



Commission on Democratic and Political Reform

A Report to Parliament on Democratic and Parliamentary Reform

January, 2013



Report on Democratic and Parliamentary Reform

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Report on Democratic and Parliamentary Reform

Part 1 Preliminary

1.1 - Introduction and aims.

The Commission is pleased to present its report to Parliament with its recommendations for democratic and parliamentary reform. It is presented in pursuance of the instructions given by the Government to the members of the Commission at the time of their appointment.

The Commission was appointed on 2nd March 2012 with terms of reference requiring it to “report on all aspects of the parliamentary and electoral system in Gibraltar and to make recommendations therein to Parliament”.

The Commission was further instructed to carry out a public consultation within three months of its appointment and to submit a report to Parliament within 12 months after the commencement of the consultation process.

Accordingly, a consultation paper was prepared and published on 1st June 2012 and individuals and organisations were invited to submit views and evidence on the merits of the suggestions put forward in the consultation paper, on how they could be affected by any of the proposed changes and to raise any other pertinent matters.

Initially the consultation process was scheduled to end on 28th September 2012 but in view of the small number of responses by the closing date, the Commission extended the consultation process to 31st October 2012.

The Government is committed to implement those recommendations that are approved by Parliament, within six months of such approval.

The Commission is composed of-

The Hon A J Canepa GMH, OBE, MP.... in the Chair;

Mr C Gomez;

The Hon G Mascarenhas;

Mr R Vasquez QC;

The Hon F Vinet; and

Mr D Figueras RD*Secretary.

1.2 - Background.

The recommendations in this report are divided into three parts. Part 2 covers parliamentary procedures and practices; Part 3 covers electoral procedures and Part 4 covers other pertinent matters raised by responders and considered by the Commission.

Parliamentary procedures and practices.

Section 39 of the Gibraltar Constitution Order 2006 empowers Parliament to make, amend and revoke rules of procedure for the regulation and orderly conduct of its proceedings and

the despatch of business. Accordingly, in exercise of these powers, Parliament has made its standing rules and orders (commonly known as the standing orders).

Part V of the Parliament Act provides for the regulation of the powers and privileges of the Parliament.

Gibraltar bases its parliamentary standing orders on the standing orders, procedures and practices in the House of Commons. Members of Parliament, particularly the Speaker, can seek guidance on these procedures and practices, some enshrined in ancient custom, by reference to Erskine May's *Parliamentary Practice*.

This work of reference, because of its wealth of advice and guidance, is relied upon by all Commonwealth Parliaments as a guide on many aspects of their parliamentary proceedings.

This report sets out recommended changes to the parliamentary procedures and practices of the Gibraltar Parliament without departing from the general principles contained in Erskine May's *Parliamentary Practice*.

Electoral procedures.

The registration of electors and the conduct of elections are regulated by Parts II, III and IV of the Parliament Act with subsidiary legislation made under the Act providing more detailed procedures for these two activities. In the case of electoral registration, this subsidiary legislation is the Electors (Registration) Rules and for the conduct of elections, the subsidiary legislation is the Election Rules and the Postal Voting (Procedure) Rules.

Any changes to the nature and operation of the system of electoral registration and the procedures for the conduct of elections will have a more profound effect on the public in general than changes to parliamentary procedures and practices.

This report sets out recommended changes to the electoral procedures for elections to the Gibraltar Parliament.

1.3 - Analysis of the public consultation.

The consultation paper detailed the proposed changes to the parliamentary and electoral procedures and practices that the Commission had in mind at the time of its publication together with the reasoning behind those proposed changes. Individuals and organisations were invited to submit views and evidence on the merits of the arguments put forward in the consultation paper.

Twenty-two individuals and one organisation responded ("the responders") to the Commission's invitation but not every responder commented on each proposal in the consultation paper.

The Commission is grateful to all responders who submitted views and suggestions for sparing the time to put pen to paper and for their interest in the aims and objectives of the Commission. The quality of the responses has been high and in some cases, views expressed show a very good understanding of Gibraltar's parliamentary and electoral procedures.

Some responders have taken up the Commission's invitation to raise matters not in the consultation paper and this has been welcomed.

All views and submissions have been carefully considered to assess them for their individual merits. The responses were found to be very helpful to the Commission in the shaping of this report and in the formulation of recommendations. All responders provided explanations to support their views on whether they agreed or not with the Commission's original proposals. The Commission has attempted to provide a summary of the responses under each subject matter.

