the right to comment at another meeting if that possibility arose. But insofar, sir, as having taken a cursory look, can you or the Government say whether or not that is expressly drafted within the Cayman Islands Bill of Rights and if not why?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION**

**INITIATIVE):** I could certainly address that. That's a very well taken point.

The — we were following here the 2003 Draft as a basic draft to follow. The European Convention does in fact say, and that's taken up in many other constitutions, that everyone's right to life shall be protected by law. I guess this was overlooked as the Government was so concerned to make sure that there were not particular positive obligations on government and that this — the Bill of Rights, by and large, only restrained government rather than made it duty. But I think that perhaps you'll note, too, that this right is not defined, neither is “slavery” and “inhumane punishment” is defined. It only relates to government as one of the very, very few. But I think that's a matter for government to decide whether they want to include, which is included in many other constitutions, everyone's right to life shall be protected by law.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, I think I can safely say we have no objection to that going in except what Professor Jeffery has said.

### SECTION 3

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Good. Well, I think that's helpful because these first three rights are so fundamental that they're absolute and ..

Good.

The point we had on section 3 is not a point of substance, but really of presentation, and the first paragraph, **no person shall be subjected to torture or inhumane or degrading treatment or punishment**, very often appears alone, starkly, as a section on its own. And then paragraphs 2 to 4 of this section, treatment of — **humane treatment of prisoners** appears in a separate section. Now, this is not a big deal, but I just wondered why you put them together. Was it simply for convenience or was there some other reason?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Two reasons, Mr. Chairman. First of all, I was given the task of retyping that. I'm such a bad typist that I was terrified of putting in another number —

[laughter]

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** — and therefore putting all the other number us out of whack again.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I sympathise with that entirely.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** That's the first reason.

The second reason is that I justified their position by thinking that this is really all about inhumane treatment, and putting kids with adults has to do with inhumane treatment, and so does everything else in 2, 3 and 4. In fact, I thought well, in fact this actually holds together rather nicely. Why should those other bits of inhuman treatment be separated? But I don't think the Government would go to the wall on this one.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. I'm convinced more by the first reason than the second.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Having been in exactly the same situation many times, it's rather difficult for us old guys to get the hang of the technology.

All right. Moving on, unless anybody else would like to raise anything at this point.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** Can I just make an inquiry from you if you don't mind? In respect of 4, 3(4) has the UK entered a reservation in respect of that provision about separation of juveniles from ..

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):** We have a reservation in relation to the Rights of the Child Convention about segregation of children from adult prisoners which is in place for the Territories.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** There's a reservation?

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):** Yeah.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** That's what I thought.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** My understanding is — is, but subject to question from Susan, is that depending on the resources of the Territory concerned and the size of it, it's a complete segregation can be difficult. For example, if you go to San Marino (phonetic) you will find that the prison has two cells, it's a very small place, and segregation would be very difficult without building a new building basically. So, it's probably for reasons of that kind I would think. It shouldn't be a problem in a much more advanced Territory like the Cayman Islands or Bermuda.

[inaudible comments]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No?

[inaudible comments]

**HIS EXCELLENCY THE GOVERNOR:** Can I say it is a problem and particularly with female juveniles because you're talking about one or two people at any one time. I mean, ideally we should be addressing this, and we're trying to address this, but to say that it is easy to do is not the case, as at least one Minister up there will confirm it has been a real problem for us.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, the view of the Government is that it is something we must do, and obviously this will have to be — these sorts of issues will have to be borne in mind when we talk about the actual implementation of the Bill of Rights so that we have sufficient lee time to get these things right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Thank you very much.

Section 4, section 5, we have a couple of points and they're the same ones really in section 5. In section 5 —

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman, sorry, I seem to be going a little bit more slower than you are and I'm sorry for that.

Under section 3(3) where it refers to **entitled to be treated in a manner appropriate to his or her status as such**, I wonder if the

Government can give some type of clarification as to what exactly does this mean when referred to **appropriate to his or her status as such**.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** My understanding — well — my understanding is this comes from the international covenant on civil and political rights, and it's designed to get across that while a person is being held on remand and not convicted they should not be treated as if they were a convicted prisoner.

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** I --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Sorry. Just for clarification, I raised it because of the desire to use language that is understandable also within the cultural context, and as certainly from the constituency from which I come, Cayman Brac and Little Cayman, often when one refers to this taking or divide from a social — a divide within the social stratifications, I would not want it to be interpreted that based on the fact that you're coming from the top 3 per cent that there should be different treatment in the second. And this is not to be facetious but it has, in fact, occurred on several occasions, so I want to make sure that if there is another word that can convey the same thing, or some other explanation that would be abundantly clear that once you're there the status refers to being convicted person or not convicted rather than the fact that you are Mr. So and So coming from an affluent family, or whether you are Mrs. Cinderella coming from a poor family. That's the concern that I have in that regard.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, I think it's a relatively easy fix. We just have to repeat some of what's said earlier in the sentence: **and every unconvicted prisoner shall be entitled to be treated in a manner appropriate to his or her status as an unconvicted prisoner**. Then that removes it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, I agree.

## SECTIONS 4 and 5

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Moving on to 5, in section 5(3) this is a very important point that: **only a person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he or she understands the reason for his or her arrest for detention.**

Obviously very important. Right.

And **as soon as is reasonably practicable** I accept does appear in some constitutions of other Overseas Territories, but it is a more relaxed role than appears in the European Convention, which uses the word “promptly”. And promptly, in my view, is undoubtedly more prompt than “in a reasonable time”, and so we have been with the other Territories when updating the fundamental rights chapters have been impressing “promptly” in this place.

And the same point — they can be considered together — the same point occurs in (5) which in the draft is number 2 again, but it obviously is (5), the one below (4), which says over the page **a person who is arrested or detained and who is not released shall be brought without undue delay before a court — without undue delay.** Again, we would prefer to use “promptly” there because promptly is, in our view, prompter than “without undue delay”. I mean it's again — promptly is the European Convention test, and I think — and if it can be done it is desirable to set a test of promptness in both of these circumstances.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Mr. Chairman, we had similar concerns but you've articulated that position quite well, and we would be in support of such the suggested amendments for “promptly” in those two places.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** Mr. Chairman, maybe we need to hear the Governor's and the Attorney General's position on that because it will bring —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** — something completely different from them.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, it's really the Attorney, I think.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** It's outside our constitutional remit, sir, but we'd be happy with it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. You're happy with it? They're happy with it, Sam.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Go on.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** Certainly I have no problem with it. I agree with the wording. This is a far more sort of progressive wording, and the word “promptly” is really relative in any event. One of the — there's a current draft of a Police Bill which is going around which changes the pre-detention — pre-charge period — period of which a person can be held before their charged. I think it's 24 or 48 or something like that, but a significant reduction, and would bring it in-line with certainly some of the cases that we have seen which addresses that issue. So, we agree with the formulation.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** Is that the prosecution side of it, or police as well?

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** The — the current draft bill was developed after extensive consultation between the prosecutorial side and the police, police consultants and everybody, including the Commissioner of Police.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Thank you very much. That's — that's good.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman, sorry.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, Julianna.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** 4(2)(c) and this might just be in error, one you can do in house, but I wonder if some clarification. When it refers to **reasonableness necessary in the interest of public health for the maintenance** should the word “or” be inserted there or is it satisfactory?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Or, yes, that did occur to us as well. Thank you. Should the word “or” appear after public health, in the interest of public --

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Which? (4)(2)(c)

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Sorry 4(2)(c) **forced labour does not include labour required of person while he or she is lawfully detained but is reasonably necessary in the interest of public health, or for the maintenance of the place in which he or she is detained.**

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Because, you know, you could have a requirement for prisoners to help reconstruct a wall or something which is nothing to do with public health but it is to do with the maintenance of the prison. And we thought it —

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Oh, yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** — but we're grateful for Julianna for spotting that because we had too.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yeah. Yeah, it should have been in there, yeah.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** My legal adviser is telling me that the change from the traditional wording of hygiene to public health is significant, and I'm trying to persuade her that it's not but she's being very determined about it so I must raise it. Why did you change from hygiene to public health?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Oh, yeah, I had that question, too.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION**

**INITIATIVE):** I think on the basis of changes that had been made elsewhere. And you prefer hygiene?

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):** Well, I think hygiene is probably a lower standard because that could be the hygiene of the cell, whereas public health seems to be a sort of higher level.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Oh, I --

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):** — of hygiene or health.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I personally would agree with the Government's decision.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Not a point we really considered.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman, under Person's Liberties, section 5, was there any particular reason why the words **and security** was not added on when it referred to **no one shall be deprived by Government of liberty of the person**? There may be a reason, I just couldn't find it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Did you catch that one, Jeffery?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I couldn't, I'm sorry.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think what Julianna is saying in section 5(1) was there any reason for this not to say **no one shall be deprived by Government of liberty and security of the person**. Because I think the — I think the — well, the ECHR language is **everyone has the right to liberty and security of a person**.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION**

**INITIATIVE):** Yes, the 2000 Draft had liberty, but no reason, in my view, not to include security at all.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** McKeeva, yes.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** I am not sure if this is the right area I want to ask this question, but if not then perhaps when we get to the area.

What about the person who has an immigration problem, is on work permit, immigration grabs them, grabs their travel documents, suspend their work permit, the person can't leave, can't work, can't pay rent, can't feed children, really can't move and live and have their being? Can anyone explain how these rights will be protected, or how it can be — whether it should be allowed or whether responsibility lie to address it or stop it? It is something that — that face the country, and I think is a social blight on the Islands. I don't know whether this Bill of Rights, as we're calling it, is — is going to address such atrocities.

Just a question, Mr. Chairman. Just a question.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay, thank you. Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I can only respond in this way, that you're talking about deprivation. There are certain countries, very few, that have what are called socioeconomic rights: the right to a roof over your head, the right to clean water, the right to basic sustenance and so on. The South African constitution introduced a number of those. There are real problems there, though, about judicial activism in the sense of judges getting involved in socioeconomic decisions, allocation of funds/resources that were really the problems, perhaps, of the government. There have been difficult decisions in this area, and because of the sensitivity here to judicial activism, the Government considered this very carefully, but decided in the end it would not apply socioeconomic rights; of course other legislation can certainly provide for this kind of thing, it doesn't stop it. And indeed, this is something that might also be considered, it's within the province of courts sometimes to say, well, the government might have an obligation [portion missing on recording].

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Shall we proceed to section, if we can?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman, under 5(e) and (f), sir, just seeking clarification for the addition of the words when it refers to **criminal offence under any law**, what the significance of that is in as it relates to the Cayman circumstances. And in (f) **in the case of the minor as established by law**, is there any particular reasons why we're adding these extra words? Thank you.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I couldn't hear you when you — could you speak a little closer to the Mike, please. Thanks very much indeed. I got the last part but not the actual section.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Section 5 (2)(e), page 5 of the Working Document, and (e) is the last three words after the words **criminal offence**, and in (f) it's **in the case of a minor as established by the law**. Is there any particular justification why we sought to add these extra words on?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Could I just — Alden, go ahead. I was going to try and offer an answer.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, I think we need to think about (f) a little more, but (e) relates to **a criminal offence under any law**, in other words, not just the law of the Cayman Islands.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** As regards (f), my understanding was that — because we come across this in many other places, there are provisions which refer to a minor. Now, unless — you can either define a minor in the Bill of Rights itself, or you leave who is a minor to legislation to prescribe who is a minor, and a middle way is to have a definition which says a minor is something like a person who has not attained the age of 18 years or such other age as is prescribed by law.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** That's absolutely right. The 2003 Draft did say **in the case of a person who has not attained the age of 18 years**, but since

the age of a minor changes from time to time we thought it best simply to say **minor as established by law**.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** And then, Mr. Chairman, under that same area under (i) I was just — and I had a side — an opportunity to speak to the professor during the break, but where it refers to **the extradition or of other lawful removal from the Cayman Islands of that person**, I just thought that putting it that way of that person becomes like a dangling modifier because we're not really moving from the Cayman Islands but what we want to concentrate on is removal of that person from the Cayman Islands. But maybe it's just a personal preference of mine, but I thought I'd bring it to the attention of the negotiating teams.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** It seems a sensible drafting point. I think as it's put now it's a bit clumsy I would agree.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** What was the suggestion, Julianna, sorry?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Currently, Mr. Chair, it refers to **the extradition or other lawful removal from the Cayman Islands of that person**.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Um-hm.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** And I thought perhaps it might be neater if we did not use it as a dangling modifier, but instead we said **removal of that person from the Cayman Islands**.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Ah, I see. Yes. Yes, okay.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** And --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Anything more on section 5?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Under 3, I just wondered whether —

and maybe it's somewhere else, as I said I haven't gone through the entire document, but should we not think about including the right — **his or her right to remain silent and being informed of any charge made against him?** And I'm not sure whether this is included somewhere else, I couldn't find it in my quick look, but if not, is there any reason that the Government chose not to include those two aspects and — under (3)?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I know it was there. It's there somewhere, I think.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** I couldn't find it.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** It definitely is.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chair, if it's there we can move on once he finds it --

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I'm sorry. I'm sure I can find it because I read it this morning and saw it.

[inaudible comment]

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** It's which one?

[inaudible comment]

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Oh, it's under "Fair Trial", of course, I'm so absolutely — it's under the next section, under section 6. Yep.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Whereabouts is it?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Under (6) of section 6.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman, under 2(b), in reference to what I asked earlier under (e), and Minister McLaughlin explained, is there any reason why we didn't keep to conformity when we said **under reasonable suspicion of his or her having committed or being about to commit a criminal offence?** Do we need to put there **under any law** or does it not apply in this particular case?

