



Constitutional Modernization Initiative

*Verbatim Transcript
of*

**Public Consultation Meeting
Held on
Monday
11 February 2008**

**North Side Civic Centre
Grand Cayman
Cayman Islands**

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MONDAY, FEBRUARY 11, 2008
CONSTITUTIONAL REVIEW SECRETARIAT MEETING
NORTH SIDE CIVIC CENTRE

WELCOME

Hon. D. Kurt Tibbetts (Leader of Government Business): Good evening everyone. And welcome. Thank you all for coming out to this, our fifth in our series of meetings on the Constitutional modernization process.

With us this evening, we have my three elected colleagues in the Cabinet. Unfortunately, Minister Eden had a prior commitment and was unable to make it this evening. If he does make it he is going to be late.

We also have with us Cabinet Secretary, Mr. Orrett Connor. And, of course, the Director of the Secretariat, Mrs. Suzanne Bothwell and her team. Suzanne is going to be doing the presentation tonight.

It won't take long before we go right into the presentation on the various issues, but just a couple of things before I do that, I forgot . . . Suzanne, forgive me. I introduced you but I didn't introduce your team.

Along with Suzanne is Mr. Christen Sukoo, who works in the Secretariat. We also have along with them Mrs. Doralyn Stewart, Ms. Yvette Cacho, Mr. Jason Webster.

Forgive me sir, what's that name again?

[Inaudible]

Hon. D. Kurt Tibbetts: And [?] Bodden.

I am not so sure which one to use.

Anyway, that's the team. They have been doing a wonderful job of facilitating all of these meetings. I certainly am sure that they will do the usual justice tonight.

Just a couple of points before Suzanne starts the presentation. Under each chair there will be found two documents: *The Cayman Islands Constitution a Reflection of Who we Are* (the first document), and then the Explanatory Notes to that. The *Summary of Proposals* is the first document and then we have accompanying Explanatory Notes.

Now, just so that you will be very clear, regardless of what stories you will have heard prior to this, these documents are simply documents that have been prepared and published by the Government as a starting point for the discussion, which we are into stage 2 of the whole process, which is a public education and the public discussion phase.

These documents simply were prepared, us having sat down taking the best advice that we could take having had the history of the process being started for several years but not being completed.

So, for it to be clear, the stance that we are taking is that we are not starting this whole process from scratch because we actually had a draft constitution prepared by London in 2003 and sent back to us after having gone through a series of public meetings and also going through a series of negotiations with London.

Now, we know four years have passed since that time, so we would not expect for what everyone considered to be the majority view at that point in time, with so many different things happening within a four year span, for all of the positions that were taken at that time to be exactly the same today.

So, what we have done is we have simply taken a starting point to stimulate your minds to stimulate your thought processes so that you can look at what we have prepared and say *Yes, we like this; Yes we think this should be the case*. Or, whenever you get to the point where there is an issue you do not agree with then you say so. Because the whole objective at the end of the day is to be able to know that whatever the negotiating team goes to London to negotiate on behalf of the people of the Cayman Islands, that what we present to London will certainly reflect the wishes and aspirations of the majority, if not all, of the people of the Cayman Islands.

The only way for us to know that is to be able to hear from you what your thoughts are.

Already there are a couple of issues in here that we have heard several people during the course of the meetings that we have had thus far say they prefer it another way. And that's fine. But unless we hear that, we won't know that.

So, I don't want you to think for a minute that what you see in these documents is the position we expect to be the end result after all of the process has taken place. Nothing like that. It is simply a starting point. And it's important that everyone appreciates that because if you don't appreciate that, some people take the view that this is exactly what we say we want, this is what we are trying to ram down people's throats, this is what we want to happen in a hurry and that is what we want to go to London to negotiate. And that's not the case.

By the way, let me state categorically for those of you who are here tonight: There is no such thing in any one of our minds about seeking independence. It has been established—and we are totally in agreement—that the vast majority of the people of the Cayman Islands at this point in time do not wish to change the Constitutional relationship that we have with the United Kingdom. And we wholeheartedly agree.

But what we do say, and I think as we talk things through people will agree with us, is that we have a 1972 Constitution, which has been amended slightly from time to time over the years. But 35 years have passed since we've had that Constitution and we have kind of grown up. Life has changed. The whole country has changed. The population base has changed. The way we do business has changed. And there is tre-

mendous growth that has gone on. And at this point in time we believe that we need to have a very careful look at our Constitution, understanding that we want to retain the Constitutional relationship that we have with London; but at the same time seeking some more autonomy because we believe we are grown up enough now that we can handle some more of our affairs than we are allowed to by way of the Constitution at this point in time.

That, in a nutshell, is what it is all about. But, certainly at the end of the day, we do not want to go to deal with what we feel; we want to know that as your elected representatives that what we go to negotiate with London as positions on the various issues with any changes that we may seek reflects what the people want. That is the entire exercise.

So, I am going to turn over to Suzanne now and I am certain that she will be very informative and she will tell you how and when to ask questions. But, again, on behalf of my colleagues, I want to say a very special thank you for taking the time out tonight to show the interest in going through this process. I am certain that at the end of the day we will have a very productive meeting.

Thanks once again.

Suzanne.

Mrs. Suzanne Bothwell (Director of Constitutional Review Secretariat): Thank you, Leader of Government Business.

We would just like to start the meeting with prayer this afternoon, as we have done at other meetings.

PRAYER

Mr. [?]: Let us pray.

Father God, we come before you again this evening seeking you Lord. We ask you again Lord to open our eyes and our ears. We ask you again Lord to lead us. We ask you again, Father, that we will make these decisions based on what is right according to you Lord; not what is right according to us.

Lord God, prevent us from making decisions out of fear, but out of courage, out of knowledge and wisdom and understanding of the path which you would have us take.

Lord God, be with us now and forever.

In Jesus' name. Amen.

Mrs. Suzanne Bothwell: Well, good afternoon everyone.

Thank you, Leader of Government Business, for your introduction.

I would just like to take us straight into the topics for discussion for tonight. We are pretty much going to be going through various areas of

discussion in the *Summary of Proposals* and really getting down into the nitty gritty of things and reasons behind them.

Before we actually begin doing that, I just wanted to deal with some preliminary issues, perhaps some starting questions for us to consider. One is, Why are we going through this process?

I think the Leader of Government Business gave a pretty appropriate explanation as to why it is we in the Cayman Islands are undergoing constitutional reform when we look at our current Constitution. But we are not operating in isolation; this is an exercise that a number of other Overseas Territories have been undergoing over the last few years.

It all stemmed from the 1999 Foreign and Commonwealth White Paper called *Partnerships for Progress and Prosperity*, which pretty much indicated the Foreign and Commonwealth's view on its relationship with the Overseas Territories. Part of that included a desire to revisit the constitutional arrangements between ourselves and the United Kingdom so that we are in a relationship that is more of a partnership as opposed to one of the authority figure who holds most of the power telling us what to do. That is basically, you know, looking at circumstances of the day—from 1972 moving straight up now, to 2008. And that is more than 30 years of development in the Cayman Islands.

Just to give you a brief overview, some of our contemporaries who have undergone constitutional reform would include, for example, the Turks & Caicos Islands. They have successfully negotiated their new Constitution based on what they would like to see as a jurisdiction. The British Virgin Islands also successfully negotiated their Constitution, which it is really a reflection of the new relationship, the modern relationship, the mature relationship between their Government, the Governor in those jurisdiction, and the United Kingdom. And at no time has there been any statement about independence by the United Kingdom in relation to theirs, and the situation is the same in Cayman. We are but part of this process. We belong to a club. And it is now our turn to really deal with this issue.

We have been attempting to go through constitutional reform for at least seven years, since the 1999 White Paper. I think it is perhaps the time now for us to get down to the meat of the matter, put aside the political rhetoric and really look at the particular issues at hand for us to consider when we are looking at how can we as a country govern ourselves in a responsible and effective manner.

In doing that (I will just move to the next slide) we are looking at really examining relationships under our Constitution. The Constitution (a copy of which . . . everybody should have a copy of this document here). This is actually a copy of the current Constitution and what the Secretariat has done is we have actually requested an answer companion guide. So if you are interested, at your own leisure look at exactly what our Constitution entails. What is this document all about? It will perhaps

give you greater context later on in understanding exactly why it is we are looking to revisit this particular document.

Now, with constitutional revision for the most part we are looking at the relationships between local Government, meaning the government that we elect, and the United Kingdom. There has been a proposal for a move to full Ministerial Government and we will be discussing that later on. And also the relationship between the citizen and local Government.

In examining these relationships I think the Leader of Government Business clearly stated that they are starting from a position that we wish to remain an Overseas Territory. And that is very appropriate in terms of the exercise we are going through, that we are able to discuss constitutional reform within the context of remaining an Overseas Territory.

So, if someone tells you, if we discuss constitutional advancement we are one step to independence, we are moving to independence, I do encourage you to ask them why they feel that way. What sort of indication do they have? whether through past experiences with other Overseas Territories' or past experiences that would give them that sort of indication. Because in this document you will see that since 1972 Cayman has undergone a tremendous amount of constitutional reform that perhaps we, as members of the public, have not had a great appreciation of because we have not traditionally been involved in this process. So it is part of our advancement in terms of local Government allowing local Government to function properly.

It is, of course, something that was raised in the Constitutional Commissioners in 2003, 2002, in their report on the political parties, but you know they acknowledged that, yes, we need to move forward as a country in terms of our constitutional reform, but doing so from the premise that we were to remain an Overseas Territory.

Now, one of the topics at hand, and I will direct your attention to page 9, is that of one person, one vote.

ONE PERSON, ONE VOTE

Mrs. Suzanne Bothwell: And we see that that was actually a topic of discussion of the first airing of our radio show today, One Person, One Vote.

You may ask, Well how is this a constitutional issue?

Well, our current Constitution establishes the size of our Legislative Assembly. It currently states that we have 15 elected members. It also allows for the establishment of a Boundaries Commission, Electoral Boundaries Commission, which allowed I think in 2003 a Commission was set up to determine electoral boundaries in preparation for this new electoral system.

And the Constitution also established that we would have 17 electoral boundaries amongst the three Islands.

Now what is missing from these components is that we have not added those two extra seats to allow us to actually move say, in May, to a one person, one vote, single-member constituency system. As far as I am aware, I am not sure if the actual boundaries have been debated in the LA or settled based on the report of the Electoral Boundaries Commission.

So, that is why the people ask, Are we going to move to it next election? And the answer is, unless we actually undergo constitutional reform, we will retain the electoral system that we currently have.

Now, this was a constitutional issue in the last 2003 discussions and it is presenting itself here again today. The members of the public, you members of North Side, are being asked to make your statements and make your voice known as to whether you think that we should move forward to a single-member constituency electoral system and one person, one vote.

There has been a certain proposal made in relation to Cayman Brac, which we read on the requisite page. It speaks about their particular circumstances; their desire, perhaps, not to be split into two constituencies and what a compromise is in relation to that. But I think that this is something the government is discussing with Cayman Brac.

But the larger question for residents of North Side is, Do you think that we should remain where we are now? I know that you do, you have single-member constituency.

Yes, Mr. Ezzard.

Actually hold, on, I will have to ask for the microphone to be provided to you. We are recording for Radio Cayman and this show is going to be replayed.

Mr. Ezzard Miller: [Inaudible] I am agreeing with what's being proposed.