Notwithstanding the fact that the Commission is obliged to keep confidential the identity of the responders and their submissions, it would seem proper to include extracts of some suggestions (albeit unattributably) that have been supported by strong and thought-provoking arguments. The inclusion of these extracts has been found to be particularly appropriate in instances where, following an analysis of particular suggestions, the Commission has been convinced by the supporting arguments and has, as a result, amended and even reversed an original proposal. The unanimous and majority views of responders have been given priority and where appropriate a minority view has been included.

1.4 - Recommendations to Parliament.

The Commission has been very conscious of its wide remit. Accordingly, it did not want to constrain or restrict the public in its submissions and we invited the public to make submissions on any subject, whether or not it was a matter that we highlighted in the consultation paper and which we had therefore already considered.

In its deliberations, the Commission has been alive to the desire of both Parliament and the people to increase the transparency and openness of the parliamentary process in order to enhance the democratic offering. The Commission has borne in mind the need for the executive to be accountable to Parliament in a system where presently there is no separation of powers between the Government benches of the legislature and the executive. The Commission has also been alive to the need for Gibraltar to have strong and effective government.

The recommendations in this report reflect in the main the consensus view of the members of the Commission. There are however two matters where the Commission has been unable to reach a consensus view even after a thorough discussion of the views expressed and the suggestions made by responders. Where there has been diversity of opinion, it has been considered equitable to put forward both the majority and minority views. These two matters are "Constituencies and the number of Members of Parliament" (section 2.17) and "Electoral systems" (section 3.15). A minority report by Robert Vasquez QC on these two issues follows immediately after the majority report.

Part 2

Parliamentary procedures and practices.

2.1 - Chief Minister's term of office.

In recent times there have been views expressed in Gibraltar that the Chief Minister's term of office should be limited to a maximum number of parliamentary terms.

We have considered the effects on Gibraltar's political life of the introduction or otherwise of such a limitation on an Elected Member's term of office as Chief Minister.

There have been varied suggestions from responders for a Chief Minister's term of office to be limited to two consecutive terms whilst others have suggested that there should not be such a restriction and that the length of a Chief Minister's term of office should be dependent on the wishes of the electorate who, in the final analysis, have the definitive say when a general election is held or on the members of each political party.

We have concluded that the democratic processes available to the electorate to elect a new Government and so a new Chief Minister or for a Chief Minister to be forced out of office by his own party, are adequate for the purpose, and that the electorate should not be arbitrarily deprived of the opportunity of electing someone for more than a set number of terms if they consider that it is in Gibraltar's interest to place their confidence in such a political leader and his government.

2.2 - Chief Minister's attendance at Parliament.

We have considered whether the Chief Minister should necessarily attend every sitting of Parliament, particularly because since January 2012 there have been monthly meetings of Parliament.

There has been broad support from responders against any controls being placed on a Chief Minister's attendance at Parliament. The view has however been expressed that the electorate would be displeased at any unreasonable or unexplained absences of the Chief Minister from meetings of Parliament.

We have concluded that there is no need to require the Chief Minister's attendance at Parliament except when he or she is required to answer questions and on occasions when the Chief Minister should be making ministerial statements in Parliament.

2.3 - Frequency of meetings and recesses.

We have previously considered the introduction of a system of fixed days for sittings of Parliament and took the view that four shorter sittings a month, perhaps lasting half a day, would be preferable to the tendency for "marathon" sittings that were common for many years. Shorter sittings would not be so onerous for Members of Parliament, encourage more members of the public to follow proceedings and would also facilitate the televising of Parliament.

We have also noted that it has recently been decided that Parliament should have an Easter recess and a summer recess lasting the whole of August, but should otherwise meet every month.

In general, there has been support from responders for four sittings each month and varied suggestions for the summer recess.

These recent arrangements appear to be working well and should therefore be formalised by Parliament.

We have concluded that there is a need for a minimum of ten meetings a year formalised by Parliament and to set parameters for parliamentary recesses. This in effect means that there would be ten meetings of Parliament every year other than in the year when a general election is held.

Recommendation 1

We recommend that Standing Orders should be amended to require Parliament to hold a minimum of ten meetings a year other than in the year when a general election is held.

Recommendation 2

We recommend that Parliament should continue to have its Christmas and Easter recesses but the summer recess should last from the end of July to the third week in September.