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Sorry, Mr. Chairman, which subsection is this? This is under 6? We're still under 6?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** 5(4).

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Oh, we're back to 5?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** I haven't moved from there.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** That's well-spotted. We should include that as well, for completeness, so that what we're dealing with is not just a criminal offence in the Cayman Islands, but any criminal offence. This is 4 ... 1, 2, 3 — 5. Sorry, (5). It should be (5). It actually says (2), but it should be (5)(b). At the end of that sentence — or that provision which says **criminal offences** it should be **under any law**. You should add **under any law**.

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):** Can I just ask on that, are we clear on that, that that would cover something which is a common law offence, because does **under any law** imply, you know, a written statute?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well law is defined, isn't it ... it includes any instrument having the force of law made in the exercise of a power conferred by law. It's not an exclusive definition. I would — my view, I mean subject to you all, is if you say under any law it includes statute law and common law.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Yeah, you gotta include common law.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It includes both, yeah, statute law and common law.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, I think that's correct.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** And, Mr. Chairman, under that same section, again, for clarification it made reference to — in the second line on page 6 is **such as a case as is mentioned in subsection 1(e)**. I was just wondering whether that's the correct one or whether it should be 2(e) and if not why because I couldn't quite follow it when I checked it?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, I must say there's --

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** 2(e).

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** It should be 2 (e), yeah.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Carry on.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** I soon finish, sir.

The same paragraph I just wondered whether — and maybe it's somewhere else, whether we didn't include the words **prejudice to the foregoing such conditions may include bail** or is that covered under "Fair Trial" because again I didn't get to look through the entire document? The same 2 (b).

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Where we added **under any law**?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Towards the very end where it talks about **included in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial**. Does that include a condition such as bail, or is it covered elsewhere in your document, or is it necessary to be covered even?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I would say that these words — these words are traditional words in this part of a Bill of Rights, and they would inevitably cover bail because they're conditions ... they're conditions to ensure that he or she appears at a later date for trial.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Okay. Because when one, Mr. Chair, looks at the Gibraltar model, they took the extra step to include these words, and it was a fairly recent piece of drafting. So I wondered whether something had come up since the traditional wording that it was deemed necessary to add, and if not, I'm okay, I just wanted to make sure that we considered it.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** We did include a number of the Gibraltar provisions here when they seemed to be sort of more appropriate and more up to date than some of the earlier drafts, but perhaps we missed one or two.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, I think the question is whether it is a fair assumption that proceedings preliminary to trial would include bail, or whether it needs to be spelled out. So I think that's what — I think — so we just have to make that decision.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah,

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Unless you have any thoughts on it, sir?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I have no problem making a reference to bail if there's any doubt, you know, to remove it by seeing — including conditions, and such conditions may include bail.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** In Gibraltar, on page 9, Mr. Chair.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** I think it must be 3.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, I've got it.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** What does that read?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It says rather long windedly **and without prejudice to the foregoing such conditions may include bail**. That is very old-fashioned language. I think one could just say at the end and **such conditions may include bail**.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** That's fine.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I wonder if I could just go back to your point about the right to remain silent, taking that in, in section 5 as well as 6. I've just noticed a note from me to me, as it were, in — about the BVI constitution section 15(3). Now I'm not quite sure what it is there, but it does say there **the right to remain silent**, so it may well be that 15(3) — you're right, the Gibraltar — the BVI constitution 15(3) does say that **any person who is arrested or detained shall be informed promptly as prescribed by law, in a language that he or she understands the reason for his arrest or detention and of his or her right to remain silent**. So, I think that did get excluded in error and probably should be put back in the relevant section.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Okay.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, I think that would be good.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** 2(b), 6(2)(b). Thank you for that. That's very helpful.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Mr. Chairman, for section 5(7) I'm just seeking a little clarity on this in terms of the effect and the possible interpretation of this section. For the purpose of section (1)(a) of this section **a person charged with a criminal offence in respect of whom a special verdict has been returned that he or she was guilty of the act or omission charged but was insane when he did the act or made the omission, that same person shall be regarded as a person who has been convicted of a criminal offence**, I'm just trying to determine what is the effect of this — of this clause. Is it saying that insanity is no longer a defence? I mean, can we — can we identify a *mens rea* in a man's mind who is determined to be insane?

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, that provision, I believe, is there to ensure that even if a person has been found guilty or not guilty by reason of insanity that it is still possible to detain them.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, that's my understanding. It's only for the purposes of (1)(a) —

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Only for that purpose. (2)(a) actually.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** (2)(a).

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** (2)(a).

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Yeah, (2)(a).

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Okay.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** I had a question also, Mr. Chair, as it relates to (3) in that same area where the proviso where it was relating to **provided that a judicial officer or an officer of the court or a police officer acting in pursuance of an order of a judicial officer should not be personally liable.** Does that cover our special constables and our justice of the peace that would have similar powers so that they would not be risk of personal liability or is it covered somewhere else?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Special constables? Are you concerned about whether this covers special constables?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** And justice of the peace.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, the justice of the peace must be a judicial officer, and a special constable I just thought must be a police officer, so I think they're covered clearly.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Mr. Chair, I don't wish to belabour the point, but I still have some residual concern from section 5(7). And I do understand the point made **the need for the protection of the public to detain such person**, but in the event that his insanity is cured what we do have is a person who has been convicted as a criminal at the time when he had no *mens rea* to form criminal intention. I'm wondering if we do not have a human rights issue in this section. Is there a way that the public can be protected from this man without rendering him a convicted criminal for an action he committed at the time when he was insane?

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Mr. Chair, it may be useful for there to be provision either in the Constitution or at least in ordinary legislation for a mechanism for review of mentally ill persons who are currently being detained. This is a point that we were live to, but we refrained from bringing it up, bearing in mind that it's still a Working Draft, just in order to be expeditious with the time. But it's a point that we can expand further on, if you so wish, at this stage.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** It's a question whether it should be in the Constitution. I mean, this is again a policy decision to be made. It's something I must say that hasn't come up in the discussion so far, but I think it's very useful to consider that point. It's the sort of question that I think we can't do around a table of this size, but certainly ought to be — can we simply note that it be considered?

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** Mr. Chair, the fact is that there are provisions in domestic legislation to deal with such people, such persons: the Penal Code, for example, and there's a Mental Health Law. And we have had instances where persons have, for example, been found not guilty by virtue of insanity, and they're detained at the Governor's pleasure. And the Governor from time to time has the power to review those cases, and depending on the — depending on assessment made by the medical officer and his team, a decision is made whether to release the person on conditions otherwise having a risk assessment and assuming that the relevant support services are there to provide that kind of assistance. So, there is already those sort of mechanisms in place in domestic legislation to address those sorts of legislations.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Yes, thank you, Mr. Bulgin. We would — we are live to the issue, and we would suggest it be left to the ordinary legislations to the extent it needs to be amended to further bolster the review process to ensure that this particular issue is properly addressed.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. And as for the other point about the language of (7), I mean, I think that can be — this is — this is — there are two ways of doing this: one is to do it in this customary way of saying **a person who is — in respect of whom a special verdict has been returned shall be regarded for that -- for the purpose of retention**; the other way is to delete (7) and put in the list of permitted circumstances of detention in 5((2) — a person who's — **a person who has been charged with a criminal offence and in respect of whom a special verdict has been returned, but he or she was guilty of the act or admission and charged, but he or she was insane when he did or made the admission, and the retention of that person was made in the execution of the order of the court.** You would actually lift that — lift the substance of it out and then it would avoid, which is I think your concern, giving the impression that that person is treated as a convict.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah?

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** We could take care of that quite easily I think.

## SECTION 6

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay, I've been dying to make a point on section 6 for some time. Maybe the point of time has arrived unless you have anything more, Julianna.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Just on section 6(2)(a) where it says **to be presumed innocent until proven guilty according to law**. I just wonder whether it was necessary to say **or has pleaded guilty** as another scenario.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, well, traditionally, these Bills of Rights of OT constitutions do say one or the other, and I think it's the European Convention on Human Rights that treats — that doesn't — this is the formula here: **presumed innocent unless proved guilty**. And I suppose the thinking is that if you plead guilty you are by definition proved guilty, but we're open to either formula.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** For us proved guilty is achieved one of two ways: either by way of a verdict being so pronounced; or you plead guilty. So it's generally correct to say.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It covers — this covers both situations.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** Yeah.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

Can I make my point now which is — or raise my question which is in 6(2)(d), and this is the important question of legal aid for persons who do not have sufficient means to pay for legal assistance. And the

test in the European Convention is **a person should be entitled to legal assistance when the interest of justice so require**, which is reflected here, but those words are preceded by **where provided by law and when the interest of justice so requires**. So it seems to — we puzzled about this, and it seems to be a double test to be satisfied by the poor person before the right kicks in. It has to be provided by law, and it has to be when the interest of justice so require and we're suggesting “or” might be — might fix it. I mean, one would hope that legal provision or provision will be made by law for all cases where the interests of justice are required, that's obviously a sensible way to do it, but there could be a case where the law actually doesn't for some reason foresee a situation and justice requires some assistance for the person. So I think — I think it would be better with “or”, wouldn't it? Was that our conclusion?

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, that rather broadens the scope of the provision, and what we are fearful of on this side is that provision **interest of justice**, shall I be kind, may be overworked, may be over employed by particular judges rather frequently, with the obvious implications for the public purse, and that is why we would like to proscribe it as tightly as we possibly can. We already have a serious issue with the cost of legal aid in this country. We are year on year spending twice what is budgeted, and however you raise the budget it gets doubled.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, I'm just wondering what — if AG would have any comment on that. I see him smiling but I'm not trying to put him in another acute position; he's a little bit too tall to get into one of those positions anyhow, so...

[laughter]

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** But I just wondered if he had any comments.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** There was a similar wording in BVI or one of the earlier constitutions that would sort of give us some steer.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. No, it's very good. Section 16(2)(d) of the BVI constitution.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** 16?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** (2)(d), section 16(2)(d) **where he or she is unable to afford to retain a legal practitioner and the interest of justice so require, by legal practitioner at the public expense provided through an established public legal aid system as prescribed by law.**

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** And I can — and I think I can understand the reason for that, because usually what happened is that you have scheduled offences that qualifies for legal aid that the Minister point out that you could have interest of justice which is interpreted in a way that becomes an unruly horse. And so a person, for example, a traffic ticket, the interest of justice requires he has a fair trial, but he's unable to afford an attorney and could simply claim that: I'm entitled to legal aid by virtue of that and it would not have been a scheduled offence. So, I think the whole purpose of being proscribed by law is to set up a schedule of a person who qualified.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, I'm leaving this to the legal minds, this whole thing, but the — when the word “legal aid” came up it kitched my attention. And I think what you're saying is that you're closing it — if you leave it that's what you're saying. You're making it tighter?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, what I'm saying — what I was saying is that the words as drafted here are not really compatible, because it's either provided by law or by the interest of justice. So what worried me was that you could have a case where the interest required, but it was no provided by law. Now, I do understand what Alden was saying, that if you leave it entirely up to the judges they could create a big expense for the government.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chair —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Whereas the BVI formula was designed to overcome that.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** I --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** By saying that — by saying that **at the public expense through an established public legal aid scheme as prescribed by law**. So you actually have to have such a thing, which I know you have here, and that — that scheme must reflect the requirements of the interest of justice. It's the way it's formulated which makes it better.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Would you --

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Well --

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Sorry, Mac. Would you be happy with the BVI?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Because we would be okay with that.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Yeah, but Mr. Chairman, I — I don't have the BVI in front of me, and I still don't know what obtains there. I hear that they have less — less expense than we have. I don't know what their prison ratio is. But if you look — if you take our — the amount of people we have in prison, the amount of people going before the courts, the amount of people that can't afford a lawyer, we don't want to do — while we're not wanting to create tremendous and over expense on our Treasury, we certainly don't want to prohibit people getting a fair trial. And I know that people have had trouble getting — getting legal aid, and I know our fees are high, but as I said, we gotta take cognisance of all — all of it together - the amount of people we have in prison, why they're going to prison, the things they go to prison for - and look at that as a country and say is this the kind of laws that we want, because sometimes it's — the prison is filled up with — for things that you might not have said in other countries that you should have been there for. So, I don't know that you want to tighten it to the extent that people are stopped from being able to get legal aid.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair, I think we all understand. [portion missing from recording]

## SECTION 12

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right shall we press on? I'm conscious that time is limited.

I think we got — I think we got through, had we got through section 9? I have no questions on section 10 or section 11. Unless anybody has, we could move to 12. And on section 12 I would just like to note a point, but not take up time trying to elaborate because it's — it's quite complicated.

