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INTERNATIONAL RESEARCH SEMINAR

RELATIONSHIPS BETWEEN REGIONAL AND NATIONAL EXECUTIVE POWERS IN REGIMES OF TERRITORIAL AUTONOMY

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FOREWARD

From a political and legal point of view, territorial autonomy has evolved throughout history, to become a key feature of institutional diversity in many countries of the world. It attests to the recognition of the right of local populations to exercise significant autonomy on their internal affairs, including legislative, judicial and executive powers, while remaining integrated into the national State, and fully respecting its territorial integrity as well as its national unity, which are cardinal principles of the Charter of the United Nations.

This year's seminar focused on "Relationships between Regional and National Executive Powers in Regimes of Territorial Autonomy". It allowed participating international experts to look into executive powers in practice in three regions of the world: the island of Príncipe in Sao Tome and Príncipe, the Cayman Islands as an overseas territory of the United Kingdom, and the Island of Rotuma in the Fiji Islands, comparing them with the provisions of Morocco's Autonomy Initiative, in particular articles 5, 12, 16, 20, 21 and 24.

Through an in-depth analysis of the above-mentioned cases, the following presentations explore how these various regional executive powers govern, consider and react to meet the specific needs of their autonomous regions, while respecting the imperative of protecting the national cohesion.

Participants discussed various issues such as, the exercise of regional executive powers in keeping with distribution of competences and resources with the central government; examples of coordination mechanisms which delineate powers; the equalization in the exercise of prerogatives between the autonomous region and the central government, as well as the fair and equitable representation of local aspirations at the national level.

Jointly considered, all the experts' contributions contained in this publication enrich our understanding of autonomy plans implemented in different regions of the world, and of the common challenges and innovative solutions that emerge from various territorial realities, where autonomous regions prosper within the national unity.

The insightful presentations and in-depth discussions that marked this seminar have shown that Morocco's Autonomy Initiative offers serious and credible political prospects and legal guarantees for the exercise of large and substantial executive powers in the Moroccan Sahara as well as for the daily management by the populations of the Kingdom's Southern Provinces of their local affairs, while preserving the territorial integrity of the Kingdom of Morocco.

This publication aims to offer informative and diversified perspectives on how nations approach the question of territorial autonomy, an extremely important aspect of territorial governance diversity, while meeting international standards for democracy and the rule of law.

Omar HILALE
Ambassador, Permanent Representative of the Kingdom of Morocco
to the United Nations in New York

INTRODUCTION

Dr. Marc Finaud[1]

Excellencies, Ladies and Gentlemen,

I am pleased to welcome you to this new international academic seminar around the theme of territorial autonomy, this time focusing on the particular topic: "Relationships between Regional and National Executive Powers in Regimes of Territorial Autonomy". I wish to thank the Permanent Mission of the Kingdom of Morocco to the United Nations in New York for initiating this event. This is the twelfth such seminar since 2009. Previous ones in Geneva, Dakhla, New York, or on line allowed a large number of academics from the whole world to address some aspects of territorial autonomy such as: the right to self-determination, democracy and human rights, governance of institutions, management of natural resources, representation and legitimacy in negotiations, solidarity and equalization between regions, development models, Human Rights Commissions, civil society and NGOs, external relations, models of territorial autonomy, political settlement of conflicts, devolution of judicial powers and legislative powers. Today, we will be looking at executive powers, particularly from the viewpoint of relations between national and regional executive authorities.

Past seminars were also useful to compare existing regimes of territorial autonomy with the provisions of the Moroccan Initiative for an Autonomous Sahara Region. Indeed, we looked at cases such as Aceh (Indonesia), Azores and Madeira (Portugal), Bangsamoro (Philippines), Cameroon, Caribbean Island states, Eastern Malaysia, Greenland (Denmark), Indian Northeast, Iraqi Kurdistan, Italian autonomous regions, Mexican states, New Caledonia (France), Newfoundland (Canada), Nicaragua's Atlantic Coast, Northern Ireland (United Kingdom), Nunavut (Canada), Puerto Rico (United States), Rodrigues (Mauritius), Quebec (Canada), Spanish Provinces, South Tyrol/Alto Adige (Italy), Vojvodina (Serbia), Wallonia (Belgium), Zanzibar (Tanzania), etc.

The findings of such comparative seminars have been published by Morocco. They allowed to conclude that, in most cases, the extent of the autonomy offered by Morocco to the Sahara Region, subject to agreement in the negotiations under the auspices of the UN Security Council, was most generous, at least more advanced that in many existing cases. It is therefore not surprising that, since Morocco presented its Initiative to the Security Council in 2007,2 regular resolutions of that

[1] Senior Advisor and Associate Fellow, Geneva Centre for Security Policy (GCSP).

[2] United Nations, Letter dated 11 April 2007 from the Permanent Representative of Morocco to the United Nations addressed to the President of the Security Council, Document S/2007/206, 13 April 2007 (https://digitallibrary.un.org/record/597424/files/S_2007_206-EN.pdf?ln=en).

Council, including the most recent one, No. 2654 (2022), adopted on 27 October 2022, welcomed the "serious and credible Moroccan efforts to move the process forward towards resolution."

Today's seminar will address some questions in comparing the provisions of the Moroccan Initiative with four new cases: the Faroe Islands in Denmark, the island of Príncipe in Sao Tome & Príncipe, the Cayman Islands as a UK Overseas Territory, and the island of Rotuma in Fiji. Unfortunately, another expert who was supposed to present the case of the Basque Country in Spain had a health emergency that prevented him for participating, but we hope to be able to publish his paper later.

As a reminder, regarding **executive powers**, the Initiative for the Autonomy of the Sahara Region includes several provisions:

- Art. 5: (…) the Sahara populations will themselves run their affairs democratically, through legislative, **executive**, and judicial bodies enjoying exclusive powers.
- Art. 12: In keeping with democratic principles and procedures, and acting through legislative, **executive**, and judicial bodies, the populations of the Sahara autonomous Region shall exercise powers, within the Region's territorial boundaries, mainly over the following:
    - Region's local administration, local police force and jurisdictions
    - In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism, and agriculture
    - Region's budget and taxation; infrastructure: water, hydraulic facilities, electricity, public works, and transportation
    - In the social sector: housing, education, health, employment, sports, social welfare, and social security
    - Cultural affairs, including promotion of the Saharan Hassani cultural heritage
    - The Environment.
- Art. 16: The powers of the State in the Sahara autonomous Region […] shall be exercised by a **Representative of the Government**.
- Art. 20. **Executive** authority in the Sahara autonomous Region shall lie with a **Head of Government**, to be elected by the regional **Parliament**. He shall be invested by the **King**. The **Head of Government** shall be the **Representative** of the State in the Region.
- Art. 21: The **Head of Government** of the Sahara autonomous Region shall form the Region's **Cabinet** and appoint the **administrators** needed to exercise the powers devolving upon him, under the present autonomy Statute. He shall be answerable to the Region's Parliament.
- Art. 24: Laws, **regulations** and court rulings issued by the bodies of the Sahara autonomous Region shall be consistent with the Region's autonomy Statute and with the Kingdom's Constitution.

The comparative questions asked to the speakers on other autonomous regions are the following:

1. In the statute of autonomy, is the regional government (executive) elected (by the population or the parliament of the region) or appointed by the central government?
2. Does the head of the regional government appoint the members of the regional executive alone or must he/she consult the central government?
3. Does the head of the regional executive exercise functions of representation of the national State in the region or are these functions exercised by an ad hoc representative (governor, etc.)?
4. Does the national State have the power to overthrow the regional government and if so, for what reason(s)?
5. Are the members of the regional administration dependent on the regional executive appointed, trained, remunerated by the latter or by the central government or both?

I will now give the floor to the experts, starting with Professor **Bjørn Kunoy**, professor of international law at the University of the Faroe Islands, then to Dr **Gerhard Sieber**t, Associated Researched at the University Institute of Lisbon (Portugal), then to Mr **Vaughan Carter**, Chairman of the Constitutional Commission of the Cayman Islands, and finally to Dr **Alan Howard**, Professor Emeritus of Anthropology, University of Hawai'i (USA). I must apologise for the all-male panel, but I should say that, regrettably, we had a female expert who cancelled her participation too late for us to fund another female speaker.

After the expert presentations, I will try to offer some concluding remarks.

REGIONAL AUTONOMY IN SMALL ISLAND DEVELOPING STATES: THE CASE OF PRÍNCIPE ISLAND (DEMOCRATIC REPUBLIC OF SÃO TOMÉ AND PRÍNCIPE) AND COMPARISON WITH THE MOROCCAN INITIATIVE FOR THE WESTERN SAHARA[3]

Dr. Gerhard Seibert[4]

1. Introduction

The two-island republic of São Tomé and Príncipe (1,001 km²) located in the Gulf of Guinea is a former Portuguese plantation colony that achieved independence in 1975. It is the second smallest state in Africa, after the Seychelles, with a population estimated at 225,000 (2021). Only about 7,500 people live in the smaller island of Príncipe (142 km²) that is 150 km distant from São Tomé Island. Accordingly, Príncipe represents 14% of the country's territory and only 3.3% of its population. The mountainous islands of volcanic origin are densely covered by tropical vegetation. Both islands have a moist equatorial climate with an annual average temperature of 25º C.

There are regular inter-island flights between São Tomé and Príncipe Island operated by Africa's Connection STP and STP Airways. A regular shipping service between the two islands was only resumed in March 2023, after an interruption of four years. Since independence several tragic shipwrecks with the loss of human lives on this route have impeded the maintenance of a permanent regular sea connection between São Tomé and Príncipe Island.

Roughly 60% of the country's population is younger than 25 years. São Tomé and Príncipe is a creole society without ethnic, religious, or linguistic divisions that emerged in the early sixteenth century when the hitherto unpopulated islands were settled by Portuguese colonists and enslaved Africans, predominately from the Niger Delta (Nigeria), Congo, and Angola. The country's official language is Portuguese that is spoken by practically the entire population (98.4%), while creole languages are spoken to a significantly lesser extent. According to the results of the last census in 2012, Forro, the majority creole in São Tomé Island is spoken by 36.2% of the population, Angolar, the language of the Angolares, a maroon community, is spoken by 6.6%, and Lunguié, the creole of Príncipe Island, is spoken by 1.0%. In addition to these three national creole languages, Kabuverdianu is spoken by the 8.5% of the population that is of Cabo Verdean origin.

With a GDP of about $550 million and a per capita income of $2,430 (IMF 2022) São Tomé and Príncipe's economy is the smallest in Africa. In the 1990s the country's plantation economy based on cocoa monoculture inherited from colonialism run-down after independence was dismantled. The plantation lands were divided into small plots and distributed to former plantation workers. Currently the country's main export earners are cocoa, palm oil and tourism, however, since

[3] The author would like to thank José Cardoso Cassandra, former president of the Regional Government of Príncipe (2006-20) and Elvira da Mata, secretary of the president of Principe's Regional Legislative Assembly, for having provided documents for this paper.

[4] Associated Researcher, Centre for International Studies (CEI), ISCTE – University Institute of Lisbon, Portugal.

independence the impoverished country has been largely dependent on international aid. In 1997 the country signed the first of several agreements on offshore oil exploration, however, despite several explorative drillings in various oil blocks in the period from 2006 to 2022 so far commercially explorable hydrocarbons have not been discovered in its waters. Nevertheless, already in 2004 São Tomé adopted its oil revenue management law that provides for the creation of a National Oil Account, the sound management of the account, including the allocation of 10% of the annual oil revenue used to Príncipe Island, annual audits of the oil accounts, and the application of transparency principles. According to the World Bank (2022) about 15.3% of the country's population lives with less than $1.15 per day while another 29% of the population is poor, living under a poverty line of $3.65 per day.

From independence in 1975 to 1990 São Tomé and Príncipe was a socialist one-party state modelled on the Soviet example. Since 1991 the country has been a multiparty democracy based on Portugal's semi-presidential regime that has functioned comparatively well. According to this system that is very uncommon in the African context the prime minister is the head of government, while the president has very few executive competences. Since 1991 presidential and legislative elections have been held regularly and several times legislative elections have resulted in a change of government. Príncipe elects five representatives to the 55-member National Assembly. Due to financial and organizational constraints local elections have only been held regularly since 2006. Soon after independence on the local level the country was administratively divided into seven districts whereby Príncipe Island constituted one single district. In 1994 Príncipe gained political and administrative autonomy, modelled on the examples of the Portuguese archipelagos of Madeira and the Azores that have enjoyed political autonomy since 1976. Príncipe's autonomous status was reinforced and expanded by national laws adopted by the National Assembly in 2010 and 2022 respectively.

Due to its small geographic and demographic dimension and insularity Príncipe's autonomy can only serve to a limited extent as model for other larger and more populous mainland territories such as the Western Sahara. By the way, São Tomé recognized the Sahrawi Arab Democratic Republic in July 1978, but in October 1996 withdrew this recognition while Morocco offered development assistance. At Rabat's suggestion, in January 2020 São Tomé inaugurated a consulate-general in Laayoune (El Aiune), the largest city in the Western Sahara. In the 2023 national budget São Tomé has allocated STN630,740 ($27,630) for the operating costs of this consulate-general.

This paper is divided into three sections. The first section provides a short history of Príncipe Island, while the second and third section deal with the island's autonomy status regarding its Regional Legislative Assembly and its Regional Government respectively. In the final considerations, some aspects of this system of governance will be compared with the Moroccan

Initiative for the Western Sahara presented in 2007 to the United Nations Security Council[5] and regularly qualified as "serious and credible" by the Security Council.[6]

I. A brief history of Príncipe

Most sources claim that the first Portuguese navigators arrived at Príncipe Island on 17 January 1471. However, it might have been later in that decade since there is no certainty about the year of arrival due to a lack of documentary evidence. Since its settlement in the early sixteenth century the two hitherto uninhabited islands of Príncipe and São Tomé have always belonged together. Portugal ruled the islands for almost 500 years, one of the longest periods of European domination in colonial history. Both islands have a similar history of settlement and colonization and are not different in terms of ethnicity or religion. Nevertheless, Príncipe has its own creole language, cultural manifestations, and island identity. Príncipe's settlement by Portuguese colonists and enslaved Africans began in 1502 when the island was granted to the Portuguese nobleman António Carneiro, whose family ruled it by local representatives until 1753 when it reverted to the crown. In that year, Santo António, the islands only larger settlement, was granted city rights and became the archipelago's capital. After the decline of the sugar industry based on slave labour that had dominated both islands in the sixteenth century, in the early seventeenth century until the mid-nineteenth century the slave trade and the production of food for the provision of passing slave ships bound to the Americas dominated both islands' economy. In the eighteenth century many colonial officers and military based in the archipelago came from Brazil, until 1822 a Portuguese colony.

In 1771, Príncipe had a population of 5,850, of whom 111 whites, 165 free mixed-race persons, 6 mixed-race enslaved persons, 900 free blacks, and 4,668 enslaved Africans. The abolition of the slave trade north of the equator, in 1815, and the return of the capital to São Tomé, in 1852, contributed to Príncipe's economic and demographic decline, although the illegal slave trade continued for several decades and new cash crops, coffee and cocoa, were already introduced in the archipelago from Brazil in 1789 and around 1820 respectively. In 1875, the year when slavery was officially abolished in the archipelago, Príncipe's population had dropped to only 1,946, of whom 45 were Europeans, 1,521 were free blacks, and 380 were so-called '*libertos*' (freemen). Many properties had been abandoned and the island was visibly impoverished.

However, in the last quarter of the nineteenth century, encouraged by tax exemptions, Portuguese investors acquired a considerable number of abandoned plots where they set up large plantations, locally called *roças*, for the cultivation of coffee and cocoa. Príncipe's largest *roças* in the twentieth century - Sundy, Porto Real, and Infante Dom Henrique - were established during this period. In the early twentieth century, altogether 52 *roças* of different sizes employed between a few dozens and several hundred African contract workers (*serviçais*), who had replaced the enslaved Africans immediately after the abolition of slavery. Their legal status was different from slavery, however, their living and working conditions were similar, particularly until the beginning

[5] United Nations, Letter dated 11 April 2007 from the Permanent Representative of Morocco to the United Nations addressed to the President of the Security Council, Document S/2007/206, 13 April 2007 (https://digitallibrary.un.org/record/597424/files/S_2007_206-EN.pdf?ln=en).

[6] See United Nations Security Council resolution 2654 (2022) of 27 October 2022 (press.un.org/en/2022/sc15981.doc.htm)

of the twentieth century. Initially the contract workers came almost exclusively from Angola, but from 1903 and 1908 respectively they were also recruited in Cabo Verde and Mozambique. In 1908, Príncipe's population had increased to 3,830, including 3,330 *serviçais*, 150 whites, and 350 autochthonous islanders.

At that time, Príncipe was severely hit by the outbreak of sleeping sickness (trypanosomiasis), which had possibly been introduced by Angolan *serviçais*. Between 1908 and 1912, the epidemic provoked mortality rates of 12.3% to 16.4%, killing hundreds of people. Only in 1913 did the measures to eradicate the tsetse fly result in a significant decrease of the death rate, and the following year the flies completely vanished from the island. Following the disappearance of sleeping sickness the Príncipe's population increased because of the introduction of new *serviçais* and the natural growth of autochthonous islanders. In 1919 Príncipe became known to the international scientific community when in May that year an expedition of the Royal Astronomical Society headed by the English astrophysicist Arthur Stanley Eddington (1882-1944) observed from *Roça* Sundy a solar eclipse that, for the first time, confirmed Albert Einstein's (1879-1955) general theory of relativity.

In 1921, Príncipe's population already reached 7,000, of whom 5,409 were *serviçais*, the largest number ever. Most of the contract workers in the twentieth century came from the drought-stricken Cabo Verde islands. In the following decades, the number of *serviçais* decreased from about 2,300 in 1934 to about 900 in 1961, when due to the decline of cocoa production only five large plantations survived. Príncipe's total population of 4,332 in 1950 remained largely constant until 1970, since the decrease of plantation workers was compensated by a natural increase of the local population, which until the present day is predominantly composed of former Cabo Verdean plantation workers and their descendants.

Due to a lack of Portuguese government investments, until the 1960s Príncipe's infrastructures remained deficient and public buildings were badly maintained. For example, until 1965 there was not a single tarred road in Príncipe. Only from 1963 when the armed liberation struggle in Angola and Guinea-Bissau had already begun Portugal began to invest more in the development of her colonies, and consequently Príncipe started benefiting from the various public investment programmes. After São Tomé and Príncipe's independence in 1975, however, the smaller island continued to feel the adverse consequences of its double insularity, as its precarious situation has been labelled locally. In December 1981, a lack of food supplies provoked a popular revolt accompanied by secessionist slogans that was quickly cracked down by the then socialist one-party regime in São Tomé.

In 1992, one year after the country's democratic transition, the first local multiparty elections were held in all districts, including in Príncipe. In 1994 by law Príncipe became an autonomous region. Since the revision of the country's Constitution in 2003 Príncipe has also been recognized constitutionally an autonomous region with its own political-administrative status (art. 137). Príncipe's first Regional Assembly was elected in March 1995 and the first Regional Government took office on 29 April. Since that year Príncipe has commemorated its autonomy status annually

on that day. In 1997 São Tomé signed a concession agreement with a South African company on the establishment of a free-trade zone in Principe's Agulhas Bay with the objective to provide services to the oil-producing countries in the Gulf of Guinea region. However, the company abandoned the project only two years later due to a lack of interest by potential investors.

The central government's failure to hold any local election in the years after 1995 caused another popular protest in 2006 led by a local opposition movement called *União para a Mudança e Progresso do Príncipe* (UMPP, Union for Príncipe's Change and Progress). In June that year the UMPP led by João Paulo Cassandra spearheaded a protest in Príncipe against a court decision declaring null and void candidacies put forward for the local elections on the grounds that they had been submitted after the official deadline of 25 May. The popular protest forced Príncipe's Regional Government headed by Zeferino dos Prazeres (MLSTP/PSD)[7] to step down. Subsequently, the central government (at the time formed by the party alliance of MDFM-PCD)[8] appointed João Paulo Cassandra as head of a provisional Regional Government until the elections. In August the same year, the UMPP headed by José Cardoso Cassandra known as Tozé gained an absolute majority in the second regional elections in Príncipe.

Tozé Cassandra's UMPP repeated its victory in Príncipe's following regional elections in 2010, 2014, and 2018. In 2011 the Regional Government headed by Cassandra rejected the establishment of a palm oil plantation and factory on the Sundy estate, since it favoured the development of sustainable tourism in Príncipe instead. Since then, the small island received considerable investments in luxury eco-tourism development from two foreign tourism companies: HBD (Here Be Dragons), owned by the South African IT-millionaire Mark Shuttleworth, and Africa's Eden, owned by the Dutch businessman Rombout Swanborn. Leading positions in both companies are almost exclusively occupied by expatriate employees. The four hotels run by the two companies charge between €460 and €1,190 per room per night, multiples of an average local monthly wage. Meanwhile, HBD has become by far the island's largest local employer. In mid-2023 the company employed 514 local people and 28 expatriates.[9] Both companies have been engaged in supporting marine and terrestrial nature conservation projects in the island. Smallholder agriculture and artisan fishing have remained the local population's main subsistence activities. Currently, Príncipe's regional annual budget is only about $10.5 million.

In 2012 UNESCO recognized Príncipe Island as World Biosphere Reserve. In November 2019, Cassandra handed over the UMPP leadership to Filipe Nascimento, a young Portuguese-trained lawyer and son of former Cabo Verdean plantation workers. In August 2020 Nascimento also took over from Cassandra the presidency of Príncipe's Regional Government. It was for the first time that a descent of former Cabo Verdean contract workers assumed Príncipe's government. Before Príncipe had always been ruled by people from the island's prominent autochthonous families Umbelina, Cassandra, Lavres, Prazeres, and Mata. Not all people of the local autochthonous minority have been happy with this change. In addition, the opposition *Movimento Verde para o Desenvolvimento do Príncipe* (MVDP – Green Movement for Principe's Development) rejected

[7] *Movimento de Libertação de São Tomé e Príncipe/Partido Social Democrata* (Liberation Movement of São Tomé and Príncipe/Social Democratic Party).
[8] *Movimento Democrático Força da Mudança – Partido da Convergência Democrática* (Democratic Movement Force of Change – Democratic Convergence Party).
[9] Personal information from Rita Alves in Príncipe, 16 June 2023.

Nascimento's appointment for formal reasons since he had not been elected member of the Regional Assembly. Nevertheless, in the sixth regional elections of September 2022, the UMPP won for the fifth time consecutively and Nascimento was elected president of the Regional Government. For comparison, in the five consecutive elections when in Príncipe the UMPP was re-elected in the country's national elections the opposition party has won every time prompting changes of the central government in São Tomé.

II. Príncipe's Autonomy

In the first place the island's autonomy status was seen as an adequate political instrument to mitigate Príncipe's double insularity, i.e., socioeconomic disadvantages caused by the geographical distance to São Tomé and the latter's centrality. In May 1994 the National Assembly approved the law that granted political and administrative autonomy for the island of Príncipe. The autonomy status law came into effect in August that year (Law 4/94). The law had a provisional character and was expected to be revised until six months before the end of the legislature of the first Regional Assembly, i.e., in October 1997. However, this intention was not realized. Only in 2010 the National Assembly approved the Political-Administrative Status of the Autonomous Region of Príncipe (Law 4/2010) to expand the island's autonomy. Since then, the region has its own symbols, including a flag, seal, and anthem, which are used together with the national ones (art.8).