2.4 - Questions and answers.

We have considered a number of options to overhaul the system for questions and answers, particularly because there is no limit on the number of questions that can be put down for oral answer during a meeting. There is also no limit on the amount of parliamentary time that Members of Parliament can spend dealing with all the questions in the order paper. We have also considered whether question time should be “guillotined” i.e. a limit set on the time that can be spent on questions and answers.

In recent years there appears to have been a marked relaxation of the rules governing the asking of questions and supplementary questions, particularly the prohibition in standing order 16(6) that a question must not be made a pretext for a debate.

In general, there has been broad support from responders for an overhaul of the system and for question time to be guillotined as a solution to the problem of marathon sessions in the recent past.

We have concluded that there is a need to overhaul the system for oral questions and answers. We have also concluded that it is desirable that Members of Parliament should seize the opportunity to debate more motions instead of making a question a pretext for a debate, this being prohibited under standing order 16(6).

Recommendation 3

We recommend that question time should be guillotined and that the Chief Minister should answer questions (including supplementary questions) for not more than three hours a month and each Minister for not more than two hours a month.

Recommendation 4

We recommend that if a tabled question for oral answer is not reached during the time allowed in recommendation 3, the Minister to whom it is addressed should provide the answer in writing unless the questioner withdraws the question or tables it for answer at a subsequent meeting.

Recommendation 5

We recommend that the period of notice that a Member of Parliament is required to give for tabling a question at a meeting should be increased from not less than five working days to not less than seven working days before the day on which the answer is required.

Recommendation 6

If recommendation 5 is implemented, then we recommend that the period of notice summoning Members of Parliament to meetings should be increased from not less than seven working days to not less than nine working days before the date of the meeting.

2.5 - Motions for adjournment.

Standing Orders provide a procedure for any Member of Parliament to move a motion at certain stages in a sitting for the purpose of discussing a given matter of urgent public importance. Standing Orders also provide a procedure for a Minister, at certain stages in a sitting, to stand and raise any matter which the Minister desires to debate without formulating a motion in express terms.

We have considered whether a motion for adjournment should also be permitted to be moved at the last sitting in any month if Parliament is not to be adjourned sine die at the end of that sitting.

There has been support from responders for the additional procedure and they have urged a greater use of motions as a means of presenting Parliament with important opportunities to deliberate on matters of wider importance than those that can be raised at question time.

We have concluded that there is a need to widen the scope for the moving of motions for adjournment.

Recommendation 7

We recommend that motions for adjournment should, after giving due notice to the Speaker, also be permitted to be moved at the last sitting in any month if Parliament is not to be adjourned sine die at the end of that sitting.

Recommendation 8

We recommend that both the Government and Opposition should bear in mind the significance of introducing motions in Parliament and thereby obtaining its approval to a specific course of action as proposed in a motion.

2.6 - Statements by the Government.

For many years now the Government of the day has only made statements in Parliament on a few rare occasions. Instead Ministers have given preference to making such statements to the media thereby negating the Opposition the chance of seeking clarification on the contents of the statement. Furthermore, it should be borne in mind that statements made in Parliament provide an official record in Hansard of the Government of the day's position on any matter of policy or public business.

Responders have expressed the view that the making of statements by the Government in Parliament is of the utmost significance if the primacy of Parliament is to be asserted and affirmed and that it is unacceptable for Ministers to bypass Parliament in this way. With the increase in the number of meetings currently being held, there can be little excuse for matters of policy or importance not to be brought to Parliament.

We have concluded that the proper place for the coherent presentation of government and ministerial policies and for the making of statements on matters of public importance is the Parliament.

Recommendation 9

We recommend that Ministers should bear in mind the significance of making statements on matters of policy or public importance in Parliament in preference to making them directly to the media.

2.7 - Committal of a Bill to select committee.

When a Bill reaches committee stage it is invariably committed to a committee of the whole Parliament. But a Bill can also, on a motion, be committed to a Public Bills Committee. If a Bill were to be so committed, the Minister in charge of the Bill would chair meetings and the members of the committee would be drawn from the Government and Opposition benches.

We have considered whether there is a need for a greater use of this kind of select committees, particularly where a Bill, because of its size and complexity, would require a more in-depth legislative scrutiny than that which can be provided by a committee of the whole Parliament, which is likely to be constrained by parliamentary time.