But if you look at the BVI constitution in section 18, 18(3)(c) and (4), there are some provisions there which are reflected also in the TCI constitution and the Falkland Islands draft constitution which — the effect of which, broadly, is that measures may be taken as regards free movement of non-belongers, or non-permanent residents as regards entry into the Territory and residence. In fact, that's the basic rule. But for those who are to be expelled there are some minimum safeguards for them. This is in the BVI section 18 (4); it's a due process of law when a person is going to be expelled. Now, I don't want to take time on it now because to read through all of that is rather — rather long winded and time consuming, but I just wondered whether the drafters of the Working Draft left that out deliberately or whether — I know it was not in the 2003 Draft of the Cayman Islands Constitution, but it's something that we put in, in order to try to deal with criticism that the UK has had in the past from the United Nations monitoring committees of the covenant on civil and political rights about minimum safeguards before a person can be expelled. I think it's — I think it's really a question whether it was a deliberate omission or whether — or something you didn't think about.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, just to ask a question based on other discussions that took place before. If we look at the BVI's constitution, 18(4) —.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** — (d): that person has the right save as aforesaid to be represented for the purposes of paragraphs (b) and (c) before the competent authority or some other person or authority designated by the competent authority. Are we saying, or would we be saying if we adopted something of that nature, what happens if that person does not have the ability to hire representation? What happens then?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, it's not saying anything about that. That would be covered elsewhere I think. Yeah, it would be covered by the general legal aid provision we discussed earlier.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Maybe I shouldn't have asked the question.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, you're not going to deny justice to somebody who wants to challenge their expulsions, I presume.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** No. No, sir. Mr. Chairman, could we leave this point over?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, that's what I --

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** We were thinking the three of us over here that perhaps it's okay because it just seems to codify rules of natural justice and so forth.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** But we want to take a careful look at it and talk to the immigration folk before we say yes to it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Sure. Okay. I just wanted to flag it up for possibility.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Yep.

## SECTION 15

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** If there's no other point on section 12, I don't propose to comment on 13 or 14, but I do have a question about 15 but perhaps I'm going too fast.

Well, the question I have about section 15, this is "Non-Discrimination", and the concern we have here is that the list — and I do realise that this list probably comes from the 2003 Draft, the list of grounds of prohibited discrimination is rather — rather selective, and it's exclusive as well, it's not an open ended list which is what —

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** We've added mental and physical disability.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. The main point, though, is it's a non-exhaustive ... sorry, it's an exhaustive list.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** That's quite true. There are two articles of the European Convention that cover this, one of which the UK hasn't even subscribed to. Article 14, of course, they have, but then there's Article 1 of Protocol 12. This is closer, this whole section to Article 1 of Protocol 12 to which the UK hasn't even subscribed —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** — because it provides that government shall not treat any person in a discriminatory manner, whereas under Article 14 that only applies to discrimination in the rights under the convention. So, this is far more extensive generally. The — as Minister McLaughlin has just said, there are additional grounds of discrimination that are in here that aren't in the European Convention, but the only two that are not of birth, property and other status, other status, the question is, I suppose what you're asking is, should there be some open-ended possibility —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** — for future grounds of discrimination which tend to arise from time to time and other status. And I think again that's a — my own advice on that has also been — although it hasn't actually specifically been considered by the government, but it would — I suppose we haven't discussed it, I should say, but my own advice would be that in something as difficult as this area an open-endedness can only avoid further amendments and so on. It doesn't bring any particular ground in that's in there now, it just leaves something in there for the future that might occur. Very little has occurred except in the area perhaps of disability over the years under the caselaw of any other country, so I don't think — my own view would be that it wouldn't pose a problem, but again it's a policy decision to make.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Mr. Chairman, we would obviously pick up on your comments that it's closed to the extent that it obviously does not include age or sexual orientation in particular. In that regard, of course, the Human Rights Committee's position is that all rights should be secured without discrimination on any basis. After all, human rights are based on the notion that all human beings have dignity and value.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yep.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Mr. Chairman, if I may respond. While I can understand the point from the Human Rights Committee, I think all parties are fully aware of — the concern resides in the large masses of the people of the Cayman Islands as it relates to certain provision here. And I'm just looking on the Human Rights Convention, Article 14 that also excludes social — sexual orientation. It has social origin association with nationality, minority, property, birth and other status, but it does exclude sexual orientation. So, I don't think we have a precedence from them, and given the very explosive nature of this, I think wisdom would dictate that we trod a road bereft of that provision in the constitution.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** If it assists, Mr. Chairman, we can confirm that we would be happy with the Article 14 grounds except that it obviously also still does not include mental or physical disability, which is also one of the vulnerable groups that we would seek to enshrine rights for as well as age. Neither of those are, again, included in Article 14, so not even

Article 14 is necessarily complete. And we would commend the Government obviously on their Working Draft to the extent that they've included mental or physical disability in that regard. I think that's quite progressive of them. But, again, if it assists, we would be happy with Article 14 except that there still are a few other groups which are not included in Article 14, including age, disability, and in addition to that I think the children's rights will need to be more substantively fleshed out in the Constitution itself.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, could I ask then if we — if we retain our draft and just change the comma at the end to the — full stop at the end to a comma and add it “or other status” if everyone would be reasonably happy.

[inaudible comments]

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** That's section 15(2). I don't think we have any objection to putting in age if people feel that we should put that in.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** I think that would be helpful just to ensure that the elderly are also being properly looked after in our Constitution.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Mr. Chair, if I may?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yep.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** While I can understand the need for the other areas which I agree with, such as age and social origin and so forth, if we — I think maybe it's heavily problematic if we put that open-ended clause to it, and if by virtue of the fact that we do not have such latitude if for whatever reason it has to go, then I'm suggesting that we put — we include a justicable clause which we have not seen in this provision. We have seen in all the other rights clauses which allow for the breach on public policy, such as public morality, public health. We have not seen any such justicable clause in this provision, so I'm suggesting that if for whatever reason we have to go with the open-ended clause that we include in this provision a justicable

clause as is in the other provisions, such as life, right to marry and all the other provisions.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, I think the good pastor may have missed the sort of limitation clause, which is clause (6) which isn't expressed quite in the same way as the others to which he has inferred but I think it has that intended effect.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** If I may, sir?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, please.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Yeah, I'm just saying as far as we're concerned, we would not necessarily support the "other status" clause on this. We're not supporting that. If for whatever reason the FCO or UK determined that it has to go, then, we're suggesting that we have a clause tantamount to the clause in the right to family 8 — (8)(3), or freedom of conscience (9)(6), or freedom of expression (10)(2), or freedom of assembly (11)(2). All of these rights have these adjustable clauses. We do not have that clause here, and I'm therefore saying that if we have to go with this open-ended clause that I'm suggesting that we have one such similar. And with due respect to the point the Minister made, (6) is different in terms of public policies. There's a limitation but not necessarily public policy as it relates to public morality or public health and so forth.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, I note that. What I can't — can't get my head around really is how do you invoke those sorts of provisions in the context of a section that deals with non — or is aimed at non-discrimination? I'm not sure how that — conceptually that could work.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** I stand to be corrected, but in my mind there is in all other rights public policy to breach those rights as is listed in this section. So too should be in this particular right given public policies determined by societal norms and values, and therefore when societal norms and values dictate a certain behaviour/action to be wrong, and the court is always stating public the court of public opinion in determining the outcome of that. On that

basis I'm therefore suggesting that we should include if we are going with an open-ended clause at least this provision.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** But Mr. Chairman, just so the pastor will understand — and this is a difficult point. But the reason why conceptually I can't see how it would work is that what we're talking about is a non-discrim — a section dealing with non-discrimination. It's not dealing with any particular behaviour or conduct, it is to avoid discrimination on the basis of who you are, or where you come from, or what your particular status may be. So, to invoke the provisions about public morality and a public order and all those things, those are things to prevent people from behaving in a certain way, or to do wrong things or somehow adversely impacting the society. The fact that you just are what you are - you're black, you're white, you're male, you're female, you're old, you're young - I just don't know how we would invoke provisions about public morality and so forth in relation to those sorts of things. I just can't see it.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** Mr. Chairman, in relationship to the suggestions that were made, again, the CMA in the representations that we have made to our Government we believe they have captured quite well in what is documented here or in articulation to them. We have — do not support, as my friend here, we take the same position the inclusion of sexual orientation or any open-ended clauses, and so we have no problem with the inclusion of age, but we do not support an open-ended statement or sexual orientation being included.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Mr. Chairman, may I then ask can the pastors, for example, give us — give us or explain or give us an example of where the public policy clause that's being suggested would come into play other than in relation to the substantive rights which are already set out with the limitations? I'm not understanding where — or what scenarios you're envisaging where the public policy clause would have to kick in, whereas all of the other previous rights themselves already have the limitation built in, so I'm not clear what's — what instances it would add anything.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** I can't — you know, I'm not necessarily advocating that particular element of it, so I think Pastor O'Connor would have to speak to that. But my only point was again spelling out the issue of sexual orientation and, again, an open-ended clause that spoke to some "other status".

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** Mr. Chairman, if we take the effect of any of the previous sections with a justiciable public policy clause, it does allow for a breach of those rights based on public policy (i.e. public morality, defence, public health, you name it). If we apply that to the non-discrimination clause, what it does say is that in the interest of public policy, or in the interest of public morality or public health the government can take an action which would otherwise be discriminatory had it not been for this clause.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** But --

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** That's the point we're making.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** But --

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** So that if, for example — I'm sorry. So that if, for example, a — anybody commits an action or engage in any behaviour that would have otherwise been in breach, and if the government does something that would have otherwise been in breach in response of that behaviour of the person's right, public policy would have protected the government in order to execute its right to breach that person's right, and we're saying it is not there in this clause right now as it now stands. It is the only right I've seen in the Bill of Rights bereft of a public policy clause, and I'm not talking about limitations, I'm talking about public policy relates to public health, public morality and so forth.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** I think that may be because each of the previous rights which are under discussion that relate to behaviour already do have that public — that public policy clause as you mentioned. (8)(3), for instance, relates to contraventions in the interest of defence, public safety, public order, public morality, public health and so on and so forth. So that is already built in, in relation to the substantive right itself. So, I don't think there's anything else to be gained from having a further public policy clause in relation to the non-discrimination right itself. All of the rights in relation to behaviour already have that built in.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, it seems with the addition of this — those words, we are creating another level other than thought when we proceeded this morning, that we would be getting to. And I can't understand why is the Government wanting to move away from the comfort level they gave the church to get to this point. I am awaiting to hear it fully explained because they are really, all of them, skirting the issue that they're really concerned about.

So I — I hope that they can explain it because what was explained to the churches, what I heard, was against the very things that the open-endedness of this would create. So, I don't — I know what the churches said, both churches, the SDA and the Minister's Association, and I don't know whether the Chamber stands on it, if they took a position or not.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Well, Mr. Chairman, I just wish to make it clear that it is not the Government who's pushing for any change. Our proposal is the one in front of you. I don't recall who actually raised the issue of — you did, sir, yeah, question about the status and that's what — the Government is trying to find a solution, a provision which is acceptable to everybody around the table in our approach to this whole thing.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** We would have liked to have seen the Government not agree, though.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** I'm sure you wouldn't like that, Mr. Bush.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I think.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** May I just clarify, I'm sorry, Mr. Chairman.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I think something I said earlier might also have been somewhat misunderstood.

When I said earlier that I would advise that the “other status” wouldn't create much difference in practice that's I was going to — I did say after that it's a policy decision as to whether we wanted to stop here. In practice, in my view, the “other status”, open-ended clause doesn't legally, in fact, carry much weight when there is a — when there are specified grounds. In the United States you simply have an equality clause generally and that allows much more scope for different interpretation. Once you've got a list of what it is you're protecting or not protecting, then, the additional clause “other status” means very little in practice.

I can well understand why in a situation like this if there is any anxiety, and since it makes no much difference either way the “other status” should be excluded and that is the reason why the Government in the first instance excluded the term “other status”. And earlier on when I said this had not been much discussed, again, I perhaps wasn't quite clear enough. Again, what I meant was what the courts might do with the “other status” hadn't been much discussed. So I — from the policy point of view, I can exactly understand why the initial intention has been to keep it without the “other status”.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. Thank you very much. I mean I think this is obviously a difficult point.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, I was going to --

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** How do you see this working because none of them have been clear enough? Everybody is skirting — where are we with these civil unions, and how do you see that working if we put in this open-endedness, the words “or status”? How are we going to deal with these issues? How does the country deal with it? I'm a marriage officer. How do we deal with it?

[inaudible comment]

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** I wouldn't marry you.

[laughter]

[inaudible comments]

**MS. THERESA PITCAIRN-LEWIS (UDP LEGAL ADVISER):** Can I also ask via the Chair whether these provisions adequately address the concerns raised in the *Thompson* case?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes.

**MS. THERESA PITCAIRN-LEWIS (UDP LEGAL ADVISER):** Especially 3, 4 and 5.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes.

**MS. THERESA PITCAIRN-LEWIS (UDP LEGAL ADVISER):** Yes?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, the *Thompson* — the *Thompson* case is very clearly taken care of here in section 3 —

**MS. THERESA PITCAIRN-LEWIS (UDP LEGAL ADVISER):** 3, 4 and 5.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** 3(b), 3(d) and section 4 — section 3(b) and section 4 really cut off that possibility of the *Thompson* case. *Thompson* case, the provision in the Bermudan legislation in respect of place of origin was extended to mean that employment could — had to be granted to a person of non-Bermudian status and as I see it, 3(b) and 4 avoid that possibility — preclude that possibility.

**MS. THERESA PITCAIRN-LEWIS (UDP LEGAL ADVISER):** Right. Can I also ask via the Chair where the whole issue of conflict then stands if, for example, a court were to decide a similar case here and we have certain provisions that the UK have to honour, and this is our domestic legislation. What would we be asking the court to decide because I don't think that these are provisions that were explicitly carved out under any human rights provisions that the UK is required to honour? So, there may be an obvious conflict between our domestic legislation (i.e. the Constitution and their responsibilities).