In 2022 the National Assembly adopted a law on the changes to the former one to further strengthen Príncipe's autonomy status. As part of this revision, the Regional Assembly was renamed Regional Legislative Assembly that was entitled to legislate on certain issues. The legislation adopted is designated regional legislative decrees. They refer to the approvals of the programme of the Regional Government, of the regional socioeconomic development plan, and the regional budget. In addition, regional legislative decrees are adopted for issues of the Region's specific interests that do not belong to the competences of the State or the National Assembly, and the establishment of public institutions and public enterprises that exercise their activity exclusively or predominately in Príncipe (art. 75b, 2022). They are signed by the country's president. He can only refuse his signature if regional legislative decrees are illegal or incompatible with the plans and programmes to which the Region is bound under the terms of law. In case of refusal of signature, the Regional Legislative Assembly and the president of the Regional Government are entitled to file a contentious appeal (art. 75c, 2022).

According to the autonomy law Príncipe's eligible local population directly elects a Regional Assembly according to the principle of proportional representation. Until the 2022 elections the assembly was composed by seven members. The president of the Regional Assembly is elected by an absolute majority of its members. The Regional Government is headed by a president elected by the Regional Assembly and currently composed of five regional secretaries with different portfolios. Their number and designations are fixed in the appointment certifications. The Regional Government is politically accountable to the Regional Assembly and the Prime Minister. The Autonomous Region of Príncipe is subject to the administrative supervision by the Prime Minister.

The first elections for the Regional Assembly were held in March 1995. Thereafter regional elections were not held at all before 2006. However, since then regional elections (and local elections in São Tomé) have only been held every four years, although by law they must take place every three years. To contain expenditure, in 2018 and 2022 the regional elections (and local elections) were held concurrently with the national legislative elections. Until 2018 the local branches of the principal national parties participated regularly in the regional elections. However, in 2022 only local groupings supported by different national parties participated in the elections. The number of registered voters in Príncipe has increased gradually from 2,868 in 1995 to 5,964 in 2022.

In 2022 the Regional Legislative Assembly was increased from seven seats to nine seats. In that year three constituencies existed with 1,934, 1,947, and 2,083 registered voters respectively that elected each three members of the Regional Legislative Assembly. The plenary of this parliament holds one ordinary session per year, between 15 September and 15 July (art. 38). Members of the Regional Government have the right to participate in the sessions of the Regional Legislative Assembly to intervene and provide clarifications. Plenary sessions are public. Outside this period a Standing Committee functions chaired by the president of the Regional Assembly and composed by the vice-president and by MPs indicated by the parties according to their representativity. Plenary sessions can be summoned extraordinarily on the initiative of the Assembly president or the Standing Committee; on the initiative of a third of the assembly members, or at the request of the Regional Government. The Regional Assembly has two standing specialized committees and may set up ad hoc or inquiry committees.

In Príncipe the MPs enjoy parliamentary immunity and cannot be interrogated or detained without the authorization of the Regional Assembly, unless they have committed crimes punished with more than three years of imprisonment (art. 20, 2022). They are entitled to hold diplomatic passports that for private travelling can be extended to spouses and minor children. They are allowed to carry arms without a license and have priority for reservations of air and sea travelling in exercise of their functions (art. 21, 2022). They can ask the president of the Regional Legislative Assembly to be temporarily replaced, provided that there are relevant reasons. MPs can lose their seat if they violate the applicable regime of incapacities or incompatibilities; if they do not assume their seat without justification until the third session or do not appear in the consecutive plenary sessions, or if they join a party or movement of citizens other than they have been elected for to the Regional Legislative Assembly. Its members are not allowed to exercise simultaneously the function of President of the Republic, member of the National Assembly, member of (central) Government, member of the courts or public prosecutor's office; member of the governing bodies of the Autonomous Region; full-time president and councillor of a district council; member of the National Electoral Commission (CEN); members of the offices of the Regional Secretariats, or employees of international organizations or foreign states.

In addition to its legislative competences the Regional Legislative Assembly is entitled to approve the Regional Government's programme; approve the regional budget; authorize the Regional Government to take out internal and external loans; vote on motions of confidence and of no-confidence to the Regional Government and establish cooperation with other foreign regional

entities. As already said, since 2006 the local grouping UMPP has remained in power uninterruptedly. Since the elections of 2018 the UMPP has been challenged by another local grouping, the MVDP. Its leader, Nestor Umbelina, a local businessman, was a member of the UMPP government until 2012. Like on the national level, Príncipe's different political groupings do not represent alternative political programmes let alone opposing ideologies, but rather competing group interests and rivalling personalities and clientelist networks. Since the country's democratic transition in 1991 all parties have been in favour of a free-market economy and neo-liberal policies, as they are demanded by the International Monetary Fund (IMF) and the World Bank, including the MLSTP, the sole ruling party during the socialist one-party regime (1975-90).

In 1990 the party demonstratively added the designation Social Democratic Party (PSD) to its name to prove its transformation from socialist party to a reformist pro-capitalist party.

Regional elections 1995-2022, results in percent of votes cast and number of seats.

Election date	Registered voters	MLSTP/PSD	UMPP	ADI	GUAP	MVDP
March 1995	2,868	65.7% (7 seats)			27.6%	
August 2006	3,411	28.4%	64.5% (7 seats)			
July 2010	3,412	33.3%	65.4% (7 seats)			
October 2014	4,065	21.7% (2 seats)	60.6% (5 seats)	11.7%		
October 2018	5,168	9.6%	60.7% (5 seats)			(26.7%) 2 seats
September 2022	5,964		54% (6 seats)			46% (3 seats)

ADI – *Acção Democrática Independente* (Independent Democratic Action)

GUAP – *Grupo Unido para a Autonomia do Príncipe* (United Group for Príncipe's Autonomy)

The central government, gathered in a Council of Ministers, preceded by a favourable opinion from the Attorney General (*Ministério Público*), can dissolve the Regional Legislative Assembly, for reasons of public interest, based exclusively on serious illegal actions or omissions, including

actions by regional authorities that undermine the principle of a unitary state, and illegal actions or omissions by the regional authorities when they are advised by the central government, but there is a clear will not to repair them, or those actions by the regional government prevent the functioning of the region. The dissolution of the Regional Legislative Assembly entails the dissolution of the Regional Government. The dissolution is ordered by government decree, which contains: the reasons for dissolution; the appointment of a provisional government that replaces the Regional Government until the new government takes office, and the deadline for holding early elections (art. 119, 2022).

On 30 May 2023 the Regional Legislative Assembly approved the annual regional budget of STN238,767,786.13, ($10,477,353.34) submitted by the Regional Government, with six votes by the ruling UMPP, while the three parliamentarians of the opposition MVDP abstained. According to São Tomé and Príncipe's ministry of planning and finance, the 2023 national budget contributed with STN122,920,00 ($5,384,044.67) (51.5%) to this amount. This contribution is considerably more than the amount of STN27,500,000 ($1,204,652.29) allocated to the capital district Água Grande where most of the country's population lives. Health, education, social welfare, and social housing together accounted for 38% of the regional budget, 24% was allocated to infrastructure, namely roads and drinking water supply, and more than 10% was earmarked for the productive sectors, including agriculture, fishing, livestock, entrepreneurship, and employment. For comparison, Principe's 2023 regional budget corresponds to 6.3% of the country's national budget for that year equivalent to $165.6 million.

III. The Príncipe Regional Government

The president of the Regional Government is appointed by the Prime Minister according to the results of the elections of the Regional Legislative Assembly. The president of the Regional Government does not represent the national state nor is there a resident local representative of the central government such as a governor in Príncipe. The State is represented in the Region by the Prime Minister or by whomever he delegates for this purpose (art. 75). The five regional secretaries are appointed by the Prime Minister on the proposal of the president of the Regional Government. Within 30 days after having assumed office the Regional Government must submit its programme to the Regional Legislative Assembly as a motion of confidence. The parliamentary groups in the Assembly can vote motions of no-confidence about the execution of its programme or relevant issues of regional interest. Motions of no-confidence can only be voted seven days after its submission. If a motion of no-confidence has not been adopted, its subscribers cannot present another one during the same legislature.

The dismissal of the Regional Government occurs in the following circumstances:

- the beginning of a new legislature
- the submission of a request of resignation by the president of the Regional Government
- the death or lasting physical disability of the president of the Regional Government
- the rejection of the Regional Government's programme

- the disapproval of a motion of confidence
- the approval of a motion of no-confidence by absolute majority of the MPs

Before the approval of its programme by the Regional Assembly, or after its dismissal, the Regional Government must limit itself only to actions strictly necessary to ensure the management of the autonomous region's public affairs.

The members of the Regional Government are civilly and criminally responsible for the acts they practice or legalize. Without authorization of the Regional Legislative Assembly members of the Regional Government cannot be jurors, experts or witnesses, nor be heard as declarants or as defendants, except, in the latter case, when detained arrested in flagrante delicto, or when they committed a crime punished by a prison term of more than three years. They cannot be detained or imprisoned without this authorization either, unless they have been arrested in flagrante delicto or have committed a crime punished by a prison term of more than three years.

The members of the Regional Government enjoy a series of privileges, including postponement of military service, a diplomatic passport, subsidies and other benefits prescribed by legislative decree, and priority in ticket reservations for air and sea fares for travelling in exercise of their functions. During the term of office members of the Regional Government are relieved of all public or private professional activities. They cannot exercise any other public or private functions, except unpaid positions in philanthropic, humanitarian, or cultural organizations. The Regional Government has executive functions, including the management of the public administration, elaboration of its programme, the submission of decree proposals and the regional budget to the Regional Legislative Assembly. At the invitation of the central government, the Regional Government can participate in the negotiation of international treaties and agreements that directly concern the Autonomous Region and in the definition of policies concerning the contiguous seabed. The Regional Government can pronounce on its own initiative or in consultation with the sovereign bodies, regarding matters within their competence about the Region.

The Regional Government is entitled to manage, under the terms of the law, the tax revenues collected in the Region, as well as the participation in the State's tax revenues, and other revenues attributed to it. The National Assembly and the central government hear the bodies of the Autonomous Region whenever they exercise legislative or regulatory power in matters within the respective competence that directly concern the Region or are of relevant interest to it (art.76). The non-compliance with the duty to be heard by sovereign bodies may, depending on the nature of the acts, determine their unconstitutionality or illegality upon assessment by the competent body (art. 79).

The principle of national solidarity obliges the State to bear the costs of inequalities arising from Príncipe's double insularity, namely regarding transport, communications, energy, education, culture, health and social security (art.87). Príncipe has financial autonomy in the framework of the Constitution and the legislation. The State's financial participation in the Region's financial

autonomy takes the form of transfers from the General State Budget and other financial and accounting instruments, including national participation in the regional system of financial incentives to support the productive sector (art. 89). The Autonomous Region of Príncipe exercises tax power under the terms of the Autonomy Status and the law. The Region disposes of the tax revenues collected locally, as well as a share in the State's tax revenues, established in accordance with a principle that ensures effective national solidarity, and other revenues attributed to it (art.91).

Under the terms of the solidarity principle, every year the General State Budget includes funds to be transferred to the Autonomous Region of Príncipe (art.101). The Autonomous Region of Principe may resort to short- and long-term loans both in national or in foreign currency exclusively to finance investments or replace and amortize previously contracted loans, under the terms of the State Administrative and Financial System Law (art.96). Borrowing for a period of more than six months requires authorization from the Regional Assembly and a favourable opinion from the central government (art. 97).

According to the Autonomy Status Law, the solidarity principle obliges the State to bear the costs of inequalities arising from double insularity with regard to transport to and from Príncipe (art. 104). Maritime and air transport, whether of people or goods, including services at ports and airports, must be provided under conditions that guarantee the competitiveness of the Region's economy (art. 105). The State ensures compliance with the universal telecommunications service in the Autonomous Region and guarantees the existence and functioning of a public radio and television service (art. 106/107). In addition, the State guarantees the Region access to energy and fuel under conditions that compensate for the extra costs of double insularity, under the terms of the subsidiarity principle and the law.

In the current Regional Government, the five regional secretaries hold the portfolios of social affairs and human capital; finance, heritage, and public administration; tourism, economy, and culture; biosphere, environment, agriculture, and rural development, and infrastructure, public works, and spatial planning. Two of the five regional secretaries are women. The current Regional Government headed by UMPP-leader Filipe Nascimento was inaugurated by Prime Minister Patrice Trovoada (ADI) on 19 November 2022. Like the central government the Regional Government does not dispose of an official site on the internet, but since September 2015 it has a page on Facebook.

Príncipe’s Regional Government inaugurated in November 2022

President	Filipe Nascimento
Regional secretary of social affairs and human capital	Fátima Cassandra

Regional secretary of finance, heritage, and public administration	Verdigal Mendonça
Regional secretary of tourism, economy, and culture	Sónia Cármen da Mata
Regional secretary of biosphere, environment, agriculture, and rural development	Júlio Mendes
Regional secretary of infrastructure, public works, and spatial planning	Carlos Pinheiro

In his address Nascimento complained that Príncipe's isolation caused by the absence of a regular maritime connecting with São Tomé had been a consequence of the lack of cooperation and solidarity by the former central government of the MLSTP/PSD (2018-22). He argued to view the autonomy status as an instrument that leverages global development and the strengthening of national unity and engages all efforts jointly to carry out the structuring projects that guarantee the continuity of the State in the region, since any gain of Príncipe would be, by definition, the gain of the entire country. Nascimento announced to fight territorial and economic asymmetries between the two islands by promoting competition in the air and maritime transport sectors in cooperation with the central government in São Tomé. He asked the newly elected government of the ADI to establish a regular shipping service between the two islands and to move forward with the exemption of port tariffs and product subsidies, especially as far as food products are concerned, to contain the impact of the rise in food prices worldwide. At the same time, he promised the new Prime Minister Patrice Trovoada, who had supported the UMPP during the election campaign, cooperation, and institutional loyalty. Nascimento said to support a constitutional revision announced by the ADI, because it would permit the deepening of Príncipe's autonomy status, particularly regarding the creation of a regional finance law, as well as a regional electoral law.[10]

On 29 April 2023 the Regional Government commemorated the 28th anniversary of Príncipe's autonomy status. The celebrations were presided over by the country's President Carlos Vila Nova. In his speech Filipe Nascimento, president of the Regional Government, stressed that Príncipe's autonomy did not mean division, but it implied the recognition of the specificities of this discontinued territory, whose resident population preserved a wealth of particular historical values and identity, whose cultural diversity proved to be one of the greatest riches of the island. He asked for greater financial autonomy to become less dependent on individual decisions by the central government that not always had transferred the contribution earmarked in the national budget. He said that thanks to autonomy Príncipe opened to the world, allowed the entry of foreign direct investment, encouraged the development of sustainable tourism, and gained international recognition. However, he also complained that the current cost of living exceeded the capabilities

[10] *Téla Nón*, 19 November 2022. *Observador*, 19 November 2022.

of the population and was concerned about the increasing emigration of young people from Príncipe in search of a life with a better future.

In his address President Vila Nova said it was necessary to get down to work. Or rather, consolidate the work begun 28 years ago considering the particularities and peculiarities of the region, working towards generating a solid and robust autonomy at the service of the real interests of the Autonomous Region of Príncipe. He argued that it was necessary to promote a greater integration of the Autonomous Region of Príncipe within the nation and the national community and that the existing natural differences between the two islands must be corrected through adequate policies of positive discrimination in all sectors so that the country would become fairer, more balanced and less iniquitous towards its citizens. Vila Nova also advocated the need to find consensus on the best model for achieving a working autonomy that does not jeopardize the cohesion and unity that are intrinsic to the unitary State that is São Tomé and Príncipe, as a constitutional imperative. Among the priorities to be resolved, he pointed out the limitations imposed by air connections, either because of their frequency, or the capacity of the planes used, or the price of tickets, the inability to guarantee the regular supply of the island with essential consumer goods and others at the same prices as those practiced in São Tomé.

Further Vila Nova complained the lack of health centres and or a hospital with more medical specialties, with acceptable conditions to respond to the health and medical assistance needs of the population, the lack of higher education institutions on the island, the lack of resident judges, a functional court or a penitentiary establishment on the island and also the need to encourage the creation of a business environment attractive to investment, both national or foreign, in sectors where the Region presents greater potential, as is the case of tourism. Vila Nova also mentioned what he considered as Príncipe's achievements reached in the last years, including the island's recognition as Biosphere Reserve by UNESCO. Moreover, he highlighted significant improvements to the runway of Príncipe's airfield, which was widened, allowing it to receive aircraft with greater capacity and in safe conditions in accordance with internationally established standards, the repair of several streets in the town of Santo António, laying of the first stone for the construction of the new grammar school in the Region and the good execution of the Plan for Fighting Malaria, with the region reaching the best statistical indices at the national level.[11]

IV. Final considerations

Príncipe's population runs its local affairs democratically through its own legislative and executive bodies, a nine-member Regional Legislative Assembly and a Regional Government headed by a president and composed of five regional secretaries. This is also the case with Morocco's initiative for the autonomy of Western Sahara, since its Article 5 underlines that "the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers (...)."

[11] *Observador*, 29 April 2023.

However, conditioned by its small size Príncipe lacks an own judiciary. According to the country's judicial division, Príncipe is one of the three judicial regions with a court of first instance staffed by judges from São Tomé. There is no prison in Príncipe, but convicts from the islands serve their sentences in the country's only penitentiary in São Tomé.

Furthermore, Príncipe runs its own public administration, manages the local economy, infrastructure, environment, and has its own regional budget that is co-financed by allocations from the country's national budget. This is largely the case with the Moroccan Autonomy proposal, as it stipulates in Article 12 that "the populations of the Sahara autonomous Region shall exercise powers, within the Region's territorial boundaries, mainly over the following:

- Region's local administration, local police force and jurisdictions;
- In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;
- Region's budget and taxation; infrastructure: water, hydraulic facilities, electricity, public works and transportation;
- In the social sector: housing, education, health, employment, sports, social welfare and social security;
- Cultural affairs, including promotion of the Saharan Hassani cultural heritage;
- Environment.

The Moroccan Autonomy initiative specifies in Article 5 that the Sahara populations "will have the financial resources needed for the region's development in all fields(..)." It also provides in Article 13 that "The Sahara autonomous Region will have the financial resources required for its development in all areas". This means that "Resources will come, in particular, from:

- Taxes, duties and regional levies enacted by the Region's competent authorities;
- Proceeds from the exploitation of natural resources allocated to the Region;
- The share of proceeds collected by the State from the exploitation of natural resources located in the Region;
- The necessary funds allocated in keeping with the principle of national solidarity;
- Proceeds from the Region's assets."

Besides, Príncipe does not dispose of local police and defence forces that are contingents of the National Police and the country's Armed Forces deployed in the island. This is not the case with the Sahara region as the Moroccan Autonomy Plan indicates, in its Article 12, mentioned above, that the populations of the Sahara autonomous Region shall exercise powers over the local police force.

Contrary to the proposal for the Western Sahara, in its Article 16, which stipulates that the powers of the State in the Sahara autonomous Region (as detailed in Article 14) "shall be exercised by a Representative of the Government", there is no resident representative of the central government in the Autonomous Region of Príncipe, but as said above the Prime Minister represents the State in the island.

Moreover, the Moroccan Autonomy Plan explains in, its Article 20, that the "Executive authority in the Sahara autonomous Region shall lie with a Head of Government, to be elected by the regional Parliament. He shall be invested by the King. The Head of Government shall be the Representative of the State in the Region". This is the case in in Príncipe Island, where the executive authority is also assigned to the head of the Regional Government, but differently from the case of the Western Sahara, in Príncipe he/she is not invested by the head of state, but by the Prime Minister.

In addition, Article 21 of the proposal for the Sahara autonomous region stipulates that "[t]he Head of Government of the Sahara autonomous Region shall form the Region's Cabinet and appoint the administrators needed to exercise the powers devolving upon him". This is also the case in Príncipe's autonomous region, where the president of the Regional Government forms his/her executive. However, he is not only accountable to the Regional Assembly, but also to the Prime Minister.

Finally, as in the Western Sahara autonomy proposal, whose Article 24 underlines that "Laws, regulations and court rulings issued by the bodies of the Sahara autonomous Region shall be consistent with the Region's autonomy Statute and with the Kingdom's Constitution", in the case of Príncipe, the law, decrees and regulations adopted by the Regional Assembly must be consistent with the island's autonomy status legislation and the country's Constitution.

As far as the case of Príncipe is concerned, the autonomy status granted in 1995 has strengthened both a local identity of the island's population and its leverage and negotiation position vis-à-vis the central government in São Tomé. The political bodies provided by the autonomy status have functioned accordingly and have provided political stability in Príncipe. The recognition as Biosphere Reserve by UNESCO and foreign investments in sustainable tourism have contributed to put the small island on the map. However, as far as Príncipe's double insularity is concerned, certain logistic and economic problems have persisted, particularly as far as regular ship connections with São Tomé and related problems are concerned such as the regular supply of fuel (also important for thermal energy production) and basic consumer goods at equal prices.

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SOVEREIGNTY ISSUES FOR A PACIFIC ISLAND PEOPLE: THE CASE OF ROTUMANS IN FIJI COMPARED TO THE MOROCCAN INITIATIVE FOR THE SAHARA REGION

Dr. Alan Howard[12]

This paper concerns the evolving political relationship between the Fijian archipelago in the South Pacific Ocean and the island of Rotuma, a fertile volcanic island of forty-three square kilometres located four hundred sixty-five kilometres north of Fiji. Rotuma has been politically affiliated with Fiji for more than a century, first as a British colony and since 1970, when Fiji was granted independence by Great Britain, as part of the new nation. Rotuma's people are, however, physically, culturally, and linguistically distinct from Fijians, having strong historic and cultural relationships with Tonga, Samoa and other Polynesian islands. **The autonomy of Rotuma will then be compared with the provisions of the Moroccan Initiative for the autonomy of the Sahara Region.**

CONTENTS

1) A Brief History of Fiji

Traditional Fijian society was hierarchical. Chieftainship was based primarily on patrilineal descent. Social groups were localized patrilineal clans of varying size, ranging from a single clan to a hierarchical order of multiple, related clans. Warfare was endemic and, by alliance or conquest, communities formed confederations led by paramount chiefs.

European engagement with Fiji began in the early 19th century with the discovery of sandalwood,

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followed by an interest in bêche-de-mer. The opportunity for chiefs to dominate trade, including the acquisition of firearms, led to intensified political rivalries and warfare, and to the ascendance of Seru Epenisa Cakobau, the high chief of the "kingdom" of Bau, a small island off the east coast of the main Fijian island of Viti Levu, to a preeminent position among Fijian chiefs. Cakobau (pronounced Thak-um-bow) converted to Christianity in 1854 under the influence of Methodist missionaries and was followed by a large segment of the Fijian population.