Mrs. Suzanne Bothwell: We will probably take the questions as they arise. It depends on the type of crowd that we have and what their views are, whether they want to ask questions. Usually we wait until the end, but since we have actually broken the meeting up and based on the topic issues that people can ask questions and make comments.

Yes. But if you have a question, just raise your hand and our staff member will provide you with a microphone so that you can ask your question.

Okay, Mr. Miller.

Mr. Ezzard Miller [Question #1]: It goes without saying that I support one man, one vote, single-member constituencies. I've lived in one all my life.

The question I have is that the current 1972 amended Constitution provides already for the Electoral Boundary Commission and from my knowledge the Commission actually met and did establish some boundaries.

The question I have is, We know that it is needed, we know it is urgent, we know one man, one vote is the correct way to go. Why can we not put that in place before the next election?

Mrs. Suzanne Bothwell: Thank you.

Hon. Alden M. McLaughlin, Jr. [Minister of Education, Training, Employment, Youth, Sports and Culture]: The question is really whether or not we have a mandate to negotiate with Her Majesty's Government for a single-member constituencies.

The issue of single-member constituencies is but one component of an overall package that we have to reach an agreement with with Her Majesty's Government. But before we can even get to the negotiating table, because we are committed to the referendum process, we have to get the say so from the electorate to go and negotiate on those terms.

So, I don't think we could really walk down the road of reestablishing an Electoral Boundaries Commission and re-configuring the boundaries, which is what we would have to do given the passage of time, before we actually got that mandate.

Mrs. Suzanne Bothwell: Thank you.

So that is something for, I guess, for North Side residents to consider is, you know, I mean this has been a longstanding topic. I do know that North Side has technically operated in a somewhat single-member constituency basis. But the issue at hand is whether you think that the country at large should be operating under this new electoral system because that is what, at the end of the day, we would have to discuss with the United Kingdom as to what it is we want as a country in relation to our electoral system.

There have been suggestions that we phase in single-member constituencies in the Cayman Islands. Some of the responses to this have been that that raises questions of inequality. The very reason why we are moving away from the system that we currently have is because we have situations where some voters exercise their only one vote, their right to one vote, whereas other voters exercise up to four votes. So that is a system that we are moving away from. The basic principle that each man should have equal numbers of votes, equal vote.

We are looking at the package of reform proposals. I really would encourage members to look at them individually. Look to see what you support, what you have concerns over, because at the end of the day what the government is asking is for your voice. You need to tell them what you want so that they can go ahead and negotiate on your behalf.

We are going to move straight into perhaps one of the most major topics in the *Summary of Proposals* and that will deal with the issue of full ministerial Government.

FULL MINISTERIAL GOVERNMENT

Mrs. Suzanne Bothwell: If you take a look at page 5 of the Proposals, and this issue actually spans item D, the Executive; E, the Governor's responsibilities; and goes on to F to a certain extent, into Officers.

One of the first statements that has been made in relation to full ministerial Government is that this is a question of basic democracy. You may ask, Well, why is this a question of basic democracy? What does full ministerial Government mean? How does it relate to democracy?

What it means is basically in our Executive, in our Cabinet, and in our Legislative Assembly, there sits not only Elected Members that we as voters put in to make law, to carry out and enact policies on our behalf, but we also have a system where there are Official Members who are hired through the Civil Service to also sit, for example, in the Legislative Assembly as voting members and who sit in Cabinet as members who help make the decisions, the policies about what Government ought to be doing.

The proposal is that Official Members should not be members of Cabinet or the LA. And these will include the Chief Secretary, the Financial Secretary and the Attorney General.

Now, on Friday we will be discussing this topic on our radio show on Radio Cayman. And just for the very purpose of, you know, why Official Members were put in the LA in the first place. Those are perhaps questions that some of us who were not around at that time may have. What is their purpose?

For example, as non-elected officials should they have the same standing or footing as elected officials who have been directly . . . they have had to go through this democratic process to allow them to make decisions on behalf of the citizens of this country. So those are some of the issues at hand.

This is not a new issue that has been raised. It has been raised before in the 2002 Constitutional Review. And it is an issue that raises itself in other jurisdictions. We find, for example, in the British Virgin Islands (which just recently negotiated their Constitution) this was an issue in their jurisdiction also. And what they had done, as a matter of fact, they have one Official Member in their Cabinet, and that is the Attorney General who, under the Constitution, is the principal legal advisor to government. However, even in his position there, he is not a voting member.

So the question for us to consider is, Do you support full ministerial Government?

What are the reasons for it?

Also, why is there a call to move away from the current system that we have?

I don't know if perhaps this is a good time for some of our prior Members to perhaps discuss some of their thoughts about this and perhaps reasons why they are in particular recommending a removal of Official Members from Cabinet and also the Legislative Assembly.

Hon. Charles E. Clifford [Minister of Tourism, Environment, Investment and Commerce]: Thank you very much Suzanne.

I think the real question for the audience to consider is when you consider the makeup of Cabinet, the current makeup of Cabinet; you have five Elected Ministers and three Official Members of Cabinet. And the Cabinet, of course, is chaired by the Governor.

You don't have an opportunity as citizens of this country to hold any one of those three Official Members accountable. So, whether they perform poorly or excellent you really cannot have a say in what happens in relation to those individuals.

The question is, Is that something that you would want to continue to happen? Or is it more democratic—which is our view—that the entire Cabinet should consist of Elected Ministers where you would have an opportunity every four years to decide whether or not those individuals are performing to the level that you expect. And if they are not, then you have an option of removing them. You don't currently have that option with respect to the Official Members of Cabinet.

So, from my point of view, I think that really is the crux of the matter and the thing for the audience to consider. So, from my point of view I would like to hear feedback from the audience as to your views on that. Perhaps before we invite views on that, some of the other Ministers may wish to comment.

Hon. V. Arden McLean [Minister of Communications, Works & Infrastructure]: I think it has been established a long time my position 1) on single-member constituencies; and 2) on full ministerial government.

I, as a citizen (forget about me being a Minister for a minute), cannot elect three members of Cabinet—and they help make the decisions that govern me as a citizen. No accountability to me. All accountable to the Governor. And that's not fair.

I am expected (now let's turn back to me as a Minister—and Ezzard has been there) I, as a Minister, go in there and I am accountable to first the people of East End and generally to the people of this country. And anything that I do or say I am held accountable for. Those three civil servants sit there forever and ever and ever and then another day and no one can move them.

But they dictate your destiny. Whether they do it right, wrong, or indifferent, they dictate your destiny. And that should not be. That

should not be. People that govern you should be elected by you and accountable to you.

Mrs. Suzanne Bothwell: Thank you Minister McLean.

The next area we would like to raise in relation to the issue of full ministerial Government . . . sorry.

Oh, we have a question?

Oh, absolutely. I'm sorry. My mistake. Sorry.

A Member of the public [Question # 2]: Thank you.

Does the Governor have a vote too?

I understood you saying it would be five Members and three Official and the Governor. So, can the Governor vote there too?

Because it looks like we don't have much to answer if you only got small to answers . . .

Hon. Alden M. McLaughlin, Jr.: No, the Governor doesn't vote.

The way the system operates . . . he chairs the meeting. He controls the agenda; he decides what's on the agenda. But he doesn't vote.

The Official Members put forward positions, the Financial Secretary, the Chief Secretary and the Attorney General, relating to their Portfolios. But the Governor (and Ezzard can attest to this) meets separately with them and essentially gives them their marching orders before each Cabinet meeting.

On our side, we can outvote the Official Members, but we never really come to that most of the time. We haven't come to that since I've been in office, actually, because they know the numbers are different.

But then it's a question of whether or not the Governor accepts our advice. Constitutionally he's bound to accept our advice on virtually all matters relating to domestic issues; and if he doesn't, he has to obtain the consent, essentially, of the Secretary of State of the United Kingdom.

So it rarely comes to that, but the UK exercise is real control over what happens, because if the Governor doesn't want something dealt with he can essentially say *I'm not putting it on the agenda*. So it never formally gets before Cabinet.

We say, and I think most people will agree, that at this stage of our development, of our maturity as a country, the people who you elect ought to have the ability to bring to Cabinet any matters which affect the affairs of this country and to have been properly debated, discussed and voted upon. We really should not be in the hands of the United Kingdom to decide whether or not we can even discuss a matter which affects these Islands, which is Constitutionally where we are now.

A Member of the Public: Okay, that sounds better to me. I agree with that, the position with the Official Members.

Mrs. Suzanne Bothwell: Thank you.

Mr. Ezzard Miller: But Alden, is it worse than that? Because my experience is that you really don't take a physical vote of four plus three. The Governor simply interprets what the discussion leads . . . and he kind of goes in his little room back there and kind of decides well the Official Members rule because there is not a physical vote where everybody votes Aye or Nay. They are bound by the doctrine of collective responsibility, which again complicates matters.

You know I am for taking Official Members out. Let me make that position clear.

[laughter]

Panel Member: That hasn't changed since 1972!

Mr. Ezzard Miller: But it is really compounded under the doctrine of collective responsibility because if there was a situation where your four votes could override their three votes, but in my four years of Executive Council, we never had an opportunity to vote. After the discussion takes place the Governor kind of just decides, *Well, okay, we will go this way*, because he believes that's the majority decision and there we're all bound by collective responsibility.

And you have these three people in there who he can horn-swoggel to go whichever way he wants because they are his employees. They are not employees like you are of the people of the Cayman Islands. And they can come in there and put a position across and he can interpret that their position is the correct one. And you as the duly elected members of Cabinet, or the people's representatives, really never get a good opportunity to air your views or to get the views of the people put across.

In my opinion, it's dysfunctional if there is disagreement. The more we get educated Caymanians the more disagreements with these authoritative forces we are going to have. And the only how you can get something on the agenda that the Governor doesn't want to put there is to sneak under the line in your business—and we all know how to do that. And then he has to deal with it, but again he can deal with it in a very nonchalant way because there is not a documented paper that you can rely on and stuff like that.

So, I support the full ministerial form of Government.

Mrs. Suzanne Bothwell: Thank you, sir.

A Member of the Public [Question #3]: Thanks.

Two questions.

Bearing in mind that the Governor clearly is the king of the castle, sets the agenda, and really dictates policy for the country, it would ap-

pear, would this Government consider publishing a synopsis of Cabinet minutes whereby the general public can be made aware of the fact that the Governor himself is dictating policy of the day? Just a synopsis, not the specifics of who spoke and what was said; but just essentially a synopsis of the discussion points and essentially let the general public be made aware of whatever happened, happened as a result of the Governor's decisions and clearly not of those individuals that we *thought* we were electing to run the country.

That's the first question.

Hon. D. Kurt Tibbetts: Let me answer that quickly, Johann. That is not how it is.

That is not how it is. The truth of the matter is that while he is the president of the Cabinet, my experience . . . the Governor does not try to tell us by and large on a daily basis when we meet in Cabinet and dictate policy to us. He does not really go that far. But he is the Head of State.

I just don't want you to go that road when that is really not obtains.

So publishing minutes will not show what you are thinking. It would simply show that Cabinet made that decision. And as Ezzard said earlier, it is a collective responsibility. The Governor doesn't vote really.

A Member of the Public (Question #4): Okay. Thank you for clearing that up.

