

## Establishing a pragmatic path to greater autonomy and decolonization

### 1. Introduction

The British Overseas Territories, especially those in the Caribbean, are experiencing a period of significant uncertainty. There is the still unresolved issue of 'Brexit', and the likely impact on the territories in regard to trade, aid, and political cooperation.<sup>1</sup> Pressure is also coming from the UK Parliament on three fronts. First, the requirement to have public registers of the beneficial owners of companies. Second, the legalization of same-sex marriage. Third, the call for diluting 'Belonger' status to allow legally-resident British Overseas Territory and UK citizens the right to vote and to hold elected office. So the territories are being placed under significant pressure, and they must respond. There are real challenges here, but some opportunities too.

The responses that are required fit in well with the theme of this year's seminar – accelerating decolonization via renewed commitment and pragmatic measures. In order for the territories to not only better withstand the uncertainties facing them, but also to move towards greater autonomy, both the territories and the UK must act firmly, but also with realism. The territories should take measures to fortify their political structures: so for example the franchise should be widened, and they should implement the suggested changes made by various observer missions to improve the transparency of their elections. On the other hand the UK must ensure that the territories receive sufficient funding to strengthen their economies; and more support is given to help territories in key areas, such as managing immigration (hence complementing any expansion of the franchise).

### 2. Enhancements to the political process

Despite some recent constitutional reforms in Anguilla, which in reality brought it into line with the other territories,<sup>2</sup> the present UK government appears reluctant to countenance further significant reform. In evidence to the recent House of Commons Foreign Affairs Committee enquiry, the government stated: "... we believe the current balance of powers [between the territories and the UK] is broadly the right one".<sup>3</sup> This approach is largely supported by the Foreign Affairs Committee itself, which said very little about constitutional change in its report.<sup>4</sup> So it is clear there is little appetite on the part of the UK governing class to agree significant further autonomy at the present time. Thus, the territories must enact local reforms and use these as confidence building measures to persuade the UK to look again at the constitutional arrangements.

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<sup>1</sup> For further information see P. Clegg (2018) The United Kingdom and its overseas territories: No longer a 'benevolent patron'? *Small States & Territories*, 1 (2). pp. 149-168, available at <https://www.um.edu.mt/sst/sst12nov2018>.

<sup>2</sup> The Anguillan Constitution (Amendment) Order 2019, 10 April 2019, available at [http://www.legislation.gov.uk/ukxi/2019/852/pdfs/ukxi\\_20190852\\_en.pdf](http://www.legislation.gov.uk/ukxi/2019/852/pdfs/ukxi_20190852_en.pdf).

<sup>3</sup> Written evidence from the Foreign and Commonwealth Office (OTS0103), September 2018, p. 5, available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-future-of-the-uk-overseas-territories/written/90142.pdf>.

<sup>4</sup> Foreign Affairs Committee, *Global Britain and the British Overseas Territories: Resetting the relationship*, 21 February 2019, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmcaff/1464/146402.htm>.

## 2.1. *Extending the franchise*

In many of the territories, including those in the Caribbean, there is a notable difference between total population size and the numbers who are able to vote in elections. The restricted franchise is a result of the tight controls over ‘Belonger’ status, and it is an issue that should be considered when gauging the quality of democracy, political participation, and civic engagement. Formal nationality issues are the responsibility of the UK, but each territory has its own more informal arrangements – equivalent to local citizenship. Belonger status (this term is used in a generic way because territories use different terminology: Caymanian; Turks and Caicos Islander) is granted to those individuals who are seen to have particularly strong links with a territory.

Being a Belonger is highly prized and the status strongly defended. This is because there are a range of benefits that Belongers have, which non-Belongers do not. The benefits include commonly the right to live in a territory without immigration restrictions; the right to own property without the need for a licence; and the right to vote and to stand as a candidate for election. Due to the small size of the territories there are challenges in relation to democratic accountability and transparency, which could be improved if the franchise was extended. Also, and more specifically in relation to the decolonization issue, a more representative electorate would enrich discussions regarding the future political status of each territory.