In general, there has been support from responders for greater use of such select committees to ensure increased scrutiny and better discussion of larger, more complex Bills.

We have concluded that a strong case has been made for the appointment of such a Public Bills Committee.

Recommendation 10

We recommend that the more lengthy or complex Bills or those which are likely to substantially impact on citizens should undergo in-depth legislative scrutiny by referring them to a select committee appointed for the purpose i.e. a Public Bills Committee.

2.8 - Standing committees.

We have considered whether there is a need for an increase in the number of parliamentary standing committees and whether one of these should be a general purpose committee. The Standing Orders only make provision for one standing committee i.e. a Standing Rules Committee.

We have also considered whether a “Public Accounts Committee” should be re-introduced as it existed from 1980 to 1984. That committee was composed of two Opposition Members, one of whom was the chairman, and two Government Members.

There have been varied views from responders but in the main there has been support for a public accounts committee and there have been suggestions that such a committee should be chaired by a “deputy speaker” and that backbenchers should form the backbone of the committee.

We are of the view that the 1980/84 Public Accounts Committee proved ineffective, impractical and unworkable particularly because Ministers were expected to scrutinise and question senior executives of their ministerial colleagues’ departments. If a Public Accounts Committee were to be set up, it would be essential for Government backbenchers to take the place of Ministers. We have concluded that there is no need to establish a General Purpose Standing Committee nor a Public Accounts Committee, given that Opposition Members have every opportunity to examine Government expenditure in detail as well as debating the report from the Principal Auditor on the Government accounts for every financial year.

2.9 - Deputy Speaker.

We have considered whether the time has come for a “deputy speaker” to be appointed particularly as Parliament is now meeting more often and because we are recommending an even greater frequency of meetings (see recommendation 1).

There has been broad support from responders for a deputy speaker to be appointed.

Legal advice made available to us, indicates that the appointment of a deputy speaker would require an amendment to the Gibraltar Constitution Order 2006 which we consider is not a feasible proposition in the short term. We have concluded, however, that the time has come for the Speaker to be assisted in his parliamentary duties by a suitably qualified person, who in effect would be able to deputise for the Speaker whenever the Speaker is unable to attend.

Recommendation 11

We recommend that the Gibraltar Constitution Order 2006 should be amended to provide for the post of Deputy Speaker and that until there is constitutional provision for such an appointment, the Parliament should designate a suitably qualified person to discharge all or some of the powers and functions imposed on the Speaker when he or she is unable to attend meetings of Parliament. Such a person should be selected by Parliament in the same manner as the Speaker.

2.10 - Remuneration of Members of Parliament.

The present structure of allowances payable to the Chief Minister, Ministers, Leader of the Opposition, Speaker and other Members of Parliament was adopted in the late 1990's shortly after the Gibraltar Social Democrats first took office. There is provision for annual increases in line with the increases in salaries paid to public officers.

We have considered whether there should be a review of this structure and if so, who should carry this out.

There has been support from some responders for such a review and there have been suggestions that the Parliament should appoint a select committee to review the structure of allowances and consider future annual increases. Others have suggested that the review should be undertaken by clerks from the House of Commons who are knowledgeable in such matters.

We have concluded that such a review should be conducted by a body made up of suitably qualified persons from Gibraltar and persons from an appropriate independent authority from the United Kingdom. We have also concluded that such a review should include a review of the pension regulations applicable to Members of Parliament as these regulations are more favourable than those applicable to public officers, as applied after January 2012.

Recommendation 12

We recommend that there should be a review of the present structure of allowances and pensions payable to Members of Parliament and that such a review should be conducted by a body made up of suitably qualified persons from Gibraltar and persons from an appropriate independent authority from the United Kingdom.

Recommendation 13

We recommend that any new pension scheme should come into effect for new Members of Parliament elected after the next general election, thereby safeguarding the acquired rights of current Members.

2.11 - Members' interests and parliamentary code.

We have considered whether the original rules on the declaration of members' interests that have not been reviewed since the Register of Members' Interests was first drawn up in June 1979, should be reviewed. We have also considered whether a review should be carried out by a select committee of Parliament appointed for that purpose, or by someone else. We have also considered whether there is a need for the introduction of a parliamentary code applicable to all Members of Parliament.

There has been broad support from responders for a review and an updating of the rules on the declaration of members' interests and for the introduction of a parliamentary code.