As European settlers, mostly from Australia, came to Fiji in growing numbers, they made increasing demands on Fijian land and resources. The result was a proliferation of disputes and, at times, violent confrontations in which the Europeans, backed by elements of the British Royal Navy, could be quite brutal in their assaults. In 1858, Cakobau signed a document to cede Fiji to Great Britain with the understanding the British would protect his interests and recognize him as the dominant Fijian chief *(Tui Viti)*. The document was sent to London for official approval and, after four years of consideration, was denied on the grounds that Fiji was too isolated and had no clear prospect of being profitable to the Empire, and that Cakobau was just one chief among many who did not have the authority to cede the islands.

In 1865, the settlers proposed a confederacy of the seven main native kingdoms in Fiji to establish some sort of government. Cakobau was elected as its first president. From the European standpoint, the involvement of Cakobau and other Fijian chiefs was mostly to give an appearance of legitimacy to what was essentially a government from the perspective of the white settlers. In 1871, Cakobau was induced to form a governing administration of chiefs and like-minded settlers. The new government was complete with a House of Representatives, Legislative Committee and Privy Council. Cakobau was declared the monarch and the Kingdom of Fiji was established. Most Fijian chiefs agreed to participate. The kingdom established taxation, land court and policing systems, together with other elements of European society such as a postal service and an official currency.

Following a period of violence, mostly on the part of Europeans against Fijians, and with the government facing problems of legitimacy and economic viability, Cakobau again offered to cede the islands to Great Britain in 1874. This time the British government was more sympathetic to annexing Fiji than it had been previously. After some vacillation, Cakobau agreed to renounce his *Tui Viti* title, retaining the title of *Vunivalu*, or Protector. A Deed of Cession was signed on 10 October 1874, and the Colony of Fiji was founded; 96 years of British rule followed, ending in Fiji being granted independence in 1970.

The policies of the first governor, Sir Arthur Gordon, were decisive in shaping the history of Fiji. Gordon saw himself as the protector of the Fijian people and initiated policies that limited their involvement in commercial and political developments. Sales of Fijian land were banned; the Fijians were taxed in agricultural produce, not cash; and they were governed through a system of indirect rule based on the traditional political structure.

In order to maintain those policies while encouraging economic development, Gordon promoted the introduction of sugar plantations. As Fijians were deemed unsuitable for the kind of work involved, he sanctioned the importation of indentured laborers from India. Between 1879 and

1916, some 61,000 Indian laborers arrived in Fiji, and although a portion of them returned to India after their indenture term, the majority opted to stay in Fiji, even though they had virtually no access to land and their political rights were considerably restricted. They continued to multiply to the point where they constituted a majority of Fiji's population from 1956 through the late 1980s, after which their numbers declined considerably as a result of outmigration that can be attributed to increased discrimination following a coup in 1987 that removed an Indo-Fijian-supported government from power and, for a time, ushered in a constitution that discriminated against them in numerous ways.

2) The Island of Rotuma

The population of the island of Rotuma at the time of European intrusion can be estimated at around 4-5,000, but following a period of depopulation culminating in a measles epidemic in 1911, it dropped below 2,000. As public health measures were introduced the death rate declined while the birth rate remained high, and by the end of the colonial period, in 1970, the total number of Rotumans in Fiji (including Rotuma) had increased to more than 6,000. However, as opportunities for education and occupations were extremely limited on Rotuma, a steady stream of migrants to Fiji led to a drop in the number of Rotumans on the home island until currently fewer than 2,000 Rotumans live on the island and more that 8,000 reside elsewhere in Fiji, mostly in urban areas. In addition, several thousand Rotumans and part-Rotumans have migrated to Australia, New Zealand, England, the United States, and elsewhere.

According to a 2019-20 survey published in the *Fiji Times* [14 September 2021], the total population of Fiji of 864,132 comprised 62 percent indigenous Fijians, 34.2 percent Indo-Fijians, with "other races" accounting for 3.8 percent (including Rotumans). The importance of this division is that Fiji has had a long history of politics dominated by concerns associated with the bi-racial division between indigenous Fijians and Indo-Fijians. This has relegated governance of Rotuma, and concern for the welfare of the Rotuman people, to the margins of the political arena.

The British occupation of Fiji had much in common with the French occupation of Morocco. Both declared their presence as "protectorates," and both showed no reluctance to use military force to protect their interests and to subdue segments of the indigenous population who resisted their hegemony. In both cases the Europeans recruited portions of the indigenous population who saw benefits in the subjection of resisters and were willing to fight alongside the Europeans to obtain them. As for Rotuma, insofar as the people embraced annexation to Great Britain and, with one brief historical exception involving a small minority, have welcomed inclusion in post-independence Fiji, it has not presented a challenge to external governance by either the British or Fijians. In essence, the governance of Rotuma by both the colonial and post-independence regimes can be characterized as benign neglect.

3) Rotuma in the Colonial Era

The first recorded European contact with Rotuma was in 1791, by Captain Edwards in *HMS*

Pandora, while searching for the mutineers of the *Bounty*. During the first half of the 19th century the fertile island became a favourite place for whalers to replenish their provisions. In the 1860s English Wesleyan and French Roman Catholic missionaries established missions, the Methodists on one side of the island, the French on the other. Antagonisms between the two sides escalated and in 1878 culminated in a skirmish won by the numerically superior Wesleyans. The unrest that followed led the chiefs of Rotuma's seven districts to petition Queen Victoria for annexation in 1979, and despite the reservations of some British officials in Fiji on the grounds that Rotuma was more likely to be a burden than an asset, the petition was strongly supported by the Governor of Fiji, Sir Arthur Gordon, who expressed the view that this should be regarded not as an annexation, "but rather as a mere rectification of the maritime boundary of the colony,"[13] and in 1881 the island was officially ceded to Great Britain.

During the British colonial period the Governor of Fiji appointed a resident administrator to serve in Rotuma.[14] He was to act as magistrate in the resolution of disputes, and to guide Rotumans in their adaptation to British rule and the political and economic changes associated with it. Following the model of indirect rule, he was expected to implement policies via a council composed of the district headmen, who in turn were supposed to advise him regarding Rotuman custom. For much of the colonial period the appointee was also a medical doctor who took responsibility for the well-being of the inhabitants in addition to his governing responsibilities.

It did not take long for problems to arise in the relationship between the resident commissioners and the chiefs. In order to fully comprehend the nature of the issues involved, it is necessary to understand the differences between the Fijian social order and that of Rotuma.

In its idealized form, Fijian social structure can be conceived as a series of patrilineal descent groups that are ranked according to the seniority of founding ancestors. Within this organization, chiefs hold authority over their group's members by virtue of real or fictive kinship seniority over them. On Rotuma, in contrast, chiefs are customarily chosen from among the bi-lineal descendants of ancestors who held a title.

Superficially viewed, the roles of Fijian and Rotuman chiefs were similar prior to colonization. Like his Rotuman counterpart, a Fijian chief organized activities in his district, was an arbitrator of disputes, and was ceremonially honoured through precedence in kava ceremonies. Both received first fruits from their subjects. But there were significant differences. For example, Fijian chiefs were leaders by virtue of direct descent from deified founding ancestors, and their political power was backed by supernatural sanctions of a more direct nature than those relied on by Rotuman chiefs. And since Fijian chiefs were chosen by primogeniture, drastically limiting potential successors to a title, they were treated with deference from birth. From childhood on, they were trained to superordination, while their subjects were socialized to subordination. On Rotuma, in contrast, with any link to an ancestral chief conferring eligibility, no one was apt to

[13] Gordon made reference to the fact that the inclusion of this island within the limit of Fiji, was contemplated in 1874, and that but for the misreading of a telegraphic dispatch addressed to Sir Hercules Robinson on the subject, the boundaries of the new Colony would probably have been so defined as to include Rotuma within them.

[14] From the time of Cession he was known as Resident Commissioner, but after a reorganization of the Fiji Government in 1935 he was known as District Officer.

receive the privileges normally afforded a Fijian chief's elder sons. The individual selected by his kin group to become chief was unlikely to have enjoyed any special recognition before that time.

These differences resulted in chieftainship of quite different characters in the two cultures. Ideologically, chiefs in both societies held comparable authority, but Fijian chiefs generally exercised a social psychological dominance over their subjects, whereas Rotuman chiefs did not. Put into cultural terms, in Fiji the powers of a chief were conceived as embodied in the individual; in Rotuma they were invested in the title rather than the man.

The Fijian social organization was ideally suited for indirect administration, and the British made the most of it. The Fijian chiefs, by virtue of their dominance, provided ready-made channels for administration. They simply added to their indigenous roles the rights and duties allocated to them by the Colonial Administration, and these were accepted by the people without significant resistance. Having been successful in developing a system of indirect administration in Fiji, British officials were encouraged to duplicate the design in Rotuma, but they failed to appreciate the significant differences in the status of chiefs in Fiji and Rotuma.

Even before Cession of Rotuma was official, however, Hugh Romilly, the interim administrator assigned to the island, observed that the chiefs in Rotuma were not treated with obedience and respect, and warned them that if English law were to be introduced it could only be done through the chiefs, and that it was absolutely essential that they should insist on the strictest obedience from the people under them. In fact, there is evidence that at least some of the chiefs were hoping that the British administrators would enhance their power, but this was not to be. The chiefs apparently assumed that they would be granted arbitrary powers that could be used to their own advantage, but the commissioners were only willing to back them up to the point of enforcing English law and established Rotuman custom. The people did not express resentment of the authority of the European Commissioner, or the imposition of most English-derived laws. They had come to accept European culture as superior and were willing to go along with European laws and officials as the price for reaping the material benefits involved, but they had nothing to gain by increasing the power of the chiefs. Furthermore, whatever power chiefs had been able to exercise in the past was diminished by the commissioners' interventions in the selection of chiefs and openly censuring them for behaviour of which they disapproved. As a consequence, competition for chiefly roles waned, and the traditional rules governing succession, flexible as they were, gave way to a lax toleration allowing almost any adult male to fill a vacancy.

4) The Autonomy of Rotuma

Beyond the weakness of Rotuman chieftainship when compared with that of Fiji, there was a strong theme of autonomy that characterized Rotuman culture. By autonomy, I am referring to the capacity to function independently, free from control by others. As my wife, Jan Rensel, and I have argued in our book, *Island Legacy: A History of the Rotuma People*, "Rotuman history can be viewed as a continuous struggle between politically powerful groups and individuals who have attempted to impose a social order of their choosing, and politically weaker groups and individuals

who have attempted to maintain their autonomy" (2007, p. xxiii). However, the thrust toward autonomy in Rotuma goes beyond the level of group politics. During our extensive fieldwork over a 60-year period, we have observed the thrust towards autonomy at every level of Rotuman society: individuals within households, households within villages, villages within districts, and between districts, as well as between Rotuma and outside entities.

The way in which the Rotuman people expressed their commitment to autonomy € the chiefs was in the form of passive resistance. Especially when proposals that the chiefs had agreed to implement on behalf of the Resident Commissioner involved expenditures of money or physical labour, the Rotumans simply did not comply and the chiefs did not have the power to force compliance. There is a clear pattern evident in the reports of the European Commissioners over time. In the initial phase of their appointment, they are full of praise for the people and the chiefs. This is undoubtedly a reflection of the respectful behaviour shown to them and the chiefs' assurance that they will do whatever is asked of them. In their later reports, however, the administrators inevitably expressed disappointment because very little of what they attempted to implement came to fruition. They accused the chiefs of being "yes men" who lacked the authority to implement change. The hitch was at the local level where unanimity of the village people was required to gain compliance, and the chiefs had no recourse if their people would not agree.

Four years after cession, the colonial government began introducing regulations aimed at controlling various aspects of life on Rotuma. These included rules regarding graveyards, school attendance, the planting and care of coconut trees, emigration, road upkeep, the control of pigs, cattle and horses, the registration of births and deaths, adultery, the preservation of trees near the beach, the preservation of useful grasses, and the prohibition of children using firearms. Fines were to be imposed for the violation of each of these regulations.

Not until 1927 were ordinances passed that dealt with the governance of Rotuma. *An Ordinance to make special provision for the Government of Rotuma,* enacted in 1927, established that the Governor of Fiji shall appoint a District Officer to Rotuma who shall, *ex officio,* be magistrate. A "Regulation Board" was to be appointed by the District Officer (with the approval of the Governor) of five to ten Rotumans. What this ordinance did was to transfer the power to select Rotuman representatives to the governmental body on Rotuma from the Rotumans (in the form of chiefs) to the District Officer and ultimately to the governor of Fiji. In actuality, the seven district chiefs continued to constitute the "Regulation Board," which was commonly known as the "Council of Chiefs." I don't know of any instances in which the District Officer appointed anyone other than a chief, although there is considerable evidence that they frequently meddled in district politics regarding the selection of chiefs.

Regarding the purpose of the Board, the 1927 ordinance read:

> It shall be the duty of the Board to consider all such questions duties of relating to the good government and well-being of the natives as may be directed by the Governor or may seem to them to require their attention, and the Board shall have power to make regulations upon any subject which may have been considered by them. And any such regulations with a view to their due enforcement may contain provisions for the infliction of fines or

imprisonment not exceeding twenty pounds or four months imprisonment for any breach thereof. [Ordinances of Fiji, No. 9 of 1927, Chapter 106, pp. 1135-6]

In an amendment to the ordinance, passed in 1958, the composition of the "Council of Rotuma," was revised to consist of the District Officer, who was to preside; the head chiefs of the seven districts; one elected representative from each district; and the senior medical officer on the island. The Council was authorized to make regulations relating to (a) the keeping clean of Rotuma and the promotion of public health; (b) the social and economic betterment of natives; (c) the performance of communal work by natives and other communal activities of natives; (d) the control of livestock on Rotuma; € the prevention or removal of public nuisances on Rotuma; (f) the care of native children and aged persons; (g) the conservation of food supplies on Rotuma.

The Council was also given the power to impose a cess to be paid by all Rotuman producers of primary produce, which at the time, was almost entirely copra. In addition, the amendment gave the Governor of Fiji the right to remove any district chief from office, and the right to appoint replacements for any representatives who died or resigned from office.

5) The Matter of Land Rights

It is difficult to exaggerate the importance of land to Rotumans, as it is to the inhabitants of most Pacific Islands. Land is not only valued as the main source of sustenance, it is at the centre of a person's identity, and thus endowed with a great deal of emotion. The issue of rights in land is therefore one that is of major concern to all Rotumans who retain an emotional connection to the island no matter where they live.

The traditional Rotuman system of land tenure was invested in named house sites, called *fuag ri*, which were generally built on raised foundations. Attached to each *fuag ri* were bush lands on which plantations, mostly of root crops and coconut trees, were cultivated. Inheritance of land was bi-lineal, through both one's mother and father. In essence, one had a legitimate claim to rights in all lands that could be traced back to an ancestor who occupied a *fuag ri.* Rotumans often identified themselves as members of a particular *fuag ri.*

This system had the advantage of considerable flexibility from the standpoint of allowing just about everyone to find land to occupy and cultivate; it had the disadvantage of promoting disputes, because most pieces of land had multiple potential claimants, and competition for the most desirable house sites and cultivatable land could be intense. Land boundaries, which were based on natural features such as rocks and trees, and were unrecorded, could also be a source of dispute.

The introduction of the commercial economy, mainly based on the production of copra, added complications to the system by increasing the value of land, as did the thirst for land by the Catholic and Methodist missions. The Europeans also introduced the notion of individual ownership of land, motivated by their own self-interests. This resulted in an expansion of the types of land rights,

but did not substantially modify the basic principle of bi-lineal inheritance. As in Fiji, the first action of the Colonial Government with regard to native lands in Rotuma was to forbid all further sales to non-natives. Over the years following cession, land matters were a constant concern of the colonial administrators, some of whom introduced statutes for managing transactions and disputes, but none materially altered the fundamentals of the system, which for the most part operated at the local level by the Rotumans. However, in the 1950s, the profusion of boundary disputes prompted Rotumans and administrators alike to request that the lands be properly surveyed and registered. But government officials in Fiji determined that there could be no survey of Rotuman lands until ownership had been determined, and in order to do so, a land commission had to be authorized to make decisions regarding ownership.

The result was the Rotuma Lands Act of 1959, which included a provision that land "shall be transmitted only through the male line," effectively changing Rotuma's bi-lineal inheritance system into a patrilineal one, as among the Fijians. The response of the Rotumans to this proposed change was intense anger, and threats were made against anyone who might come to Rotuma to implement it. Rather than try to force compliance, the government backed down and did nothing. As it stands, the Rotuma Lands Act of 1959 remains on the books until today, passing from the colonial government to the government of independent Fiji without having been implemented. The land remains unsurveyed and decision-making concerning issues of transmission and usufruct has continued to be ruled by custom rather than by law.

6) Rotuma as Part of the Independent Nation of Fiji

In April 1970, a constitutional conference in London agreed that Fiji should become a fully sovereign and independent nation within the Commonwealth of Nations. The Dominion of Fiji became independent on 10 October of that year. Prevailing opinion is that constitutional development towards independence, which began in the 1960s, was more a response to international and British pressures than to any demand from within Fiji.

The constitution of 1970 that emerged from the conference mirrored the racially based divisions that were characteristic of the British colonial regime. Thus, the House of Representatives, which, along with a Senate, constituted the Parliament, was to consist of fifty-two members elected to represent three constituencies: a Fijian roll of voters (22 members), an Indian roll (22 members), and a roll of those who were neither (8 members). Rotumans were allocated to the Fijian roll so inevitably ended up without representation. In the Senate, however, which consisted of twenty-two members who were to be appointed by the Governor-General, the Council of Rotuma was allowed to select a candidate to represent the Rotuman people.

In the years between 1987 and 2007, Fiji experienced four coups, all of which were racially motivated to a large degree. The first coup, led by military officer Sitiveni Rabuka in 1987, was precipitated by a growing perception among Fijian nationalists that the government was coming to be dominated by the Indo-Fijian segment of the community. This ultimately resulted in a new constitution in 1990 ensuring that the indigenous people of Fiji (that is, Fijians and Rotumans) had

a monopoly on political power. This constitution included a specific chapter dedicated to Fijian and Rotuman interests and directed that Parliament:

> shall, with the object of promoting and safeguarding the economic, social, educational, cultural, traditional and other interests of the Fijian and Rotuman people, enact laws for those objects and shall direct the Government to adopt any programme or activity for the attainment of the said objects and Government shall duly comply with such directions. [pp. 32-33**]**

The previous three voter rolls remained the same, although the Indian roll was significantly reduced by massive outmigration. In addition, a roll of Rotuman voters was now included, which insured Rotuman representation in the House of Representatives as well as in the Senate.

Under the 1990 constitution, Rabuka was elected to Parliament and became Prime Minister in 1992. He authorized a Constitutional Review Commission charged with recommending changes to lessen the ethnic bias in the current constitution. The result was a revised Constitution that was approved in 1997 and took effect in 1998. While the composition of Parliament was essentially the same, the document included language granting all persons the right "to practice their language, culture and traditions." In addition, it specified that "the rights of the Fijian and Rotuman people include their right to governance through their separate administrative systems". [p. 10] It also included reference to "affirmative action and social justice programs to secure effective equality of access to opportunities, amenities or services for the Fijian and Rotuman people" as well as for other disadvantaged citizens or groups. [pp 10-11]**.** Regarding customary laws and dispute resolution, it added that "Parliament must have regard to the customs, traditions, usages, values and aspirations of the Fijian and Rotuman people." [p. 93]

The most recent coup, in 2006, was carried out by Frank Bainimarama, then Commander of the Republic of Fiji Military Forces. It followed a political crisis when the prevailing government introduced a series of bills that were considered to favour ethnic Fijians. Bainimarama presented the government with a list of demands that included withdrawing the bills, but negotiations failed and Bainimarama took control. He stated that he had launched the coup in order to "lead us into peace and prosperity and mend the ever-widening racial divide that currently besets our multicultural nation."[15] Above all else, Bainimarama emphasized the need to root out racially discriminatory legislation and attitudes, and emphasize the common national belonging of Fiji's citizens, above any form of ethnic self-identification. Fiji's race-based electoral system would be replaced by a "one citizen, one vote" system with no ethnic differentiation. This was to be achieved, he declared, through the *Fiji Peoples Charter for Change, Peace & Progress, National Council for Building a Better Fiji* [2008], the stated aim of which was to "rebuild Fiji into a non-racial, culturally vibrant and united, well-governed, truly democratic nation that seeks progress, and prosperity through merit-based equality of opportunity, and peace." [p. i]

A new Constitution was drawn up and implemented in 2013, the Preamble to which reads:

[15] Fiji Government, "Commander, RFMF – Public Declaration of Military Takeover", 5 December 2006.

WE, THE PEOPLE OF FIJI,

RECOGNISING the indigenous people or the iTaukei, their ownership of iTaukei lands, their unique culture, customs, traditions and language;

RECOGNISING the indigenous people or the Rotuman from the island of Rotuma, their ownership of Rotuman lands, their unique culture, customs, traditions and language;

RECOGNISING the descendants of the indentured labourers from British India and the Pacific Islands, their culture, customs, traditions and language; and

RECOGNISING the descendants of the settlers and immigrants to Fiji, their culture, customs, traditions and language,

DECLARE that we are all Fijians united by common and equal citizenry.

The electoral changes in this Constitution meant that Rotumans no longer had guaranteed seats representing Rotuman interests in Parliament. Nevertheless, it must be pointed out, Rotumans have been extraordinarily successful educationally and are overrepresented in the professions, in management, and in the government bureaucracy, so they are not without influence in Fiji.

Bainimarama served as Prime Minister of Fiji from 2014 to 2023, when his Fiji First Party was defeated by the People's Alliance Party headed by the former coup leader and prime minister, Sitiveni Rabuka. While serving a Prime Minister, Bainimarama appointed retired general Jioji Konrote, a Rotuman who was formerly the head of the Fiji Military Forces, to the Presidency of Fiji in 2016. Konrote had had a distinguished career that included serving as commanding officer of the United Nations forces in the Middle East and Fiji's ambassador to Australia. He served for two three-year terms as Fiji's president and was outspoken in his support of the "We're all Fijians" point of view; he also steadfastly avoided using his influence to support any Rotuman causes.

7) Rotuman Affairs During the Bainimarama Period

The central government's approach to Rotuma during the Bainimarama period could be considered one of subtle, and sometimes not so subtle, "Fijianization", by which I am referring to attempts to reduce Rotuma's social and cultural uniqueness in favour of nudging it closer to forms characteristic of the Fijian social order and culture. This approach was most apparent in two Bills introduced to Parliament in 2015: The Rotuma Lands Bill and The Rotuma Bill.

Over the years there have been numerous calls by Rotumans for something to be done to set up procedures for the proper settlement of landownership issues and boundary disputes, with the understanding that the bi-lineal system of inheritance would be retained. After a lengthy period of holding discussions with Rotumans on the island and in Fiji, a Bill was drafted providing for a lands commission "to provide for the registration of Rotumans to regulate the registration, dealing with and transmission of land and related matters." [Rotuma Lands Bill 2015, p.3] While the draft bill acknowledged bi-lineal inheritance, it included a requirement, in the case of inheritance

through the maternal line, that the consent of the majority of the male members of the kin group be required. It also included a provision that "a legally adopted child shall be deemed not to be a child of his or her adopter."