If one considers the relationship between the total adult population and the electorate, marked differences are clearly apparent. In British Virgin Islands and Cayman Islands less than half of the population is able to vote; in Turks and Caicos the gap is even more significant. The territory has a voting-age population of close to 35,000, but the number of registered voters at the last election was only 7,732. In other words, only about 22 per cent of the adult population were able to vote; and if you factor in turnout (of 80 per cent) the figure falls to 18 per cent.

The territories have long defended the status-quo, fearful that extending the franchise to immigrants, even those who have been resident for many years, will change the nature, and undermine the coherence, of their societies. It is true that territories such as Cayman Islands and Turks and Caicos have seen significant immigration recently (see below), but that should not discount a (managed) extension of the franchise. For several years the UK has called for such a change,<sup>5</sup> while the Foreign Affairs Committee has recently argued that “Belongerships and its equivalents are wrong”, and “... we do not accept that there is any justification to deny legally-resident British Overseas Territory and UK citizens the right to vote and to hold elected office”.<sup>6</sup> The call for change by the Foreign Affairs Committee is focused on these two particular groups, but reform could also be considered for other long-standing residents.

## 2.2. *Improving the electoral process*

As well as making the franchise more representative, there are several further reforms related to elections that could be enacted to improve the legitimacy of the process:

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<sup>5</sup> Foreign and Commonwealth Office, *The Overseas Territories: Security, Success and Sustainability*, CM 8374, June 2012, available at <https://www.gov.uk/government/publications/the-overseas-territories>.

<sup>6</sup> Foreign Affairs Committee, *Global Britain and the British Overseas Territories: Resetting the relationship*, p. 26.

- Where appropriate to tighten and/or enforce campaign finance laws. For example, in assessing Anguilla's general election in 2015 the Commonwealth Parliamentary Association (CPA) noted that "[we] received a number of reports that parties and candidates were receiving large donations from business entities, underlining the need for greater transparency in campaign finance".<sup>7</sup> Similarly, reporting on the 2017 election in Cayman Islands, the CPA stated, "The transparency of campaign finances was limited as there are no requirements for contestants to submit or for the authorities to audit or publish, reports of expenditure before polling day", and so there were concerns that this "distorted the fairness of the campaign".<sup>8</sup> Reservations were raised that the post-election procedures for politicians to declare their spending were also compromised.
- Where appropriate to re-draw electoral boundaries in order to reduce the discrepancy between the sizes of constituencies, so the vote of one elector is as equal as possible to the vote of another. For instance in Anguilla, the largest constituency had 2,355 registered voters in the 2015 election (Valley South), and the smallest (Sandy Hill) had only 964. Cayman Islands and Turks and Caicos have also significant disparities, although in part this is caused by their multi-island status. Nevertheless, as the CPA argued in its report on the 2016 general election in Turks and Caicos:

The differences in numbers of voters per elected representative undermine the principle of equality of the suffrage and the equal weight of the vote, with a vote in ED 3 (South Caicos) having more than three times the power of a vote in ED 7 (Cheshire Hall & Richmond Hill, Providenciales) in electing a representative to the House of Assembly.<sup>9</sup>

### 3. Increasing financial support

The vast majority of UK Overseas Territories have long since graduated from budgetary aid; in the Caribbean the exception is Montserrat. The position of the UK is encapsulated in the following quote by William Hague, then Foreign Secretary, on launching the 2012 White Paper on the Overseas Territories: "We expect these territories to do all that is necessary to reduce ... their reliance on subsidies from the British taxpayer."<sup>10</sup> Nevertheless, the vulnerability of relatively well-off territories is clear to see when one considers the impact of Hurricane Irma, the risks posed to their key financial services and tourism industries, and the consequences of the UK leaving the European Union.

There is a sense in several territories, even those such as Montserrat that do presently receive budgetary assistance, that additional financial support is required to place their economies on

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<sup>7</sup> Commonwealth Parliamentary Association, Election Observer Mission, Anguilla General Election April 2015, Preliminary Report, available at

[http://www.caribbeanelections.com/eDocs/election\\_reports/ai/ai\\_CPA\\_2015\\_prelim.pdf](http://www.caribbeanelections.com/eDocs/election_reports/ai/ai_CPA_2015_prelim.pdf).