We have concluded that there is a need for an urgent review of these rules and that this should be carried out by a body made up of suitably qualified persons from Gibraltar and persons from an appropriate independent authority from the United Kingdom.

We have also concluded that there is an urgent need for a parliamentary code.

Recommendation 14

We recommend that the rules on the declaration of members' interests should be reviewed by a body made up of at least three suitably qualified persons from Gibraltar, one of whom should be the chairperson, and persons from an appropriate independent authority from the United Kingdom with experience in this type of exercise. We also recommend that the register of members' interests should be made available in the Parliament's website.

Recommendation 15

We recommend that a parliamentary code applicable to all Members of Parliament should be drafted by the same persons as are specified in recommendation 14 and that the Parliament should determine its introduction by resolution.

2.12 - Ministerial code.

We have considered whether there is a need to up-date the ministerial code that was first adopted after the enactment of the 1969 Constitution, so that Gibraltar has stricter, more comprehensive rules governing the conduct of its Ministers.

There has been support from responders for a ministerial code because Ministers nowadays face a greater degree of conflicting interests, risks of perceived undue bias in their dealings with the public, accusations of not acting on matters within their remit and are exposed to pressures from lobbyists. The view has been expressed that the code should also expressly prohibit Ministers from interfering with the recruitment, promotion and discipline of public officers.

We have concluded that there is a need for the current code to be brought into line with that applicable to Ministers in the United Kingdom and that the code should come under periodical review.

Recommendation 16

We recommend that a review of the ministerial code should be conducted by a body of at least three suitably qualified persons from Gibraltar; that the code should be drawn up along the lines of that applicable to Ministers in the United Kingdom and that it should be kept under periodical review.

2.13 - Televising of parliamentary proceedings.

We have considered whether sittings of Parliament, or any part of them, should be televised.

There has been broad support from responders for the televising of proceedings.

We have concluded that the sittings of Parliament should be televised but not the proceedings of standing or select committees.

Recommendation 17

We recommend that consideration should be given to televising the proceedings of Parliament and we further recommend that in the event of a privatisation of the Gibraltar Broadcasting Corporation, the arrangements for the televising of parliamentary proceedings should be guaranteed.

2.14 - The news media.

In any democracy the news media plays a vital part. In Gibraltar, Government direct and/or indirect funding plays an important part in the financing of the news media. It is essential that if the democratic process is to be seen to be fair, any resulting perception of bias should be mitigated by objective means.

We have considered whether an independent authority, either an existing one or one created for the purpose, should oversee the distribution of Government funds to the media.

In general there has been support from responders to somebody overseeing the distribution of public funds to the media and the point has been made that significant public funds have been given to media outlets that have supported the political views of the Government of the day in a manner that may not have been justified.

We have concluded that it is desirable that the distribution of Government funds to the media should be overseen by a public officer or public body and that the amount of public funds so expended should be made public.

Recommendation 18

We recommend that the Media Director should henceforth be required to prepare and publish an annual report on the activities of his department which should include a detailed statement, listing recipients, of the amount of public funds paid to the media. We further recommend that this report should be laid on the table in Parliament.

2.15 - Select committees.

In the House of Common, Opposition Members and even Government backbenchers, can influence the conduct of the administration and modify aspects of policy by their scrutiny of administrative activity as members of select committees. Given the great extension of the range and complexity of government activities together with a parallel growth of bureaucracy, it could be said that it has become a more difficult task to check the actions of Ministers and their departments. In their scrutiny of Government policies, the select committees question Ministers and their senior executives.

In Gibraltar, Opposition Members have the opportunity to question Ministers in considerable detail by asking topical questions in Parliament. Additionally, Opposition Members can table motions for debate. Select committees could also, through hearings and published reports, bring before Parliament and thus put in the public domain, a body of fact and informed opinion on important issues and build up expertise in their subject of inquiry.

Standing order 41 provides for Parliament to nominate select committees after giving notice which must include the names of the Members of Parliament proposed to be nominated. It further provides that a select committee shall be confined to the matter referred to it by Parliament and they may from time to time report their opinions or observations.

We have considered whether select committees should be created and how they should be made up in order to fulfil their task. We question whether select committees would be a realistic possibility given that matters have become so polarised and confrontational in local politics as to make them unworkable in practice. On the other hand, we feel that a greater use of select committees could serve to diminish negative perceptions of local politics.