Rejection of the bill by Rotumans was immediate and widespread soon after its initial circulation. Interestingly, the rejection of the 2015 bill has taken a very different from the opposition to the 1959 land bill, which was centered in Rotuma among landholders who would have been directly affected. Opposition to the 2015 lands bill has come mostly from Off-Island Rotumans via the Internet and especially social media. Why this has been the case needs an explanation as it is extremely unlikely that more than a few of them would ever actively claim their rights to land on the island. The answer lies, I believe, in the central role played by the home island and its traditional culture Rotuman identity. The right to land on the island provides an anchor for, and reinforcement of, that identity. To illustrate, a Rotuman living in Brisbane, Australia, wrote on an online forum discussing the bill wrote:

> My wish has always been that my children, grandchildren, and so on, will be able to return to Rotuma proudly knowing that, yes, they do have a *hanua* (land) to go to. They may not live there but they have a sense of belonging to our beloved Rotuma. [Online Rotuman Forum, Rotuma Website]

Sosefo Inoke, a Rotuman lawyer in Fiji, drafted a petition criticizing the bill on the grounds that it "does not accord with Rotuman customs and traditions, discriminates against Rotuman women, do not comply with [Fiji's] Constitution or International Law and its provisions are arbitrary." [Online Rotuman Forum, Rotuma Website]

A more direct assault on Rotuman sovereignty came in the form of an accompanying bill, The Rotuma Bill of 2015**.** The bill establishes a Council of Rotuma consisting of the seven district chiefs, the seven *faufisi* (second-ranking chief) from each district, two Rotumans appointed by the Minister from the Rotuman community, who are reputable in society with distinguished careers in the public or private sector and are registered land holders, and the District Officer as an *ex-officio* member. The functions of the Council were to (a) consider matters that affect or are likely to affect Rotuman customs, including issues relating to traditional protocol, traditional processes of resolving disputes within the Rotuman community and general matters relating to the roles of traditional leaders; (b) consider any other matter which may bring about stability and harmony in Rotuma; and (c) perform other functions as imposed on it by the provisions of any written law. In addition, the bill establishes a Forum of the Rotuman People, consisting of the seven district chiefs, an elected representative from each district, one elected member representing women's rights and interests, four members appointed by the Government Minister responsible for Rotuma, and the District Officer as an *ex-officio* member. The functions of the Forum were to (a) assist the Council; (b) consider issues relating to the welfare of the Rotuman community as may be necessary or as directed by the Minister; (c) administer funds and carry out such functions as may be required under written law; and (d) consider other issues that may affect Rotumans. District chiefs were to be elected by all eligible kin groups *(mosega)* rather than each separately in rotation according to traditional Rotuman custom.

Reactions to the Rotuma Bill reflect an awareness of the assault on Rotuma's sovereignty, beginning with the very definition of "Rotuma." Rotuma is defined in the bill simply as "the islands of Rotuma." In a strongly worded response to this simplistic definition [Online Rotuman Forum, Rotuma Website]**,** Fuata Jione, a maritime captain and Australian citizen, argued that the definition of Rotuma is the legal cornerstone for Rotuma's economic survival insofar as it protects, or does not protect, the legal rights of Rotumans to the resources of the land and the surrounding sea. He argues that the United Nations gave official recognition for "Archipelagic States" to claim rights to sea territories outside the archipelago waters for economic means, and that Rotuma has been an Archipelagic State since Cession. Therefore, Fuata maintains, the definition of Rotuma must reflect the legal rights of Rotumans as traditional owners of the Rotuma Islands Archipelago, its dependency, rocks, fisheries and all rights to resources in the territorial sea lying 12 nautical miles from the archipelago waters baseline and to the resources in the 200 nautical mile area assigned under International Maritime Law.

Rotumans were quick to understand the implications of the creation of the Forum of the Rotuman People, a body with no precedent in Rotuman culture. By including four members appointed by the Government Minister responsible for Rotuma (none of which had to be Rotuman), the Forum would constitute a major step in shifting responsibility for the governance of Rotuma to the central government of Fiji.

In a paper concerning "What is at Stake for Rotuma?" in the Rotuma Bill of 2015, Lee-Anne Sackett and her co-authors (2018) summarize the implications of the above changes to the governance of Rotuma as follows:

> The proposed level of ministerial involvement in Rotuman governance is unprecedented, yet it extends further into the one of the Council's core functions: its power to make laws (in the form of regulations) for Rotuma. Under the Bill the Council is reduced to 'considering matters affecting Rotuman people', which is in stark contrast to making regulations 'to be obeyed by all members of the Rotuman community'. The power to make regulations is instead transferred to the Minister, albeit following consultation with the Forum (though it should be noted he/she also appoints members to the Forum).
>
> Therefore, the Bill not only removes Rotuma's ability to choose which Fijian laws apply to Rotuma, it also gives the Fijian government, through the 'Minister', the exclusive power to make local laws for Rotuma (p. 8).

Sacket and her co-authors conclude that "Rotuma's relationship with Fiji would change from one where it has special autonomous administrative arrangements with the Fiji government, to one where it effectively becomes another island in Fiji and under the control of the Fijian government." (p.9)

However, the most widespread criticism of the two bills had less to do with their contents than with the government's failure to engage in any meaningful consultation with the Rotuman people

before submitting them to Parliament. While it is true that meetings were held in Rotuma and among Rotumans in Fiji regarding the bills, it seems to be the case that they had more the character of a sales pitch than a discussion of the act's provisions. Most Rotumans who commented claim that they did not know the content of the bills until they saw the final copies.

Tivaklelei Kamea, a Rotuman law student in Australia, eloquently summarized the apprehensions of most Rotumans who offered critiques of the two bills:

> It is my conviction and submission that should these provisions become legally binding laws, then they will literally lead to the gradual eradication of our Rotuman customary practices, cultural values, as well as the loss of any meaningful and sentimental connection to our lands, traditions, rituals and artefacts, as well as our way of life and unique ethnic identity. It is also my submission that this is in direct contravention of the Rotuman people's human, civil, political, cultural and economic rights under international law, as well as rights protected by the 2013 Fiji Constitution. [Online Rotuman Forum, Rotuma Website]

Another indicator of the trend towards "Fijianization" is the composition of assigned personnel to government positions on Rotuma. From the time of Fiji's independence through the latter part of the twentieth century, government personnel who served on the island, from the District Officer, to the Principal of the High School and the teachers, to the doctor and medical personnel, police officers, and others were nearly all Rotumans. This is no longer the case. In a survey taken this year by some of my Rotuman associates, the District Officer was Fijian as was the High School principal and several of the teachers, the doctor and nurses, the head of police, and the manager of the post office, in addition to a number of other Fijians in lesser positions. I am not convinced that this shift toward Fijian personnel is part of a well-thought-out policy of "Fijianization", but I do believe it represents a definite shift away from treating Rotuma's culture as worthy of preservation to regarding the island as any other in the Fijian archipelago.

8) The Case of Rotuma in Comparison with the Moroccan Sahara Autonomous Region Initiative

The provisions of the Moroccan Initiative, some of which are defined below, have received support from members of the Security Council of the United Nations, who considered the initiative "as a serious, credible and pragmatic solution to put a definitive end to the regional dispute over the Moroccan Sahara".[16]

There are several important differences between the Rotuman case and the Moroccan Initiative for the Autonomy of the Sahara Region.[17] In contrast to the Rotuma Bills of 1959 and 2015, which

[16] North Africa Post, "UN Security Council Holds Closed-Door Consultations on Sahara Issue, Large Support to Morocco's Autonomy Initiative Reverberates", 21 April 2023 (https://shorturl.at/esEY0).

[17] See the full text of the Moroccan Initiative tabled to the United Nations Security Council on 11 April 2007 at: digitallibrary.un.org/record/597424?ln=en.

were drawn up by anonymous government officials without regard for any degree of Rotuman self-governance, the Moroccan Initiative presents a well-defined list of competences assigned to the Sahara autonomous region, allowing the population of the Sahara Region to manage their own affairs and respond to their own needs and aspirations, while respecting their cultural identity.

Article 5 of the Morocco Initiative clearly announces a large set of powers, guarantees and privileges that will be given to the population of the Sahara Region in order to exercise a leading role in the bodies and institutions of the region.

In addition, both Articles 12 and 13 present the wide range of areas over which the institutions of the Sahara Region will exercise powers and define the financial resources that will be allocated to the local population in order to run the local bodies and institutions.

Article 12 specifies that:

> *"In keeping with democratic principles and procedures, and acting through legislative, executive and judicial bodies, the populations of the Sahara autonomous Region shall exercise powers, within the Region's territorial boundaries, mainly over the following:*
>
> *• Region's local administration, local police force and jurisdictions;*
>
> *• in the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;*
>
> *• Region's budget and taxation;*
>
> *• infrastructure: water, hydraulic facilities, electricity, public works and transportation;*
>
> *• in the social sector: housing, education, health, employment, sports, social welfare and social security;*
>
> *• cultural affairs, including promotion of the Saharan Hassani cultural heritage;*
>
> *• environment."*

For its part, Article 13 explains that:

> *"The Sahara autonomous Region will have the financial resources required for its development in all areas. Resources will come, in particular, from:*
>
> *• taxes, duties and regional levies enacted by the Region's competent authorities;*
>
> *• proceeds from the exploitation of natural resources allocated to the Region;*
>
> *• the share of proceeds collected by the State from the exploitation of natural resources located in the Region;*
>
> *• the necessary funds allocated in keeping with the principle of national solidarity;*
>
> *• proceeds from the Region's assets.*

Article 21 states, "*The Head of Government of the Sahara autonomous Region shall form the Region's Cabinet and appoint the administrators needed to exercise the powers devolving upon him, under the present autonomy Statute. He shall be answerable to the Region's Parliament*".

With these articles from the Moroccan Initiative for the Autonomy of the Sahara Region in mind, we can now consider the differences between the Rotuman and Moroccan cases.

a) The most obvious difference between the two cases is with regard to the **recognition of ethnic populations as politically relevant groups**. During the colonial period, the British administration organized Fijian society along the line of "racial" groups. Initially, the major categories were European and Fijian; soon after, the categories Indian, Chinese, Polynesian, and Rotuman were added. Interbreeding between Europeans and other ethnic groups disrupted the "purity" of these distinctions and resulted in the category of "half-caste," a pariah category, emblematic of the breakdown of a proper hierarchy in which Europeans were distinguished conceptually as "civilized," while the rest, to varying degrees, were considered "uncivilized." However, by the mid-1930s attitudes had changed, and the term "half-caste" gave way to the label "part-European," which carried much more positive connotations. Part-Europeans were placed immediately below Europeans in the reformulated hierarchy, with their European "blood" now considered a definite advantage. Part-Europeans were given preferential treatment and granted privileges sometimes overlapping with those of Europeans.

For Rotumans, interbreeding with Europeans began early in the 1820s, when a substantial number of renegade sailors took up residence on the island. This interbreeding is acknowledged in the 1936 Fiji census, in which the issue of race is discussed. Concerning Rotumans the report states:

> *The race to-day is a mixture of Polynesian, European and Mongolian, and it is in some cases extremely difficult to distinguish between a European-Rotuman and a so-called full-blooded Rotuman*. (Legislative Council, Fiji, 1936, p.11)

This confounding of racial categories gave Rotumans, if not a relatively privileged place in the hierarchy of non-European ethnic groups, at least some latitude for proving their worth, which they did through education and hard work. The island of Rotuma benefitted from this classification insofar as the colonial government, and post-independence Fijian government, were extremely permissive with regard to allowing Rotumans to self-govern within broad limits. But following the coup of 2013 and the elimination of ethnicity as the basis for elections and governance, Rotuma's cultural uniqueness was considerably lessened as a consideration for the central government. The stance of the recent government appears to be about bringing Rotuma's governance more in line with its own policies than with promoting self-governance.

This markedly contrasts with stance of the Moroccan Initiative for the Autonomy of the Sahara Region, which recognizes the uniqueness of Sahrawi populations and pledges to provide them with the opportunity to run their own affairs. Article 19 of the Moroccan Initiative refers to the active

participation of the local population in the election of their representatives in the Parliament. This Article stipulates that "*[t]he Parliament of the Sahara autonomous Region shall be made up of members elected by the various Sahrawi tribes, and of members elected by direct universal suffrage, by the Region's population. There shall be adequate representation of women in the Parliament of the Sahara autonomous Region*". In addition, Article 12 of the Initiative that describes the wide range of areas in which the Sahrawi population will exercise its powers, "through legislative, executive and judicial bodies", including, inter alia, over "*[c]ultural affairs, including promotion of the Saharan Hassani cultural heritage*".

b) Another difference between the two cases is related to the **relationship between the autonomous region and the central government**. Rotumans voluntarily ceded their island to Great Britain, and subsequently voted to remain within Fiji after it was granted independence. There has never been any significant resistance to the hegemony of either the colonial or post-independence Fijian governments, with the exception of specific policies regarding land and governing structures that deviate from traditional Rotuman practices and have been incorporated into legislation but not implemented.

The Moroccan Initiative for the Sahara Region is based on mutual acceptance of both the sovereignty of Morocco over the Sahara region and the full autonomy of that region. This is why, according to its articles 5 and 6:

> "5. […] *the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers. They will have the financial resources needed for the region's development in all fields, and will take an active part in the nation's economic, social and cultural life.*
>
> *6. The State will keep its powers in the royal domains, especially with respect to defence, external relations and the constitutional and religious prerogatives of His Majesty the King*."

c) Another difference is related to the **size of the respective populations and their resources**. The population of Rotuma is minuscule compared to that of the Sahrawi tribes, and the island's resources are negligible, so it has much less significance for Fiji's overall economy and governance.

According to the 2020 CIA Factbook, the population of the Sahara Region exceeds 652,000[18] (out of a Moroccan population of over 37 million according to the World Bank). In the Moroccan Initiative, the whole population of the Sahara Region will be considered as citizens of Morocco and subjects of the King ("*within the framework of the Kingdom's sovereignty and national unity*") but they will benefit from the "*end to separation and exile, and […] reconciliation*". Regarding resources, the populations of the autonomous region will receive, in particular, "[*t]he share of proceeds collected by the State from the exploitation of natural resources located in the Region*". According to the Moroccan phosphate company, its main mine in the Sahara Region "*has an*

[18] CIA World Factbook 2020, "Western Sahara" (theodora.com/wfbcurrent/western_sahara/western_sahara_people.html)

extraction capacity of 4 million tons of phosphate rock per year".[19] The Sahara Region's 1,200 km-long coastline is considered as one of the richest in the world in fishery products.

d) The cases are also different with regard to the **role of negotiations in the autonomy and devolution process**. The Moroccan Initiative for the Autonomy of the Sahara Region refers to "negotiations," which implies divergent views to begin with. In 2008 the Moroccan government opted for a policy of Advanced Regionalization aimed at promoting citizen participation, democracy, and decentralization as means of facilitating political, economic, social, and cultural autonomy. This reform was enshrined in the 2011 constitutional revision, which adopted the principle of self-government for regions and established mechanisms for dialogue and consultation. Such guarantees are incorporated in the Moroccan Sahara Autonomous Region Initiative. Indeed, its Article 7 stipulates that "*The Moroccan initiative, which is made in an open spirit, aims to set the stage for dialogue and a negotiation process that would lead to a mutually acceptable political solution*". This is why the Moroccan Initiative promotes a critical process of negotiation and reconciliation that will lead to a lasting agreement based on mutually acceptable principles of autonomy.

In addition, according to the Moroccan Initiative, once the autonomy status is established, the Sahrawi populations will not only be represented in their regional parliament and government, but they will also enjoy representation in the national parliament and all national institutions. This is underlined in Article 18 which states that "*The populations of the Sahara Autonomous Region shall be represented in Parliament and in the other national institutions. They shall take part in all national elections*".

In the Rotuman case, there is no single entity claiming to represent all Rotuman interests. Although the 2013 Fiji constitution assures recognition of "*the indigenous people or the Rotuman from the island of Rotuma, their ownership of Rotuman lands, their unique culture, customs, traditions and language*," there are no organized groups with whom the government can negotiate implementation. The situation is exacerbated by the fact that the vast majority of Rotumans, a great many of whom have a stake in the island's autonomy, do not live on the island and have no organized representation. This has left the implementation of policy via acts drafted in Parliament to anonymous government officials who, while acknowledging some degree of autonomy for Rotuma, make arbitrary provisions that ignore or change aspects of Rotuman customs, as they did in both the 1959 and 2015 land bills. And because Rotumans, wherever they are, have been so vehement in their opposition to the drafted legislation, the government has been reluctant to implement the provisions in these bills, which means the bills are in fact all dead letters. This leaves the governance of Rotuma vulnerable to the process of Fijianization described above.

If there is a lesson to be learned for Morocco from the Rotuman case, it lies in the importance, within an autonomy status, of meaningful consultations prior to drafting any legislation that can affect the autonomous region. I am referring to a process aimed at being constantly aware of a

[19] Phosboucraa, "Who We Are" (www.phosboucraa.ma/en/Who-we-are)

people's cultural values, ways of conducting affairs and resolving disputes, and the like, before and during negotiations. Knowledgeable individuals and groups, including tribal members who live elsewhere but retain rights in their homeland, could be presented with potential policies to get their reactions, so as to avoid introducing possibly offensive policies into negotiations or legislation. Hence the importance, in the Moroccan Initiative, of the participation of representatives of the autonomous region in all the legislative work within the national parliament to ensure that their interests are not infringed upon by the central government.

9) Addendum

A general election in Fiji in December 2022 ousted Bainamarama, and the new government has vowed to return to a multicultural model for the Fijian polity, with specific consideration for safeguarding the interests of Fijians and Rotumans as indigenous populations. Presumably this will involve giving Rotumans a formal voice in any legislation concerning the island and will provide a basis for preserving its culture. This development draws attention to the inherent instability in Fiji's government since 1987 when the first of four coups took place. Ironically, the victor in the recent election, Sitiveni Rabuka, was the leader of the first coup in 1987. It also points up the difficulty in maintaining policies in the long run.

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SHARING CONSTITUTIONAL POWERS IN THE UNITED KINGDOM'S OVERSEAS TERRITORIES: CONSOLIDATION AND CONTROVERSY IN THE CAYMAN ISLANDS – A COMPARISON WITH THE MOROCCAN INITIATIVE FOR THE SAHARA REGION

Dr. Vaughan Carter⁎ and Dr. Livingston Smith⁎⁎

Introduction

Section 43 of the Cayman Islands Constitution[20] establishes that "the executive authority of the Cayman Islands is vested in [His] Majesty"[21] and that, "subject to the Cayman Islands Constitution, the executive authority of the Cayman Islands shall be exercised on behalf of [His] Majesty by the Government, consisting of the Governor as [His] Majesty's representative and the Cabinet, either directly or through public officers".[22] Executive powers, in particular[23], are therefore shared in the Cayman Islands between the United Kingdom's appointee (usually a career diplomat but in some instances a senior civil servant from its civil service[24]) and a Cabinet mainly

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[20] The Constitution of the Cayman Islands is contained in Schedule 2 to The Cayman Islands Constitution Order 2009 (U.K.S.I. 2009 No. 1379) (referred to herein as "the Cayman Islands Constitution" or "the 2009 Constitution"). The Cayman Islands Constitution has been amended twice since its inception in 2009: The Cayman Islands Constitution (Amendment) Order 2016 (U.K.S.I. 2016 No. 780) ("the 2016 Amendment"); and The Cayman Islands Constitution (Amendment) Order 2020 (U.K.S.I. 2020 No. 1283) ("the 2020 Amendment").

[21] Section 43(1) of the Cayman Islands Constitution.

[22] Section 43(2) of the Cayman Islands Constitution.

[23] This Paper is primarily concerned with the exercise of executive powers, although it will still be relevant to note where, and the circumstances in which, the Governor remains empowered under section 81 of the Cayman Islands Constitution to enact legislation. The Governor's power to disallow local laws, which was contained in section 80 of the 2009 Constitution was one of the provisions revoked by the 2020 Amendment. The United Kingdom, however, retains the power to legislate for the Cayman Islands, including its Constitution, by way of an Order in Council (effectively secondary legislation enacted by the executive branch of the United Kingdom), as authorised under sections 5 and 7 of the West Indies Act 1962. As a matter of constitutional principle, the United Kingdom Parliament may also legislate for the Cayman Islands; and while this power is not usually exercised in practice, the circumstances in which an amendment to what became the Sanctions and Anti-Money Laundering Act 2018, to include a provision requiring the establishment of public registers of beneficial ownership in United Kingdom Overseas Territories, was passed, gave rise to the introduction of some additional guardrails around this relationship. Accordingly, the 2020 Amendment inserted a new section 126 into the Cayman Islands Constitution, which provides for the notification of proposed Acts of Parliament extending to the Cayman Islands or Orders in Council extending such Acts of Parliament to the Cayman Islands, whereby any such proposal "shall normally be brought by a Secretary of State to the attention of the Premier so that the Cayman Islands Cabinet may signify its view on it".

[24] See Research Briefing published by the House of Commons Library on 30 June 2022 (Loft, Phillip, *The UK Overseas Territories and their Governors* (referred to hereafter as: House of Commons Research Briefing: *UKOTs and their Governors*), which is available at: https://researchbriefings.files.parliament.uk/documents/CBP-9583/CBP-9583.pdf), in which, at 11-12, it is noted that there have been calls for a wider pool of candidates and greater consultation on the appointment of Governors in order to increase trust and improve relations, but the United Kingdom Government has maintained that the involvement of local governments in the appointment of governors would carry "the risk that a Governor's position might be untenable if his or her appointment had not had local support at the selection stage."

composed of locally elected representatives (although the Deputy Governor[25] and the Attorney General[26] are also *ex officio* members of Cabinet[27]). The elected representatives who sit in Cabinet comprise the Premier[28], who is appointed by the Governor, on the basis that he or she can command a majority of the seats of the elected members of the Parliament in accordance with either section 49(2) or (3) of the Cayman Islands Constitution; and seven other Ministers[29], appointed by the Governor, acting in accordance with the advice of the Premier, from among the elected members of the Parliament.

Relationships in which constitutional powers are shared, particularly as in the Cayman Islands where this relationship is evolving against a backdrop of colonialism and where it is accepted that there is an underlying right to self-determination[30], can be precarious and vulnerable at least to the perception of if not the actual abuse of power by the dominant party.[31] However, this relationship in the Cayman Islands has generally functioned well and, on the whole, it has been welcomed by the people of the Cayman Islands, especially since it has provided a sound platform for significant economic development.[32] This is not to say that there is universal approval for the way in which the jurisdiction has developed[33], or that there have not been issues along the way, or indeed that significant challenges may not lie ahead; but rather to illustrate that, in certain situations and under the right circumstances, a territory can prosper in a relationship where constitutional powers are shared. Consistent with the aims of this Seminar, it follows that is instructive to investigate and consider the experience of the Cayman Islands, albeit that this operates in the particular political, historical, sociological, and geographical context of the Cayman Islands, to nevertheless determine

[25] The Deputy Governor is a new position created in the 2009 Constitution to replace and upgrade the former Chief Secretary role. Under section 34(1) of the Cayman Islands Constitution, the Deputy Governor "shall be such person as Her Majesty may designate as such by instructions given through a Secretary of State and who shall hold office during Her Majesty's pleasure"; although, notably, section 34(2)(a) of the Cayman Islands Constitution requires that such person be Caymanian.