The second point is the role of the Cabinet Secretary. If the Governor is ultimately responsible for controlling two or three individuals in Cabinet, and also responsible for setting the agenda, would it not be fair for the Cabinet Secretary (a sort of independent body) to be responsible for the general administration of Cabinet meetings whereby both the Elected Officials and the Official Members are able to share equally in putting that agenda together?

It seems almost one-sided whereby the Governor sets the agenda and can be somewhat dismissive of matters of State when the general public are assuming the four to five Elected Officials are really the persons who are setting the course for the country when from what I am hearing tonight (and thank you for clearing it up) it might be completely different.

Hon. D. Kurt Tibbetts: I hear what you are saying.

If I might just quickly add, and you can add . . . first of all, as of now, the Cabinet office headed up by the Cabinet Secretary (who is here tonight) is under the Office of the Leader of Government Business. We were able to orchestrate that. But what also obtains now (as you have heard) is that His Excellency decides on the agenda. Elected Ministers and the Official Members of Cabinet have their deadlines for the papers they are bringing to Cabinet. They pass them through the usual channel,

through the Cabinet Secretariat within the deadline. But the Governor actually decides what goes on the agenda.

And we take issue with that—not a personal issue with it; but we take issue with that system. The truth of the matter is that as of now he has the ability to not put a paper on the agenda for a decision to be made in Cabinet. And that cannot be right if the elected Ministers are the Ministers who are responsible to the people of the country and who will be making the decisions with regard to policy and thereon to the Civil Service to do the implementation.

Minister McLaughlin, I think you wanted to add to that.

Hon. Alden M. McLaughlin, Jr.: Yes, I just wanted to explain a little bit what our proposal will do in terms of a change in the way things are run. It comes down to (as Suzanne said) a basic question of democracy.

Should or should not the Elected Ministers have control of the agenda which relates to the setting of policy and implementation of policies which they have campaigned on, which they have been elected and given a mandate to carry through? That's the essential question.

We say the answer to that should be, yes.

And in order to ensure that, Cabinet ought to be chaired by the Leader, or whatever we call him—Chief Minister, Premier, or whatever—that the Leader should set the agenda and decide what goes on it and what does not go on it; that there should be no Official Members in there because they were not elected. They are not accountable to the people. They are not responsible to the people in the way that Elected Ministers are.

And then the Governor should be entitled to attend and hear, because Her Majesty's Government obviously has an interest in what is going on. [He can] make his notes, send his report to the UK in the usual way. And, if there were some extraordinary carrying on, something that he could or should exercise (some of his emergency powers or special responsibilities), then fine. But absent any of those extraordinary events that he sit . . . if he wants to make a contribution, fine. But he has no vote and he has no role as chairman. That's essentially what our proposal is.

It is about more democracy. It is about making your elected Government more accountable to you.

Mrs. Suzanne Bothwell: Thank you, very much for those explanations.

Again, as we said, this is a question of democracy. And this is an issue that we have seen in a number of our Caribbean neighbors, Overseas Territory neighbors, have to deal with. As a matter of fact, the very issue of setting Cabinet agenda . . . apparently it is a very live and practical problem that is being faced. We see, for example in the British Virgin Islands, what they were able to arrange. We don't know what their negotiating position was or what they felt comfortable with. Was it that there

should be a separate steering group for the Premier, the Governor and the Cabinet Secretary to meet to set Cabinet agenda?

That is very different from the position we have in our Constitution right now, which is that the Governor presides over Cabinet and he sets the agenda. At the end of the day what is being asked is, you know, Cabinet implements Government policy. How is that policy supposed to be implemented without any interference, or unnecessary interference or hindrance? Because if the Government cannot even say what is on the agenda to be discussed on a weekly basis, the question is, Why have we put them there? And what can we do?

The second topic dealing with full ministerial Government is looking at the relationship between the United Kingdom and the Cayman Islands directly. Not necessarily only through the Governor, but also directly with the United Kingdom, dealing particularly with those issues relating to External Affairs.

Relationship Between the United Kingdom and the Cayman Islands Directly

Mrs. Suzanne Bothwell: Under the current Constitution, the Governor retains special responsibility over a particular area. As we all know, we have four Ministers before us and they are all assigned by the Governor responsibilities ranging from Agriculture to Tourism, et cetera, Education, Youth, Sports. But those areas the Governor retains include, External Affairs, Defense, Internal Security, Police, the appointment of Civil Servants and the appointment of the Judiciary.

One of the proposals in this document is that in particular when we look at External Affairs there needs to be greater dialogue between the Cayman Islands local Government and the United Kingdom, simply because the Government in the UK is looking after their own policy position. They are members of various international bodies. They sign up to particular agreements on particular positions. And the question is, Where does Cayman feature in all of this?

Oftentimes we find that when the United Kingdom becomes a member to a convention or a treaty that many times those treaty obligations are extended to all of its Overseas Territories. Oftentimes these conventions have particular reservations which certain parts of it may or may not apply to a particular jurisdiction.

What is being asked here is that, Look, if Cayman is going to have extended to it international treaty obligations, there should be some prior dialogue and discussion between the United Kingdom Government, the Foreign and Commonwealth Office, and the local Government. Because oftentimes some of these policies, or some of these treaties may be contrary to our position as a country; it may have a negative impact on our

country; it may have very serious cost implications, or infrastructure implications for our country.

If we as the territory of the United Kingdom are expected to meet these demands, there should be dialogue on a number of levels because there are serious financial implications. That, perhaps, goes to the heart of the question, Well, the United Kingdom (who has signed us on to this) . . . what are you going to do to facilitate our meeting these obligations? Where are putting your vote on assisting your territory?

So this is another issue that is being looked at. Not just, you know, the relationship between the Governor, but also the relationship with the United Kingdom and looking at a partnership, looking at the maturity of the relationship. That is what this level of constitutional advancement or discussion is all about. It is not about running towards independence. It is about looking after local interests; looking after our interests in the Cayman Islands simply because we as citizens have elected our representatives to do that. And they should be able to do that fully, constitutionally. They should not be in a position where agreements can be made on our behalf that apply to us and there is no dialogue because dialogue is prohibited by virtue of our Constitution.

Our Constitution should reflect the way we want our country to run. And really that is the heart of the issue that we are looking at here. How do we want our country to run?

What do we want to ensure, or what do we want to equip our Legislative Members with or our Executive Members with so that they can manage the affairs of this country effectively and in our best interests?

I think we have a question.

Mr. Billy Adam [Question # 5]: Yes Ma'am, thank you.

Good evening Panel.

Good evening everybody out there.

Following on from the radio show today, Ma'am, and seriously speaking, I think it is a crying shame that we in the Cayman Islands are unaware of all of the treaties that the United Kingdom has already signed us up to. There is no comprehensive list that we can say 1, 2, 3, 4, 5, 10, 20, 30, whatever it is, and the implications of it. From time to time, we get in drips and drabs where we are signed up.

I think that as part of this exercise, that list should be drawn up and we should be able to know exactly what are the commitments that are on that list. This is a serious issue.

I have another thing. I don't know if Mr. Alden . . . I think he may want to answer that.

Panel Member: Did you want a response to that, sir?

Mr. Billy Adam: I have something else.

Mrs. Suzanne Bothwell: I can perhaps provide some assistance.

There is a list, but it is not necessarily perhaps published. And perhaps one of the issues is who is responsible for that list and who is responsible perhaps for reporting on our treaty compliance? I do know some of those responsibilities fall under the Attorney General's office at the moment.

So, hopefully, through either Freedom of Information or responding to the requests of the public, maybe these are the kinds of things that should become public information. I do know the UK has some level of a list of the treaties that its territories have extended to them, but I do know that part of the Government's obligation is to report every so often on issues of treaty compliance. I do know part of that responsibility does fall with the Attorney General.

A Member of the Public: You said that there is a list now.

In the past, I have been told that there wasn't a list.

Mrs. Suzanne Bothwell: Well, there may not be a list that you can just copy off. But, of course, this country, this Government has to know exactly what treaties it is signed on to.

Mr. Billy Adam: Well, from time to time I have heard that there has been a surprise that they didn't know.

You see, as an ordinary citizen I don't think that we have really begun to understand openness and transparency. It is this secrecy that has people worried about full ministerial. Because the same person is going to be the legislator, the policymaker, and then the administrator in an atmosphere of having meetings in Cabinet in secret and we are not told what is discussed at that level. We don't know what our treaties are.

These are serious fundamental issues that we need to come out of the dark ages of parliamentary dictatorship—sorry, democracy. And we need to . . . the public needs to know what's going on. You want people to embrace government, embrace the constitution, have faith in government, but we need to know these things.

So, does a list exist?

Well publish the bloody list!

Mrs. Suzanne Bothwell: Well, as I said Mr. Billy, the issue is—

Mr. Billy Adam: Why keep it secret?

Mrs. Suzanne Bothwell:—who has responsibility?

I think that the Government's initiative to move towards Freedom of Information will be facilitating that level of process to the public being able to access information regarding the Government and knowing about the information contained within the walls of Government, whether it is

through the elected membership or whether it is through those persons who are Official Members at present.

Mr. Billy Adam: You know, let us hope we can move where we can trust. Let's stop this secrecy because the British are the masters of secret smoking mirrors interception and we have inherited too much. We have become more holy than the Pope sometimes in the secrecy that exists here.

We don't need Freedom of Information, just be honest with the people.

Mrs. Suzanne Bothwell: Well, I do agree that we need to know as a society and as a country how our Government operates and who has responsibility for what. I hope that this is perhaps the process that we are now going through whereby we can look at that, but also scrutinize it and see exactly what we want for the future.

Hon. Charles E. Clifford: Mr. Adam, I am going to certainly take from what you say that you support any proposal that would require the United Kingdom Government to consult the Cayman Islands Government before entering into any treaty that would affect our interest. I think once we get to that point it would certainly address the concerns that you have with respect to trying to determine accurately what treaties apply to the Cayman Islands and what treaties do not.

So we certainly thank you for those comments.

Mr. Ezzard Miller: Before you move off that topic, I don't think . . . dialogue is important, yes; but as long as we . . . which is why I have great concern about this term "modernization" instead of calling it advancement. Right? Because what we are really talking about is that we need to get to an advanced position where we govern our country. Right?

Now, I know that nobody wants to talk about independence; but don't brandish these words around about we are going to have the right to self determination if we don't have independence. As long as Britannia Rules, Britannia Rules. Right?

Billy, the list is easy to find. Go to the House of Commons. Any treaty that the UK has signed is automatically if not completely, partially or part thereof extended to the Cayman Islands by virtue of Britannia Rule. So what we need is not dialogue. We need . . . anything that the British Government wants us to go into on an international basis should have to be debated in our Parliament and approved before they sign us up.

[applause]

Mr. Ezzard Miller: Similar to the model that we followed on the Mutual Legal Assistance Treaty, which was not something that was initiated by

the UK Government, but certainly that was a good example of why and how the Cayman Islands can itself negotiate very effectively in the international market.

Yes, we had Sir Ian Percival as expertise from the UK Government, but the team was led by Cayman negotiators. It was passed by our [Parliament] and it became law. That's what we need. We need to be masters of our own destination. And as long as we have this relationship of Britannia Rule, we can't talk about self-determination because as long as somebody else can make a judgment on what you have already thought was your self-determination, then it is not self-determination.

So, I support consultation, but as far as the British Government is concerned they already have that. Their consultation is one way—they tell you we did this and you will accept it, like they did with the hanging and capital punishment. They walked into the Cabinet one day, and we had just spent hundreds of thousands of dollars building a gallows, and they told us we couldn't hang anybody.