There has been broad support from responders for a greater use of select committees as a significant and effective measure in raising the profile and significance of Parliament, since without them Parliament is handicapped in the general running of parliamentary business.

We have concluded that the Standing Orders already provide the Parliament with adequate rules and the procedures for the nomination of select committees to deal with the matters referred to it by Parliament whenever it so wishes.

Recommendation 19

We recommend that Parliament should make greater use of Standing Orders to nominate select committees where appropriate.

2.16 - Petitions to Parliament.

We have considered whether, given the size of Gibraltar, it may be possible to have greater public engagement with Parliament beyond that offered by four yearly elections. This public engagement could take the form of improvement to the petition system, for example, by introducing a system as has recently been introduced in the United Kingdom, whereby if sufficient signatories subscribe to an issue online or in writing, Parliament would be required to debate the subject in question.

In general, there has been support from responders for an improvement of the petition system. The point has been made that when the House of Commons has agreed to consider

a petition from the public, the public in general and the signatories in particular have been under the misleading impression that consideration means approval of the views of the petitioners.

We have concluded that there is a need to improve the public petition system.

Recommendation 20

We recommend that Standing Orders should be revised to improve the public petition system as a way of enhancing public participation in the parliamentary process, along the lines of the system in the United Kingdom.

2.17 - Constituencies and the number of Members of Parliament.

In the House of Commons, the role of all Members of Parliament is, inter alia, to represent their constituency, to look after the interests of their constituents and to take up their personal problems. This function is discharged through the use of surgeries where Members of Parliament attend to those constituents who ask to see them. In addition, Members of Parliament receive a great deal of correspondence from their constituents.

In Gibraltar, although the public cannot take advantage of similar arrangements to the same extent they do have recourse more directly to Ministers. We have considered whether backbenchers on the Government side (if they were to be introduced into Parliament) could be tasked with addressing to Ministers the problems the public raise with them. The public, needless to say, already have recourse to Opposition Members.

We have considered whether there would be merit in formally partitioning Gibraltar into constituency areas and in setting a limit on the number of candidates standing for election in any constituency. We have also considered whether as an alternative, all Members of Parliament should be associated with separate "precincts" with a view to permitting the electorate to have a more personal contact with parliamentarians. The electorate would then be able to raise matters of concern affecting their area or their daily lives with "their own MP" at appropriately set-up surgeries within those "precincts".

We have also considered whether there should be backbenchers on the Government side and whether two would be an equitable number. These two backbenchers could either be provided by increasing the number of Government Members to 12 with ten of them being Ministers and a consequential increase in the number of Opposition Members from seven to nine or alternatively by maintaining the present complement of ten Government Members but reducing the number of Ministers to eight. Either formula would provide Parliament with two Government backbenchers.

We have received varied and in depth views and suggestions from responders on these two subjects. Briefly, the majority of responders are opposed to the partitioning of Gibraltar into constituencies because of its small size and because it could prove counter-productive. The majority of responders are also opposed to any increase in the size of the Parliament as the electorate is well served by 17 elected members and the additional expenditure is unwarranted.

Since we have been unable to reach a consensus view on constituencies and the number of Members of Parliament we have decided to put forward the majority and minority conclusions for Parliament's consideration.

The majority of members of the Commission have concluded that-

- (a) Gibraltar should not be partitioned into constituency areas;
- (b) Members of Parliament should not be associated with separate "precincts"; and
- (c) there should not be an increase in the number of elected members since 17 Members in a place of our size are quite enough.

The minority view on this issue i.e. that of Mr Robert M Vasquez QC, is at page 25.

Part 3

Electoral reform.

3.1 - Electoral registration.

There are different procedures for the compilation of the register of electors for Gibraltar and for European parliamentary elections.

The register for European parliamentary elections is an open or rolling register which means that at any time during its four year life, the register can be amended by inserting new electors, deleting electors either because of death or because the elector has left Gibraltar, by changing addresses and by changing names.

We have considered whether the register for Gibraltar parliamentary elections should be converted into a rolling register. Maintaining a rolling register would mean that it could be kept as up to date as the electorate wishes and should a general or by election be called during the four year life of the register, the returning officer would conduct the election using an up to date register of electors.

There has been broad support from responders for the introduction of a rolling register.

We have concluded that there is a need for a rolling register.

<p>Recommendation 21</p>

<p>We recommend that a rolling register should be maintained for Gibraltar parliamentary elections on the lines of that maintained for European parliamentary elections.</p>
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3.2 - Election expenses.