[26] The Attorney General is appointed by the Judicial and Legal Services Commission under section 106 of the Cayman Islands Constitution; and, in accordance with section 56 of the Cayman Islands Constitution, "shall be the principal legal adviser to the Government and the Legislative Assembly [now referred to as the Parliament following the 2020 Amendment]".

[27] Section 44(1)(c) of the Cayman Islands Constitution.

[28] Section 44(1)(a) of the Cayman Islands Constitution.

[29] The 2020 Amendment altered section 44(1)(b) of the Cayman Islands Constitution to increase the number of Ministers in Cabinet from six to seven.

[30] Part I of the Cayman Islands Constitution, which enshrines for the first time a Bill of Rights, Freedoms and Responsibilities, commences by asserting that: "Whereas all peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law; 1.—(1) This Bill of Rights, Freedoms and Responsibilities is a cornerstone of democracy in the Cayman Islands".

[31] The concept of sharing sovereignty between what are termed macro and micro sovereigns in various different contexts is explored in greater detail in Carter, Vaughan and Ku, Charlotte and Morriss, Andrew P., *Evolving Sovereignty Relationships between Affiliated Jurisdictions: Lessons for Native American Jurisdictions* (February 19, 2023) (hereinafter referred to as "Carter, Ku and Morriss, *Evolving Sovereignty Relationships*"). Texas A&M University School of Law Legal Studies Research Paper, Law & Economics Center at George Mason University Scalia Law School Research Paper Series No. 23-001, which is available at SSRN: https://ssrn.com/abstract=4365118 or http://dx.doi.org/10.2139/ssrn.4365118; and forthcoming in the Arizona Journal of International and Comparative Law.

[32] Freyer, Tony and Morriss, Andrew P., *Creating Cayman as an Offshore Financial Center: Structure & Strategy since 1960*, 45 Ariz. St. L.J. 1297 (2013) referred to hereafter as Freyer and Morriss, *Creating Cayman*), which is available at: https://scholarship.law.tamu.edu/facscholar/23.

[33] See Bodden, J.A. Roy, THE CAYMAN ISLANDS IN TRANSITION: THE POLITICS, HISTORY, AND SOCIOLOGY OF A CHANGING SOCIETY (2007).

whether there are salient lessons for other jurisdictions where the sharing of executive powers is being contemplated.

In order to perform this task, one must first have an understanding of both the general rules of constitutional engagement that the United Kingdom deploys with its Overseas Territories (UKOTs)[34]; and, more specifically, how the constitutional nexus with the Cayman Islands has supported development, such that the Cayman Islands has now become the largest of the UKOTs in terms of population.[35] These building blocks are constructed in the next two sections of the Paper. Thereafter, this Paper reflects upon the importance of the 2009 Constitution and the consequent increase in local autonomy under this new constitutional settlement – the "consolidation" – before highlighting some more recent issues – the "controversy" – that have resulted in the 2020 Amendment and a further recalibration of the constitutional relationship between the Cayman Islands and the United Kingdom. The final section of this Paper then seeks to analyse the Caymanian experience with reference to the themes identified for this Seminar, including appointments to the local[36] executive, the conditions of local autonomy, and the extent to which functions usually reserved for a nation-state may be exercised locally.

I - The Constitutional Arrangements for UKOTs

There are fourteen remaining UKOTs, which are effectively the remnants of the British empire, of which 10 are permanently inhabited by British nationals.[37] While all of the UKOTs are administrated separately, the UKOTs, together with the United Kingdom and the Crown

[34] The term "Overseas" was first used in a 1999 White Paper issued by the United Kingdom Government (*Partnership for Progress and Prosperity: Britain and the Overseas Territories*, 1999, Cm. 4264) (referred to hereafter as "the UK's 1999 White Paper" or "*Partnership for Progress and Prosperity*"), to replace "Dependent" Territories and to thereby signpost a more equitable relationship; and the terminology was formally adopted in the British Overseas Territories Act 2002.

[35] The Research Briefing published by the House of Commons Library on 23 January 2023 (Loft, Phillip, *The Overseas Territories: An Introduction and Relations with the UK* (referred to hereafter as: House of Commons Research Briefing: *Relations with the UK*), which is available at: https://researchbriefings.files.parliament.uk/documents/CBP-9706/CBP-9706.pdf), cites the Cayman Islands, at 9, as having a population of 68,000 in 2021 and affirms that this is the largest amongst all of the UKOTs. The Cayman Islands Population and Housing Census 2021 Report (https://www.eso.ky/2021-population-and-housing-census-report.html), however, calculates the total population, as of October 2021, at 71,432, while local reports (https://www.caymancompass.com/2022/08/31/caymans-population-grows-by-10-5-in-less-than-a-year/) point to a further increase in the intervening period up to the end of August 2022, placing the population at 78,554. Whatever, the actual figure, it is apparent that the population of the Cayman Islands has increased dramatically over a relatively short period of time, compared with, for example, 5,564 in 1911, 5,235 in 1921 and 6,209 in 1934 (as cited in Wells, David, *A Brief History of the Cayman Islands*, which is available at: https://www.cigouk.ky/downloads/Cayman-Islands-e-book-October2018.pdf).

[36] The term "local" is used here to refer to the Cayman Islands. It has been adopted *in lieu* of "regional", which while applicable in the context of the Sahara Region, does not translate to the Cayman Islands, since the Cayman Islands is a tri-island jurisdiction located almost 5,000 miles from the mainland United Kingdom.

[37] Ascension, St. Helena and Tristan da Cunha, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Monserrat, Pitcairn and Turks and Caicos Islands are the ten permanently inhabited UKOTs; and the additional four UKOTs without permanent inhabitants are Akrotiri and Dhekelia, British Antarctic Territory, British Indian Ocean Territory and South Georgia & The Sandwich Islands.

Dependencies[38], form one undivided realm in which the King is sovereign[39], which means the UKOTs have no separate international representation[40], nor do they have representatives in the United Kingdom Parliament.[41]

The powers of the United Kingdom with respect to the UKOTs are usefully summarised in the House of Commons Research Briefing: *Relations with the UK* as follows[42]:

1. As a matter of constitutional law, the UK Parliament has unlimited power to legislate for the Territories. Through the UK Privy Council, the UK Government can also issue Orders in Council, which are a form of law allowing changes to be made to Territory laws and constitutions. The UK Privy Council also acts as the final court of appeal for Territory courts.
2. The UK can also issue instructions to OT Governors to implement certain policies, where the Territory constitution gives the Governor such a power.
3. The UK has responsibility for the defence of the Territories, managing most of their foreign relations, and, usually following consultation, extending international treaties to them that the UK has ratified.
4. In most cases, fiscal policy and liability for Territory debts is not an issue for the UK, but three Territories (Pitcairn, Montserrat and St Helena and Tristan da Cunha) are eligible for funding from the UK's aid budget.
5. Many issues are devolved to Territory Governments and their Governors: These include immigration policy, internal security like the police, financial services, the environment, and social policy including health and education (though the UK can provide support, such as through the Conflict, Stability and Security Fund, and has the ultimate power to intervene).

[38] The Crown Dependencies comprise the Isle of Man and the Channel Islands. The Channel Islands fall into two separate self-governing bailiwicks: The Bailiwick of Jersey (including the uninhabited islands of the Minquiers, Ecrehous, Les Dirouilles, and Les Pierres de Lecq) and the Bailiwick of Guernsey (consisting of Guernsey, Alderney, Sark, Herm, Jethou, Brechou, and Lihou). See Mut Bosque, Maria, Questioning the Current Status of the British Crown Dependencies (2022) 5(1) Small States & Territories 55, which is available at: https://www.um.edu.mt/library/oar/bitstream/123456789/94160/1/Questioning_the_current_status_of_the_British_Crown_Dependencies%282022%29.pdf; and in which the author distinguishes the Crown Dependencies from the UKOTs on the basis that the Crown Dependencies have never been colonies of the UK and that, accordingly, status of the Crown Dependencies has never been questioned by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence of Colonial Countries and Peoples ("the Special Committee on Decolonization").

[39] Hendry, Ian and Dickson, Susan, BRITISH OVERSEAS TERRITORIES LAW (2018) (hereinafter referred to as "Hendry and Dickson"), at 23.

[40] The House of Commons Research Briefing: *UKOTs and their Governors*, explains at 13-14, citing Hendry at Dickson, at 249, that there are some instances in which UKOTS can become involved in international affairs; noting that: in the British Virgin Islands and Cayman Islands, the Governor should devolve responsibility over the Territory's relationship with regional Caribbean organisations (also the case in Montserrat), EU relations and similar issues to the locally elected government; and that in Anguilla, Bermuda, and the Turks and Caicos Islands, the Governor can do this, but is not a requirement.

[41] House of Commons Research Briefing: *Relations with the UK*, at 4.

[42] House of Commons Research Briefing: *Relations with the UK*, at 5.

6. This division has sometimes created tensions between UK and OT law: For example, same-sex marriage is not permitted in some Territories. While the UK Government has called for reforms, it has defended OT self-government.
7. In response to allegations of mismanagement and corruption, the UK has suspended the constitution of the Turks and Caicos Islands in 1986 and 2009[43] and has threatened direct rule in the British Virgin Islands following a Commission of Inquiry in 2022.[44]

As regards the division of power between the Governor and the local representatives, the House of Commons Research Briefing: *UKOTs and their Governors*, advises that[45]:

1. Generally, the smaller a Territory's population, the more law-making power or policy responsibility the Governor (sometimes called the Administrator or Commissioner) wields.
2. In most OTs, the Governor retains responsibility for external affairs, defence, and internal security (such as the police and judiciary).
3. In some [UKOTs], such as Anguilla and the Turks and Caicos Islands, the Governor also has responsibility for international financial service regulation … [which] has been retained by the UK because of the potential security, reputational or financial impact of the Territories on the UK.
4. These type of "reserve powers" mean the Governor can usually exercise their responsibilities in these fields without reference to the legislature or local government, though they often have to consult with them.

The House of Commons Research Briefing: *UKOTs and their Governors* also notes the following additional legislative and other powers that are generally exercised by Governors in the UKOTs[46]:

1. Legislative powers – Governors can have also significant law-making powers. … Only three Territory constitutions do not allow the Governor to make laws: Bermuda, Montserrat, and St Helena (though they can in Ascension and Tristan da Cunha, which form part of the same Overseas Territory with St Helena). … [and] The UK retains the right to make law for all the Territories.
2. Other powers – Governors usually chair executive councils, issue pardons, and make grants of crown land.

[43] See the Report of the Commissioner, The Right Honourable Sir Robin Auld, from the Turks and Caicos Islands Commission of Inquiry 2008-2000, which is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/268143/inquiry-report.pdf.
[44] Report of the Commissioner, The Right Honourable Sir Gary Hickenbottom, form the British Virgin Islands Commission of Enquiry, which is available at: https://bvi.gov.vg/sites/default/files/resources/web_accessible_-_bvi_coi_report.pdf.
[45] House of Commons Research Briefing: *UKOTs and their Governors*, at 5.
[46] House of Commons Research Briefing: *UKOTs and their Governors*, at 6.

II - Introduction to the Cayman Islands

The Cayman Islands is an "island group … in the Caribbean Sea, comprising the islands of Grand Cayman, Little Cayman, and Cayman Brac, situated about 180 miles (290 km) northwest of Jamaica. … [and] are the outcroppings of a submarine mountain range that extends northeastward from Belize to Cuba.[47] The economy of the Cayman Islands is built on the twin pillars of tourism[48] and the increasingly dominant financial services industry.[49]

The historical context and significance of this development excerpt from Freyer and Morriss:

> *Cayman's development must be examined within the context of broader constitutional trends within Britain's dissolving post-war Empire. In the Caribbean, Cayman, other jurisdictions that maintained ties to the colonial powers, and colonies that won independence like Jamaica and the Bahamas diversified from commodity economies into financial and tourist centers. Cayman was unusual, however, because its government constructed a financial regulatory system that enabled the territory to achieve more economic development and diversification than its peers, bringing it the highest per capita wealth in the Caribbean and put Cayman on par with the prosperity of Britain.*[50] *This success is all the more remarkable because the Islands began from a base of a barter economy built on subsistence agriculture and the export of labor. Thus, between 1960 and 1980, the Cayman Islands went from being one of the least developed - both legally and economically – jurisdictions in a poorly developed region to surpassing its former colonial power in GDP per capita terms and developing a sophisticated body of financial law.*[51]

As Carter, Ku and Morriss further explain:

> *For the Cayman Islands, therefore, a key moment in both its political and economic development came with the dissolution of the West Indies Federation in 1962. Choosing*

[47] www.britannica.com/place/Cayman-Islands. Grand Cayman is the largest and most populous island, about 22 miles (35 km) long and 8 miles (13 km) across at its widest, with a total area of 76 square miles (197 square km). It has a 36-square-mile (93-square-km) sound that is a breeding ground for much marine life. The capital is George Town, on Grand Cayman. Cayman Brac, about 89 miles (143 km) northeast of Grand Cayman, … [with a] total area is 14 square miles (36 square km). The smallest of the islands, Little Cayman, lies 5 miles (8 km) west of Cayman Brac; it [has] a total area of 10 square miles (26 square km).

[48] As noted in Britannica (www.britannica.com/place/Cayman-Islands): "The physical beauty and superb climate of the islands have made them a haven for tourists. The government invested heavily in promoting tourism, which increased eightfold between the mid-1970s and the early 1990s. Since then, tourism has continued to grow steadily, as the islands have developed a good reputation for diving. Cruise ships call at Grand Cayman, bringing some one million visitors annually on day trips. In addition, hundreds of thousands of stopover tourists (those who stay one or more nights) visit the islands each year."

[49] As also noted in Britannica (www.britannica.com/place/Cayman-Islands): "International finance has become a major component of the economy. The Cayman Islands are renowned as an offshore banking centre, owing to the absence of direct taxes and to liberal banking laws that generally ensure confidential transactions. Hundreds of banks and trust companies, including most of the world's 50 largest banks, are registered in the Caymans [*sic*], making the islands one of the largest financial centres in the world. Revenue paid by registered businesses contributes considerably to the government budget."

[50] Higman, B.W., A CONCISE HISTORY OF THE CARIBBEAN (2011), at 267-326.

[51] Freyer and Morriss, *Creating Cayman*, at 1300. See also Johnson, Sir Vassel, AS I SEE IT: HOW THE CAYMAN ISLANDS BECAME A LEADING FINANCIAL CENTRE (2001), at Part III, *The Building Process*.

to remain with the UK as a Crown Colony rather than pursue independence, either as part of Jamaica or on their own, the Cayman Islands bucked the trend and charted a different course. This is reflected in legislative developments, starting as the first Companies Law in 1960, which made company registration in the Cayman Islands possible for the first time. Fees were generated to supplement the pre-existing customs duties, ensuring that Cayman did not become financially dependent on the United Kingdom and thereby, in time, allowing it greater room to assert autonomy.[52] *This became an integral part of Cayman's strategy to increase its share of the shared sovereignty.*

As one former Governor, Thomas Russell (1974-82), told an interviewer:

"My job here [in the Cayman Islands] is really a kind of combination of ombudsman and business consultant. I don't interfere very much and the British government leaves us very much alone, largely no doubt because we don't need any kind of grant."[53]

Cayman's continuing link with the United Kingdom helped to ensure fiscal stability enabling Cayman to carry out an integrated development plan to update public facilities, improve roads and telecommunications and continue mosquito control.[54] *The success of Cayman's collaborative approach was about getting the right mix of ingredients; blending constitutional autonomy with just enough British backing; and encouraging entrepreneurial innovation in financial services, while still keeping government in control.*[55]

III - The 2009 Constitution and the Consolidation of Greater Local Autonomy

At the end of the 20th century, the Cayman Islands found itself in a somewhat of a quandary. On the back of a thriving tourism product and a booming financial services industry, the Cayman Islands economy had developed exponentially; and yet its constitutional arrangements were not significantly different from those basic provisions contained in the first written constitution of the Cayman Islands enacted in 1959.[56] New constitutions were forthcoming in 1962[57] and again in 1972[58], and there were several minor modifications thereafter, but, in comparison to the other UKOTs in the Caribbean region and to nearby Bermuda, the constitutional arrangements in the Cayman Islands were the least advanced. In practice, this meant that, compared with its neighbours, the Governor in the Cayman Islands had a more prominent position and greater powers

[52] Cranton, Michael, FOUNDED UPON THE SEAS: A HISTORY OF THE CAYMAN ISLANDS AND THEIR PEOPLE (2003) (hereinafter referred to as "Cranton, *Founded Upon the Seas*"), at chapter 13, *The Engineered Miracle: Economic Development 1950-2000*.
[53] Sampson, Anthony, THE MONEY LENDERS: THE PEOPLE AND POLITICS OF THE WORLD BANKING CRISIS (1981) (hereinafter referred to as Sampson, *The Money Lenders*), at 288.
[54] Cranton, *Founded Upon the Seas*, at chapter 13.
[55] Carter, Ku and Morriss, *Evolving Sovereignty Relationships*.
[56] The Cayman Islands (Constitution) Order in Council 1959 (U.K.S.I. 1972 No. 863).
[57] The Cayman Islands (Constitution) Order 1962 (U.K.S.I. 1972 No. 1646).
[58] The Cayman Islands (Constitution) Order 1972 (U.K.S.I. 1972 No. 1101).

than their contemporaries elsewhere; and, conversely, the locally elected representatives in the Cayman Islands held less sway in the Executive Council ("ExCo"), where, unlike other UKOTs, there was no Premier or, at this point, no formal Leader of Government Business[59] to serve as a local counterpoint to the United Kingdom's appointed Governor in the exercise of the executive functions of government.

In addition, the democratic legitimacy of the local legislature was compromised by the presence of the unelected Chief Secretary, Financial Secretary and Attorney General in the Legislative Assembly, as well as these postholders also featuring as *ex officio* members of the ExCo. While other UKOTs retained similar *ex officio* appointees in their legislatures and executive bodies, none did so to the same extent as the Cayman Islands at this time. More pointedly, this meant that responsibility for the management of the territory's finances remained the purview of the appointed Financial Secretary, leaving the elected representatives reliant upon a civil servant for the administration of the budget, which, subject to approval by the Legislative Assembly was required by the representatives who were appointed to ExCo to deliver on their manifesto commitments.

Put simply, the constitutional arrangements, which as Freyer and Morriss[60] illustrate had facilitated the economic advancement of the Cayman Islands, were no longer fit for purpose; rendered increasingly obsolete by the very development that they had fostered. The more the annual Cayman Islands budget grew year on year, the louder the calls for direct financial accountability to the voting electorate inevitably became. It was not, however, a local initiative that initiated the decade of debate that would eventually result in the 2009 Constitution. Instead, it was the United Kingdom's 1999 White Paper that first invited the UKOTs to enter into a new partnership for progress and prosperity with the United Kingdom[61]; a modern and effective alliance based on self-determination[62]; their being responsibilities on both sides[63]; the UKOT's exercising the greatest

[59] The Cayman Islands (Constitution) (Amendment) Order 2003 (U.K.S.I. 2003 No. 1515) introduced the terms "Leader of Government Business" and "Leader of the Opposition" and renamed ExCo as "Cabinet"; which, together, symbolised an entrenchment of the Westminster system of government in the Cayman Islands.

[60] In Freyer and Morriss, *Creating Cayman*, at 1297, the authors summarise their thesis as: "The Cayman Islands are one of the world's leading offshore financial centers (OFCs). Their development from almost a barter economy in 1960 to a leading OFC for the location of hedge funds, captive insurance companies, yacht registrations, special purpose vehicles, and international banking today was the result of a collaborative policy-making process that involved local leaders, expatriate professionals, and British officials. Over several decades, Cayman created a political system that enabled it to successfully compete in world financial markets for transactions, participate in major international efforts to control financial crimes, and avoid the political, economic, racial, and social problems that plague many of its Caribbean neighbors."

[61] See *Partnership for Progress and Prosperity*, and the Forward by the Foreign and Commonwealth Secretary, at 4-5.

[62] In respect of which the Foreign and Commonwealth Secretary affirmed (*Partnership for Progress and Prosperity*, at 4): "Our Overseas Territories are British for as long as they wish to remain British. Britain has willingly granted independence where it has been requested; and we will continue to do so where this is an option. It says a lot about the strength of our partnership that all the Overseas Territories want the constitutional link to continue. And Britain remains committed to those territories which choose to retain the British connection."

[63] In connection with this principle, the Foreign and Commonwealth Secretary advised (*Partnership for Progress and Prosperity*, at 4): "Britain is pledged to defend the Overseas Territories, to encourage their sustainable development and to look after their interests internationally. In return, Britain has the right to expect the highest standards of probity, law and order, good government and observance of Britain's international commitments."

possible control over their own lives[64]; and a commitment from the United Kingdom to continue to help those UKOTs that need it[65] (referred to together as "the Four Principles").

Although this initiative was received with a measure of scepticism by some in the Cayman Islands[66], a Constitutional Review Commission was appointed by the Governor, which duly reported in 2002 with its recommendations.[67] These recommendations, however, were not thought to be sufficiently progressive in terms of local autonomy and there was a feeling that having waited for so long for the 1972 Constitution to be fundamentally modernised, this opportunity should not be squandered on anything that fell short of this objective for fear that such opportunity may not present itself again for another thirty years.[68] Following the rejection of the 2002 Report there was, perhaps inevitably, a lull, but the constitutional modernisation process was reinitiated on 1 March 2007 by the appointment on a Constitutional Review Secretariat, which under the supervision of the Cabinet Secretary, sought to achieve a "national consensus on areas of constitutional reform upon which the Cayman Islands Government may negotiate a new constitution for the Cayman Islands with the United Kingdom".[69] Many interest groups became engaged in this process and while there were differences[70] – some of which were fundamental[71] – these efforts eventually bore fruit in the form of the 2009 Constitution, which enshrined the following significant constitutional advances for the Cayman Islands:

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[64] Here the Foreign and Commonwealth Secretary asserted (*Partnership for Progress and Prosperity*, at 4) that: "We [the United Kingdom] … want them [the UKOTs] to have the autonomy they need to continue to flourish."

[65] In this regard the Foreign and Commonwealth Secretary noted that budgetary help from the United Kingdom had only been necessary for Montserrat and St. Helena, and in both instances, this had been for "special circumstances".

[66] See the analysis of Sir Howard Fergus, who in considering both the Cayman Islands and his native Montserrat in Fergus, Howard A., *Constitutional Modernisation in Montserrat and the Cayman Islands: Taking the British Seriously*; presented at the University of the West Indies Cayman Islands Country Conference, 27-28 May 2004; available at: https://www.open.uwi.edu/sites/default/files/bnccde/montserrat/conference/papers/fergus.html), explained this sentiment in the following terms: "While the citizens of these territories generally desire some devolution of the Governor's authority on to the elected government (rather more so in Montserrat) consonant with greater democratisation, they are also conscious of the need for checks and balances on the government. It may not be an exaggeration to say that the relative disinterest in independence stems partly from lack of trust in local politicians, which can also be interpreted as a lack of self-confidence. The irony is that this attitude feeds the self-same colonialism which may have fostered the self-doubt in the first place. There is thus an ambivalence about constitutional modernisation in the BOTs [UKOTs] in the region."