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Well, yes, there is the European Convention on Human

Rights. It may be that under that convention the same situation would apply if somebody here of known Caymanian status took the case to the European court of Justice in Strasbourg. But they can do that any way, there's already the right of individual petition. But certainly if the case were brought in this country under this Constitution, *Thompson* who one in Bermuda before the Privy Council would not win under this Constitution here which is very different from the Bermudan, as I see it. I may be completely wrong but that's how I see it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I agree.

**MS. THERESA PITCAIRN-LEWIS (UDP LEGAL ADVISER):** Right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I don't know anything about the *Thompson* case, all I've understood about it is that it was not a matter of interpreting the Constitution of Bermuda which is actually very similar to this, but the Bermuda Human Rights Act which, unbelievably, seems to me to be cast in terms incompatible with or inconsistent with the Constitution — but anyway I don't want to go on.

I wanted just to say from our point of view I — you know, we've taken note of what has been said, and I know this is an area of unease. So, shall we just leave it there and move on because I certainly don't want to take up a lot of time trying to solve a problem in a —

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yep.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Mr. Chairman, may I just draw your attention to the BVI Constitution, section 26?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** There are some things that are included in their definition of “discriminatory” —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** — which we may find useful.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** One area, for example, is economic status. Just some of the language in that list, this very comprehensive list, I think the question with sexual orientation is — that's a very loose — loosely phrased and can be interpreted in different ways by different people.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Right. Well, I must say when I raised the point I thought it might get a rather frosty perception, but —

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, though --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** We'll move on —

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** No. No, before you move on, sir, what are we preparing to do with this, then? Can you give me some guidance?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** What am I preparing — going to do with it? Well, I'm going to take it home and think very carefully about it, but my instinct at the moment is that our only clear allies on this point are the Human Rights Committee, and for the purposes of the draft that I'll prepare I'll probably play it cautiously and not make it open ended for the time being.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Not make it open ended?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No. No. No. He was being obliging, but I think — no, just leave it with me.

**MS. SARAH COLLINS (REPRESENTATIVE FOR THE HUMAN RIGHTS COMMITTEE):** Mr. Chair, I'm not sure from the Human Rights Committee's perspective that that's where we thought we had got to, because if I remember the debate, Ms. McLaughlin on behalf of the committee indicated that Article 14 or similar wording would be acceptable from our point of view, I thought that the Government had accepted that and that we were actually having a debate about a very important issue. From our perspective, at some point this issue will have to be discussed. It is of fundamental importance and if we don't discuss it now we will be discussing it on another occasion.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. Well, that's your privilege, and I suspect I might be sent back to raise it

again, too, at the next round. But my concern now is not to prolong discussion on this because we have — we have less than a couple of hours left including a break, and we have some topics other than the Bill of Rights to have a look at, and I'm determined to have a look at them even if it takes till midnight. But I don't suspect people will want to stay that long so I'll probably be talking to myself. So --

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** We'll stay.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** But let me just say this, that I will mark it in the draft that I produce as something that needs to be returned to.

All right. Protection of Children.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, before you move to that, on page 15, and it will be 15(3)(a).

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** And the words for the appropriation of revenues for other funds of the Cayman Islands or for the imposition of taxation. Might we not want to use the words "revenue enhancement measures"?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I don't know what that means.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Mr. Chairman, we've used taxation all the way through. I think it might — I'm not sure why we need the euphemism in a constitution, but I mean we don't have a strong objection to it as long as we're consistent, the language is consistent throughout the Constitution.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** My only trouble is that I don't know what revenue enhancement is. Has anybody on our delegation heard of that?

[laughter]

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Well, Mr. Chairman I don't know a lot of words that you're using either, nor why do we even need them.

[laughter]

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** But I know what this means, and I believe that it's — it's better for us as a Territory rather than the word “taxation”.

All the budgets in this country that we have ever produced has used the words — and every documentation, every piece of documentation that you will find in connection with budgetary matters and the bringing in of fees are the words “revenue enhancement measures”. I'm sure that the Government would know what it is, and I understand that they want to use the same words throughout. So, if they understand, I will invite them to sit with you and tell you a little bit more about it, but use those words as if everyone understands what they are and we don't understand what taxation is.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Mr. Chairman, just to say that we know what “revenue enhancement measures” mean but we're not used to hearing the Opposition using it. Usually when we refer to these matters they talk about taxation and in terms that you think it was a really dirty word.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** And any time we've used it we've pleaded with them don't go and tax the people.

[laughter]

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** And that's why I am asking them again don't use these words because.

[laughter]

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Yes, Mr. Chairman. If they're going to come back and tell you, you see, this is what the Bill of Rights say we must say, and so we're shifting a whole historical approach to budgetary matters, Mr. Chairman, that's all I'm trying to draw attention to. I have always been one that believed in making money, when I spend it that we spend first what we make rather than what we borrow. But some people believes in tax, borrow and spend.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chairman, I'm pretty sure that matter can easily be sorted out, sir, because we do understand exactly what the Leader of the Opposition is saying.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Protection of Children, Protection of the Environment, Lawful Administrative Action. Okay.

Education. This is my next question.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

### PROTECTION OF CHILDREN

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** I just want to find out from the lawyers and — because the documents have been so late we haven't had time to discuss it on our side, but are we satisfied that we are doing everything that we need to do as far as the protection of children is concerned in view of many international obligations that we all have, and international treaties that we are committed to and so on? I am not a lawyer and I just — I just feel like this is kind of scant.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Mr. Chairman, this provision simply provides the right — the duty towards children — it's one of the more positive rights, one of the more positive rights — to protect them from harm, exploitation, negligence and so on, simply because if one included all the rights in this provision that are contained in the Convention for the Rights of the Child, it would be a very, very long list.

I can just tell you what it would include.

It was inserted into an earlier draft, but it includes the right to: a name and nationality from birth; to family care or parental care; to appropriate alternative care when removed from the family environment; to basic nutrition and shelter, health care, services, social services; to be protected from maltreatment, neglect, abuse. It goes on and on and on and on and on along those lines.

The convention is already extended to the Cayman Islands and the Children's Law is already being implemented, so it is all in the law in any

event, and this simply provides a kind of framework right as a basic right without spelling out the detail.

So, that was the reason for it. It certainly is possible to have a few pages on that, but our feeling was that this would encapsulate the basics of the Children's Law, and all else can be done by legislation as it is.

**MS. THERESA PITCAIRN-LEWIS (UDP LEGAL ADVISER):** Can we, Mr. Chairman, have the right to revert to this at another time because in light of what's been happening very recently with all the molestation that's going on with our kids here, and the inappropriate sentences that's been meted out by our judiciary, it's completely unacceptable.

I would like the opportunity to revert to this at some other time. Thanks.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** Mr. Chairman, just to indicate in regards to molestation, there are amendments now that is in final draft and should be tabled in the Legislative Assembly in regards to some of the things that the speaker was talking about, and we hope to get them in there shortly working along with the Attorney General.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Mr. Chairman, just to add to this. I don't think — I fully — I won't say fully, I am aware of the matters to which Theresa refers. I think all of us who live in Cayman are keenly aware and alarmed of some of the cases that we've heard about and some of the resolution of some of the cases. But the issue as I've seen it and as we see it from this side, is not about any lack of rights on the part of children, it's about the enforcement of those rights, it's about how matters are dealt with before the court, it's about the adequacy of our social services regime and social workers and police reporting. The whole range of things. But I don't think that the answer really is, you know, in pages and pages in our current Constitution to deal with it. But --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I was going to --

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** I would be happy to defer — as Theresa suggested, come back to it the next round of talks.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, I was going to suggest that. I recognise 16 as identical, nearly identical to the provision in the BVI constitution. But I was going to make just one

suggestion on it, which I think would both substantively and presentationally improve it, and that would be to take out in the second line, to delete **as it considers fit** and such, so it would say **Parliament shall in addition to** [et cetera] **enact laws to promote** [et cetera]. Now, I don't think the words **such as it considers fit** are necessary anyway because the legislature has its discretion as to what it passes, but — and it could — if those words are there could create the impression that, you know, it might do so if it sees fit and it might not if it doesn't see fit. The value of taking those words out is you have a constitutional duty for the legislature to get on and do these things, to promote the wellbeing and welfare of children and afford them protection from harm, exploitation, et cetera.

Now, nobody can force the legislature to do these things, but it would add to the political public pressure where there is a gap that they should fill it, they're obliged to fill it under the Constitution.

So, that was just a suggestion, Alden, and I think it would be presentationally better to not — not to have those qualifying words. You look a bit reluctant. And, of course, one can't deal with the whole thing in a constitution, it has to be the legislature and the agencies of government who deal with this stuff. That was going to be my ...

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** We're happy with your recommendation, sir. That's fine.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Mr. Chairman.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Just one quick question on the very last statement. It says **and to provide them with such facilities as would aid their growth and development**. Now, I think all of us obviously want the very best for all of our children, I know that. When I read this, can someone sort of allay my fears that when it says **and to provide them with such facilities as would aid their growth and development** how wide could something like that be interpreted? In other words, if picking an example, someone had saw a — what they thought in their view was a gap in, let's say, sporting facilities that they believe would aid in the growth and development of children, could they bring that sort of matter and say that: Government, you're now duty bound because you overtly stated in your constitution that you're going to provide them with such facilities as would aid with their growth and development, or am I just on the wrong track? Just a quick question for clarity.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. I mean I take the point. I suppose you could change those words slightly to say after degradation **and to facilitate their growth and development, and to facilitate their growth and development.** I mean that's just —

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I think the question is to what extent is this open ended, or provide the sufficient guidelines. And I think this is one of the provisions where you would have to inform any decisions about this with the practice under the Convention of the Rights of the Children, and there's some — examples are provided. There are issues about provision for mental health of children which is often neglected, more neglected than it is for adults and so on. What other issues are there? There's — yes, that's a very good example from Susan, drug rehabilitation, that kind of thing, and so on.

It's — this is one of the more positive rights where it requires government intervention, and it is therefore a little more open to the courts on a case-by-case basis simply looking at individual — you can't provide for everything in so much as in law, you know, so this is a more general provision, again, framework, but it is informed by the convention and the practice under the convention.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. “Protection of the Environment”, “Lawful Administrative Action”, “Education”.

## SECTION 18

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, I wonder if I could be given a brief explanation on 18.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** On sorry?

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** On 18.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Eighteen is an increasingly accepted right, a constitutional right. It is something, particularly 18(1), that we have already because it

simply is the law of about judicial review of the action of public officials. We all have a right to go to the court to challenge any public decision, and those decisions have to be lawful, have got to accord with the law under which the power is conferred upon the public official, they have to be reasonable, they can't be arbitrary, and they — and unreasonable, and they must be fair meaning that the procedures by which they are reached must be fair, you have to have natural justice.

This is already in the law, but to make it a constitutional right just elevates it status and applies it to all public officials and allows people reading the Constitution to see that this country observes good administrative practice, and if there is not good administrative practice it can be enforced in the courts. It's a reassurance that this is done, that all people, public officials however high, are subject to the laws of good and fair and reasonable public administration.

This provision first was introduced in South Africa, it is now part of the European Union Charter, which hasn't been accepted everywhere, but it's increasingly becoming something that ought to have constitutional significance. And the second part, too, that if decisions are given about our lives they should be rational. In order to make sure they're rational you ought to be able to see the reasons. So, this is an additional right, it doesn't appear in the European Convention on Human Rights, but is increasingly being accepted, and it was decided that this had a sort of particularly — that it was good for this country to let their citizens and the world to know that they observe these standards.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman, just a question. Is the — His Excellency the Governor considered a public official, and if so, could this not be deemed to be a backdoor approach to making his decision subject to judicial review?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I think they are subject to judicial review already, and I think he is — he or she, as there might be sometime in the future, are already within the definition of public officials, and we discussed that earlier this morning, and I don't see any reason why section 18 should not apply to acts of the Governor, like anybody else.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** Sorry, can I just inquire from Professor Jowell by way of clarification. The language you have here says **all decisions and acts of public officials shall be lawful, reasonable and fair**. Are those three words to be taken as disjunctive or conjunctive? In other words, if it is perceived as not fair, does it then translate into a constitutional breach which then triggers a reason, a request for reasons or duty to give reasons?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I think the provisions are separate, but the --

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** In other words, what I'm asking you is that does it have to be unlawful, and by extension reasonable and unfair — unreasonable and unfair or just anyone of these?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I would have thought any one of those, yes. Unlawful — a decision can be struck down if it is either unlawful on its own or unreasonable or unfair. And the duty to give reasons should apply as a separate duty. It's also perhaps part of the duty of fairness that it is not always accepted as fair under, as you would know, under the notions of natural justice. They don't always extend to the giving of reasons, but under this provision they now would — there would be a constitutional right.

Are you asking whether one should change “and” to “or”, or are you simply asking how far it goes? Are you suggesting an improvement in the drafting?

[inaudible comment]

## EDUCATION

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** “Education”. I'd like to ask Susan to make a point about this, if I may.

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):** Thank you.

This provision we've looked at in the context of the Convention on the Rights of the Child and also the International Covenant on Economic, Cultural and Social Rights, and both of these conventions provide for the right to education. In fact, both of them provide — shall be primary education which is provided free to children, so in — part of this actually goes beyond what is required as it also includes secondary education. But the problem that we have with this is that the limitation to Caymanian children, because under these conventions free education has to be given to all children who are living in the Territory, present in the Territory.