<sup>8</sup> Commonwealth Parliamentary Association, Election Observer Mission, Cayman Islands General Election May 2017, Final Report, available at

[http://www.caribbeanelections.com/eDocs/election\\_reports/ky/KY\\_EOM\\_REPORT\\_2017.pdf](http://www.caribbeanelections.com/eDocs/election_reports/ky/KY_EOM_REPORT_2017.pdf).

<sup>9</sup> Commonwealth Parliamentary Association, Election Observer Mission, Turks and Caicos General Election December 2016, Final Report, available at

[http://www.caribbeanelections.com/eDocs/election\\_reports/tc/TC\\_EOM\\_2016\\_Final\\_Report.pdf](http://www.caribbeanelections.com/eDocs/election_reports/tc/TC_EOM_2016_Final_Report.pdf).

<sup>10</sup> Foreign and Commonwealth Office, Written ministerial statement: The Overseas Territories White Paper, 2012, 28 June, available at <http://bernews.com/wpcontent/uploads/2012/06/120628-Written-Ministerial-Statement-on-White-Paper.pdf>.

a stronger footing. The UK should reconsider its well-established position of keeping support to a minimum, and establish a 'new deal' for the territories. As a first step it needs to make good any losses in support presently provided by the EU beyond 2020. But it needs to go further, and put in place financial support that will upgrade key services, such as health care and education, strengthen infrastructure, and give a real chance for economic diversification. Funding should also be committed for more than just a single year – perhaps three years – to give the territories more certainty when putting their plans in place.

### 3.1. *Greater support for dealing with immigration*

One example where further financial support could be provided, which might also help boost efforts to extend the franchise, is in the area of immigration. Several territories in the Caribbean have seen their populations rise in recent years, in part caused by significant levels of legal and illegal immigration. In Turks and Caicos, for instance, the total population was 19,886 in 2001 and in 2017 it was 39,788. During this period the Turks and Caicos Islander population grew, but much less quickly than numbers overall. Thus, the percentage of the total population regarded as Turks and Caicos Islanders fell from 52 per cent in 2001 to 39 per cent in 2012. Another indicator of the changing demographic is the number of Haitians living in Turks and Caicos. In 2001, there were 5,027; in 2012 the figure was 10,928,<sup>11</sup> and the number has risen since. A particular concern is the number of Haitians trafficked into the territory. As the Turks and Caicos Islands Human Rights Commission noted, "2018 [saw] a peak in human trafficking ... primarily from the country of Haiti".<sup>12</sup>

The issue of immigration is one that touches both the responsibilities of the Governor and the local government, with the result being often unsatisfactory policy-making. At times of crisis the UK sometimes provides help, for example, in the spring of 2018 a UK warship was sent to patrol the waters between Turks and Caicos and Haiti, but frequently support is reactive and piecemeal. For many years the territory has called for the UK to give more sustained support to deal with the immigration issue, but without success. So the capacity of Turks and Caicos to repatriate illegal immigrants is limited; the ability to prosecute traffickers is almost zero; the conditions in the detention centre and prison are poor; and it is difficult for child immigrants to find places in over-crowded schools. If UK authorities were prepared to provide more financial resources then a broadly based and more successful approach could be taken to immigration, thus creating a more supportive space for reform of the franchise to be enacted.

## 4. Conclusion

Although there is no particular appetite from London for significant constitutional change, that does not mean progress cannot be made towards greater autonomy. A pragmatic and step-by-step approach should be taken to improve the functioning and financing of the territories. The paper has provided a snapshot of what might be possible in areas such as electoral reform and greater financial disbursements. Effective confidence building measures by the territories, together with a clear financial strategy on the part of the UK, could bring about tangible change.

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<sup>11</sup> Turks and Caicos Statistics Department, available at <https://www.gov.tc/stats/statistics/social-statistics/5-population>.

<sup>12</sup> The Turks and Caicos Human Rights Commission, available at <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/the-future-of-the-uk-overseas-territories/written/88596.pdf>.