We have considered whether there is a need to reinforce the regime for the authorisation, payment and declaration of a candidate's election expenses. Section 14 of the Parliament Act limits the level of expenditure by or on behalf of candidates at elections. The authorised level of expenditure on a candidate's election campaign was set at £3000 in 2007.

We have also considered whether it would be equitable to revoke section 14(2) of the Parliament Act that permits any election expenses incurred one month before the date of the election, in respect of services rendered or materials supplied, not to be taken into account to arrive at the total amount of election expenses incurred. We consider that this provision provides an unfair advantage to Government Members over any other candidate who would not be privy to the planned date of an election.

There have been varied views over the merits of revoking section 14 but there has been majority support for the revocation.

We have concluded that all election expenses incurred at any time before the date of the poll should be taken into account to arrive at the total amount of election expenses incurred.

Recommendation 22

We recommend that section 14(2) of the Parliament Act should be revoked and that all election expenses incurred at any time before the date of the poll should be taken into account to arrive at the total amount of election expenses incurred.

3.3 - Return of election expenses.

We have considered a reinforcement of section 15 of the Parliament Act that requires the election agent of a candidate at an election to make a return containing a full statement of all expenditure incurred in connection with the election. The Election Rules should provide the format of the return to avoid the current situation whereby returns are submitted in different styles and with varying contents.

In general, there has been support from responders for a reinforcement of section 15 as explained in the preceding paragraph.

We have concluded that there is a need for the format of the return of election expenses to be standardised.

Recommendation 23

We recommend that the Election Rules should provide, by means of a schedule, the format of the return of election expenses and the form of words of the statutory declaration.

3.4 - Inspection of election expenses returns.

We have considered whether section 15(5) of the Parliament Act that requires the Returning Officer to publish a notice of the time and place at which the returns of election expenses can be inspected, should specify the length of time that these returns can be available for inspection. Current administrative practice allows one day for such inspection.

In general, there has been support from responders for the return of election expenses to be open for public inspection for a longer period of time.

We have concluded that there should be no time limit imposed on the inspection of returns of election expenses.

Recommendation 24

We recommend that section 15 of the Parliament Act should specify that the returns of election expenses can be available for public inspection without limitation.

3.5 - Donations.

The return of election expenses must contain a full statement of all moneys, securities or value received by an election agent from the candidate or from any other person in connection with the election. We have considered whether the return of election expenses should contain a more open declaration of every donation received by a candidate from third parties for financing the election campaign and whether Gibraltar should introduce controls over which kind of donations a candidate can accept as is the case in European parliamentary elections.

There has been support from responders for a more open declaration of donations and there has been a suggestion that a cap should be placed on the funding of candidates to diminish the disparity of funds between candidates (and their parties).

We have concluded that there is a need for a more open declaration by candidates of donations received for financing the election campaign.

Recommendation 25

We recommend that every donation over £100 incidental to an election campaign (whether as one donation or as several lesser donations amounting in total to £100 from the same source) should be separately declared in the return of election expenses together with the identity of the donor.

3.6 - Definition of election expenses.

This report is recommending tighter controls over election expenses. We consider that these controls cannot be achieved unless the law provides a clear interpretation of “election expenses” and how and to what extent property, goods and services provided directly or indirectly through a political party, free of charge should be treated as election expenses.

There has been broad support from responders for “election expenses” to be clearly defined and our conclusion is that it should be defined.

Recommendation 26

We recommend that the Parliament Act should provide an extensive definition of “election expenses”.

3.7 - Proxy voting and early absentee voting.

We have considered the introduction of proxy voting as an alternative to an elector voting in person or voting by post. The advantage would be that proxy voting could be used by electors where the postal voting procedure does not provide them with the ability of being able to cast a vote. For example, an elector on a cruise on polling day would not be able to provide a reliable address for the delivery of the ballot paper by post. Because the norm in past elections has been to give the Returning Officer the statutory minimum period of 30 days to organise the poll, there is insufficient time, where distances are great, for a ballot paper to get to an elector and to be returned by polling day. Already experience from past

elections, in some instances, indicates that a significant number of postal votes do not arrive in Gibraltar by polling day and are therefore not counted.