[67] Ebanks, Benson O., *et al, Review of the Constitutional Modernisation Review Commissioners* (2002) (hereinafter referred to as "the 2002 Report").

[68] See Carter, Vaughan, *Evaluating the Cayman Islands Bill of Rights, Freedoms and Responsibilities: More Evolution than Revolution*, 4 Tex. A&M L. Rev. 385 (2017) (hereinafter referred to as: "Carter, *Cayman Islands Bill of Rights*), which is available at: https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1131&context=lawreview, at 387-389.

[69] See the entry for the Constitution Review Secretariat at: https://www.constitutionalcommission.ky/local-government-organisations.

[70] See Smith, Livingston, *Between Colony and Independence: Constitutional Modernization on the Cayman Islands*; presented at the University of the West Indies Cayman Islands Country Conference, 27-28 May 2004; available at: https://www.open.uwi.edu/sites/default/files/bnccde/cayman/conference/paperdex.html (hereinafter referred to as "Smith, *Between Colony and Independence*"), in which the amount of immigration into the Cayman Islands was cited as a challenge for the maintenance and articulation of a distinct Caymanian identity. As a result of this phenomenon, Smith further notes that, alongside the willingness to preserve economic gains, there was also a growing sense that Caymanian culture also needed to be recognised and preserved; and the constitutional modernisation process thus provided an opportunity to mobilise around this goal.

[71] The Cayman Islands has traditionally been a devout Christian community, whose interests in the modernisation of the Constitution were represented by both the Christian Ministers Association and the Seventh Day Adventist Church. While there was broad agreement across the Cayman Islands on the need for a Bill of Rights, the religious community endeavoured to protect certain beliefs from being undermined by human rights; and so, canvassed against homosexuality and sought to define marriage as a union between persons of the opposite sex. These viewpoints were recorded in Smith, *Between Colony and Independence* and the ensuing clash with the Human Rights Committee over the inclusion of a right to equality in the 2009 Constitution is detailed in Carter, *Cayman Islands Bill of Rights*, at 393-397.

1. Constitutionally entrenched human rights – Part I of the 2009 Constitution contains the Bill of Rights, Freedoms and Responsibilities and, while the Cayman Islands could point to a long tradition of recognition of and respect for human rights, including through international human rights treaties that had been extended by the United Kingdom to the Cayman Islands, this was the first time that a human rights chapter formed part of the Cayman Islands Constitution and the rights therein were directly enforceable in domestic courts on this basis.[72]

2. Institutions supporting democracy – Part VIII of the 2009 Constitution incorporates a series of institutions designed to support democracy and the rule of law. These include a Human Rights Commission (which placed the pre-existing Human Rights Committee on a constitutional footing); a standing Constitutional Commission; and a Commission for Standards in Public Life; which together augmented the functions already delivered by a Complaints Commissioner (now the Ombudsman, who has also assumed responsibilities for Freedom of Information) and the Auditor General.

3. Some encroachment on special areas of responsibility, such as foreign affairs and national security, which had traditionally been the preserve of the Governor – Under section 55(1) of the 2009 Constitution, the Governor still maintains *prima facie* control over: (a) defence; (b) external affairs; (c) internal security; and (d) the public service; however, these powers in connection with external affairs are now subject to subsections (3)[73] and (4)[74]; and, insofar as internal security is concerned, while these powers may be exercised without prejudice to the establishment of a National Security Council in section 58, the establishment of the National Security Council is an important development nonetheless.[75] Further provision for assignments and delegations in respect of all of the special areas of

[72] See Carter, *Cayman Islands Bill of Rights*, at Part I, *The Emergence and Enactment of the First Bill of Rights in the Cayman Islands* for, *inter alia*, further analysis of: the extension of international human rights treaties to the Cayman Islands; contributions from the Cayman Islands to the United Kingdom's periodic reporting under various international human rights treaties; the use of international human rights treaties as an aid to statutory interpretation and for the development of the common law by the courts in the Cayman Islands, notwithstanding that these treaties were not directly enforceable; the extension to the Cayman Islands and its people of the right of individual petition to the European Court of Human Rights; and the inclusion in the 2009 Constitution of additional human rights, over and above those commitments established in the European Convention on Human Rights.

[73] "The Governor shall not enter, agree or give final approval to any international agreement, treaty or instrument that would affect internal policy or require implementation by legislation in the Cayman Islands without first obtaining the agreement of the Cabinet, unless instructed otherwise by a Secretary of State."

[74] "The Governor shall, acting after consultation with the Premier, assign or delegate to the Premier or another Minister, by instrument in writing and on the terms and conditions set out in subsection (5), responsibility for the conduct of external affairs insofar as they relate to any matters falling within the portfolios of Ministers, including— (a) the Caribbean Community, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution; (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect the Cayman Islands; (c) tourism and tourism-related matters; (d) taxation and the regulation of finance and financial services; and (e) European Union matters directly affecting the Cayman Islands." Further guidance as to the operation of the latitude provided under section 55(4) of the 2009 Constitution is also contained in subsections (5) and (6).

[75] Under section 58(4) of the 2009 Constitution: "The National Security Council shall advise the Governor on matters relating to internal security, with the exception of operational and staffing matters, and the Governor shall be obliged to act in accordance with the advice of the Council, unless he or she considers that giving effect to the advice would adversely affect Her Majesty's interest (whether in respect of the United Kingdom or the Cayman Islands); and where the Governor has acted otherwise than in accordance with the advice of the Council, he or she shall report to the Council at its next meeting."

responsibility in section 55(1) and, specifically, for external affairs, are also contained in subsections (2)[76] and (7)[77] respectively.

4. Restructuring the framework for governance – Prior to the 2009 Constitution, the Governor's pre-eminence in the executive function of government was clear. The new arrangements, however, reflect a significant shift towards greater local autonomy and representation, as embodied in: the consolidation of Cabinet government[78]; the establishment of the Premier as the head of the political executive, to replace the somewhat less authoritative nomenclature of Leader of Government Business; associated refinements to the power dynamic within Cabinet, whereby both the Governor and the Premier have input into the Cabinet agenda[79]; the requirement that the new position of Deputy Governor be Caymanian[80]; and the assumption by an elected Minister of the responsibility for finance.[81]

IV - Controversy and the 2020 Amendment

Having trailed its neighbours in terms of constitutional development beforehand, the 2009 Constitution established the Cayman Islands as the front-runner in this regard amongst UKOTs in the Caribbean region. Bermuda to the north may have priorly obtained greater local autonomy, but, for present purposes, that was an historical anomaly and one that the United Kingdom was set against repeating. While the United Kingdom was not averse to any of its UKOT's exercising their right to self-determination (once support for this course of action had been appropriately established), the United Kingdom was not prepared accede to full internal self-government in a UKOT, thereby ceding its continuing role in local governance, until a UKOT had first affirmed its desire for independence.[82] In this way, full internal self-government was positioned as a

[76] "The Governor, acting after consultation with the Premier, may assign or delegate to any member of the Cabinet, by instrument in writing and on such terms and conditions as he or she may impose, responsibility for the conduct on behalf of the Governor of any business in the Legislative Assembly with respect to any of the matters listed in subsection (1)."

[77] "The Governor may, by directions in writing and with the prior approval of a Secretary of State, delegate or assign such other matters relating to external affairs to the Premier or another Minister designated by the Premier as the Governor thinks fit on such conditions as he or she may impose."

[78] Section 44(3) of the 2009 Constitution affirmed that: "The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government except those matters for which the Governor has special responsibility under section 55, and the Cabinet shall be collectively responsible to the Legislative Assembly for such policies and their implementation." This provision has been subsequently supplemented, *inter alia*, to make it expressly clear that the Cabinet possesses "autonomous and exclusive capacity in domestic affairs" for any matter that is not: one of the special responsibilities; a function which the Governor must exercise under the Constitution or any other law in the Governor's discretion or judgement, or in accordance with instructions from Her Majesty through a Secretary of State; or a function which the Governor is empowered or directed, either expressly or by necessary implication, to exercise without consulting with the Cabinet, or to exercise on the recommendation or advice of, or after consultation with, any person or authority other than the Cabinet; as reflected in the new Cabinet Manual, which is available at: https://www.gov.ky/publication-detail/cabinet-manual, at 3. See also, at 2 in the Cabinet Manual, for further detail on the exercise of the Governor's functions in section 32 of the 2009 Constitution and the Governor's associated responsibilities to Cabinet.

[79] Section 36(3) of the 2009 Constitution.

[80] Section 34(2)(b) of the 2009 Constitution specifically and section 34 generally on the functions and authority of the Deputy Governor.

[81] Section 54(1) of the 2009 Constitution. Insofar as financial autonomy is concerned, it is notable that section 113 of the 2009 Constitution also introduces express controls over public debt, which limit the capacity of the Cayman Islands Government to borrow.

[82] Harris, Sophia A., *Self-Government in the Cayman Islands: The Perspective of Non-Governmental Organisations (NGOs)* (hereinafter referred to as: "Harris, *Self-Government in the Cayman Islands*"), delivered by the President-Elect of the Cayman

transitional arrangement for UKOTs; one with entry requirements and a clearly signposted exit; but not as an end in itself. As such, the 2009 Constitution appeared to be the zenith; it was as far as the United Kingdom was prepared to allow the Cayman Islands to advance constitutionally for so long as the Cayman Islands remained a UKOT.[83]

However, subsequent events and their surrounding controversy would present the Cayman Islands with an unexpected opportunity for further constitutional advancement, greater local autonomy, and a corresponding reduction in the powers of the Governor. Such controversies were not new to the Cayman Islands. Indeed, the collapse of the Euro Bank trial[84] (the first prosecution for money laundering in the Cayman Islands and therefore of major jurisdictional importance) and the fallout from Operations Tempura and Cealt,[85] have all exposed the realities of the constitutional

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Islands Chamber of Commerce to the United Nations Special Committee of 24 on Decolonisation, on 12th June 2003 at the United Nations in New York City, New York (delivered previously in Anguilla in May 2003), in which it was noted that: "We have been labouring for generations under the impression that we did not have the absolute right to self- determination as an Overseas Territory. … This is in contrast to Bermuda, which apparently operates as an Associated jurisdiction with the right to self-determination and thus Self Government and which includes limited powers of the Governor. We have been advised that should we seek a similar constitution, which provides for this level of Self-Government as an Overseas Territory, we must also take the necessary measures to move towards independence."

[83] Inevitably, different actors have different perspectives on the 2009 Constitution and the process by which is came about. Speaking on the commencement of the 2009 Constitution, local politician, Sir Alden McLaughlin, emphasised the tangible benefits, in respect of which he commented: "… we are ushering in a model of new governance that's going to improve democracy and reduce ability of the governor to act outside of the advice of the elected representatives" (http://archive.caymannewsservice.com/2009/11/03/); whereas others (see Harris, Sophia, *Challenges and Opportunities in the Process of Decolonization of the Non-Self-Governing Territories in the Caribbean Region – The Cayman Experience*, presented at the Caribbean regional seminar on the implementation of the Second International Decade for the Eradication of Colonialism: challenges and opportunities in the process of decolonization in today's world, Frigate Bay, St. Kitts and Nevis, 12 to 14 May 2009, which is available at: https://www.un.org/dppa/decolonization/sites/www.un.org.dppa.decolonization/files/2009_6_dp_sophia_harris.pdf) viewed the 2009 Constitution as a missed opportunity to properly investigate the free association option for self-determination and thereby characterized the 2009 Constitution as merely "a revised administrative document between the UK and a Colony, as opposed to a constitutional document of the people and by the people".

[84] See the commentary in Harris, *Self-Government in the Cayman Islands*: "Without getting into the intricacies of the trial itself, it is important to note that in the judgment handed down by our Chief Justice, it is revealed that the prosecution, headed by our Attorney General, was forced to disclose that the UK Government through MI6 had planted moles throughout the Banking industry (and by separate accounts, had also wire tapped telephone lines), by consent of the Governor. It also came to be known that the head of the Financial Reporting Unit employed by our Government was on the payroll of MI6. It is worthy to note that the FRU, which was a part of the Cayman Islands Police force, was restructured by the Attorney General to fall directly under the auspices of the Attorney General's office. Upon becoming tipped off that a search warrant was to be issued against the head of the FRU (the search warrant resulting from suspicion of interference with the telephones of our Judiciary), MI6 instructed him to destroy all evidence that would have implicated the UK Governments involvement. Some brief mention was also made on discovery of the evidence held by the prosecution, of "the London Plan" for the Cayman Islands, which left all in wonder and bewilderment as to the true intentions of the UK Government's relationship with the Cayman Islands. Without getting into any further detail, in this presentation, on the Euro Bank trial, it is understandable that all confidence in the Attorney General by the Government and indeed by the people of the Islands was lost, which resulted in the financial industry, including the Cayman Bar Association and the Law Society, calling for his resignation and, of most concern, the Cayman Government refused to sit in the Legislative Assembly with the AG, who is included as part of the Executive Council under our constitution."

[85] The background to Operations Tempura and Cealt are summarised in the *Special Report of the Auditor General on The Review of Expenditures for Operations Tempura and Cealt* (October 2009), which is available at: http://www.legislativeassembly.ky/portal/pls/portal/docs/1/9782685.PDF, at 3-4; and which explains that: (i) a team of London Metropolitan Police officers were brought to the Cayman Islands by approval of the Governor's Office to conduct a special investigations into a complaint of a corrupt relationship; (ii) in the course of investigating this complaint ("Operation Tempura"), several individuals were arrested, including a presiding judge, which arrest was subsequently determined to be unlawful; and (iii) the scope of the investigations nevertheless expanded to encompass additional allegations of wrongdoing by police officers ("Operation Cealt"). The Auditor General Special Report concluded, *inter alia*, that "… there were significant deficiencies in the administrative management of the police investigation projects Operation Tempura and Operation Cealt and the accounting for

relationship between the Cayman Islands and the United Kingdom and have likely assisted in the Cayman Islands justifying its claims for greater local involvement in areas previously reserved for the Governor, both in the 2009 Constitution and in the 2020 Amendment. Insofar as the intervening period between these two constitutional milestones is concerned, there were two other events of particular note, which precipitated the 2020 Amendment.

The first relates the aborted tenure of Governor Choudhury in the Cayman Islands, who took up his post in March 2018, but was recalled to London in June 2018 on account of allegations of misconduct, and then removed from the post in September 2018. The precise circumstances that resulted in this outcome are unclear, but it is against this backdrop of uncertainty that the significance of the second and more fundamental issue should be considered. This more fundamental issue involved the passage through the United Kingdom Parliament of what became the Sanctions and Anti-Money Laundering Act and the inclusion by way of amendment of a provision requiring the establishment of public registers of beneficial ownership in UKOTs[86]. Whatever the merits or otherwise of this provision, many UKOTs nevertheless objected to it on principle; namely that it was an incursion into domestic matters specifically designated for the UKOTs in their respective constitutional arrangements. In normal circumstances, the United Kingdom Government would consult with UKOTs before proceeding with anything of this sort. However, in this instance, the United Kingdom Government was outmanoeuvred in Parliament and too weak to resist the amendments proposed to its Bill. The Cayman Islands, in particular, was quick to seize upon this opening; and characterising the situation as legislative overreach (even though there was no legal impediment to the United Kingdom Parliament enacting such legislation, notwithstanding that it may have been in breach of an established convention), it sought to leverage the ensuing controversy to press for further constitutional advancement in areas in which the United Kingdom had previously been unreceptive.[87]

Following negotiations, which took place in London in December 2018 and consequent discussions that then continued in the course of 2019, a draft Order in Council ("the Draft Order[88]") containing the amendments to the Cayman Islands Constitution that the United Kingdom had agreed was sent by letter dated 10 November 2019, from the Minister of State for the Commonwealth and the UN in the Foreign and Commonwealth Office to the Cayman Islands Premier. The Explanatory Note to the Draft Order[89] advised:

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their related costs"; and it is notable that, despite the expenditure, there were no prosecutions brought as a result of the investigations these Operations.

[86] 2018 c. 13, section 51.

[87] See the *Constitutional Commission's Response to Requests from His Excellency the Governor and the Hon. Premier and Hon. Leader of the Opposition for Comments on Potential Revisions to the Cayman Islands Constitution 2009* (27 June 2018), which is available at: https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommissionsResponsestoRequestsforCommentsonPotentialRevisionstotheCaymanIslandsConstitution2009_270618_1543527160_1543527201.pdf.

[88] The Draft Order can be viewed at: https://cdn2.hubspot.net/hubfs/6430568/Constitutional%20Reform/2019%2011%2001%20-%20Cayman%20Islands%20Constitution%20(Amendment)%20Order%202019.pdf.

[89] For further context and commentary, see the Constitutional Commission's *Explanatory Note on the Proposed Amendments to the Cayman Islands Constitution Contained in the Draft Order in Council* (17 February 2020), which is available at: https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommissionCoverLetterExplanatoryNotetoCIG_170220_1582828896_1582828903.pdf.

This Order makes several amendments to the Constitution of the Cayman Islands. In particular, it changes the name of the Legislative Assembly to the Parliament, it abolishes the power of disallowance and introduces instead some pre-legislative controls, it replaces the Governor's reserved legislative power with a right for the Governor to address the Parliament of the Cayman Islands in defined circumstances, and it makes clearer that the Cayman Islands Cabinet has autonomous capacity with respect to domestic affairs. It also changes the circumstances in which the Governor must consult the Cabinet, and provides for Parliamentary Secretaries and a Police Service Commission. It provides an obligation for the Secretary of State to notify the Premier of proposed Acts of the United Kingdom Parliament that would extend directly to the Cayman Islands or Orders in Council extending any provisions of an Act of the United Kingdom Parliament to the Cayman Islands.

Save with one exception, all the items referred to in the Explanatory Note found their way into the final 2020 Amendment. These items merit further comment, which will follow in due course, but it is first necessary to explain the circumstances in which the anomaly – that is the proposed and agreed removal of the Governor's reserved legislative power found in section 81 of the Cayman Islands Constitution – was ultimately retained.

The explanation for this outcome is derived from the ramifications of a constitutional challenge to a refusal by the Deputy Registrar to grant a special license[90] to marry to a same-sex couple ("Day and Bodden Bush"). The refusal was predicated on the basis that the Marriage Act had been amended to define marriage in the Cayman Islands as a union between a man and a woman only. In a lengthy judgment handed down by the Grand Court,[91] the Hon. Chief Justice decided, *inter alia*, that the amendment to the Marriage Act, which affirmed the definition of marriage relied upon for the decision of the Deputy Registrar, preceded the 2009 Constitution; it was therefore an "existing law" when the 2009 Constitution came into effect; and as such, could be construed with such modifications, adaptations, qualifications, and exceptions as may be necessary to bring the law into conformity with the Cayman Islands Constitution and the Bill of Rights, Freedoms and Responsibilities therein.[92]

The Day and Bodden Bush decision at first instance was, however, successfully appealed in the Cayman Islands Court of Appeal,[93] which outcome was thereafter upheld[94] by the final court of

[90] A special license was appropriate in this instance because at the time of the application both applicants resided outside of the Cayman Islands.
[91] *Chantelle Day and Vicki Bodden Bush v The Governor of the Cayman Islands, the Deputy Registrar of the Cayman Islands General Registry and the Attorney General* (Civil Cause N. 111 OF 2018 and Civil Cause N0. 184 OF 2018).
[92] See *An Explanation of the Constitutional Issues Arising from the Day and Bodden Bush Litigation*, published by the Constitutional Commission on 7 June 2021, which is available at: https://www.constitutionalcommission.ky/upimages/publicationdoc/AnExplanationoftheConstitutionalIssuesArisingfromtheDayandBoddenBushLitigation_FINAL_1623105592_1623105603.pdf.
[93] *Deputy Registrar and Attorney General v. Day and Bodden Bush* [2020 (1) CILR 99].
[94] *Day and another v. The Government of the Cayman Islands and another* [2022] UKPC 6.

appeal for the Cayman Islands, the Judicial Committee of the Privy Council ("JCPC").[95] The Court of Appeal judgment is, however, of particular note in the present context because it set in train the course of events that resulted in the retention of section 81 of the Cayman Islands Constitution. The first stop in this journey is the Court of Appeal's direction that, notwithstanding that it had found in favour of the Government's appeal, Day and Bodden Bush were nevertheless entitled, expeditiously, to legal protection that is functionally equivalent to marriage.

The journey then continues with the Government's attempt to comply with the Court of Appeal's direction with a Bill to provide for domestic partnerships and for incidental and connected purposes ("the Domestic Partnership Bill 2020"). However, the Domestic Partnership Bill 2020 was defeated by a vote of nine to eight in its Second Reading on 29 July 2020; and faced with a constitutional impasse, the Governor resolved to use the reserved powers to legislate in section 81 of the Cayman Islands Constitution to settle matters. The Governor thus proposed and subsequently assented to the Civil Partnership Act and eleven other consequential amendments to other legislation, on the basis that this exercise of his section 81 powers was necessary to uphold the rule of law and to comply with the United Kingdom's international obligations under the European Convention on Human Rights in accordance with the Governor's responsibilities under section 55(1)(b) of the Cayman Islands Constitution.

The journey then concludes, at least insofar as the 2020 Amendment is concerned[96] with what was by this time the inevitable revision of the Draft Order to retain section 81 in the Cayman Islands Constitution. The Explanatory Memorandum for the final 2020 Amendment confirms that: "Agreement to the removal of the Governor's legislative reserved power was subsequently withdrawn following its use at the point the Governor assented to the Civil Partnership Act on 4 September 2020".[97]

While the retention of section 81 of the Constitution was undoubtedly a setback for the enhancement of local autonomy, it is significant that other amendments to the Cayman Islands Constitution contained in the Draft Order, which also advanced local autonomy, were, despite all the controversy surrounding the Day and Bodden Bush litigation and the failure to enact the Domestic Partnership Bill 2002, still enacted in the final 2020 Amendment. This says something quite profound about the current strength of the relationship between the Cayman Islands and the

[95] For an further information on the relevance and importance of the JCPC to the Cayman Islands, see the *Judicial Committee of the Privy Council Explanatory Notes*, published by the Constitutional Commission on 15 November 2022, which are available at: https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommission-JCPCExplanatoryNotesFinal_151122_1668522406_1668522407.pdf.

[96] The journey is on-going in another location, with the Governor's justification for the use of his reserved powers in section 81 of the Cayman Islands Constitution challenged in the courts. The Grand Court rejected this challenge and affirmed the constitutionality of the Governor's actions (*Kattina Anglin v The Governor of the Cayman Islands and Colours Caribbean (Intervenor)* (Cause No. G169 of 2020)), although this decision is itself the subject of appeal (which appeal, Civil Appeal No. 006 of 2022, was heard on 9 May 2023, with the decision reserved for a later date).