So they believe that they have consultation. But what we need is some authority that it does not happen unless there is some commitment or decision made locally to bring it into effect, whether the Parliament or otherwise.

Hon. Alden M. McLaughlin, Jr.: Ezzard, I think you have hit the nail on the head. As long as we are in a constitutional relationship with the United Kingdom, I mean all of these proposals we are putting forward, whatever is accepted by the people, whatever mandate we have, we still are subject to agreement by the United Kingdom.

As long as we are, and I think indication are—sure indication are—that we don't want to sever that relationship, we have to accept and understand that there are certain constraints under which we operate, and that we can push the envelope as far as we want, but unless we are prepared to actually sever that relationship, ultimately where we get in terms of autonomy is essentially a matter for Her Majesty's Government in the end.

Mr. Ezzard Miller: So what happens is that every time you raise the word "independence" we have this 50-year old argument put out that it is going to destroy the country and nobody wants to talk about it.

This is the 21st century, right? I mean, can anybody tell me what would happen to the Cayman Islands that was worse than Ivan? And what did the UK Government do for us—our Mother country? Zero!

Anything else that happens, that's what they are going to do for you. All they are doing right now is destroying our economy. We are one of London's biggest competitors. You really think they are going to do something good for you?

Hon. Alden M. McLaughlin, Jr.: I hear you.

To come back to the issue we were discussing, when Meg Munn, the UK Secretary of State for the Overseas Territories was here, one of the things she said to us is that her biggest job as the OT Minister is to get an awareness among her colleague Ministers that agreements that they enter into, policy decisions that they take, may impact the Overseas Territories and that they need to bear that in mind when a lot of these decisions are taken, when international agreements are entered into.

But the UK will not back away from the position that they have set out in writing a number of times—that they expect the Overseas Territories to be bound by their international obligations.

What we are saying is, if that is the case, then we need to have at least the opportunity to make representations to you before you enter into these agreements, because you need to understand what the implications are for us, whether it's a relation to air transport arrangements or Human Rights, or whatever the case may be. Currently they just go merrily about their business and they do what they do. I don't think most of the time they even consider whether it is going to have an impact on Overseas Territories; it is just not within their contemplation. It is not that they mean to do us bad things. It's just that we are such an insignificant little spot out in the Caribbean Sea that they just never contemplate it.

So, what we are proposing is that it be written in the Constitution, this relationship that we have with you requires you to talk to us before you do things, agree to things which are going to have an impact on us.

Whether the UK will agree to that is another matter. But that is what we are putting forward.

Mr. Ezzard Miller: That they have got to call you and say, Do you agree? That you have to say, Listen our Parliament needs to make a decision that we will or we won't be a part of this?

I know you're not going to get that as long as you have that Constitutional relationship. But you say we're going to push the envelope as far as we can because . . . and I do not agree with you that they will not do things to hurt us.

[applause]

Mr. Billy Adam: Just quickly, I didn't quite hear at the end . . . is the proposal then going to be that any treaty that the United Kingdom wishes us to be partner to will be discussed in the Legislative Assembly and then we are going to know, and it is going to be published, the list of all these things that we are obligated to?

We don't need Freedom of Information for that. All you need is a will to be open.

Hon. Alden M. McLaughlin, Jr.: I think you are pushing an open door with this Government about those issues.

Mr. Billy Adam: No, I want to see a written thing.

Hon. Alden M. McLaughlin, Jr.: Well, we'll have to put it in writing then.

Hon. D. Kurt Tibbetts No.

Forgive me Minister, but Billy, this is one meeting. We've heard it the first time. You can't expect us to give a commitment now.

We want to be fair.

Mr. Billy Adam: Thank you sir.

Hon. D. Kurt Tibbetts Notes are being taken.

Mr. Billy Adam: Okay sir.

Hon. D. Kurt Tibbetts And absolutely, but what you are seeking. You know better.

Mr. Billy Adam: I don't mind pushing it.

Hon. D. Kurt Tibbetts: But you know better.

Mrs. Suzanne Bothwell: I just wanted a brief exposition of what we see some of our neighbors doing. I mean this is a real issue that we are all facing. We all have common issues because we all have similar relationships with the United Kingdom.

One of the things which the British Virgin Islands successfully negotiated was that the Premier or any other Minister designated by the Governor on the advice of the Premier on terms and conditions set out in the particular constitutional section would be able to have conduct of External Affairs. For example, in matters relating to the Caribbean Community the Organization of Caribbean States. Of course, that's relevant to the British Virgin Islands because of where they are situated. But perhaps of relevance to us, for example, is the relationship between, for example, the Virgin Islands and the United States Virgin Islands. We don't know if there are any other country in the Caribbean that we would like to have the ability to directly negotiate with. Negotiate issues, external issues on tourism and tourism related matters, taxation and the regulation of finance and financial services, and European Union matters directly affecting the interests of the Virgin Islands.

So what we have seen to some extent, at least based on the type of negotiations that the BVI have had, is that this issue of the Governor handing over some of his exclusive responsibilities on external affairs, that some of that can be shared with Ministers of Government so that

the local Government can have more say in issues regarding their external affairs.

They may not have gone as far as what we are proposing in terms of we would like to have dialogue with the UK in relation to any treaties. But that is something for us to consider. We now have an opportunity for ourselves to look at the issue of External Affairs and determine what it is we want to deal with in our Constitution regarding this subject matter.

Do we want to limit it just to treaty obligations and having dialogue with the United Kingdom? Or do we want to go the route also of allowing our Government the flexibility that if there are initiatives that may enhance our large industries and areas wherein we have to protect our large industries, that they will be able to negotiate directly with other third parties on this particular issue?

Delegation of Special Responsibility to Ministers of Government

Mrs. Suzanne Bothwell: Now, just moving on, and we are still on the topic of full ministerial Government, one of the first items that we discussed in the proposal is actually looking at delegation of special responsibility to Ministers of Government. We spoke about one just now, that being External Affairs.

But, I think of equal importance is those constitutional responsibilities that should lay with the Premier. Right now, we have the Honourable Kurt Tibbetts who has been elected by his peers in the legislature as the Leader of Government Business. But what we do see absent from our Constitution is his constitutional role. We would expect, as a matter of course, that, okay, if he's been elected to this position he must obviously have Constitutional responsibility, a Constitutional role that should be set out very clearly. That is what is absent. That is one of the things that is absent in our Constitution.

And this goes right back to the discussion that the honourable Ministers had earlier on regarding who has the responsibility in Cabinet for setting the agenda, presiding over Cabinet, assignment of Ministerial Portfolios? I mean these persons are elected. We exist in a party system in the Cayman Islands, shouldn't we perhaps be the Leader of Government Business or the Premier be able to assign the Portfolios to Ministers? Or at least have some dialogue with the Governor about that?

Right now, I think, in our Constitution that is the exclusive domain of the Governor. At least constitutionally it is.

One of the other issues, however, in relation to partnership and sharing of responsibilities of the Governor, special responsibilities, is looking at that issue of national security, the issue of internal security.

Last year the Audit Office in the United Kingdom actually did an audit of the Foreign and Commonwealth Office. And one of the major is-

sues they were looking at was managing risk, which means the United Kingdom and its Overseas Territories. One of the statements they made in that report was that in order to effectively manage risk, there should be greater lines of accountability and coordination between the Governor, Commissioner of Police and Cabinet. That was particularly in relation to internal security and police.

It is based on this particular ethos or principle that they have discussed and of course I believe that is reflective of the current view of the FCO. We see a number of our contemporaries in their constitutions actually establish a National Security Council to help direct policies dealing with internal security issues.

I would like us to take this point in time, or pause at this point in time, to perhaps allow one of our panel members to explain to you why they feel this is an important delegation of responsibility which is currently exclusively under the Governor and what kind of practical effects and implications it will have for members of the public and our local Government.

Hon. Alden M. McLaughlin, Jr.: I was trying to get the Leader to deal with this one since he's the one who has the most answers to the Governor.

But we have had issues from the outset with the exclusion of the elected Government from discussions relating to internal security. Most of you will remember that when we took office in May of 2005, this country was going through a crime wave that none of us had ever experienced before in the aftermath of the hurricane. Some very radical steps had to be taken to get things back under control. I think many people may have forgotten how bad things actually were towards the end of 2004 and through the early part of 2005. But major policy decisions had to be taken.

At that time, really, because the police force was in crisis what they call the Gold Command, which are the upper echelon of the police—the Commissioner, the Deputy Commissioner, and so forth—were in Cabinet almost every Tuesday because they needed our support and assistance to get through this really rough patch.

So we thought and we developed a plan, which cost almost \$50 million over four years, to make sure that the police had the equipment, the resources, the staff, everything, training, to be able to police effectively and so forth.

We changed Governors (I think on 5 September 2005), and the current Governor came in and the situation with crime improved significantly and people got back a sense of security and so forth in the country. Attitudes to the elected Government changed to a point where up until this point we were effectively excluded from any discussions relating to the policy matters in relation to the police.

On the other hand, the Chief Secretary, the Deputy Chief Secretary, and even more junior members of the Civil Service meet with the Governor and Commissioner of Police regularly to discuss these matters. It is really only when there is a major issue, or we ask that the elected Government gets to weigh in on any discussions relating to policy concerning the police and internal security. We think that is wrong in principle.

The Governor has extended an offer that he will meet or that they will brief the Leader separately from their other meetings on a regular basis if they want. We have said to him that that is not sufficient, that is not adequate. When things go wrong, as they have gone wrong in the past, when there are issues about policing our constituents look to us. They don't blame the Governor. They don't blame the Chief Secretary. They say, What are you all doing about the situation with crime? or the police or with speeding, or road safety or whatever it is. No one calls into question the Governor; it is the Elected Representatives that are asked to deal with these issues. And that's what you expect in a country that's supposed to be a democracy.

So, our proposal is not about us becoming involved in the operational matters in relation to the police about how many cars they send out there and who they pick up and who they prosecute and who they do not, or who they promote, or who they appoint, none of those issues. We are talking about involvement in policymaking.

What we are proposing is not that the Governor hand over that authority to us . . . when I say to us, I mean to elected Ministers, because maybe there will be another Cabinet. What we are proposing is the establishment of a National Security Council, which the Governor will Chair, which the Commissioner of Police will be a part of, which would also include the Premier and two Ministers so that the elected Government would have a real role in the discussion and decision-making in relation to policymaking concerning internal security.

I want to make it absolutely clear that this would not have anything to do with appointment, promotion, discipline, remuneration of police officers or operational issues. We are talking about policymaking and monitoring.

So, that is what we are proposing. And what we are proposing is actually not novel, it has actually been recommended by the UK National Audit Office. It is what the BVI now has, or one form of this is what the BVI has actually put in place as well.

So, I hope that helps.

Mrs. Suzanne Bothwell: Thank you.

Now, another aspect of . . . sorry Bert. I am not doing too well today.

A Member of the Public [Question # 6]: Good night everyone. Thank you for allowing me to come out here tonight.

Just regarding Alden on policy, regarding internal policy. I have a problem in regard to, what you pointed out, after Ivan—which was an excellent point, right?

There were a lot of disarrayed families at that time that had destroyed homes. I was out personally after Ivan taking a drive out to my family in East End and I saw looting going on down by Portofino's and all that. What I am saying is in making my point clear is this: I would like a policy in place to defend my home.