We have looked into this a bit in relation to the Falkland Islands because they mentioned they have a problem of people passing through,

people coming in yachts and staying for a few weeks and sometimes people arrive at the school gates and these people demand education for their children. We did do a paper on it, and we're pretty clear that you'd be safe not offering free education to any child who was in the Islands for less than six months, but after that any child in the Islands has to be provided with a free education under these conventions. So at the moment this limitation to Caymanian children is not acceptable in our view.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):**

Mr. Chairman, it is my understanding that the conventions to which Susan referred the UK has a reservation in respect of them in relation to the UK itself, that the requirement for free primary education is not — the UK is not at the moment bound by that particular provision. And I haven't looked at this point in some 18 months, and maybe the UK has changed its position since, but if that's not the case, then, I don't see what the difficulty would be with the Cayman Islands Constitution providing as it does.

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):**

There is a reservation to the Rights of the Child Convention, and I'm not sure of the covenant, but it probably would be the same, in relation to immigration which is designed to allow a restriction to be put on who is provided with free education. But we — when we were looking at this we looked at the effect of the reservations, and they only provide a limited protection, but once the children are in the Territory for a significant period of time, then, you do have to provide them with free education, free primary education.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** We --

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):** I could sup place you with a copy of the paper if you like.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Well, we really need to look very carefully at this because of the implications for the public purse and for the accommodation, and it might actually change significantly, or make even stricter our immigration provisions because the sheer number of people we have on work permit means that the government school system is incapable of accommodating all of the children that are here and, in fact, the private schools which are in operation actually depend heavily for their very

existence on the fact that we have so many non-Caymanians — non-Caymanian children here because of parents here in the workforce. And if we were pushed to a position where we were required to offer free education to all primary school children, I think we would have some serious issues. We'd have to go about significantly beefing up, not just the physical plan, but our general resources to cope with it.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, there is a problem, though, even — even with people whom we have allowed to come in on work permit. There is a problem and when their children who are under their care and protection, even when they try to get in — and they can get placed in a private school — they have problems bringing those children. So that's something that I think attaches to this as well and to that whole question surrounding children who should be educated. And I've seen it. I've seen it. I've seen the parents get a work permit. I've seen them have their dependent children with them and then can't get — can't get them into school. So, I know that's something that you say the law should — the law should rightly be dealing with, but I just wanted to draw attention to that matter to the Chair.

And I was wondering by the wording here even if we don't attach the words “free” to it whether it wouldn't be a good thing just to say “for tertiary levels of education” children have that right, even though we say that the State can't pay for it.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, some background might assist, and the point that Mr. Bush made is well taken, but that derives again from the overall policy concern about the adequateness of our education plan.

The way things work at the moment, I mean all — the law requires all children in the Cayman Islands to attend school at least until the age of 16, and the law requires that Caymanian children get free tuition.

In the good old days when the plant wasn't so stretched, all children who came here when the numbers of immigrants were significantly less, if their parents chose to do so they went to the government school system. Days when I was in school that was very common. There is no prohibition, even from a policy standpoint, on expatriate children going to the government school system. They have to pay a fee, which is significantly less than the private schools charge, but it's always dependent on space. And, increasingly, although things — when the new schools — when the new high schools are completed in another 18 months or so, things will change on that front, at least temporarily until the numbers rise again. But both high schools, the

middle school and the senior high school, have been at capacity now for years, and so there is very little scope for — for entry there.

At the primary school level, certainly, the schools in West Bay — the school in West Bay and the schools in George Town are always at capacity — usually over capacity. The ones in the outer — outlying districts are not quite so, East End and North Side particularly.

The reason I give you that sort of background is to tell you that this is a real practical issue for us, and we'll have to look carefully to see how we can deal with it. It's not that the Government is mean-spirited or that we don't want to provide free education to all children, it's a capacity issue at the moment.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think my reaction, though I defer to Susan if she has a different view, is that given what you say — and I do understand, you know, the possible consequences — from our point of view it will be preferable to delete section 19 because we are not insisting that you have in your Bill of Rights a section about education. What we couldn't easily or at all accept is a provision which is flat contrary to one of our international obligations and on its face is discriminatory. So ...

Do you agree, Susan?

I mean, if it can't be — if it can't be solved — well, it obviously can't be solved because of the things you say I think I would prefer to see it out.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** I think we can — I think we can — I agree with your suggestion and we're happy to take it out. But we could solve it but we would solve it by making the situation that Mr. Bush referred to even worse because, you see, what's happening is that immigration is becoming increasingly tougher on people bringing their children here because of these sorts of implications and that is itself creating a human rights issue for...

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** But we'll leave that for another discussion.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Mr. Chairman, could I suggest that we look at — in the BVI constitution how they handled it, section 22, it's on page 15, and section 2. I'm not sure, Minister, if this is something you considered.

But there is section 4 which also kind of outlines, and I just wondered if that could be something useful and made middle ground.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** We did. We thought it was too complicated, but maybe we can be persuaded otherwise.

### **PUBLIC EMERGENCIES**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right “Public Emergencies”. All I going to say here was here there are two alternatives and a reference to a third one, which is the BVI constitution, sections 27 and 28. Now, I think that the BVI sections, having modernity on their side — we took a long time working those out with the BVI — one of those provisions is it provides a procedure for declarations of emergency by the Governor, and a requirement for the Governor to consult the Cabinet or the Premier so far as practicable, which picks up actually one of your proposals higher up — elsewhere in the paper. And then it goes into the need for proclamations of emergency to be considered by the legislative body, and then it has separate provisions for derogations or the limits of the derogations.

And also, it has — it has in section 28 something rather similar to the first three paragraphs of your proposed section 20 about dealing with a particular — sorry, it's equivalent to 2 and 3 dealing with a particular question of persons detained during an emergency. It's actually quite a full — quite a full little code of how an — declaration of emergency may be declared involving the executive and the legislative arms of government, and then the consequences in terms of derogations from the Bill of Rights and the special case of detained persons.

My plan in producing a draft for the next round was to put those sections in here, and then we'll need to look at them. In the meantime, you know, people can look at — I'm telegraphing now what I think would be a good solution and have time and we can discuss them again.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yeah, I think the thinking here, Mr. Chairman, was exactly that. Initially what was written down here is basically the 2003 Draft.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** It wasn't considered terribly satisfactory so the Government then looked at Article 15 of the European Convention, sort of taking that in, and then we saw sections 27 and 28, and you see there's a note on page 17, and that's why it was inserted. That seemed probably the best of all, but we thought we wouldn't burden the document by setting them out in full here.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** But that certainly I think was exactly the thinking.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And indeed, you know, if anyone wants to discuss them next time round we should because, you know, emergencies do happen as people here vividly know.

## SECTION 21

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Twenty-one — unless there's anything else on that, section 21 obviously is ... we discussed earlier and I gave such assurances as I could about it. I think there's only one point in (b) that looks rather odd, and that is the words **Parliament should consider whether and to what extent to remedy the incompatibility, whether and to what extent**, which rather conveys the impression that the legislature here could simply disregard finding of incompatibility by the Grand Court, which is not a very respectable signal to send to the outside world. And so we thought it would be better to put **should decide how to remedy the incompatibility**. And, of course, there are many ways of skinning a cat, and it will all depend on the circumstances of the finding by the Grand Court, but the choice is left to the legislative body. But I don't know — what do you think about that?

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** I think we're okay with that. I think it actually improves —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, okay.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** — what's there.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** “Duty on Public Officials”, that seems to me fine.

### INTERPRETIVE OBLIGATION

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Unless there's any other comment, “Interpretive Obligation”, on this one I recognise that paragraph 1 or (1) comes from the UK Human Rights Act and seems to me a very useful thing to include because it directs the court to do everything it can in the absence of a clear incompatibility, to read and give effect to legislation in a way which will be compatible with a Bill of Rights. Therefore I would regard this as crucial to making the thing work properly and in the way that I think you would want it to work.

However (2) I don't think is necessary, and I think it's — it's confusing. We found it very confusing. We didn't see what the relevance of — particularly little (b) and (c) when they refer to **incompatible primary legislation, incompatible subordinate legislation**. I know this is lifted from our UK Human Rights Act, but we were still none the wiser as to why those things were there. So we would prefer — we would suggest deleting (2).

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Those are two sections are only confusing in the UK and no one really knows what they mean. I think it would be much clearer here to simply take them out because they don't seem to add anything at all to anything else.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. But leave in (1) on its own, yeah.

### SECTION 24

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And then we come to 24 which is ... we recognise a crucialty or concern that there should be — that the fundamental rights shall be vertically but not horizontally enforced, and that is the normal situation in any case. And we have no questions on that, I don't think.

Oh, wait a minute.

24 “government”, see definition...

I think it's — I think it's the — I think it's the — do you remember what this point was, Susan? I think it's the definition we probably looked at earlier.

Yes, so just to be clear, the government who can be the only defendant here is defined in section 1 to include public officials as defined section 27 and Parliament but to a limited extent the courts. And then if you look to 27 we thought that was a fairly comprehensive — fairly comprehensive definition of public official, which I note excludes private schools, churches, Parliament, courts and tribunals, and it excludes Parliament and courts because they're dealt with elsewhere. It's a bit circular but I think it — I do understand the point and I think it works.

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, I think they're referring to the Cayman Islands Parliament, but we haven't accepted that change yet. We might one day, but we haven't accepted it at this round. We've reserved our position on it which is why I keep referring to legislature, when I remember to.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Mr. Chair, the 24(1), it may not be necessary because it is confusing there to use the word “government” there at all. One can just say **any person can apply to the Grand Court to claim that his or her rights have been breached or threatened**. One doesn't have to mention the defendant at all.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** This is on the basis that it's — it's stated in each of the articles.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, it is. It is so clear that it can only be Governor.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Well, I think we've done brilliant work. We've got “Remedies”. We've got “Remedies”. We looked at the “Human Rights” section yesterday. The “Remedies” I don't think we have any question on — at all this does reflect the Human Rights Act as well.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Sorry.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** Just a clarification, Professor. Usually the enforcement provision would read has been, is being or is being likely to be breached, in other words, an anticipated breach. Is this a more restrictive provision, the enforcement provision? Section 24 where persons alleging a breach. I'm just trying to find the BVI.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, I think I'd be grateful for any help on that.

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** It's just a matter of formulation I think.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, I agree. I think it does constitute --

**HON. SAMUEL W. BULGIN, QC, JP (ATTORNEY GENERAL):** All right, section 31 of the BVI, that's right, it says **if any persons alleges that any of the foregoing provisions of this chapter has been, is being, or is likely to be contravened**, I just wanted to know whether the formulation in 24 is any less restrictive or --

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yeah, I think that's an interesting question. I think you know threatened — yes, threatened is sort of more everyday language, that's all, but I think there's nothing complicated about — that people wouldn't understand about your formulation and perhaps that's a better one. Certainly — I haven't seen — I'd like to see it but I think...

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Section 31  
—

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Thirty one.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** — (1) which is a sort of classic formula that **a person who alleges any provisions of this foregoing chapter has been, is being or is likely to be contravened in relation to him or her, then that person may apply**

**to the high court for redress.** I missed out some wording in the middle but that's essentially the thrust of it. But it — but it is — I mean that's sort of customary wording —

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yeah, I think --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** — in this place.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, I think I'd be perfectly happy with that myself.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay “Remedies”. The reward for looking at “Remedies” quickly is that we can break for tea.

Go on McKeeva.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** No, 26 sorry.

## SECTION 26

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Twenty-six, okay, that's one — “Human Rights Commission”. Yes, please.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, I had drawn attention to ... I drew attention to clause 3 and 4, and the appointment of members and the commission being independent of the government.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** And I don't know whether you had a thought about it or wanted to tackle it at another time.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I was going to — I was going to substitute for (4) a provision saying that **in the exercise of its functions the Human Rights Commission shall not be subject to the direction or control of any other person or authority**, that's the classic formula to state independence in the

constitution. That I think would help because it would make it unlawful for any other body to — any other person or body to try to give orders to the Human Rights Commission.

As far as the — as far as the appointment of it is concerned, I personally don't see any problem about the Governor making these appointments after consulting, after consulting the Premier and Leader of the Opposition. I would take your point much more if it was acting in the accordance of the advice of these.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** I recognise that too. It's not on the advice.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** But, Mr. Chairman, you have to be practical. You're dealing with political creatures which we all are, at least 15 of us in here, maybe some more.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I mean, one solution would be — one solution would be that all of the members are appointed by the Governor in his or her discretion. That would make it above the political fray, as it were.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** That would be more satisfactory to me.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah. I mean we would be perfectly happy with that.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yeah.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I don't know what the Government —.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** That would be more satisfactory.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I don't know what the Human Rights Committee view on this is.

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, but they have a view on how this is framed in the first place.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Sorry, could you repeat the summary?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Oh, well...

**MS. SARAH COLLINS (REPRESENTATIVE FOR THE HUMAN RIGHTS COMMITTEE):** We're not sure we were following the point that was made by Mr. Bush.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. No, the Leader of the Opposition made clear yesterday that he thought that the provision of section 26(3) which is that — all of the members of the proposed Human Rights Commission would be appointed by the Governor after consulting the Premier and the Leader of the Opposition, and that this would in some way prejudice the independence of the commission. I said that I thought — well, the fact that they're appointed only after consulting and not in accordance of the advice of these esteemed gentlemen would be — would make it okay, or at least make it tolerably okay. I then said but to be really pure we would have no objection to all of these appointments being done by the Governor in his or her discretion. And I see --

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** No, we take fundamental objection to that, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Because we wind up then with four UK delegations with no local input. Now, that might be satisfactory to Mr. Bush in his new...