[97] See paragraph 10.1 of the Explanatory Memorandum, which is available at: https://www.constitutionalcommission.ky/upimages/educationdoc/ExplanatoryMemorandumtoTheCaymanIslandsConstitutionAmendmentOr..._1606143720_1606143720.pdf. See also: Constitutional Changes, UK Withdraws Section 81 Removal, Cayman Compass, 18 September 2020; which is available at: https://www.constitutionalcommission.ky/upimages/educationdoc/CaymanCompass-Constitutionalchanges_UKwithdrawsSection81removal_18Sept2020_1600701924_1600701924.pdf.

United Kingdom and is indicative of the level of maturity and mutual respect required for a successful partnership.

And so, with this perspective established, it is pertinent to return to the contents of the 2020 Amendment, which are of greatest constitutional import and which the Cayman Islands Government has explained[98] as follows:

1. The renaming the Legislative Assembly to Parliament might appear cosmetic but was considered important "because often the term Legislative Assembly is considered a lower legislative body to a parliament".
2. Section 32 of the Cayman Islands Constitution and the exercise of the Governor's functions was amended to provide for a requirement whereby the Governor ought generally to consult with the Cabinet on matters dealing with defence, external affairs, and internal security, which are areas of responsibility traditionally reserved for the Governor.[99]
3. Section 44 of the Cayman Islands Constitution was amended to increase the number of Ministers in Cabinet in light of the complexity and breadth of matters within the remit of Cabinet; to establish a mechanism whereby potential further increases in the number of Ministers in Cabinet may be implemented; and, most importantly, to affirm the role of Cabinet by confirming that, subject to the Cayman Islands Constitution, the Cabinet possesses autonomous and exclusive capacity in domestic affairs for any matter that is not: (i) one of the Governor's special responsibilities under Section 55; (ii) a function that falls within the purview of the Governor acting within his/her authority or by instruction by a Secretary of State; or (iii) a function which the Governor carries out after consulting any other authority other than the Cabinet (such as the Judicial and Legal Services Commission).
4. Section 58 of the Cayman Islands Constitution was amended in respect of the National Security Council to remove the ability for the Governor to use his/her discretion to not follow the advice of the National Security Council on matters of internal security.[100]
5. New sections 58A and 58B to the Cayman Islands Constitution were inserted to create and empower a Police Service Commission, whose remit includes appointments and discipline within the Royal Cayman Islands Police Service ("RCIPS"), and places some checks on the Governor's control over this RCIPS, which were considered apposite following issues the arising from the inception and mismanagement of Operations Tempura and Cealt.
6. Section 71 of the Cayman Islands Constitution was amended to remove the requirement for the Governor to approve Standing Orders made by the Parliament, thereby

[98] See *Constitutional Changes Explained*, which is available at: https://f.hubspotusercontent10.net/hubfs/6430568/Constitutional%20Changes%20Explained%20v2.pdf.

[99] In *Constitutional Changes Explained*, it is noted that: "There are caveats but it is good to have an expectation spelled out in the Constitution that the Governor would consult on these three key areas of his/her responsibility. In addition, there is for the first time a change that allows the actions of the Governor to be subject to judicial review, however the question of whether the Governor has complied with instructions from Her Majesty cannot be questioned in any court."

[100] In *Constitutional Changes Explained*, it is also noted that: "Instead a Secretary of State would have to instruct the Governor that following the advice would adversely affect Her Majesty's interest and therefore he/she can go against the advice received from the National Security Council."

strengthening the separation of powers between the executive and legislative branches of government.[101]

7. Section 77 of the Cayman Islands Constitution was amended, *inter alia*, to require the Governor to signify his/her consent for the Parliament to introduce any Bill that concerns one of the Governor's special responsibilities, that is matters of defence, external affairs, internal security and the public service; and if there is a dispute between the Governor and the Parliament over whether a matter falls within the scope of one of those special responsibilities, the Premier may then refer the question to a Secretary of State, whose decision on the matter would be final.
8. The Cayman Islands Constitution was amended to further enhance local autonomy over domestic affairs by deleting section 80 in its entirety, which previously allowed Her Majesty to disallow any law passed by the Elected Representatives and assented to by the Governor.[102]
9. A new section 126 was, as noted above, introduced into the Cayman Islands Constitution to ensure that where it is proposed that any provision of a draft act of the United Kingdom Parliament should apply directly to the Cayman Islands, or where an Order In Council should be extended to the Cayman Islands, that such proposals should normally be brought by the Secretary of State to the attention of the Premier so that the Cabinet may signify its view on it.[103]

All told, therefore, the Cayman Islands now enjoys a significant degree of autonomy; and, while the United Kingdom still retains the ultimate constitutional power and despite the presence of the Governor in the Cayman Islands, there is a strong sense that it is the locally elected representatives who are now primarily in charge of the day-to-day governance of the Cayman Islands. Challenges may arise from time to time, which bring the locally elected representatives into conflict with the Governor, but by working together, these challenges are generally successfully overcome.

V - Analysis of the Caymanian Experience with Reference to the Sahara Region Autonomy Proposal

Having detailed how the sharing of constitutional powers has evolved in the Cayman Islands, this final substantive section focuses on the Sahara Region Autonomy Proposal ("the Autonomy Proposal")[104] and the extent to which this initiative could be informed by the Caymanian

[101] In *Constitutional Changes Explained*, it is further noted that this requirement was a holdover from when the Governor was the President of the Legislative Assembly.

[102] It is interesting to note that this provision was implemented, notwithstanding that section 81 of the Cayman Islands Constitution was retained, although this can be rationalised on the basis that the United Kingdom retains the ability to legislate for the Cayman Islands in any event.

[103] In *Constitutional Changes Explained*, it is finally noted that: "This provides meaningful protection that is enshrined in the Constitution"; and although it does not prevent the United Kingdom Parliament or Her Majesty's Government from directly making laws for the Cayman Islands, it nevertheless "recognises for the first time that the views of the Government and the people of the Cayman Islands must be heard".

[104] As the Concept Note for this Seminar ("the Concept Note") advises, the Autonomy Proposal was advanced by the Kingdom of Morocco to the UN Secretary-General on 11 April 2007, as its "Initiative for Negotiating an Autonomy Statute for the Sahara Region" in order to break the stalemate in negotiations on the regional dispute about Sahara. See: United Nations, Letter dated 11

experience. The authors are not experts on the Sahara Region and so this paper does not take any position on the history of the conflict in the region. While the authors do, of course, recognise that it is impossible to divorce the prospects of potential resolutions for the Sahara Region from the historical context of the situation that they are designed to address, this paper nevertheless proceeds on the basis that there is merit in drawing upon the experiences of other jurisdictions in similar but clearly not identical situations[105] and that it will then be for those that are directly involved in the Sahara Region dispute to judge the utility of the Caymanian experience for their purposes.

At the outset, it is important to understand that, in spite of all the increases in local autonomy secured in and subsequent to the 2009 Constitution, the Cayman Islands remains on the United Nations list of Non-Self-Governing Territories. Under the current power-sharing arrangements, not only does the United Kingdom retain direct control over certain issues, as well as holding residual powers in respect of other areas in certain circumstances, it still has the ultimate power to legislate for Cayman Islands should the need arise. While other former British colonies in the Caribbean region have become independent and have thereby severed their link with the United Kingdom, the Cayman Islands has retained this link, preferring therefore to operate within a very limited window for further autonomy. This is an entirely different scenario to that which presents in the Sahara Region; but it may still be instructive to seek to understand the motivation behind this thinking.

Irrespective of whether this amounts to a voluntary form of colonialism[106] or whether it reflects the realities of global era in which sovereignty is no longer (if it ever was) absolute[107], it is clear that the Cayman Islands has leveraged the continuing relationship with the United Kingdom for its benefit and that this has assisted in securing economic development on an unprecedented scale in the region.[108] For example, many of the hallmarks of the success of the financial services industry in the Cayman Islands – which include: (1) a common law-based legal system that offers exceptional protection to investors; (2) specialised, proportionate, internationally compliant regulatory systems; (3) high levels of "governance" as measured by factors such as "voice and accountability", "political stability", "government effectiveness", "rule of law", and "control of corruption"; and (4) a final court of appeal in the form of the Judicial Committee of the Privy Council, which is usually comprised of members of the United Kingdom's own Supreme Court,

April 2007 from the Permanent Representative of Morocco to the United Nations addressed to the President of the Security Council, Document S/2007/206, 13 April 2007 (https://digitallibrary.un.org/record/597424/files/S_2007_206-EN.pdf?ln=en).

[105] As the May 2023 Concept Note also advises, previous comparative studies have included the cases of: Aceh (Indonesia), Azores and Madeira (Portugal), Bangsamoro (Philippines), Cameroon, Caribbean Island states, Eastern Malaysia, Greenland (Denmark), Indian Northeast, Iraqi Kurdistan, Italian autonomous regions, Mexican states, New Caledonia (France), Newfoundland (Canada), Nicaragua's Atlantic Coast, Northern Ireland (United Kingdom), Nunavut (Canada), Puerto Rico (United States), Rodrigues (Mauritius), Quebec (Canada), Spanish Provinces, South Tyrol/Alto Adige (Italy), Vojvodina (Serbia), Wallonia (Belgium), Zanzibar (Tanzania).

[106] See Smith, *Between Colony and Independence*; and, Yusuf, Hakeem O. and Choudhury, Tanzil, *The Persistence of Colonial Constitutionalism in British Overseas Territories* (2019) 8(1) Global Constitutionalism 157; which argues that despite the UK Government's exaltations of self-determination of its Overseas Territories, provisions of colonial governance persist in their constitutions.

[107] Carter, Vaughan, *Rethinking Sovereignty in the Global Era: What does this mean for the Cayman Islands?*; presented at the University of the West Indies Cayman Islands Country Conference, 27-28 May 2004; available at: https://www.open.uwi.edu/sites/default/files/bnccde/cayman/conference/paperdex.html.

[108] Economic benefits are not the only benefits enjoyed by certain UKOTs. Given the strategic positions of Gibraltar and the Falkland Islands, the United Kingdom therefore provides more in terms of security.

and which "offers international investors both the comfort of a legal system with which they are generally familiar and the legal security of an established body of law"[109] – are derived from the relationship with the United Kingdom.

What is not so clear, however, is whether a similar dynamic could operate in the Sahara Region. While it is understood that the Sahara Region is rich in phosphate reserves, has a plentiful supply of fish off its coast, and may also have as yet untapped offshore oil deposits; applying the Caymanian experience, what will be interesting to ascertain is the extent to which a power-sharing relationship with Morocco's central Government would assist the Sahara Region and its people in benefitting from these resources and thereby developing its economy.[110] As it stands, Article 13 of the Autonomy Proposal instructs that the proposed Sahara Autonomous Region will have the financial resources required for its development in all areas. Resources will come, in particular, from:

- taxes, duties and regional levies enacted by the Region's competent authorities;
- proceeds from the exploitation of natural resources allocated to the Region;
- the share of proceeds collected by the State from the exploitation of natural resources located in the Region;
- the necessary funds allocated in keeping with the principle of national solidarity;
- proceeds from the Region's assets.

It is understood that what is entailed by "the share of proceeds" from the natural resources in the Sahara Autonomous Region is that the Sahara Autonomous Region will fully benefit from both the share of proceeds from the exploitation of natural resources located in the Region, as well as from the proceeds coming from the exploitation of natural resources in other regions. Further details illustrating how this would operate in practice would assist in establishing a fuller understanding of this process.

Article 12 of the Autonomy Proposal also supports the involvement of the population of the Sahara Autonomous Region in the exercise powers in various sectors, including in relation to the economy. Article 12 specifies that: "In keeping with democratic principles and procedures, and acting through legislative, executive and judicial bodies, the populations of the Sahara Autonomous Region shall exercise powers, within the Region's territorial boundaries, mainly over the following:

- Region's local administration, local police force and jurisdictions;

[109] Morris, Julian, *Cayman: Engine of Growth and Good Governance* (Cayman Finance), October 2021. For a fuller analysis of the development of financial services in the Cayman Islands, see Freyer and Morriss, *Creating Cayman*.
[110] The interplay between political and economic sovereignty, and indeed cultural sovereignty, is explored in detail in Carter, Ku and Morriss, *Evolving Sovereignty Relationships*.

- In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;
- Region's budget and taxation; infrastructure: water, hydraulic facilities, electricity, public works and transportation;
- In the social sector: housing, education, health, employment, sports, social welfare and social security;
- Cultural affairs, including promotion of the Saharan Hassani cultural heritage;
- Environment.

In addition, Article 5 of the Autonomy Proposal establishes a general principle that the Sahara Autonomous Region "will have the financial resources needed for the region's development in all fields, and will take an active part in the nation's economic, social and cultural life".

The United Kingdom does not make any financial contributions to the Cayman Islands budget[111] – and, in fact, the British Governor is paid for by the Government of the Cayman Islands – other UKOTs, such as Montserrat and St. Helena, do receive financial assistance from the United Kingdom for particular needs, notwithstanding the general aim of working towards financial self-sufficiency across the UKOTs.[112]

Another significant factor in the willingness of the Cayman Islands to continue in a relationship with the United Kingdom is that the arrangement is framed by the United Kingdom's acceptance that the Cayman Islands has the fundamental right to self-determination (as enshrined in the Cayman Islands Constitution), albeit subject to this being articulated in a form acceptable to the United Kingdom. This provides a level of comfort for the Cayman Islands in that were the relationship with the United Kingdom to turn sour, the Cayman Islands could relatively easily and without too many complications, go its own way if this is what its people desired.[113] .

It is also interesting to note that in the Cayman Islands, the franchise is limited to Caymanians, and permanent residents are unable to register to vote in elections to the Caymanian Parliament,

[111] The United Kingdom's primary concern with the financial affairs of the Cayman Islands is to ensure that the jurisdiction does not become a liability. Hence the negotiation of the Framework for Fiscal Responsibility negotiated between the Governments of the Cayman Islands and the United Kingdom in 2011 (see: https://www.gov.uk/government/news/foreign-office-and-cayman-islands-sign-new-fiscal-responsibility-framework#:~:text=The%20Framework%20for%20Fiscal%20Responsibility,into%20force%20by%20July%202012) and the subsequent provisions restraining public debt incorporated into section 113 of the Cayman Islands Constitution.

[112] See Loft, Phillip and Brien, Philip, *UK Aid and the Overseas* Territories; Research Briefing published by the House of Commons Library on 22 March 2023 which is available at: https://researchbriefings.files.parliament.uk/documents/CBP-9758/CBP-9758.pdf).

[113] It is often noted, however, that this decision could put at the financial services industry at risk, as was the case when the Bahamas became independent in 1973. Shorn of what Tooze describes as the "comfort of attenuated imperial power" and the "cocoon of local political stability" (Tooze, Adam, *The Hidden History of the World's Top Offshore Cryptocurrency Tax Haven*, Foreign Policy, 15 January 2023, which is available at: https://foreignpolicy.com/2023/01/15/the-hidden-history-of-the-worlds-top-offshore-cryptocurrency-tourist-trap/) much of money invested in the Bahamas moved to the Cayman Islands at this time and there are many in the Cayman Islands who fear a similar flight if the Cayman Islands were to make this move.

notwithstanding that they may have been resident in the Cayman Islands in many instances for well over ten years. As a result of the restrictions in the franchise in the Cayman Islands, when children who do not qualify to vote are also taken into account, the electorate comprises only approximately one-third of the population.[114] There have been some suggestions raised in the United Kingdom Parliament that the franchise for elections in the Cayman Islands ought to be extended[115], but these have been met with strong resistance locally in the Cayman Islands and other UKOTs. There are, however, some creative ways whereby newcomers can become more integrated into civic society in the receiving jurisdiction. There are, for example, already many instances where non-Caymanians are appointed to the boards of statutory authorities and government companies, or to administrative tribunals and appeals tribunals, in the Cayman Islands; and the Constitutional Commission has also floated the possibility of broadening the composition of Advisory District Councils[116], the concept of which was introduced by section 199 of the 2009 Constitution but which Councils have not yet been implemented, to include permanent residents.[117]

Article 19 of the Autonomy Proposal advises that "the Parliament of the Sahara autonomous Region shall be made up of members elected by the various Sahrawi tribes, and of members elected by direct universal suffrage, by the Region's population …", thereby providing the Sahrawis with certain privileges in respect of the electoral system. Article 4 of the Autonomy Proposal also "guarantees to all Sahrawis, inside as well as outside the territory, that they will hold a privileged position and play a leading role in the bodies and institutions of the region, without discrimination or exclusion"; and, as noted above, Article 5 of the Autonomy Proposal further notes that "the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers." The closest that the Cayman Islands Constitution comes to these types of issues is in section 89(2)(d)(ii) of the Constitution, under which the two smaller Islands of the tri-Island jurisdiction – Cayman Brac and Little Cayman – collectively always enjoy the protection of at least two Members of Parliament in circumstances where their population would not normally demand as much representation.

Article 19 of the Autonomy Proposal also proclaims that: "There shall be adequate representation of women in the Parliament of the Sahara autonomous Region". This is a positive commitment to

[114] According to statistics published by the Elections Office in April 2023 (https://portal.elections.ky/files/downloads/2023/statistics/Elector_Statistics_-_Average_Age-Gender_and_count_by_district-APR2023.pdf) the total electorate is 23,496.

[115] See Clegg, Peter, *Establishing a Pragmatic Path to Greater Autonomy and Decolonization*; paper presented at United Nations Regional Seminar Caribbean 2019, St George's, Grenada; at section 2.1: Extending the Franchise; which can be accessed at: https://uwe-repository.worktribe.com/output/848189.

[116] See *Constitutional Commission Conclusions and Recommendations: Advisory District Councils*, 15 October 2021, which is available at:
https://www.constitutionalcommission.ky/upimages/publicationdoc/Enclosure1-ConstitutionalCommissionConclusionsandRecommendationsonAdvisoryDistrictCouncils_151021_1643925864_1643925864.pdf

[117] Whereas, following the British Overseas Territories Act 2002, British Overseas Territories Citizens obtained or could obtain full British Citizenship, with all the attendant rights, this is not reciprocated in the Cayman Islands where British Citizens are subject to the same work permit regime and immigration requirements as other non-Caymanians. The Cayman Islands itself does not have any representation in the United Kingdom Parliament, and Caymanians that are not resident in the United Kingdom, are not entitled to vote in national elections in the United Kingdom, even where they are also British Citizens. Article 18 of the Autonomy Proposal, however, establishes that "the populations of the Sahara Autonomous Region shall be represented in Parliament and in the other national institutions" and that they "shall take part in all national elections".

ensuring women's participation in decision making, their representation in the regional institutions and their political and economic empowerment. While the Cayman Islands currently has a female Speaker of Parliament, a female Chief Justice, and indeed a female Governor, and has previously had a female Premier, there is no similar statement of principle regarding the representation of women in the Cayman Islands Constitution.[118] The number of women in high office in the Cayman Islands should not give rise to any sense of complacency, however, not least given that the Commonwealth Parliamentary Association observation of the 2021 General Election noted that:

> *While more women (54 per cent) than men (46 per cent) have been included on the voter register, only 22 per cent of candidates were women (11 in total). This is a decline in comparison with the previous elections, when 26 per cent of candidates running for office were women (16 in total). However, 26 per cent of candidates elected to Parliament were women (5 in total), representing an increase from the 16 per cent (3 members) previously elected, but still falling short of gender parity.*[119]

As Article 5 of the Autonomy Proposal sets out, it is intended that the Sahara populations will themselves run their affairs democratically through the Sahara Autonomous Region Parliament, as well as executive and judicial bodies. It is further stated that these Sahara Autonomous Region organs of government would enjoy "exclusive" powers, although this would only be insofar as their specified remit extends. On the other side of the relationship, Article 14 of the Autonomy Proposal instructs that:

> *The [Moroccan] State shall keep exclusive jurisdiction over the following in particular:*
>
> - *the attributes of sovereignty, especially the flag, the national anthem and the currency;*
> - *the attributes stemming from the constitutional and religious prerogatives of the King, as Commander of the Faithful and Guarantor of freedom of worship and of individual and collective freedoms;*
> - *national security, external defence and defence of territorial integrity;*
> - *external relations;*
> - *the Kingdom's juridical order.*

As noted above, there is also a division of responsibilities in the Cayman Islands, with the United Kingdom, through its Governor, retaining the "special responsibilities" specified in section 55 of

[118] The Preamble to the 2009 Constitution simply affirms that the Cayman Islands intends to be: "A country that honours and acknowledges the important contribution of Caymanian women who during the absence of the seafaring men of the Islands managed the affairs of their homes, businesses and communities and passed on the values and traditions of the Islands' people."
[119] See the full Report at: https://www.uk-cpa.org/media/4140/final-report-cpa-bimr-eem-to-cayman-islands-2021-003.pdf: in which it is recommended that: "proactive measures should be considered in conjunction with mainstreaming awareness about gender equality and harmonising official language, in line with international good practice".

the Cayman Islands Constitution; and so, this is an intersection where the following comparative analysis could have a particular value:

1. Section 59(2) of the Cayman Islands Constitution states that: "Subject to this Constitution, the Legislature may make laws for the peace, order and good government of the Cayman Islands", which provides the local institution with broad *prima facie* powers, subject only then to the express exceptions in the Cayman Islands Constitution.[120] This approach to the demarcation of responsibilities differs from Article 12 and Article 14 of the Autonomy Proposal and could be of assistance if greater clarity around these provision is required.
2. In a sense the Autonomy Proposal provides greater devolution than there is in the Cayman Islands in terms of the police force,[121] although the Caymanian experience does illustrate that there are potential issues around policing and national security, which are reflected in the attempts to find a better constitutional balance in this regard, both with the introduction of a National Security Council in the 2009 Constitution and a Police Services Commission in the 2020 Amendment.
3. External affairs are another area where the 2009 Constitution resulted in a softening of what had previously been the special responsibility of the Cayman Islands Governor and thereby the United Kingdom. As noted above, and notwithstanding that the Cayman Islands is a UKOT, there is specific provision in section 55(4) of the 2009 Constitution for powers in respect of external affairs to be assigned or delegated to local Ministers in respect of: (a) the Caribbean Community, the Association of Caribbean States, the United Nations Economic Commission for Latin America and the Caribbean, or any other Caribbean regional organisation or institution; (b) other Caribbean regional affairs relating specifically to issues that are of interest to or affect the Cayman Islands; (c) tourism and tourism-related matters; (d) taxation and the regulation of finance and financial services; and (e) European Union matters directly affecting the Cayman Islands.[122] The Autonomy Proposal specifies in its Article 15 that: "State responsibilities with respect to external relations shall be exercised in consultation with the Sahara autonomous Region for those matters which have a direct bearing on the prerogatives of the Region"; and that: "The Sahara autonomous Region may, in consultation with the Government, establish cooperation relations with foreign Regions to foster inter-regional dialogue and cooperation". The amount of latitude permitted by the United Kingdom in this regard is instructive. In addition to a long-established presence in the United Kingdom itself, the Cayman Islands has more recently been permitted to open an office with a representative

[120] Notwithstanding the constitutional division of responsibilities and the regular operation thereof, section 125 of the 2009 Constitution still ensures, for use in extreme circumstances, that: "There is reserved to Her Majesty full power to make laws for the peace, order and good government of the Cayman Islands."