I am going to tell you this: When you talk about culture and evolving and everything else, I know a little bit about that. I have lived in the States a long time. I am prior military, I know about defending, I know all of that. But defending my home? I should have a fundamental right—not to commit crime or anything. I am talking about fundamental right to have a firearm, if necessary, and licensed. I'm a good standing citizen, right? Not being part of a gun club. I am telling you that as we evolve as a culture in Cayman we are going to get more people in our country, we are going to get more people who are going to go in all the lines of pushing the envelope. We are already getting pushed on our property right now. And what I am saying is that we can ask the police for all kinds of assistance.

I had a cousin that tragically . . . his life was . . . left this earth over a year and a half ago. The police haven't told our family nothing about it. We don't know what happened to him. Right?

So, what I am saying is a Right to Bear [Arms] and defend my property. That's what I am talking about. That needs to be a policy that down the line we are going to have to look at. Not because you are in the Gun Club you can have a gun. I don't believe in that. Right?

My father had a licensed gun in the States for years. I know how to use that, right? But we are getting to a point in this country policy-wise, where the police are not going to be able to do everything.

We have people right now on the street carrying more guns or more ammunition than a lot of people in the police and they are coming arbitrarily on to your property in the late hours of the nights. Here in North Side, 2:00 or 3:00 in the morning people are still driving up and down in here. And down by the bars they are having weapons on them. I am not telling it, I know!

We cannot have this culture that keeps pushing the envelope on people's private property. We have to get . . . the country is going to have to make a policy not in regard to police doing everything. I know it's going to come.

And I welcome the policies that you are saying Alden. And I agree with you totally having Cabinet being able to scrutinize any Premier sitting in on those decisions with the Governor. But I feel, moving forward

in our country, we are going to put a constitution, modernize it, advance it, whatever, we need to make sure that we can defend ourselves.

After Ivan, we were helping out the police in our own district here. Right? When we had a curfew, the police couldn't man down here, they were still fixing the roads up in Bodden Town.

I am just being practical here. I am not trying to promote guns. I am just saying from a point of view.

Next door to my house a couple of months ago out by the gas station, they were robbed. Right? At 2:00 in the morning, 3:00. Right next to my house. The police? Not in North Side. In Bodden Town. So, if somebody busts in my family and shots any one of my family what I am going to do now? Call the police and tell them come out? No man!

I shouldn't have to do that. I should be able to defend my property at all times. I own that property. I bought that property. And it's mine. And I know going down the line we are going to have to do that for policy.

[applause]

Hon. Alden M. McLaughlin, Jr.: Well, I'm certainly not supportive of arming the nation, but you raise an excellent point from a Constitutional stand point. Should it really be the case, as it is now, that an English or a UK Commissioner of Police, from the UK, appointed by the UK, is the one individual who decides who can have a firearm in this country or not?

If we had something like a national security council, at least you get a broader representation of people making those kinds of decisions.

So, I mean, you spoke about what happens on the ground, but from a Constitutional point that I take from what you say is that we need to have some of our own people who are elected weighing in on these policy decisions on matters such as that. Yeah.

At the moment it is one man who makes that decision.

A Member of the Public: I was just saying if you could add the town councils or district committees that you could know who your people are that have a licensed firearm. But it's getting to a point now where I guess I feel that the influx of people . . . the authorities can't do everything. I believe like moving like you said to a national security council. Maybe that could forward that advancement in that direction.

Thank you.

Hon. Charles E. Clifford: Just let me say as well and to speak directly to your point because there is a real issue going on right now in my constituency in Bodden Town in the Pease Bay area where residents are being pelted with rocks. So far, three people have been injured, substantial damage to property. I mention this incident because, Constitutional provisions notwithstanding, I spoke directly with the Commissioner of Police

on this twice. And the Commissioner visited the area. I brought it up at Cabinet level. And even since bringing it up at Cabinet level someone has been injured again since that.

So the police have not been able to contain that situation.

I recommended some things to the Commissioner. I don't know whether he took them on board or not. But, clearly, if we had something akin to a national security council (call it whatever you want, but we are suggesting a national security council), at least we would have an opportunity to discuss and have greater input into how that issue is being addressed. Because at the end of the day our constituents expect us to be accountable to them and to do something about it; when in fact, when it comes to matters of the police on the operational side, we have limited influence.

But if we had a national security council we could certainly have greater dialogue with them on that matter. Right now it's sort of a hit and miss situation where we don't know what's going to happen tonight. Maybe we have to call the Commissioner again and find out what is being done about this.

I mean, it's really an unacceptable situation. At the end of the day as a Government, we have to provide resources for the police. And so, if we are going to be providing those resources to the police, we should be in a better position to understand how they are employing those resources.

A Member of the Public [Question #7]: Sorry, just one follow on question.

Mr. Clifford mentioned providing resources for the police. Just so that I am clear, at no stage now is it mandatory for the Governor or the Police Commissioner to brief the Leader of Government Business on security matters in the Cayman Islands?

I heard that correct, yes?

Panel Member: You heard that correct, yes.

A Member of the Public [Question #8] : Okay.

Is the Government of the Cayman Islands ultimately responsible for paying the salary of the Governor? Or does that come from the coffers of the Foreign and Commonwealth Office?

Forgive my ignorance.

Hon. Charles E. Clifford: No sir. You help to pay his salary just like everyone else in this room.

A Member of the Public [Question #9]: So I am also assuming now that the police commissioner is also paid by the people of the Cayman Islands, yet there is nothing on the books to reflect that they should have

to report weekly, monthly, quarterly, to the people that we elect on matters of State?

Hon. Alden M. McLaughlin, Jr.: The responsibility for internal security is one of the Governor's special responsibilities. So that is not delegated . . . in fact, I don't think it can actually be delegated under the current Constitution to elected Ministers. And this Governor takes the view—which quite frankly I think is nonsense—but he takes the view that because he can't delegate the responsibility constitutionally, that that means that he can't share with us what information relating to what's going on—

Member of the Public: Essentially, it's a play on words.

Okay.

Well, if memory serves correct, in the aftermath of Ivan we almost felt like certain leaders of the business community were deputized and were briefed along matters affecting the country. Yet we have Official Members of Cabinet who will brief you if and when they feel like?

This is a nightmare.

This can't be acceptable.

Hon. V. Arden McLean: If I may, Johan, the irony of it all is, you ask about the Governor's salary, if it's paid for from the coffers of this country. It is. And the irony of it is that we can't dictate how much it should be either.

Mr. Ezzard Miller: I paid a big political price for making a statement, I think it was in 1990, that the Governor of the Cayman Islands had more power than Castro in Cuba. And everybody thought, oh man, Ezzard's a Communist. But you're seeing it now!

And just a comment on what's on the screen to take the discussion forward. I support the security council. I have some concerns about the Governor's actions being subject to judicial review. I would much prefer to see it remain with elected people and they have a two-thirds majority vote to overrule in Parliament of any decision the Governor makes with or without consultation.

I have some concerns about . . . because of the Human Rights issue, the European Courts and all of that kind of stuff, some of these highfalutin lawyers here who wanted to break the Cayman Islands Government could tie up decisions of the Governor and take it all the way up and it could be involved for a long time. Whereas, you know we politicians are a lot more expedient than lawyers and we can cry out in the LA and get a vote override him with two-thirds majority vote, because you are keeping it within the responsibility of what the people were elected to do.

I think we need to keep the relationship that way and you put him up in his plumed hat and bring him out on National Heroes' Day and that's it.

Mrs. Suzanne Bothwell: Well, that just brings us forward right into the next topic.

Any other questions or statements?

A Member of the Public [Question #10]: I just wanted to make one statement regarding the individual who talks about firearms and the Firearms Law actually prescribes the circumstances under which someone is able to legally acquire a firearm outside of the Gun Club.

So, the only challenge I see in the Firearms Law of an individual getting a firearm is whether the Commissioner of Police feels that that person should get one regardless of what is prescribed in the Law. What it essentially boils down to is going through the appeal process. If the appellate body is the Cabinet, and the Governor decides what goes on the agenda of the Cabinet, you can see what would happen there.

But I would like to move on from that and ask a question about the protection or the Right to Life.

It says that "if someone is deprived of that right under terms that are permitted by law for using such force as is reasonable, for the defence of any person for violence or for the defence of property. . ." I am reading from the draft Constitution. And I am wondering . . . it doesn't say who is able to carry out the actual act of defending.

Hon. V. Arden McLean: If I can break in there. Can you say which draft Constitution? Because we don't have one out there.

A Member of the Public: This is the 2003 draft.

Sorry about that. That was a good observation.

My question is that if I read the first clause it says "For the defence of any person from violence or for the defence of property . . ." what it does not say is *who* can carry out the act of defending. Is that saying that the State is responsible for defending the life and property of the individual? Or can the individual defend his life and property?

Hon. Alden M. McLaughlin, Jr.: The latter.

You need to read the substantive subsection that precedes what you just read. It says, "A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use to such an extent and in such circumstances as are permitted by Law of such force as is reasonably justifiable [and those are very important words] for the defence of any person from violence or for the defence of property."

But you need also to understand that the whole point of a Bill of Rights is to protect the individual from the State, from the excesses of the State. That is the principal purpose of a Bill of Rights.

A Member of the Public: Well I understand that, but if an individual, a private person, challenges another and with the intention of depriving them of their life, and that private individual responds and the outcome is that the attacker loses his life, what I am saying is that in the wording here—while you may understand that as a lawyer—doesn't literally say that to me. When I read that it doesn't say whether that responsibility is of the State. Because there are many people who argue that it is the State's responsibility to defend you.

Mrs. Suzanne Bothwell: Thank you Mr. Warren.

Basically that section really says that whatever the Law would allow you to do. So this Human Rights Commission will really be contingent upon what the domestic law would allow in terms of what is lawfully permitted in terms of taking life.

For example, as we now have in our law, you can take someone's life in case of self-defence. That is a lawful . . . what's allowed by law in terms of taking someone's life. So there it has to be read in light of any provision in any other specific law which delineates what's lawful.

We can deal with that during the Human Rights section of this discussion further if you wish.

Hon. Alden M. McLaughlin, Jr.: It's ancient law, really—Common Law—that you can use what's called reasonable force to defend yourself or property or to prevent the commission of crime. In each and every particular circumstance the question always is, What is reasonable force?

So, if someone is stealing your bicycle, reasonable force might not be to blow his head off. You know, the Court would probably say that's not reasonable force.

So, you understand what I mean.

MAKING THE GOVERNOR'S DECISIONS SUBJECT TO THE COURTS AND JUDICIAL REVIEW

Mrs. Suzanne Bothwell: Okay.

Looking on the screen we are also going to be looking at the issue of the Governor being required to communicate his reasons for his actions to the Premier. And also, where he acts without the consultation of Cabinet his decisions should be open to judicial review.

This relates specifically to section 7 of our Constitution which sets out exactly the special responsibilities of the Governor and the fact that if he has to exercise his powers as a matter of urgency, you know, he has

to act before he's consulted Council, even though the Constitution says that he ought to do so afterwards as soon as possible. The question is, What if he made the wrong decision?

What if he made a decision that was not reasonable?

And this is something that we as a Government live with on a day to day basis. The laws are there whereby many times you as a citizen have to apply for certain applications, have to seek the authority of Government and that make certain decisions that impact you, impact what you can do whether you can develop a property, whether you can have a business license or work permit. We can go through the whole list of rules and regulations that we are subject to by the Government.