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Swallow it.

[laughter]

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** I won't say it because it's going to be provocative.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Mr. Chairman, if it assists our position remains the same as stated yesterday.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I can't remember what that was.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** — I don't want to be provocative and say I didn't expect any better, but I still — I still say that we've been here talking all along all these things that we don't want politicians doing. And it seems just we're going the wrong way when you come to one and they can do it. And --

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Well, bearing in mind it is a local commission, we think it is appropriate for the legislature and the local Parliament to have some input into the appointment of the commission members, and the current proposal for the Governor to do so in consultation with the Premier and Leader of the Opposition would achieve that. Absent any alternative practical proposals, we are quite fine with the current drafting as is.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Well, Mr. Chairman —

**MS. SARAH COLLINS (REPRESENTATIVE FOR THE HUMAN RIGHTS COMMITTEE):** There's another point about independence because the independence of an appointee is affected, not just by appointment, but by the power to remove and by provisions prescribing the term, which is something that the Human Rights Committee would address in commenting on the detail in relation to the constitution of a commission.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, I am going to — as I said, I am satisfied that it's not on the advice of, but rather in consultation with. But what — we have a small community and what I'm trying to get away from, sir, is when some things happen, the first people that get the blame, and unnecessarily sometimes, is the politics and people can hide: but don't blame us, blame the politicians. And I'd rather the Governor take the blame.

[laughter]

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** And, Mr. Chairman, the other way sometimes it's a fact that there is interference. There is — when you look at some of the boards we appoint and some of the things they do, and we appoint them directly, mind you, not the Governor.

And what I'm saying that when you live in a small community and perception means a lot, looks like to me, unless you just don't care what people say, but we are human so we care what people say. But maybe one of these days the H RC will agree with me somehow on something.-

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. I think — I think on that note it would be good to have a break. And when --

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Mr. Chairman, very quickly before we break.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** I feel obliged to state for the record that having — I find it a bit remarkable that having spent considerable time doing the minute drafting points that we do not appear to have reached any general consensus on the two most significant issues. I think we may have — it may do an injustice to us to walk away from the table without having any further clarity or progress on those two fundamental issues which are both very important and...

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Which are those issues?

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Principally, the grounds for discrimination and the related question raised by the Leader of the Opposition in relation to the right to marry.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And the what, sorry?

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** The right to marry.

[inaudible comment]

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Be that as it may, I think we have not been given a sufficient opportunity to properly discuss this, having then spent considerable time doing more minute drafting. We really ought to have — I think time would have permitted us to do that. We really ought to have spent a bit more time having a more detailed and substantive dialogue on those fundamental points.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, well we can — there's a choice. I mean, we can come back after tea and spend an hour or two on it, and then we go into the remaining items on the — amongst the proposals, such as single-member constituencies, people-initiated referendums and so on, which I'm determined to touch on at least. Or we can take note of what you say, and I appreciate these are important points, and note them as ones that we should come back to, because we shall have to come back to this.

I mean my purpose in having this discussion today, which I think is — has been very useful, is to try to get some — get some idea of whether a Bill of Rights and responsibilities drafted in this sort of a fashion is likely to fly, because if it isn't then we have to go back and tell our Minister we might as well stop this business because, you know, in view of the decision she has taken, the policy of the British government, you know, there is no point in talking about anything else.

But I think my conclusion is, and I hope I got it right, is that there is a substantial prospect that it would fly in this sort of formulation, curious though it is, curious in the sense of being unlike the norm in the Overseas Territories. Unique.

And there are still some naughty points to sort out, but in substance, it seems to me that we haven't come across anything so fundamental as to derail it. I hope that's right.

And we, as I said earlier, are approaching it with an open mind and trying not too hard to be high bound by precedent and perfection and idealism.

But I do recognise, you know, next time round when we meet again we shall come back to it, not I hope — not from our side not — I earnestly hope we will not be instructed to come and reopen it in principle. There may be some details that we when we've had a chance to study it further we'll want to come back to, some forms of words or even points of substance in some of the descriptions of the rights.

But I think, you know, we've done a lot of good work today. When we meet again we shall touch base on it again, see if anybody has any further thoughts, and certainly come back to the points you want to raise. I mean I — when I do my draft for the next round I will indicate

in one way or another, with an asterisk or a note, the points that need further discussion, that have been left unresolved, and I'm very happy to do that because I think ... I'm very happy to do that on the points you mentioned.

They — as far as I can see they both actually arise in the same place, which is in the discrimination section, and I'm happy just to put a note there that that needs further discussion. But I think a large part of this, at least on first — first discussion is — is ... will not need an asterisk saying that we have to come back to it. I hope that turns out to be right.

So, shall we have a break and then come back?

I'm sorry, you wanted to take up more time, but I don't think — I don't think it will be very popular.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Well, popularity can't be the test for the Human Rights Committee's work I'm afraid.

[laughter]

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** We — we appreciate your position, but of course, for the record, we obviously will reserve our ability to come back to revisit these issues a little more fully.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**MS. MELANIE MCLAUGHLIN (REPRESENTATIVE OF THE HUMAN RIGHTS COMMITTEE):** Thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Good.

Well, shall we have a break for ten minutes or so, and then come back and look at the remaining proposals unless there's anything...

**RECESS**

**RESUMED**

## **PROPOSAL 22**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right, ladies and gentlemen. Shall we embark on the last leg for this time and move to proposal 21 — no proposal 22 adopts the one person, one vote principle and single-member constituencies throughout the Cayman

Islands. **Adopt the one person, one vote principle, two single-member constituencies throughout Grand Cayman; and (3) Cayman Brac and Little Cayman remain a single constituency sending two members to the UK — Parliament [Freudian slip] but each voter should have only one vote.** As far as the UK delegation is concerned, each and every part of that proposal is acceptable.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Each and every what, sir?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Each and every part of that proposal is acceptable. Yes.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman ... did you speak on this one, Mr. Chairman? I know you opened it, but --

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Twenty-three — 22, Proposal 22, yes. My recollection is that this proposal is exactly as was discussed in 2002, and on the basis of which an Electoral Boundary Commission was established, did its work, recommended the division of constituencies into single-member constituencies on Grand Cayman, and one on the Sister Islands, but with two Members coming from the Sister Islands, and that was perfectly acceptable to the UK at that time and that remains the case.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, I — our position is that we have not found support for the provisions outlined in the proposal, and I don't know that point 3 of the proposal for Cayman Brac was as the same in 2002 as it is now. I think the Government after they found a rejection of the one man, one vote in Cayman Brac, they shifted their position to create this monster here. Our position, as we found it, was supported by the people in Cayman Brac, who are most adamant that they did not want their system split up. And, in fact, the Government has the second Member from Cayman Brac in their party, who was an independent on being elected, but then joined the Government's party. But I believe that he has said that his position is he has found that the people don't want it, and he has been told soundly by the people of Cayman Brac that they don't want this system.

Now, I know, Mr. Chairman, that you have said in the past on several areas that some of these things the UK would go either way and left it up to local decision, and I don't know whether that would still hold when you say you are taking that position.

Mr. Chairman, the UK has to pay attention to what obtains in this country. Not everything — and I keep saying this — that works in other Territories works here. Our system — there's nothing wrong with our system of voting the way it is; it has worked well. And if it is not broken, as the cliché says, then why fix it? Presently we have — and I keep saying this too, that we have one of the highest turnouts in elections, in general elections, probably one of the highest outside of those countries that has mandatory voting. So, I don't know why we want to go and meddle with something that is working.

We keep referring to Bermuda, for one. Bermuda system grew out of a system — present system grew out of a system that was altogether bad, and finally, they got down to more democracy, four people, five people, and then they finally got down to four in a constituency, and then they changed it to two in a constituency, and then I think it must have been the last election, if I'm not mistaken, they went down to one. And if you talk to the Bermudans they will tell you that they were better off when they had one person, and they lost in getting only one representative.

In those districts that has one representatives — one representative — more than one representative, Mr. Chairman, people are more represented. And democracy takes care of it at the end of the day if someone has not performed, then, no matter how strong a coattail may be, that person will not be elected. And I have experienced it on both sides. I have experienced it and — on — for the local people here, Mrs. Orrett. We went in with a strong election, and by 1988 she had lost the support. And while the rest of the group were miles ahead, she was — she's lost because the people said she just didn't do her work. And we've had coattails extended at other times where groups went in.

And this — I know that the UK has some obligation, but is this one of them that we should have one man, one vote? Is this some international obligation? I know the thought didn't come with any international obligation here, it came about because people thought that they should have been elected and so they were making noise, arguing about who coattails brought other candidates past the post.

The truth is that if a person has strong enough coattails in constituency southwest West Bay, then, that person is respected and he will take — or she will take ... the coattails will be long enough in the other constituencies to take members if that the is scare, and I keep saying that when you're not electable you're not electable.

I don't understand why we should move from where we are.

The other — the two districts in this country that have single members are single members because they are small constituencies. If they had more — more people in their districts it would simply stand to reason that there would be more representatives. The only reason why

there are one representative in those single districts now is because they have a small population.

Mr. Chairman, nobody can tell me that this can make democracy better. It might be standard around some — because I believe even in the United Kingdom there is still some ... some elements of more than one person in the constituency.

We live in a small Island and these are the facts. We are going to open up a can of worms, create tremendous more expenditure that we can't afford all around because you got to set up different — from the day of voting it's wrong and creating expenditure. And then the — you're opening up that need that people have, that pension expectation for — to want everything that their neighbour have.

Check the districts or the constituencies and check those persons in the constituencies. And I can tell you it might not be the general run of the mill, but I've been told that in Jamaica, as big as the constituencies are that sometimes when the — when the borders of a district — facilities, government facilities are close enough, they boarder one another, they're close enough to be used by people on both constituencies, yet the demand is: I want my own. I want my own post office. I want my own play field. I want my own hurricane shelter. And every considerable and conceivable expenditure that can be asked for is asked for.

And, Mr. Chairman, anyone supporting it now can say, well, we don't have to do it, until they get by themselves and they know the need of that voter, or that block of votes. Then they come to government with a long shopping list.

This is not going to create anything good for this country but trouble, nothing good could come out of this. When you're together in four, as we are, I can't do anything, Mr. Chairman, unless I consult with my colleagues. One man has been able to build — garrison constituencies and do all sorts of things. He has nobody to give account to but — at the party level, but as his constituency level he do more or less as he please, at the end of the day saying: I have to be elected and the party agrees, they need that member.

Mr. Chairman, I can tell you this. From where I sit no matter how many times they chop West Bay into pieces they're not gonna having any effect. Those of us that the people want they will vote for us, and probably the same in the other districts. George Town was successful. They learned the game, but it was the right thing to do the last election. Bodden Town was more successful because they learned the game. They had a strong man. They were together and that's why they could say vote for us as a block. But they didn't destroy democracy. The results were that the people voted for who they wanted to vote for, and that's what democracy should be.

I don't hear much clamour for the one man, one vote now. That was back in 2002 when any excuse to hammer the government and to

bring me down was brought. Not now. Look at it. When is the Government proposing for this to happen? Not 2009. 2013. Why? Why if this was genuine.

We have good democracy in this country, nothing untowards that could not have been fixed by amending the law which we have done over the years and improved our democracy here.

The clamor that I hear from people is I tell you much more local rather than national elections, not so much single-members. I haven't found any support for that because once we start to show people, look, if you have four representatives and you can't find Representative 'B' you will find Representative 'A'. If you don't find him you gotta find the other one. But if you cut it up and you go to representative in southwest West Bay, he can tell you: No, I can't help you. Go to northwest West Bay, that's where you live. And he can do it with impunity because he knows that person cannot have an effect on him.

And this single-member constituency is a laugh in the face of democracy when the Government has done what they done, and still got the audacity and temerity to bring it here after they were elected, supposedly, to create it. You didn't hear much about it afterward, and when they did propose it, it is for 2013. Laughable.

And if they think this is getting back at someone, they're only destroying what we have. It's not going to make this country any better, and with the population growing it's going to be worse for their positions that they claim that they have.

I will stop there, Mr. Chairman, and I will tell them again, they can cut my constituency up into ten pieces, we're gonna still take the seats, God willing.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you.

Insofar as what you said, McKeeva, about the UK, there is no international obligation requiring one form of constituency or another that I'm aware of. This is not — that's not the issue. The reason why the 2003 Draft has these provisions in it and why the Electoral Boundary Commission met and did its work after the Lancaster House talks in 2003 was because at the Lancaster House talks in 2002 there was agreement between the parties that we should go to this.

Now, this was not a demand of the UK side. As far as the UK is concerned, provided the arrangements for elections and electoral constituencies are democratically defensible, my Minister I'm sure would be satisfied. There is no wish on the UK to impose its own single-member constituency first, plus the post system on the other Territories, on the UK Territories. That's not the point.

So, what I am saying is that the proposal to go to that single-member constituency with the two members in the Sister Islands is acceptable to the UK, I'm not saying only that is acceptable to the UK. I know that the current constitution leaves these matters for local

legislation, and I'm not suggesting for a moment that from our point of view we see defects in the current system, but this is classically a matter which involves the democratic system and the working of the democratic system in the Territory. And so, if there's any suggestion that we're trying to dictate something that is completely wrong. Our earnest wish is that all — both parties in the Cayman Islands and other interested persons should reach a consensus on what they think collectively ought to be a good way forward in a new constitution for the election of members of legislative body. So that I hope makes our position clear.