[121] The development of a local Cayman Islands Regiment has been viewed by some with a measure of scepticism, largely because it falls under the remit of the Governor, and notwithstanding that the establishment of a local defence force was a policy decision approved by the local Government. For further information, see: https://ukdefencejournal.org.uk/the-caymans-and-the-british-presence-in-the-caribbean/.

[122] Section 55(3) of the Cayman Islands Constitution establishes further protection against undue exercise of external relations powers by the United Kingdom, whereby: "The Governor shall not enter, agree or give final approval to any international agreement, treaty or instrument that would affect internal policy or require implementation by legislation in the Cayman Islands without first obtaining the agreement of the Cabinet, unless instructed otherwise by a Secretary of State."

in Washington DC in the United States[123] and has approval for similar assignments in Asia and in Brussels to interface with the European Union.

4. Article 14 of the Autonomy Proposal reserves what are referred to as the "attributes of sovereignty" for the Moroccan State. The flag, the national anthem and the currency are expressly but not exclusively reserved in this regard. While the United Kingdom retains all legal sovereignty for the Cayman Islands, it is interesting to note that the Cayman Islands has its own flag (albeit that this has the Union Jack in the top left corner); its own national song (although *God Save the King* remains the national anthem); and its own currency (the Cayman Islands Dollar, which is pegged to the United States Dollar and not the British Pound.[124]

5. While, under Article 14 of the Autonomy Proposal, the Moroccan State would keep exclusive jurisdiction over the Kingdom's juridical order, Article 22 of the Autonomy Proposal states that: "Courts may be set up by the regional Parliament to give rulings on disputes arising from enforcement of norms enacted by the competent bodies of the Sahara autonomous Region"; and "These courts shall give their rulings with complete independence, in the name of the King". However, Article 23 of the Autonomy Proposal advises that: "As the highest jurisdiction of the Sahara autonomous Region, the High Regional Court shall give final decisions regarding the interpretation of the Region's legislation", but that this is "without prejudice to the powers of the Kingdom's Supreme Court or Constitutional Council." Ultimately, therefore, the courts of the Sahara Autonomous Region appear to be amenable to review by the Moroccan Supreme Court or the Constitutional Council in some way.[125] As noted above, the independence of the judiciary is a critical feature of the governance of the Cayman Islands, upon which much of the jurisdiction's economic success is built, and the 2016 Amendment was propagated in order to underscore this independence.[126] There are, in the Cayman Islands, local Summary Courts, a High Court (termed the Grand Court, with various Divisions, including a Financial Services Division) and a Court of Appeal, the judges for all of which are appointed by the Governor, acting in accordance with the advice of an independent Judicial and Legal Services Commission, appointed in accordance with section 105 of the Cayman Islands Constitution and empowered under section 106 of the same. A final appeal lies to the His Majesty's Judicial Committee of the Privy Council ("JCPC"), and while this is currently entirely composed by judges of the United Kingdom's Supreme Court, when these judges sit on appeals from the Cayman Islands, they apply and interpret the law and Constitution of the Cayman Islands.[127] The appeal to the JCPC does not therefore involve

[123] As the Cayman Islands Government has noted: "the representative's role affords greater opportunities for providing the true and accurate record of the Cayman Islands to US elected officials, department staff, industry representatives and media" (https://www.gov.ky/news/press-release-details/caymans-1st-us-based-office-opens).

[124] Since 1 April 1974, when the Currency Law of 1974 was enacted, 1 Cayman Islands dollar = 1.2 U.S. dollars. For more information on the history of the Cayman Islands currency, see the Cayman Islands Monetary Authority, at: https://www.cima.ky/currency.

[125] Article 24 of the Autonomy Proposal further requires that: "Laws, regulations and court rulings issued by the bodies of the Sahara autonomous Region shall be consistent with the Region's autonomy Statute and with the Kingdom's Constitution".

[126] Section 107 of the Cayman Islands Constitution contains the guarantee that: "The Legislature and the Cabinet shall uphold the rule of law and judicial independence, and shall ensure that adequate funds are provided to support the judicial administration in the Cayman Islands."

[127] See: https://www.constitutionalcommission.ky/upimages/publicationdoc/ConstitutionalCommission-JCPCExplanatoryNotesFinal_151122_1668522406_1668522407.pdf.

an evaluation of local decisions against some standard ordained by the United Kingdom, although the JCPC will often be called upon to consider the relevance of decisions from other jurisdictions, including but by no means limited to the United Kingdom.

6. An independent judiciary can provide a significant check on the exercise of executive and legislative powers through the enforcement of a Bill of Rights. Article 25 of the Autonomy Proposal confirms that: "The Region's populations shall enjoy all the guarantees afforded by the Moroccan Constitution in the area of human rights as they are universally recognized." The Cayman Islands Constitution did not have a human rights chapter until the 2009 Constitution, but when a Bill of Rights, Freedoms and Responsibilities was finally introduced, it is notable that the scope of the rights enshrined exceeded those encompassed by the ECHR and incorporated into United Kingdom law under its Human Rights Act 1998.[128]

7. In addition to the independent judiciary, the Cayman Islands Constitution, as noted above, contains a number of additional institutions designed to support democracy and the rule of law in the Cayman Islands, including but not limited to a Human Rights Commission, an Ombudsman, a Commission for Standards in Public Life, an Auditor General and a Public Accounts Committee of the Parliament. The Autonomy Proposal does not provide for anything like this range of checks and balances; and while Article 26 of the Autonomy Proposal refers to an Economic and Social Council, which shall be set up in the Sahara Autonomous Region and "comprise representatives from economic, social, professional and community groups, as well as highly qualified figures", it is not apparent what function this Council is intended to perform. While the Autonomy Proposal does not particularise the range of institutions that now feature on the Cayman Islands Constitution, it is relevant to recall that Article 5 of the Autonomy Proposal clarifies that "the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers" and that they "will have the financial resources needed for the region's development in all fields, and will take an active part in the nation's economic, social and cultural life."

Turning finally to the exercise of executive powers, it is here where there is perhaps the most significant distinction between the constitutional arrangements in the Cayman Islands and what is projected in the Autonomy Proposal for the Sahara Autonomous Region. In the Cayman Islands, it is anticipated that the local Ministers and the Governor, along with the *ex officio* Members, will work together in Cabinet. While the Governor chairs Cabinet, the Cayman Islands Constitution does not list the Governor as an actual Member of Cabinet; and the agenda for Cabinet is set by both the Governor and Premier. Even where a matter falls within the purview of the Governor alone, the Governor is nevertheless obliged to keep the Cabinet informed of the general conduct of all such matters.[129] From time to time, there may be controversy where a Governor is perceived to exceed their power or loses the confidence of the local Government; but, on the whole, the system has generally functioned well in the Cayman Islands.

[128] See Carter, *Cayman Islands Bill of Rights*, at 393-398.

[129] Section 31(3) of the Cayman Islands Constitution also obliges the Governor to "endeavour to promote good governance and to act in the best interests of the Cayman Islands", albeit "so far as such interests are consistent with the interests of the United Kingdom".

In contrast to the system in the Cayman Islands where the local Government is intertwined with the Governor – somewhat akin to a joint enterprise where both partners have a shared vested interest – the Autonomy Proposal does not seek to impose any representative of the Moroccan State on the Sahara Autonomous Region. In accordance with Article 20 of the Autonomy Proposal, the executive authority for the Sahara Autonomous Region lies with "a Head of Government, to be elected by the regional Parliament". It is anticipated that the Head of Government will be invested by the King of Morocco; and thereafter, "shall be the Representative of the State in the Region". Article 21 of the Autonomy Proposal then provides that the Head of Government of the Sahara Autonomous Region "shall be answerable to the Region's Parliament" and "shall form the Region's Cabinet and appoint the administrators". However, in its rider to the appointment of administrators – which is that these are as "needed to exercise the powers devolving upon him, under the present autonomy Statute" – Article 21 also reveals the key to understanding why it is that the locally elected Head of Government in the Sahara Autonomous Region is intended to operate without a similar counterpoint like the Governor in the Cayman Islands. What is thus important to comprehend is that, although the Sahara Autonomous Region may have certain devolved powers that are not dissimilar to those exercised by the Cayman Islands Government, the division of responsibilities established by Articles 12 and 14 of the Autonomy Proposal is much starker. Essentially, the greater autonomy reflected in the omission of any representative of the Moroccan State in the governance of the Sahara Autonomous Region is therefore being offset in the Autonomy Proposal by the State's exclusive jurisdiction over those areas specified in Article 14.

VI - Conclusion

The Cayman Islands and the proposed Sahara Autonomous Region are on different journeys. The direction of travel for the Cayman Islands is towards greater autonomy, albeit in small increments, and with a demarcated ceiling for so long as the Cayman Islands remains a UKOT. The Autonomy Proposal, in contrast, envisages the creation of a new autonomous region connected to the central Government, which would settle the long-running dispute in the Sahara Region. However, in spite of these differences, there are a number of significant parallels in the constitutional arrangements that govern the relationship between the Cayman Islands and the United Kingdom and that which is proposed for the Sahara Autonomous Region and Morocco under the Autonomy Proposal.

While it is accepted that the relative success of the partnership in the Cayman Islands – which has generally thrived notwithstanding controversies from time to time – does not necessarily turn it into a model to be transferred elsewhere, the Caymanian experience can still inform the Autonomy Proposal and its prospects for success. Based on the Caymanian experience of sharing constitutional powers, our conclusion is that the following points could be instructive:

1. One of the primary reasons why the Cayman Islands has settled for limited political sovereignty has been that it has been able to leverage the continuing relationship with the United Kingdom for its tangible benefit; and it follows that the Autonomy Proposal would

have greater prospects for success if the people of the Sahara Region could get a sense of how they would benefit, whether economically or otherwise, if they were to share constitutional powers with the Moroccan State.

2. Objectives and priorities ebb and flow over time and, as the Caymanian experience reveals, the rules under which constitutional powers were shared in one era may require modernisation as time moves on. As such, the prospects for the acceptance of the Autonomy Proposal might improve if some form of periodic review was built into the framework of the Autonomy Proposal, while nevertheless acknowledging that Article 8 of the Autonomy Proposal does already indicate that the autonomy statute shall be submitted to the populations concerned through a referendum in keeping with the principle of self-determination and with the provisions of the UN Charter.
3. The election system proposed for the Sahara Autonomous Region endeavours to be inclusive of the various Sahrawi tribes and, at the same time, to provide representation for the entire Sahara Autonomous Region based on universal suffrage; but the underlying objective here could be augmented by: (i) the creation of additional institutions designed to support democracy and the rule of law; and (ii) the adoption of other more nuanced ways in which the Sahrawi tribes could enhance their participation and integration.
4. The 2009 Constitution provided the locally elected representatives in the Cayman Islands with some involvement in the special areas of responsibility (including external affairs and internal security) previously reserved for the Governor; and a softening or blurring of these lines of demarcation in respect of exclusive jurisdictions reserved for the Moroccan State in the Autonomy Proposal could create a more enduring partnership.

What is perhaps most important in any relationship is trust. With trust comes goodwill and a capacity to overcome adversity, as was well illustrated when the United Kingdom still agreed to give the Cayman Islands greater autonomy in the 2020 Amendment, despite the constitutional controversy surrounding the Governor's use of reserved legislative powers to enact the Civil Partnership Act 2020 in the Cayman Islands. Accordingly, if there is one guiding principle that can be derived from the Caymanian experience, it is that the Autonomy Proposal should seek, wherever possible, building upon the commitment in Article 7 to "set the stage for dialogue and a negotiation process that would lead to a mutually acceptable political solution", to nurture mutual trust and respect between all parties with vested interests in the Sahara Region[130] in order for any arrangement in which constitutional powers are shared may prosper.

[130] Article 7 of the Autonomy Proposal also notes that the initiative is presented in "an open spirit". Article 34 of the Autonomy Proposal also contains a pledge to: "negotiate in good faith and in a constructive, open spirit to reach a final, mutually acceptable political solution"; along with a commitment by the Kingdom of Morocco to "make a positive contribution to creating an environment of trust which would contribute to the successful outcome of this initiative."

CONCLUSION

Dr. Marc Finaud[131]

Excellencies, Ladies and Gentlemen,

First of all, I wish to apologise for the absence of Dr **Bjørn Kunoy**, professor of international law at the University of the Faroe Islands, who unfortunately was unable to join us for this webinar. I hope that he will be in a position to write an article for the publication later.

Let me then thank Dr **Vaughan Carter**, Chairman of the Constitutional Commission of the Cayman Islands, Dr **Gerhard Sieber**t, Associated Researched at the University Institute of Lisbon (Portugal), and finally Dr **Alan Howard**, Professor Emeritus of Anthropology, University of Hawai'i (USA) for their detailed and inspiring contributions to our collective thinking about the various systems of territorial integrity, particularly from the viewpoint of executive powers, and their comparison with the provisions of the Moroccan Initiative for an Autonomous Sahara Region.

I will not summarise their very clear contributions that speak for themselves. Let me just offer some concluding remarks about the similarities and differences of those cases with the case of the Sahara Region.

1°) Obviously, all cases are the result of diverse historical trajectories that still influence today's realities. They all are somehow related to a colonial heritage although the colonial power is now playing either no longer any role at all (in the case of the Sahara or Rotuma), a limited role as the central government (in the case of the Cayman Islands), or as the provider of a model for the regional autonomy (in the case of Príncipe, inspired from the system of the Azores and Madeira in Portugal). What is worth noting is that, even when the colonial power is the same (Great Britain for both the Cayman Islands and Fiji/Rotuma), the governance system of the autonomous regions can be quite different.

2°) In three of the examined cases (Cayman Islands, Príncipe, and Rotuma), the origin of the autonomy system is not a conflict with the central or colonial government but a deliberate and common decision to grant some powers (mainly legislative and executive) to the autonomous region, often made necessary by the "double insularity" (Príncipe) or ethnic and cultural specificities (Rotuma), or adopted as a means of ensuring economic development (Cayman Islands). In the case of the Sahara Region, it is motivated, among others, by the desire of the Moroccan Kingdom to solve a protracted dispute related to decolonization.

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3°) In all cases, irrespective of the origins, there is a voluntary decision of the autonomous region to remain within the national boundaries and not to seek full independence. This decision is mainly motivated by the understanding that regional interests are better served by territorial autonomy than by independence thanks to an appropriate balance between regional and national powers.

4°) In comparison with the three other cases, the provisions of the Moroccan Initiative for an Autonomous Sahara Region are the most extensive since they cover the whole spectrum of powers: legislative, executive, and judicial. The list of domains of regional competency detailed in Article 12 of the Moroccan Initiative is the longest and includes practically all areas of economic, social, and cultural life with the exception of national prerogatives such as the currency, defence and national security. Even external relations and regional cooperation can be granted to some extent to the future autonomous Sahara Region (although this may also exist in the case of Príncipe).

5°) The devolution of executive powers to the autonomous region varies in all cases in terms of extent and relationship with the central government. In most systems, the head of the regional government is elected directly or indirectly as a result of regional parliamentary elections, and appoints the civil servants of the regional administration. But in some cases, the head of the regional government is accountable both to the regional parliament and the national Prime Minister and is invested by the national Prime Minister (Príncipe), or the Cabinet is chaired by the Governor representing the central government (Cayman Islands). For the Sahara Region, the representative of the central government in the autonomous region only exercises the residual powers of the State while the executive authority in the autonomous region in all other domains lies with the Head of the Regional Government (Art. 16 and 20). While the Head of the Regional Government is invested by the King (to confer upon him/her the highest legitimacy), he or she is only answerable to the regional parliament. In most cases, the autonomous region is represented at the national level in Parliament (in the Fiji Senate for Rotuma, or in the Moroccan House of Representatives according to Art. 18 of the Initiative), or it is consulted by the central authorities on matters of concern to it (in the case of Príncipe).

6°) Finally, although the origins and mechanisms of each autonomy system vary, its effectiveness depends on efforts and political will by both the national and the regional governments to maintain relationships of trust, dialogue, prevention of incidents or disputes, mechanisms of peaceful resolution of conflicts, and clearly defined responsibilities. One positive aspect of the experience of the Cayman Islands is the understanding that the system of autonomy can evolve and be extended to new domains. This is why a system such as a “periodic review” can be useful and could be included into all regimes of territorial autonomy.

BIOGRAPHIES

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Dr. Marc Finaud is a former French diplomat who has been seconded to the Geneva Centre for Security Policy (GCSP) between 2004 and 2013 and has then worked there until 2022 to train diplomats and military officers in arms control, international and human security, while conducting research in those fields. During his 36-year career as a diplomat (from 1977 to 2013), he served in several bilateral postings (in the Soviet Union, Poland, Israel, Australia) as well as in multilateral missions (to the Conference on Security and Co-operation in Europe, the Conference on Disarmament, the United Nations). He holds Master's degrees in International Law and Political Science. He was also Senior Resident Fellow (WMD Programme) at the United Nations Institute for Disarmament Research (UNIDIR) between 2013 and 2015. He is now also a Swiss citizen and remains associated with GCSP as a Fellow. He works as a private consultant (www.finaudconsulting.com). List of publications: www.gcsp.ch/marc-finauds-publication.

Dr. Gerhard SEIBERT
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Dr. Gerhard Seibert graduated in Cultural Anthropology from Utrecht University, Netherlands, in 1991, and earned a PhD in Social Sciences at Leiden University, Netherlands, in 1999. Until 2008 he was post-doctorate fellow at the Instituto de Investigação Científica Tropical (IICT), Lisbon, Portugal. From 2008 to 2014 he was researcher at the African Studies Center at ISCTE – Lisbon University Institute (CEA / ISCTE-IUL). Between 2014 and 2019 he was associate professor at Universidade da Integração Internacional da Lusofonia Afro-Brasileira (UNILAB), Campus dos Malês, São Francisco do Conde, Bahia, Brazil. Since 2015 he has been permanent professor of the graduate programme PósAfro at Centro de Estudos Afro-Orientais (CEAO) of Universidade Federal da Bahia (UFBA) in Salvador. He has conducted research in Mozambique, Cabo Verde, São Tomé and Príncipe and on Brazil – Africa relations. He is author of *Comrades, Clients and Cousins. Colonialism, Socialism and Democratization in São Tomé and Príncipe* (Leiden: Brill 2006) and co-editor of *Brazil-Africa Relations. Historical Dimensions and Contemporary Engagements* (Woodbridge: James Currey, 2019).

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Dr. Howard began his career as an ethnographer in 1959 on the island of Rotuma, in Fiji, where he spent a year; he then spent an additional year among Rotumans who had migrated to urban centres in other parts of Fiji. After an interval of some twenty-six years, during which he conducted

research among Hawaiian-Americans on the island of Oahu, he returned to Rotuma in 1987 with his anthropologist wife, Jan Rensel, and began a new, extended period of research both on Rotuma and among Rotumans who have migrated to Fiji and various destinations abroad. In addition to his ethnographic research among Rotumans and Hawaiian-Americans, he has authored or co-authored essays on a variety of social science topics, including theoretical overviews, methodology, and population issues, as well as Polynesian topics. Many of his writings have been co-authored with colleagues from a range of disciplines, including sociologists, psychologists, linguists, epidemiologists, physical anthropologists, and cultural anthropologists. He also collaborated with several Rotuman scholars, with whom he has co-published. Since 1987, Jan and he have been collaborators on most of their Rotuman projects and have co-authored a number of articles and book chapters, as well as a book, *Island Legacy: A History of the Rotuman People* (2007). He retired from teaching in 1999 but has been actively engaged in research and publishing until the present, in addition to creating and managing websites -- most importantly, the Rotuma Website, which he created in 1996 and continues to manage.

Dr. Vaughan CARTER
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Dr. Vaughan Carter, LLB, LLM, Attorney at Law, has been a Member of the Cayman Islands Constitutional Commission since January 2015 and was first appointed as its Chairperson in July 2017. He has a long-standing interest in the constitutional arrangements of the Cayman Islands, dating back to his appointment as a Lecturer in Law in 1997, at what was then the Cayman Islands Law School ("CILS"). Vaughan later went onto serve as Senior Lecturer and Acting Director of Legal Studies at CILS before being appointed as Deputy Permanent Secretary in the Ministry of Education, Training, Employment, Youth, Sports and Culture in 2006. After 15 years in the public service, Vaughan moved into private practice and now has a specialist public law practice at his firm, Savannah Law, which encompasses constitutional challenges and human rights, administrative tribunals and appeals tribunals, statutory appeals and judicial review, professional regulation and regulatory hearings and legislative drafting and policy development. He also supports and advises various institutions that support democracy under the Cayman Islands Constitution. Vaughan has written and presented extensively on constitutional issues impacting the Cayman Islands, other United Kingdom Overseas Territories ("UKOTs") and the Commonwealth Caribbean and maintains his academic credentials by volunteering as a part-time Faculty Member at the Truman Bodden Law School of the Cayman Islands. In the course of his professional career, Vaughan has lectured for a number of universities in the United Kingdom and the United States; his most recent academic appointment being as a Visiting Professor in International Human Rights Law at the University of Alabama. Vaughan also delivers training in constitutional law, human rights and good governance and has been commissioned locally for this purpose by various institutions, including the Cayman Islands Judiciary and Judicial Administration, the Commissions Secretariat, the Office of the Complaints Commissioner, the Royal Cayman Islands Police Service, the Immigration Department and the Cayman Islands Government Legal Service. He has also been engaged by the United Kingdom Department for Overseas Development, in conjunction with the Commonwealth Foundation, the Commonwealth Legal Education Association and the Commonwealth Human Rights Initiative, as Caribbean Regional Expert and Trainer in joint efforts to build capacity in human rights across the UKOTs.

Vaughan is a qualified Civil and Commercial Mediator and was a founding Director of the Cayman Islands Association of Mediators and Arbitrators. He has also served numerous boards and committees in the Cayman Islands, including the Human Rights Committee, the National Pensions Board, the Special Economic Zone Authority, the University College of the Cayman Islands Board of Governors and the Legal Advisory Council and is particularly proud to have represented the Cayman Islands on the Council of the University of the West Indies. In addition to his work with the Constitutional Commission, Vaughan currently serves as a Law Reform Commissioner and as a Member of the Gender Equality Tribunal, in between which he volunteers his time and legal expertise with Cayman Cricket in the capacity of Disciplinary Committee Chairman and as Legal Advisor to the Disciplinary Appeals Committee of the Cayman Islands Football Association.

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Dr. Smith, Associate Professor in the Arts and Humanities Department, became part of the UCCI team in 2000. Prior to joining UCCI, he was a tutor in the Department of Government, University of the West Indies and lecturer and administrator at the Northern Caribbean University, Jamaica. A recipient of the 1994 Universal Adult Suffrage Scholarship in Jamaica, he has conducted advanced research in such areas as Privatization, the role of Government, Caribbean constitutional reform, democracy and democratization, Caribbean political culture, human rights and election processes. At UCCI, he teaches courses in Political Science/International Relations, Sociology and History. He chairs the Editorial Board of the *Journal of the University College of the Cayman Islands*. In addition, he currently reads for the LLB degree in Public International Law offered by the University of London.