What we have an expectation of is that where they make their decision that they do so reasonably and fairly. And this principle also extends to what is being proposed here. That, if the Governor has exclusive responsibility (for example, issues of defence, external security, internal security, police and so forth), that he should in making those decisions, first of all in all circumstances, communicate his reasons for his actions to the Premier.

And where he is not required to consult Cabinet, that if Cabinet feels those decisions were made improperly, they should be able to inquire into them. And not only inquire into them just for the sake of doing so, but inquire into them so that they can effect proper change.

Right now, if we are not happy with the decisions of Government, we can go through legal means to inquire into these decisions and perhaps have the decisions struck out, struck down, reviewed, changed, so forth, revisited, and that is one of the recommendations that they are making.

What it does is support accountability in Government; that no matter who you are, whether you are an elected representative, a public official, Her Majesty's representative, that there are the inherent accountabilities in there so that when things are done improperly, when they are opened to scrutiny, that there should be mechanisms where we as a country can inquire into these decisions and perhaps effect change through the Courts.

We do have one question or one comment on that.

Mr. Ezzard Miller: [Question #11]: Are we going to revoke privilege from Parliament too and make everything that goes on there subject to court review?

Mrs. Suzanne Bothwell: I don't think we heard your comment. Can you please for the sake of the radio—

Mr. Ezzard Miller: [Question #11]: The question is, Are we making the Governor's decisions subject to the Courts and judicial review. The question I am asking is, Are we going to remove privilege from Parliament and

make the decisions and the comments and stuff that are made in Parliament subject to judicial review too?

Hon. Alden M. McLaughlin, Jr.: That's not our proposal.
Are you proposing that?

Mr. Ezzard Miller: I am proposing two things: I do not support the idea of making the Governor's decisions subject to judicial review as I explained earlier. I would be more comfortable with having it for the Leader of Government Business or a particular Minister to take a Bill or a Motion to Parliament and a two-thirds majority vote of Parliament would override any decision the Governor makes as opposed to going through a longwinded court process.

Right?

And I am also—

Hon. Alden M. McLaughlin, Jr.: Can I address that?

The fundamental problem I see with that is that the Governor is Her Majesty's Government's representative in Cayman. So, for us to take the position that we can overrule any decision that the Governor makes is essentially saying that the UK is no longer, you know, ultimately responsible for us. So I don't think that that one has legs at all.

Mr. Ezzard Miller: So, are you suggesting that only matters that are not in the special powers or not retained by the UK should be subject to judicial review?

Hon. Alden M. McLaughlin, Jr.: No.

The thing about judicial review is not . . . you are not saying that the Governor can't make the decisions.

Mr. Ezzard Miller: Right.

Hon. Alden M. McLaughlin, Jr.: It is a question of whether or not the decisions he made were reasonable, rational and fair. And the Court can pronounce on those things. So we are not trying to override his or Her Majesty's Government's ultimate authority and responsibility for these matters, but we are saying that the Governor must exercise those powers essentially fairly reasonably, which is a different matter than overriding—

Mr. Ezzard Miller: But I am talking about—

Hon. Alden M. McLaughlin, Jr.: This is your proposal.

Mr. Ezzard Miller: Right.

No, we don't need to override his good decisions. The same decisions that he makes which the politicians determined were unreasonable, they were done without consultation and they were incorrect. We should be able to take it to the LA and overrule it.

Right?

Because the fear I have with going through the Courts is, again, Rule Britannia. The final appeal is the Privy Council in England.

Mrs. Suzanne Bothwell: Well, I just want to say, Mr. Ezzard, I think one of the issues that we are going to face with this particular issue is that even if a Motion or Bill is brought by Parliament, at the end of the day the Governor has ultimate responsibility over the LA regarding the passing of Bills and Motions.

Right?

Whereas, with a Court of Law, if constitutionally a Court is given jurisdiction to inquire into the decisions of a Governor, there is nothing the Governor or anyone can do about that; they have been given jurisdiction. And it therefore follows that they can lawfully inquire into that and make a decision which will bind the Governor and the United Kingdom and therefore will allow the Cayman Islands to seek legal redress and recourse.

So it is really about . . . I mean at the end of the day it really depends on what formula works and how far you can achieve accountability when a Governor makes decisions. But—

Mr. Ezzard Miller: The short answer is that I have more faith in the politicians than I have in the judiciary the Governor appoints. Because even if you get your judiciary committee, as you are recommending, which I agree with and support, right?, she's going to still have over a certainly . . . we have got to be moving to the fact that we are going to get away from this thing with the UK with their nuclear threat of overriding local legislation.

Certainly, we are going to write in this, we are going to ask in this Constitution, that that be rescinded or, again, at least a two-thirds or a majority vote in parliament. If we pass a law . . . as a good example, your government passed a law that you didn't want to pay the overseas supplement allowance, right? Which was passed as I recall it unanimously. There wasn't a single dissenting vote in Parliament, and the Governor simply refused to implement it.

Right?

So, you know, we are talking in cross-purposes. We take them to the Court, put in so that he cannot override anything that two-thirds vote of our Parliament cannot undue.

Mrs. Suzanne Bothwell: I think this is duly noted. I think it is definitely something for the Government to consider.

Okay?

CHECKS AND BALANCES ON EXECUTIVE POWER

Mrs. Suzanne Bothwell: Now, one of the other issues that the Government would like to raise is how do we keep increased power in check? We are saying that, okay, we should give Members of the Government responsibility over particular issues because it is about allowing us to function properly as a country. But, at the same time, there are issues about keeping a balance of power.

One of the recommendations that has been made under the Checks and Balances section of the *Summary of Proposals* (which you can find on page 6), is term limits on the office of Premier.

The recommendation is that anyone who holds the position of Premier should only be able to hold that position for two consecutive terms and, after that, whilst they can continue to run for election, run as a candidate, sit in the LA, sit as a Minister, they would not be able to sit as the Premier for more than two consecutive terms, more than eight years. You would have to take a break from that position constitutionally before you can reacquire that position in Government.

You do not support term limits?

Mr. Ezzard Miller: I said I do not support term limits in Parliament. If the people want to keep a representative they have, that should be their choice. That is ultimate democracy.

I do not think that we should be limited to any term limit. No Government in this country has made it beyond eight years that I am aware of. They have representatives who have been elected in an individual constituency for longer periods than eight years; but I do not know of any government that remained in office for more than eight years. So, I don't know why the urge to have this limit. If the people get something done, they want to keep them. They should have that choice.

Mrs. Suzanne Bothwell: Thank you.

Mr. Billy Adam: From the other side.

With our system of government, a parliamentary dictatorship/democracy, and the inherent fact that there is not separation of powers and the machinery that is established, and if we look throughout the Commonwealth countries, the worst countries are the ones that have had successive regimes and the machinery that is set up. Just take Antigua—30-odd years for the same leadership. And the level of corruption that sets in. Regardless of all the laws that you want, the machinery that is set in place devastates the people and the countries.

If we look around the world, the most successful countries are the ones that have limited terms, even if it is just for one term.

In the longest running democracy in the world—over 750 years—we don't even know who the leader is. I mean, they know who it is. And the world knows who it is if you want to find out; but the name will never stand out. Because in Switzerland, for instance, from 1291 . . . 1291—the longest running democracy. Their president serves for one year—one year—in the Federal Republic of Switzerland. That's all he serves. And he then is replaced and reelected by someone.

The European Union now has it limited to one year as well. And that's the United States of Europe. They keep changing. So it's a country that ends up . . . in the Commonwealth countries you have it built on personalities and not policies. And the policies keep changing.

With the added ministerial powers, I would ask that consideration be given that no minister should be allowed to sit on any board because we have, again, the conflict between the legislative, the policymaking and the administrative. And when we put ministers on boards we are asking for trouble. And I would like to see that in the Constitution—no minister sit on any bloody board!

We have one ex-minister here who made a commitment. And that political promise was kept. And that was Mr. Gilbert McLean. He said he would never be on a board or chair a board while he was in government and he stuck to that. Many people say one thing in the campaign and do something different when they get in. Well, that's one thing he stuck with. Some other things I disagreed with him on, but that one thing I commend him for.

Hon. Alden M. McLaughlin, Jr.: Billy, we don't have any difficulty with that because we've already done that. We said Ministers shouldn't serve on boards, and none of us do. So we have no difficulty with that.

Mr. Ezzard Miller: I mean, while I have no difficulty with that as a policy, I have some concerns with some constraints that regulate our Constitution. Because, I mean, just like I don't agree with your limiting the public debt in the Constitution, because there could come times when you have to exceed it. I think there should be legislative provision for it and policy positions for Ministers not serving on boards. But there could come a time when it would become absolutely necessary for a Minister to chair a board and then he would be eliminated from doing it because it's in the Constitution.

I think we have to be careful how far we try to expand this operational manual and . . . I can give you an example of good countries that have . . . one of the best that comes to mind is Singapore. Imagine where Singapore would be today if they had had limited terms on Lee Kuan Yew.

Hon. V. Arden McLean: But this Government came into power saying that we would not sit on any boards. To further strengthen that, I recently amended the ERA Law. And one of the clauses in there is that no Member of Parliament will sit on that Board. So, administratively, that's fine.

[applause]

Mr. Billy Adam: Madam Chairlady, I would just say that if we look around and if we look at boards that have had the most problems in this country, it has been the boards that have been chaired by Members of Parliament, and especially Members of Cabinet. That's where we have had the most trouble in this country.

Even Caribbean Development Bank, when they gave the loan for the Port Authority and for Cayman Turtle Farm, they prevented, in the conditions of that loan, Ministers sitting on those boards and those laws were changed to allow Ministers to chair those boards. And from then trouble started.

Hon. Alden M. McLaughlin, Jr.: Billy, can I ask you to be gracious enough to acknowledge that it is not these Ministers or this Government to whom you refer?

Mr. Billy Adam: I thought I made that fairly clear. But, I do agree with you sir. It is not these Ministers and this current Government. I said "previous."

ACCOUNTABILITY OF GOVERNMENT

Mrs. Suzanne Bothwell: I just wanted to touch with you on the issue of accountability of Government. And, as Mr. Miller said, we just spoke on issues of public debt. I would just like you on your own time to go through the list of items on the proposals here about ways we can have checks and balances in executive power and how you feel about them.

Just to read them: one would be that you have, as you said, "limits on public debt: there should be constitutional backing for the limits in the Public Management and Finance Law, so that they cannot simply be changed by the government of the day."

There should be oversight bodies (and it says see G below). That includes oversight bodies such as a Standards in Public Life Commission to look at issues of corruption and conflict of interests, which we just spoke about, of Ministers and senior public officials.

The issue of people-initiated referendum, the ability of citizens to identify an issue of national importance and be able to direct the Gov-

ernment in ways of receiving certain support from their voters to actually hold a referendum on the issue.

Public access to information with the Freedom of Information Law “should have constitutional backing, so that key features (including the whistle blower provisions) cannot simply be changed by the government of the day.”

And Human Rights that may not be invaded by the government.

And also a clear rule that Ministers and public officials must exercise their powers in the interest of the country and not for their private interest or benefit, which is a statement [INAUDIBLE].

I just would like to perhaps just move ahead with the agenda and also just perhaps view a few more of the major issues of the *Summary of Proposals* before our guests start to get restless.