If, for example, in the light of reflection there were a consensus that the current system should continue, I cannot see that the UK could possibly object to that because it works, it is democratic system. I know of no criticism in our Parliament or anywhere else of the system. Equally, if it is thought that things would be improved, democratic representation would be improved by moving to single-member constituencies with the two from Cayman Brac and Little Cayman, equally that would be acceptable, too. And so, this is really one that I have to throw back at you and hope that in the interim period between now and the next round there might be more consensus on it.

But, Kurt, would you like to comment, or Julianna?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Thank you, Mr. Chairman.

Certainly from the Cayman Brac and Little Cayman perspective, this issue perhaps has been the most contentious of issues. As you would no doubt know, there are two separate Islands and currently we have two representatives, so that in itself poses some logistical problems of having to represent the two Islands with Parliament being on Grand Cayman. But we have had, not unlike other Caribbean countries, quite a bit of racial tension, some spoken of, some more — or less conspicuous. And it is not a rarity for economic wealth to play a role in elections. It is also not unknown because of us having to import everything that either Moses or myself will have to leave the jurisdiction for whatever medical reasons and what have you. And with the arrangement that the Government has proposed, where it would be one man, one vote, where we could still have two representatives, it would leave the Islands almost in a situation where they would not have the type of representation they want.

We also have a scenario where there's still not equity in the Government's proposal in that if Grand Cayman was divided up into the 16 pieces or boundaries, we still have the — 15 I beg your pardon, 15 — we feel that it would be actually eroding the democracy we have in the Brac. And that if the Government puts up two persons, for example, Mr. Chair, to run and the voter is entitled to only vote for one person, how is that going to work in practice? The two of us just show up at the house and say vote for our party, but, oh, you just have one vote. We

believe that that would only add to the divisiveness that's already in the Island with the introduction and some people's minds of the party system as far as Cayman Brac and Little Cayman is realised.

And you could end up with a very popular person gaining a great percentage of the votes and the second person getting in to represent by just a very small amount of the votes because of a whole social dynamics there. And we have a great concern about that, and I can tell you that I have absolutely — and neither does the Second Elected Member, if I may speak on his behalf, any mandate, whatsoever, to support this.

So I would wish to seek clarification from the UK that if this is one of the points that the Opposition and the Government does not agree on that the status quo would remain, or whether there is some overriding factor that would weigh the balances because there is no way that any of my constituents will agree to this. And I realise that we're only about 2,000 people and less than 1,000 voters, but we would not in any shape or form agree to the proposal that the Government has on the table. And the Second Elected Member is here. Perhaps he can get permission from his leader to either defer or confer.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** Mr. Chairman, the Government proposal would not be on the table if, one, we didn't believe that there was majority support for it, and, two, if we had not as a unit agreed on the proposals.

We have — we have been around all of the constituencies, including Cayman Brac, and it is an issue, we have no doubt about that. But if as a country we are agreed to move to single-member constituencies, and we believe that that is what the majority of people want for a range of reasons, we have to find a way to ensure that all — all electors have the same weight in terms of votes. We can't have some constituencies being single-member constituencies and some others — well, we can't have some electors having more than one vote and some having one vote, and so that is our proposal.

We have since Thursday a rather successful meeting, tried to get the Opposition to sit down and talk about some of these issues, thus far to no avail. And if — if either in — after we've received your draft back or even if before that the Opposition wants to sit down and talk about a number of these issues, we're happy to do so. Thus far it has by and large been object to everything the Government proposes.

But that — that is still on the table and still I believe the sensible way forward because we have — we have every interest, every interest in putting to the country a document that has broad-based support, but we have every interest in trying to get the support of the Opposition on these issues, and we are still quite willing to do so. If not, the Opposition represents, I presume, a constituent group in the country, but we have NGO support and we have the Government position on the matter and

nothing in our discussions has told us that there is a proposal which the majority of the people are not going to support.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF THE OPPOSITION):** Mr. Chairman, I just — just so that I can make sure that I didn't have any hallucination with the mandate that I got from my constituency, the Second Elected Member for Cayman Brac is in the room. Can I seek clarification from the last speaker, the Minister for Education, that when he talks about majority of support that that quantum leap also is the position he found within his party, and that the Second Elected Member is considered as minority support because, otherwise, Mr. Chairman, I think it's very important for the Second Elected Member from Cayman Brac to be given an opportunity to express his findings as well.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chairman, I'm not — I'm not not wanting for the Second Elected Member to speak, but he spoke here in this forum already on the same issue and he explained his position and no one is denying that. And that position has not changed with him, I am certain.

[inaudible comments]

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair, if I might.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** If I might. It is obvious from this rounds — this round of talks that there will be some issues that we will leave the table not having resolved, and we accept that. While everyone has thrown their case forward and those thoughts have been expressed from each side and from the NGOs and the Human Rights Committee, it is obvious that in the process of these negotiations that we all should be of a mind and willing to sit down and talk some more as that is the purpose of negotiations.

So, just to say, I see the way forward, Mr. Chair, as once people have expressed their positions based on their representation, based on their own thoughts, then, as you have intimated, we would wait for you to send us a draft working document, and with good faith we should get

together again prior to your return, to see if we can narrow the gaps and then proceed on with the negotiations. So, rather than us make attempts right now that are going to be to no avail, I'm simply saying that let us remember that this is but the first round, and that we will proceed on, and I just trust that we can all keep good faith in the process of the negotiations.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I think that's right. I think my main concern, as I've said throughout, is that every point should be touched on so that we can see where the respective positions and whether they've changed or modified in any way, but this one seems to be as I expected.

Can we just then move to 23?

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Mr. Chairman, can I just get one bit of clarification from the Government on their proposal — or on their proposal as it's reflected in their document versus — in the draft document versus their second round of proposals? Can the Government tell us whether on section 82(1)(a) where it says that **an Electoral Boundary Commission would be appointed provided that the first such commission shall be appointed** [and it says] **with** [I presume that means within eight years of the appointed day] ... Is the Government saying that their new position is that the first Electoral Boundaries Commission could be eight years from the date of the commencement of a new constitution and therefore the 2013 position could actually stretch out to 2018, that the first commission be appointed, in which instance, in reality then the first election under which single-member constituencies could take place would be 2021?

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** No, no, no, no, no, no, no. No, Mr. Chairman. I never drafted this with that provision. I don't know what's guided this, but the intention is — under the proposal as the Leader of the Opposition said earlier is that single-member constituencies would be established in advance of but in time for the 2013 elections.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** I just wanted to be clear on that, Mr. Chairman, because it's a very important point.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, I think — I suspect the eight years was taken from the 2003 Draft. And the point is that, you see, as conceived in 2002, there would be need to

be a Boundary Commission straight away for which I remember we made provision for a special Order in Council. It did its work. If it had gone ahead, then, and a new constitution had come into force on the basis of the constituencies recommended by that commission, that would have been 2003 or 4. And then in the light of discussion in 2002 we thought that the boundaries should be reviewed no later than eight years after that. That was the thinking at the time. And so that's my thought on it.

But with that shall we — I mean because there are — there are details that have to be thought about if one is going down this route and how one prepares for it. I mean, the one clarification I would like — I mean, I think it's pretty obvious but the alternative — I mean, I'm presuming this is the alternative preferred by the Opposition is to leave the Constitution, the current Constitution as it is on this point rather than to fix the current system in concrete, in other words, to leave it to local legislation, leave it to ordinary legislation to deal with the constituencies and the method of election and so on. That's your position at the moment presumably?

Right.

Okay, well, it's plain we're going to have to come back on this, back to this at the next round.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, if I may. Coupled with this are — was the discussion — the discussion with extra seating, extra seating.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** And I don't know whether you are coming back to that or whether this discussion comes into this or whether that comes by itself or what.

And I just want to say for — to make it absolutely clear, last week Thursday we didn't get any invitation that I know about to sit down, to sit down and talk about this particular item. We had discussions publicly on it, and we stated our position forthrightly then as I have done today and other Members have done, but that's it.

And two things I'd like to say, sir: issues changed since 2002 and things — the way some people saw it back then they don't see it that way, and that holds true when you look at what we proposed when we stopped the process and then when we went out and we found no support for it. And so, while the Government holds that up and the UK might have some belief that everything that was proposed back then still holds today don't. And then party members change.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. I mean, I don't see a direct — to answer your first question, I don't see a

direct correlation between the numbers and the system. However, I do think that serious thought should be given to increasing beyond 17, as I was saying the other day, the number of elected members, because the population is growing. And in order to provide — if it is — if it is thought desirable and necessary to have an increased number of Ministers to cope with the increased amount of business, including taking finance as a ministerial matter rather than leaving it with a financial secretary, the democratic process would improve if there were enough members to form a backbench group plus the opposition.

And what I was thinking on — what I might very well put in the draft is something that we've already done in the constitutions of the BVI and the TCI, and that is a power — you name the number for the time being of elected members, but a power to increase the number by law, by legislation. And then it's — it builds in a bit of flexibility in that regard. Because at the moment, one is stuck with the fixed number, and if you wanted — if it became necessary or desirable to increase that number, you'd have to change the Constitution each time.

Anyway, that's that point.

I think since we're past scheduled closure time, but I wonder if we could — if everyone is willing to stay for a few more minutes we should try to look at the remaining proposals even if only briefly.

### SECTION 23

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And as far as 23 is concerned this is the “Improve the Representation of Districts”. I didn't find anything in the Working Paper reflecting this. Maybe it's — Alden, please.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** No, sir, we — before I move on just to say the Working Paper that we prepared at section 41, under the “Executive” we have sort of anticipated what you said about creating the ability to increase the numbers of Ministers and representatives without having to change the Constitution again.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** So that's already there for something for you to have a look at.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** But in relation to proposals 23 and 24 we haven't got around to drafting those provisions yet, so...

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** We'll do some more work on that over the next few weeks.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay, we'll come back to those the next time. Okay, that's very helpful. That would be very helpful. If you — if you are able to send me anything that I could work into — in the next two or three weeks work into the draft, I will --

**HON. ALDEN M. MCLAUGHLIN, JR. JP (MEMBER OF PPM, MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS & CULTURE):** We'll try to do that assuming principles are generally accepted.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, if you are able. If you're not able, if you're too busy working on other things don't worry because I'll just put a — place a mark there saying that, you know —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, just quickly, 23, 24 and 25 and that can be verified, in principle, if my memory serves me right, are points which are agreed upon by both the Opposition and the Government, so I think —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** In principle, so I think it's — the only question would be for everybody to be satisfied with the construct of the draft.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. As far as 25 is concerned, there is a provision which I have to tell you would not

be acceptable to us, for the reasons I suggested — I explained to you the other day. That is — it's on page 69, section 109, and —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Well, Mr. Chair, forgive me, sir, I don't mean to make too light a moment, but you do read the very last sentence? We are inviting you to honour the referendum requirement, but obviously it seems you're not prepared to accept that so let's hear what you say, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I'm sorry, I missed the —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** If you look at Proposal 25 and the very last sentence.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I see. **Should be invited to agree that it would honour this referendum requirement.** Well that is a different proposition to trying to write something into the Constitution, and I have no doubt that...

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** It's not a different proposition, sir, but go ahead.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Pardon?

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** It's not a different proposition —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I know it's not a different proposition, but it's a matter of where such —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** I understand. I understand.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And as I said the other day, it might be possible to have some of that — some

exchange of letters about it. But it cannot be — it cannot be an unconditional promise that any change in the future will have to be done by a referendum, apart from the two measures you mentioned because of the —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Yeah. Mr. Chair, perhaps the way forward is we did get copies of those letters that — or the letter dealt with in the BVI, so we do have copies of that.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Perhaps the way forward with that one is at your best moment and with your deepest consultation, in your draft you could send us what would be most acceptable to the UK, and then when we — when we talk about it again we can talk and we will give the Opposition copies of the BVI document so that they can have a think about it themselves. And hopefully we will talk about it and we will see what your draft says and then we'll move with it again and see how strong the barrier is by next time.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. But before closing, I mean, I do want to emphasise that the UK government is — does respect and applaud the wish of the Cayman Islands to put a draft in your Constitution to a referendum. I mean, that in principle is a good thing we believe. It should have the demonstrable support of the people of the Territory.

All that I'm concerned about is that there might be situations in the future where, apart from the cases of minor or uncontroversial amendments, there might be a need to proceed more quickly than a referendum would allow.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Yes, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** You see what I mean? So we will —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Hence your best think and your deepest consultations.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yep, we'll have to try and find some words to come to square that circle.

But with that, unless anyone has anything to say, I --

### CLOSING REMARKS

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Mr. Chairman, just one quick point, sir, and this is a point that we would need to think about and perhaps discuss with the Government in the interim.

Last Thursday we did intimate or support for the principle of Proposal 24, I don't think we had actually gotten into the actual mechanics of the numbers (i.e. not less than 20 per cent of the electorate), and so...

But one other quick point, Mr. Chairman. In this process we have been thinking, and perhaps we throw it out there so that the Government would consider and yourselves. One of the real weaknesses we see in this process of modernisation, from a Cayman perspective, has been the fact that we've tried to do this in a start-stop type process (i.e. we get a commission of some sort, we do consultation of some sort, we have negotiations and then we sort of believe somehow we'll just leave this whole issue of the Constitution behind). And then it's nice and easy for us as elected Members, and then the community more importantly, to simply pick up where we left off, even if there's a significant break in time, which happened this time, for example, in which the Government found out there were some issues like the qualifications to stand for election which last time around they felt had support in 2002, this time around was met with strong resistance.

One of our thought processes would be, sir, that perhaps we need to think about whether or not the Constitutional Secretariat be made a permanent feature of our landscape and an independent feature of our landscape, with a mandate to have ongoing education and development of programmes, especially for programming within the schools, et cetera, so that — because long-term as a country this creature called the "Constitution" should always be alive. And whatever we can do to make the public more informed, more appreciative of what their Constitution is should be something that we should all embrace, and it would make this process a whole lot easier on us when we go about trying to make changes and so that you're not always starting, seemingly, from scratch.

And so we throw that out there because we do believe that that would be a very important part of our way forward as a community.

**HON. W. MCKEEVA BUSH, OBE, JP (MEMBER OF UDP, LEADER OF OPPOSITION):** Mr. Chairman, I'm glad that we have had these meetings and, most importantly, that it has been made clear what we have been saying on the greater points on the Governor's power, and now there should be no more talk about scare mongering in these areas. The UK delegation, yourselves, have been very clear on what will lead us to be an independent country.

And to take up on the point of my colleague that if the Government is going to use the Secretariat and other time and money that rightly belongs to the people of these Islands, we would like the same to be extended to us to be able to educate people on this matter further, that we should be given the wherewithal to do the same. We have heard and you have asked us often about consensus. Well, we need the same funds to be able to do that and to be able to do our part in the educational process.

There is, Mr. Chairman, I would like you to know, much concern about the education on and about the Constitution, and it is something that we are recommending and would appreciate you considering that a constitutional provision is included for a constitutional commission.

All my life I've been a nationalist, but I always believed in sensible nationalism. You have heard talk about independence. You have seen the headlines and what Ministers have had to say. Any country moving to that level has to be prepared for its serious consequence, and I certainly, sir, don't believe we are ready.

I posed the question often: Where is the academia, where are the institutions, and how do we maintain the trust and confidence of the international community that would be and is so necessary to our existence? There is need for a nonpartisan body that continues through a well thought-out programme of education, and what the Constitution is all about, and about any further need for modernisation, and that body must educate about the pitfalls and dangers of an independent Cayman Islands. We would do right and you would do right by posterity if we create such a commission for the education of our people. So, sir, I hope that you would take our suggestions up on this matter on a constitution for our homeland.

I want to give you thanks for your time, and that of your delegation, on behalf of our group and hope your time with us was an enjoyable one. And I know you know by now that there is a whole lot of different between 2002 and what obtains today in the minds of at least legislators if you haven't heard otherwise. I certainly am ... and our appreciation is also extended to the other delegations as well for their input and to be able to be educated somewhat on the thoughts of what those delegations had to say.

I want to also thank Mrs. Pitcairn-Lewis for her free advice.

[laughter]

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, I hope that you would take up the suggestions of having the next meeting in Cayman Brac. You would have to decide whether you're going to open that meeting or not, but that's something that you could talk to the Secretary of State about, and my advice is if you go to Cayman Brac that you should have considered that matter. I would hope — I know this, that the Bracers are welcoming people, and they appreciate when anybody from the UK come to talk to them. They are very fierce about their connections, and they would give you a good welcome unless you misbehaved somehow, and I don't see that. But I can tell you this: you will hear from them forthrightly, if not in a formal setting, about their wishes for one man, one vote, one country, two systems.

And so we thank you, and I hope you understand that we are all trying to make a better Cayman, better Cayman Islands. Some people puts their views completely different from others. At the end of the day, I believe that that's what we're all trying to do, make a better country, and I do hope that the UK will take our views into consideration.

Some of the stronger points that we have argued deeply and hard about, if you go to referendum, perhaps this is what should be put to the people, and then the UK can know without politicians just saying so, where the people stands. Particularly the Governor's powers and the one country, two systems, and the entire matter of one man, one vote are serious — serious issues for this country.

I want to thank you, sir, again, for your kind efforts in helping us to reach the points we did. Thank you kindly.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** McKeeva, that's fine. And I'd like to thank ... someone else wanting the floor.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Yeah, Mr. Chairman, I guess it's votes of thanks, but on behalf of our president of our Chamber of Commerce, Mr. Tibbetts, and the council, and certainly the membership, we'd like to thank you for your very abled chairmanship of these talks. It's been very professional and I think it reflects very well on the process.

And we'd like to thank certainly the Government and certainly the Opposition for allowing our organisation democratic opportunity to express its views around this table, even though my interventions have been very brief and to the point, and I'd ask the United Kingdom delegation to take a careful look at our position paper when you return to London so that you can see what our members regard as important issues in this discussion.

Thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Thank you. Pastor Al.

**PASTOR AL EBANKS (CHAIRMAN OF THE CAYMAN MINISTERS' ASSOCIATION):** I want to echo Mr. Pineau's sentiments; again, to both the Government and the Opposition; the other NGOs that have participated; and to your good self. And just to say that it's been an honour for us and we trust to — on behalf of the folks that we represent we trust to be able to continue to be a positive, as much as we can, voice in this process because at the end of the day this is about what is good for open, transparent accountable government, and I believe that everyone around this table that that is our ultimate desire. And we thank you for allowing us to be a part of that process and we look forward to hopefully what will be a good outcome for the benefit of the people in the future.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much.

Pastor Shian.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH DAY ADVENTISTS CONFERENCE):** , Mr. Chair, I'd like to join the chorus of gratitude for the privilege for us and the members of our church to be represented here. I want to thank the Government for the invitation and the support, I want to thank the Opposition, and I also want to just thank you, sir, you've done an impressive job indeed, and for the enlightenment that was shared here. I think we leave here with much clarity on a number of issues, and particularly some satisfaction as it relates to the Bill of Rights and quite a lot of clarity on that. And I think we've had great progress here, and we pray that the Lord will continue to give us wisdom as we work together for a final document for all the peoples of these Islands.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Thank you very much.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, certainly the Government would wish to express our own appreciation to you and your team, first of all, and also to all of those others who participated, the Opposition and the other NGOs.

I remember when we first talked about restarting the engines to see where we could get with modernising the Constitution, and your statement to me immediately was: Sorry, I can't help you because I'm

retiring in three months. You remember that? I am very happy, sir, that London saw it fit to hear our request and that you saw it fit to allow yourself to be retained as a consultant to see us through this process.

I certainly had a lot of confidence because of having experienced you before when we were dealing with the process, and certainly it hasn't been any less than what we expected. We know that we don't always see eye to eye, but we are always able to talk the matters through and get somewhere with it.

The Government has spent a lot of time in doing our best to try to assist with coordinating efforts and making sure that the public education process was one that could be as thorough as possible. And in that light I'd also like to say a very special thank you to Susan and her team from the Constitution Modernisation Secretariat who have really worked hard, and they have worked hard not for us, Mr. Chair, but for the country. And while some people may have the view that they are working on behalf of the Government to promote the Government's position, that was not their remit, that is not their remit, and certainly they themselves I know will continue to do the job until at least for the time being we see this process through, and then I'm sure we'll see what happens from there.

And, Mr. Chairman, I think what is important that has transpired during these four days of talks is the fact that while we knew from the very beginning that we would not be in agreement with everything, that is all of us, it was important for all positions and perspectives to be put on the table so that all of us would have the benefit of what those thoughts are. And that includes the UK's thoughts, which we now have a clear understanding of and will be in a much better position from hereon in to be able to gauge what positions can be unified among ourselves so that we can be moving the process forward. What I'd like, Mr. Chair, is if you would in your ending note show us how you see the direction forward so that everybody can be clear and we can know what to look forward to in the days and weeks ahead.

I'd like to thank all of my colleagues, and a very special thank you to Professor Jeffery Jowell, who while he is retained by the Government, really has done some extremely hard work to assist us in the preparation of the various documents so that we could move the process forward as fast as we possibly could get there.

It is up to us now once we get a draft back from you, and on behalf of the Government I give the commitment that we will be quite willing to sit and talk the whole process through, all of the various points, the easy ones and the difficult ones, and do everything possible to gain consensus so that we can try to complete this process as quickly as possible.

Thank you once again, Mr. Chair, and your team. Thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, thank you. Thank you. Thank you, first of all, all of you for your kind words for me and my team, and we certainly appreciate that.

It's been a hard four days in which we've all had to work pretty hard. And attend — attending four days in a row I know is difficult, more difficult for you here than it is for us, who have come here especially for it because you have many other things to do. So I do appreciate the time that you've been prepared to put into this process, which — and it was I who asked for four days, so it's my fault. But I'm very grateful that you took the time to come and participate and make valuable contributions all of which have been helpful to us. I said on Monday in the opening session that forbearance was key, and for a very great deal of the time there has been forbearance and tolerance and a readiness to listen to other's point of view and that is the key to moving this thing along successfully and I'm grateful for that.

I would like to make — say a special thank you to Barbara and her team for making the arrangements that we've had in the last four days which I think have been comfortable, efficient, delicious, and apart from one great thunder clap this morning which was I assume the good Lord speaking to us, or perhaps warning us, it's been a very, very nice few days for us.

And I'd also like to thank the sound technicians and note takers, all those who have to sit and listen to us grinding on this stuff, and they've been very supportive. Thank you very much.

As for the way ahead, I — as I said yesterday, we will go back and report to our Minister how this round went, and I hope that she will be encouraged. I will then work as quickly as I can to produce a text which I hope will be nearly complete, but there may be some gaps in it of the kind that we mentioned earlier where I won't feel able to draft something because it's better to get some kind of — your side on things like people-initiated referendums and so on. But other than that I'll try to do a complete draft with indications, clear indications, of points where, in my view, we have to come back. And we've been taking notes of what we think is pretty much consensus on already and those cases where there was not agreement and not consensus and we'll need to return to them.

And I'm actually rather sorry that the Human Rights Committee have gone because I could have reassured them again that some of their concerns will be in that list.

I hope that we'll be in a position to send that document out in two or three weeks time, and that the object of that document will be to form a basis for work at the next round.

And the Leader of the Opposition mentioned Cayman Brac, and there may have been a bit of menace in there, I'm not quite sure, but I have never been to Cayman Brac and I would very much like to go, and I think it would be great if it was practically possible to have some meetings there.

We are thinking of the very beginning of December, the very first few days of December. And I'm not sure how long we should plan for, but perhaps three days, perhaps we don't need four days on that round, I'm not sure, but I would have thought it would be sensible to look for three. I asked for four this time because I wanted to make sure we got through the whole agenda, as it were, and we have done that and I'm very grateful to you for cooperating in such a way as to achieve that objective. But I think that next time we might be able to make it three, but if you would prefer four, that's fine with us. I — my main concern in terms of mechanics is to make sure that we have enough time to deal with some difficult issues, and it's much better to factor in more time and finish early than to factor in less time and leave things outstanding or the surface only skimmed.

Assuming that we can get a good deal of progress at that meeting, we will then need to make a judgment where it's possible that we could reach a deal at that meeting with forbearance and intelligence and hard work. But if not, we would need to form a judgment on how far we were towards achieving a final agreement. And the objective always is to try to narrow down the points of difference to a manageable number, which if necessary would need to be taken to our Minister for political decision, with your participation of course. That's the way ahead as I see it.

I think that I have been — I think that we've actually made good progress this week, better than actually I thought we would. I was somewhat skeptical that we wouldn't get through the whole agenda at all; we managed to do that. I rather feared that we'd bump into big hurdles and get stuck and not find a way over or around them and that has not happened, not happened partly due to my parking things when they looked more difficult, but I think — I hope that that was the right thing to do.

And my objective is, as always, to try with as open a mind as possible and with as much ingenuity as our team can come up with, to try to find arrangements for a new constitution which will be an improvement, a step forward from the current Constitution which is now old and in many respects outdated and — but which in the end would be acceptable, as a package, as a whole, to us both — both the Cayman Islands Government, Opposition and Legislative Assembly and other interest groups and the UK government, but above all will be acceptable to the people of the Cayman Islands, and that remains the objective towards which we shall work.

And with that, I thank you once again. I look forward to seeing you again next time around and all the very best to you.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Mr. Chairman, just one other point if I could.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Sure.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** What is the plan to inform the community about these talks? And obviously from our perspective we would like to inform, you know the membership of our organisation. So I'm just trying to get some guidance from you as to the way forward for us and how we share this information with others.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Yes. Well, there will be some media briefing tomorrow which I will take part in, and there will — and of course it's entirely up to you how you report the matter back to your organisation. We certainly cannot insist on maintaining everything that was said within these four walls as confidential. That would be entirely unrealistic to do that.

All I would plead is that if we are going to make a serious effort to achieve a good result, a good result for the Territory as a whole and a good result with which British government will be happy also, then, as in any negotiation, please respect the views of the other parties and their — and remember that things that are said or positions that are stated at a particular time may be easier to adjust, trim, compromises to be found if that basic respect of confidence is kept. By contrast, if it is not and if statements are made which — which any sensible person would keep in confidence, then, positions will harden and it will be impossible — not utterly impossible necessarily, but much more difficult to reach a sensible solution. But I can do no more than that I think. I mean I think it's a matter of common sense in the end.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, lest I forget and lest I be accused, it would be remiss of me if I didn't thank His Excellency the Governor and our Attorney General for being here and for participating. My apologies that they had slipped me, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, mine, too.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** But no, thank you very much, and I appreciate they're both, like everybody else, very busy men indeed, and so it was very helpful to have you here.

All right, well, with that let's adjourn.

**ADJOURNMENT**