But I wanted to deal with in particular first and foremost the issue of eligibility to vote and eligibility to stand for election, and we find that on item H, which is found on page 9 on the *Summary of Proposals*.

ELIGIBILITY TO VOTE AND ELIGIBILITY TO STAND FOR ELECTION

Mrs. Suzanne Bothwell: Now, I would just like to say first and foremost just to set the stage for this issue, the proposal at hand (it’s actually on page 10 of the *Summary of Proposals*). What was proposed was that in relation to the eligibility to vote

[RECORDING GOES DEAD AT THIS POINT FOR APPROX. 3 MINUTES]

[RECORDING CONTINUES]

Hon V. Arden McLean: . . . is a starting point. Nothing is etched in stone.

But, Ezzard, are you . . . Okay, whether that changes your mind or not, I guess you have those things in your mind.

Okay.

We get a couple coming to this country who do not have any children. Childbearing age. And they have a child whilst being here. Subsequently, they receive Caymanian status and that child subsequently receives Caymanian status. For all intents and purposes, would you call that child Caymanian who was born and grew up here?

Yes.

Yes!

Then, we get to the situation where, after that child was born and the parents got Cayman status, another child is born. That one is born of Caymanian parentage. That child can run. But the other one can’t who

was born here too. That child will have to live here forever and a day and nothing ever will they ever be entitled to anything Caymanian.

Now, somewhere, somehow, we are going to be faced down the road . . . it may be 20 years, it may be 30 years. As far as I am concerned, it will be 30. If you want to change it to 30, 35, 40, whatever, something is going to have change. Now I am not hell bent on advocating for it one way or the other. What I am saying is that there is something fundamentally wrong with that child having been born here.

Now what most of us are concentrating on is those parents who came here. And they should not be allowed to run. But nobody else is concentrating on those children who will outlive those parents forever and a day.

The other night, it was interesting at Savannah, some young ladies came there, two sisters—one was born before their parents got status. One of them can run, the other can't under the current Constitution because of Caymanian parentage. Do you see where it is coming from?

Now, a number of people, and I hear it on the radio as well, that this is an "Anton Duckworth" amendment that we are proposing so Anton can run. Now, for Christ sake.

Now, let's look at it: Anton received status a few years ago, like five years ago. He is somewhere in his early 60s. I would like to know which one of you would vote for Anton at 85. That is the realities of this. That is the realities of this. So people have to stop saying that. It's ludicrous.

But that person who comes here, we will agree is in their mid 20s before they get here, with the exception of the 2003 fell swoop of the UDP grants. With the exception of those, those people come here in their 20s, after they have finished their tertiary education. They have to stay here 15 years. That's 40. Then they have to stay 25 more to get to be eligible to run. So, do you see where it lies? It lies in those children who were born in this country who would be most eligible for that kind of provision.

I am telling you, those children are going . . . gray hair is going to trip them down in this country and they have no rights. That's a serious, serious matter.

Now, I am not saying that it should be changed now; but I am saying to this country that it will have to be changed somewhere. I don't know where.

Mr. Ezzard Miller: All those numbers and all those additions makes my argument even more succinct, because if they ain't ever going to be able to run and nobody going to vote for them at 65, then take my option. You have to be born in the Cayman Islands of at least one Caymanian parent to run.

I mean, we have to reserve something for our Caymanians.

Panel Member: But you do. You just talked for 20 minutes against it.

Hon. Alden M. McLaughlin, Jr.: Ezzard, the thing is that I think . . . this is the fourth meeting we have had. The fifth. And the position you take seems to be that you are in the majority who have represented to us. And so we will take it on board. That's what this exercise is about.

Mr. Ezzard Miller: You have asked me for my opinion, you know. You are not going to leave here tonight and say you did not get Ezzard's opinion. Now, you mightn't get somebody else's; but you're going to get mine!

Hon. Alden M. McLaughlin, Jr.: And we're grateful for it. We are very grateful for it. That is what this exercise is about.

A Member of the Public [Question #12]: I concur with Ezzard to a certain degree, but in regard to the children, Arden, how old would you say the children would be, like, in order to be able to run? If you are going to put a stipulation that the children now when they are born here, after their first generation how many years do we come to something like that? Because I truly concur with Ezzard. I believe a born Caymanian . . . I am proud to be Caymanian. My parents were Caymanians, my grandparents are Caymanian, my great-great grandparents and my great-great-great grandparents were. I am proud of that.

I don't believe we will like going into parliament the Premier should be nothing else but a great-great-great Caymanian. I just absolutely believe that.

Now, I understand what you are trying to say here, but I am wondering now . . . [laughter]

I don't even know if I should say that. [laughter] 'cause even if you take the children, you have the first generation born . . . I mean they can still sell you out wholesale too in a business deal [laughter] as Leader of Government Business or anything.

I don't think . . . the lineage has to be very important. It has to. I just think you have to be born Caymanian because even when I was in the States I was still proud to be Caymanian. My father made sure of that. So, it carries you. I don't think being here for 20 years . . . in some aspects, yes; but not entirely.

So I agree, I concur with Ezzard. I totally believe Caymanian all the way.

Because even if you have first generation of children, after that Cayman status parent, for 20 years . . . does that really make them a bona fide Caymanian to say they are going to be here through thick and thin, the long run, invest in their country? I think another 20 years, maybe from those children, that first generation . . . I am, you know, I am just saying.

But I totally agree with Ezzard.

Hon. V. Arden McLean: Now you are getting there old boy. Now you are getting there.

You understand now, that their children's children got to be able to do it. And you had to wait until your great-great-great-great-great . . . myself as well.

But we are giving it up anyway. We are giving it up anyway. On that second generation every one of them will be able to run.

So Ezzard, don't think that I am defending for it. Your opinion will be said, but mine will too. You know that.

A Member of the Public (Johann) [Question #13]: Just one question.

What about a proposal whereby anybody holding public office must hold Cayman Islands Passport and only a Cayman Islands Passport? They must be a naturalized Caymanian, holding a Caymanian Passport and not having—

Hon. D. Kurt Tibbetts: Not even a British Passport, Johann?

A Member of the Public (Johann): Not a British Passport.

Hon. D. Kurt Tibbetts: Okay.

A Member of the Public (Johann): Not even.

Hon. Alden M. McLaughlin, Jr.: Johann, that would be a legally and constitutionally indefensible position. I will tell you why.

Whether you want to accept it or not, you are a British citizen because you were alive at the time when Her Majesty's Government passed the (I forget the name) Act in 2003 which made all Overseas Territories citizens, British citizens. When you apply for your British Passport, that is the evidence of your citizenship, but it doesn't make you a citizen.

So all of us who were alive at that point are British citizens. So, if we accept your proposal, none of us will be able to stand for election which really, I don't think, is viable because then we'd have to look for some other people to run.

Mrs. Suzanne Bothwell: I would just like to say that under the current Constitution there are limitations on a candidate being able to pursue citizenship. There are exceptions, for example, if you have other citizenship by virtue of your birth, which is a natural thing. We as individuals have no control over where we are born and we have many Caymanians from various generations either having to be born in America or Jamaica for very practical and real reasons or the choice of their parents. But there are current limitations, restrictions, on persons who wish to run for election.

[END OF TAPE 2 SIDE A]

[TAPE 2 SIDE B]

Mrs. Suzanne Bothwell: . . . actively to pursue their citizenship in the United States, as opposed to they are not born there but they decide to post the residency requirements and their allegiance and so forth. So there are restrictions on that.

Did you have another question or . . . ? No?

Okay.

HUMAN RIGHTS

Mrs. Suzanne Bothwell: I wanted to just deal with these major points, the other one being the issue of Human Rights.

Now, in the 1999 White Paper by the FCO, the *Partnership for Progress and Prosperity*, the United Kingdom indicated their desire to see their Overseas Territories have reflected in their constitutions provisions which were Human Rights compliant, Human Rights provisions. Because, as we have been discussing, that is part of their international obligation.

We have already been signed on to at least seven Human Rights Conventions. Where we are now is that we are discussing, I would say, the reasons why we should have Human Rights, a Bill of Rights, in our Constitution. Also, what are the potential benefits for doing that for the Cayman Islands?

One of the issues that we face right now is that, okay, we are signed on to seven Human Rights Conventions, so we have made that international statement to the international community that we observe Human Rights, we enforce Human Rights in our country. But that has not translated down to our domestic legislation whereby an individual, you as an individual in this room can enforce a Human Rights breach that has been levied against you.

And as the Minister indicated earlier on, the real reason for Human Rights is for protection against the State. It is really that protection of the individual. This is where the role of the individual comes in.

I just want to just very quickly go through some of the sentiments as outlined by the United Nations regarding Human Rights and expectations of the Government in your country.

One of the expectations they have of Government is an obligation to respect. This means that the State is obliged to refrain or stop from interfering. It entails the prohibition on certain acts by Government that may undermine the enjoyment of Rights. For example, with regard to the Right to Education, it means that the Government must respect the liberty of parents to establish private schools and to ensure the religious

and moral education of their children in accordance with their own convictions.

Another aspect of Human Rights that is placed on the State is the obligation to protect. The obligation to protect requires the protection of individuals against abuses by non-State actors. Once again, the Right to Education comes in as an example. The rights of children to education must be protected by the State from interference and indoctrination by third parties including parents and family, teachers and the school, religious sects, plans, business firms, et cetera.

And then thirdly, there is the obligation to fulfill. This requires the State or the Government to take positive action to ensure that Human Rights can be exercised. So, for example, in relation to education again, using that as my core example, most of our children rely on government education, government schools. And that is an example of the State's obligation to fulfill. Under the Human Rights Convention all children should have access to education. It actually says "free access to education." However, because of particular circumstances (and each jurisdiction is different) what we allow in Cayman is free access for our local citizens and access to education for those who are not resident based on [?].

But I was reading through our history book at some points in time and I recall reading in the earlier days that there was a point in time where the United Kingdom felt it was not necessary or financially viable to actually establish a school in the Cayman Islands. That may have been a long time ago. It may have been before most people's time. But we actually lived in that era in Cayman. Right now, it would be atrocious if anyone even thought to suggest that our children were not valuable enough that they should not have rights to education or access to education.

So there you see, for example, some of the obligations that Human Rights impose on the State. It is really an obligation for a State to respect the Rights of the individual, to protect the Rights of the individual, and also to fulfill those Rights.

And also, because many times in terms of fulfillment of Rights, we do need State input. An example is health care. Health care is actually a Human Right in that whilst the State is not expected to meet your every healthcare need, it is expected that we as citizens and residents of this country can live in a healthy enough environment and receive our basic healthcare needs. That is why, for example, I am sure that we have a lot of immunization that goes on because of world standards and the realization that we need to meet these obligations.

Now, one of the concerns I know that some people have is in relation specifically to how will Human Rights affect our culture, affect our way of life and especially affect our practices, particularly our religious practices. I would just like to reiterate that Human Rights are not there to take away; they are actually there to protect.

We in Cayman have operated on a premise that, Well, we are already exercising our Right. So why should we have a Bill of Rights?

Well, the reason that we are exercising these rights is because past governments have made it their point to ensure that when they developed our country, when they allow us to access services, when they provide services, when they look after our needs, that they actually apply these very same Human Rights standards so that we are able to live in a community without fear, without oppression, without rejection and denial. We have been very fortunate in that sense.

But the real issue at hand is should we be relying on the good will of our Government?

If Human Rights are there to protect the individual against the Government, should we be relying on the good will of Government to protect us?

The answer is really, no. This is supposed to be our guaranteed fundamental Human Right—a Human Right as individuals that your neighbor cannot say what you have, that your Government cannot say what you have, that no one can take away from you.

One of the issues that we are having as a community is that even though we sign on to these conventions our courts right now are not able to adequately enforce the Human Rights of individuals. I did give an example of the Grant case, *Grant v. the Chief Education Officer*, that I am sure that many of you all were aware of, more commonly referred to as the Rastafarian Case.

Now the reality is that we have individuals of different faiths in our community. And the question at hand was the issue of denial of education of a child. Whilst the court had jurisdiction to deal with this matter, the problem it ran into was that it couldn't deal with it on a Human Rights basis. It couldn't actually look at a particular Right—because you don't have anything reflected like that in our Constitution—and say, *Well, this is the kind of remedy that I can afford this child.*

What it had to do was to use different legal principles. We mentioned the issue of judicial review inquiring into decisions. What it did is that it actually was able to look behind the decision of the Chief Education Officer and make a ruling that her decision was unreasonable and, therefore, send it back to that council, the Education Council, to reconsider the issue.

Whilst in that case that worked, and it came to a solution and the child was able through various means to continue his education, this avenue may not be open to us as individuals in every single circumstance. So what putting a Bill of Rights in our domestic laws would do would allow us as individuals to enable our judicial system (who is supposed to be there to protect Rights) to actually look at an issue from a Human Rights perspective and say this is either wrong, there's a breach that needs to be corrected, and this is how you correct it. Or either say,

You know what? No, this is actually not a breach of your Human Rights and the Government is entitled to take the action that they have.

One of the other issues that we are facing is that if we are signing on to these conventions and we already have extended to us the Direct Rights Petition to act to the European Court of Human Rights if there is a Human Rights breach, that raises its own set of issues. Because if our courts locally cannot deal with the Human Rights issue, that puts the Human Rights issue totally in the hands of a court that has no relationship, no direction to the Cayman Islands.

But if we do put in a Bill of Rights, what it would be, even if a petition was made, it will not hear that petition until that individual has gone through our own judicial system to seek his or her remedy.

Secondly, not every Human Right is an absolute right. Some Human Rights are limited. And putting in place Human Rights, a Bill of Rights within the Constitution, will allow Government to restrict human Rights which should be in their control. For example, it is as a matter of course that countries are expected to limit Human Rights when it comes to issues of internal security, and issues of morality. You know?

If, for example, there is an issue with health or that will affect the moral or be morally degrading to society, the courts, the Human Rights will say this is not your right. For example, freedom of speech and expression is such an example.

Yes, we are all free to speak. We are all free to come together and discuss issues. But when does your right to speak interfere with another person's Human right? When does your right to speak interfere with the value system of your society?

That is part and parcel of the goal that a Bill of Rights will play. It will actually help delineate these lines so that we as citizens, we as a country will know very clearly where our Human Rights begin and where they end.

The same issue in relation to border control. There are limitations on a person's ability to come into a country and to leave a country. That is part of border control, immigration control, which is very relevant to Human Rights.

So, we see that we have some flyers there advertising the lecture series that is put on by the Human Rights Commission and Committee. I would encourage you that if you have any particular questions at hand that you do take advantage of these forums to discuss the issues. And also, if you have any particular questions while we are not Human Rights experts, what I think the purpose of this exercise is all about is that if there are particular Human Rights concerns that you as a community have, then what that does is give the Government an obligation that when they are discussing the issue of Human Rights in the United Kingdom they can lay on the table, Okay, these are the areas of our concern, let's look and see how we can implement particular rights in a way that

they are consistent with what the Cayman Islands wants, or what [?] that we expect to have.

Do you have any questions or comments?

Mr. Billy Adam [Question #14]: In 2002, when the petition People for Referendum was going around, the Government, through the governor, prevented civil servants from taking part in that community affair activity. The Governor himself did that, because we went to him.

Will the Governor be able in a people-initiated referendum, first in the petition to have the referendum, and then in the referendum itself, will the civil servants be denied that right to take part in that?

Hon. D. Kurt Tibbetts: Absolutely not! You don't have to go any further.

A Member of the public: Okay sir.

Hon. D. Kurt Tibbetts: Absolutely not.

A Member of the public: Okay. Thank you sir.

Mr. Billy Adam [Question #15]: The United States and the United Kingdom have seen an assault on the right to privacy on a scale in the last five years that is unheard of. We know that an immense amount of spying is going on on private emails, mail, phone calls and the rest of it.

What can be done locally for us to cut down, not only the UK spying, because their spy network is in good shape—Mr. Ballantyne is working for the FCO now. What can be done locally to prevent the abuse and the invasion of the Right to Privacy and restore those things?

What are we proposing for a Bill of Rights?

Hon. Charles E. Clifford: Billy, I know we can always count on you to put the difficult issues forward.

I say difficult too because you know as well as I do that as far as spying is concerned it is something that is not unique to the UK and its territories. It happens all over the world for all sorts of different reasons.

So, while we can put the Fundamental Right to Freedom in the Constitution, that simply gives you the legal basis for expecting those Rights and being entitled to those Rights.

Unfortunately, because the world is the way it is, it is difficult sometimes to even know that these things are going on because they are so covert. So it is a very difficult situation.

All we can do at this point as a Government, really, is to ensure that those Fundamental Rights and Freedoms are enshrined in the Constitution. As far as how we enforce them, that is a completely different discussion.

Mr. Billy Adam [Question #16]: What about warrantless searches, which in the Cayman Islands started with the Customs Law in 1991, by Mr. Thomas Jefferson? When his namesake, Thomas Jefferson, one of the Founding Fathers of the United States, moved the 4th Amendment to the US Constitution—which was to prevent warrantless searches, because that’s one of the causes of the American Revolution. And it’s going on here.

Hon. Charles E. Clifford: Well, I think it actually started or was in legislation here before 1991. I believe there was some amendment to the Misuse of Drugs Law much further back than that that authorised searches on the basis of reasonable suspicion.

And because I have been on the other side of that fence, I can understand that there are legitimate reasons for that to be the case. I know that it’s difficult for some people to accept that. But I can tell you that while we need to have checks and balances in place to make sure that there is no abuse of that, that it is a necessary tool for effective law enforcement in certain areas.

ATTORNEY GENERAL

Mrs. Suzanne Bothwell: Okay. Thank you very much.

I just want to wrap up the last two major issues . . . the last major issue, I should say, and that is the one issue of the Attorney General. You will see that highlighted on page 8 of the *Summary of Proposals*.

One of the recommendations that has been made is that, I will read it very quickly:

“The Attorney General is currently appointed by the Governor in his discretion, and has a multiplicity of potentially conflicting roles. He presently sits as a voting member of both the Legislative Assembly and the Cabinet. He is the principal legal adviser to the Government, and he is also responsible for criminal prosecutions.

“The revised Constitution should require the Governor to make this appointment upon the advice of the Premier. But the appointee’s qualifications, independence and suitability for the office must be acknowledged by the Judicial and Legal Services Commission. With the creation of a Director of Public Prosecutions, the primary responsibility of the Attorney General would be as the principal legal adviser to the Cabinet. The Attorney General should not be a member of Parliament or the Cabinet, but should be required to attend sessions of both bodies.”

I think the main issue here in relation to the Attorney General’s potentially conflicting roles. One of the concerns that has been raised by the Government is that first and foremost the Attorney General provides

advice to Cabinet. So, if you provide advice to Cabinet, should you also be voting as a member of that Cabinet that you provide advice to?

Secondly, the issue of the Attorney General under the Constitution is the principal legal advisor to the Government. Now, "Government" is not defined in our Constitution. So who does that mean?

Does it mean the Cabinet? Which would consist of the Governor and the elected representatives.

Does it mean the Governor alone in his person?

Does it mean Ministers who sit outside of Cabinet?

So, really and truly, this is a question to be considered because what could potentially happen is the Attorney General can find himself in a position where he has to advise both the Cabinet and the Governor. And the question is can that actually happen? Or is there a circumstance where one Member or one aspect of Government is without legal advice? And should that ever be the case? So, that is one of the major issues for consideration that we would like you to think about during the public consultation period.

The Secretariat has just started a radio show called *Constitutional Conversations* which we just had our first show today and will be also having them on Fridays at the time *Talk Today* would be on air, 12 to 3. We are going to be doing each one of these topics. As a matter of fact, on Friday, we will be discussing this topic at 12.15, and we will be discussing the topic again on Monday when we deal with the issue of Official Members.

So I would just like to thank everyone for coming this afternoon, tonight. I think it is a very useful and interactive discussion. Please . . . we have not discussed every single topic, but I would like you to go through the *Summary of Proposals*, to look at it, look at the areas that we have not discussed, form your views and really be prepared to have your say. If you feel like calling the show, emailing the Secretariat, calling us in our office (and our contact details are in the various documents that you have) please do so because what is being asked of you right now is that you consider the issues and then provide the Government with what you believe is appropriate for our Constitutional reform.

Thank you.

[applause]

Hon. Alden M. McLaughlin, Jr.: Thank you all for being so patient. It's been a long evening. These are complex issues. Thank you very much for listening so intently and participating.

I just wanted to finish up by telling you very quickly about where we go from here.

We are doing two rounds of public meetings so we will be back again to talk to you. The outcome of all of this exercise, the public meetings, the talk shows, any other input that we get . . . we are going to pro-

duce another document which we hope will reflect fairly broad consensus on the issues, having gotten this information and this feedback over the course of the four months, to produce a document that will hopefully reflect the majority views of people on critical issues in relation to the Constitution.

That document will then form the basis for the referendum question or questions. So, it is important that we get it right in terms of what people are really feeling and thinking and aspiring to in relation to their Constitution.

But it is a wonderful opportunity—an opportunity which has never presented itself in this country before—for you, ordinary man/woman in this country, to actually participate in helping to shape what the new Constitution is like.

Regardless of who says otherwise, it is an opportunity that should not be missed by every single person who lives in and is eligible to vote in this country to actually come out having formed their views and vote yes or no to the broad framework and questions in relation to the Constitution which will be put to you. You will have an actual document. You can read it, look at it and understand whether or not this meets with your approval.

The country has never had a referendum before. It's all new. And the Government understands that we are taking a serious risk, or gamble some may say, because we know that if we don't get the authority the mandate from you we are not going to be able to take the process forward. But we believe so firmly in the use of referendum as a tool of democracy that it is something we are absolutely committed to. But we need everyone to come out and participate. Hopefully, we will vote in favour of the document we produce, but more important even than that is that you actually participate for the first time in this wonderful exercise of democracy.

Thank you all very much.

Hon. D. Kurt Tibbetts: Thank you folks for coming out tonight.

Madam Speaker, your bunch has been the liveliest so far!

Thank you very much folks.

Good night.

Mrs. Suzanne Bothwell: Thank you.

Remember now we have another meeting in North Side . . . on the 6th of March? Yes, 6th of March. So I think we actually . . . it may actually be here again because I think they were having problems the last time. But we will be announcing to the North Side community exactly where the location will be. But it will be scheduled for the 6th of March.

Thank you very much.

Female: Ladies and gentlemen, please remember the refreshments at the back of the room. Kindly help yourself to them.

Thank you.