We have considered other possibilities to assist electors who are absent from Gibraltar on polling day to cast their vote. One such possibility is early absentee voting. This procedure would be used after the closing date for postal voting applications, on production of evidence to the satisfaction of the returning officer that the elector is obliged to be absent from Gibraltar, at short notice, on polling day for unforeseeable and compelling reasons.

There have been negative reactions from responders on the introduction of proxy voting.

We have concluded that proxy voting is undesirable and that early absentee voting should be introduced. We have also concluded that the time has come for the Returning Officer to investigate the possibility of introducing secure internet voting.

We have concluded that it may probably be necessary to increase the period between the issue of a writ calling for a general election and the day of the poll from not less than 30 days to not less than 42 days. Candidates should be nominated at least 33 days before the date of the election instead of the present 21 days. These additional days would assist the Returning Officer by giving him more time for the otherwise rushed administrative arrangements for the conduct of an election and also help to make the postal voting system more effective.

Recommendation 27

We recommend that early absentee voting should be introduced for electors who satisfy the Returning Officer that they are obliged to be absent from Gibraltar, at short notice, on polling day for unforeseeable and compelling reasons and cannot recourse to postal voting.

Recommendation 28

We recommend that section 20(2) of the Parliament Act should be amended to increase the period between the issue of a writ calling for a general election and the day of the election, from not less than 30 days to not less than 42 days.

Recommendation 29

We recommend that the timetable in Rule 2 of the Election Rules should be amended to set the closing date for the delivery of nomination papers as noon on the 33rd day before the date of the election instead of the present 21st day and additionally consequential adjustments should be made in the period of time allowed for candidates to withdraw their candidature.

3.8 - Broadcasting during election campaigns.

Section 7 of the European Parliamentary Elections Act requires the Gibraltar Regulatory Authority to set a code of broadcasting standards for the contents of programmes to be

included in television and radio services in relation to European parliamentary elections. The standards are intended to secure that such programmes, and in particular news, are presented with due accuracy and impartiality and that advertising by a body with objects of a political nature and advertisements directed towards a political end are not included in television or radio services. We have considered whether a similar provision should be enacted for Gibraltar parliamentary elections and we have concluded that it should.

There has been support from responders for a broadcasting code.

Recommendation 30

We recommend that the Gibraltar Regulatory Authority should set a code of broadcasting standards for Gibraltar parliamentary elections in consultation with the Returning Officer and the Gibraltar Broadcasting Corporation in line with the requirements of the European Parliamentary Elections Act.

3.9 - Exit polls.

We have considered the merits of exit polls and the way they have been conducted during the last couple of general elections. We are of the view that the way that these polls have sometimes been conducted has been most unsatisfactory and without the reliability of those conducted in other countries.

In general there has been support from responders for the regulation of exit polls.

We have concluded that the time has come to regulate the manner in which exit polls are conducted.

Recommendation 31

We recommend that exit polls should be regulated as to the manner in which they are conducted and that a prohibition should be placed on the publication of their results prior to the end of voting on Polling Day.

3.10 - Counting of votes at general elections.

We have considered the procedure for the counting of votes at general elections and we are dissatisfied with the length of time it takes to count the votes using the present tedious manual system. We have noted that very much faster systems are employed in other countries judging by the speed with which results are declared.

In general, responders support an investigation into the use of an electronic system that could expedite the count. However, views have been expressed that notwithstanding the long time it takes to count the votes, ours is as foolproof a manual system as is possible.

We have concluded that it is necessary to investigate the use of technologically advanced systems for the counting of votes.

Recommendation 32

We recommend that the Returning Officer should give serious consideration to establishing what technological advances are available for the counting of votes and whether these could be adopted in Gibraltar.

3.11 - Register of political parties.

We have considered the merits of setting up a register of political parties. There is no such register kept in Gibraltar and it can therefore be said that political parties are not specially recognised. A register would provide political parties with a stronger legal recognition and ensure that before they can be registered, they conform to certain basic requirements as to their constitution, emblems, executive committee, accounting records and the holding of annual assemblies of the membership.

There has been support from responders for the maintenance of a register of political parties.

We have concluded that, as a means of enhancing our democratic process, the activities of political parties, including the manner in which the leader and the executive committee of the party are elected, should be regulated and that they be required to register in a register of political parties.

Recommendation 33

We recommend that subsidiary legislation for the registration of political parties with the basic provisions detailed in the outline proposals at Appendix 1 should be introduced.

3.12 - Establishment of an electoral commission.

We have considered the merits of an electoral commission being established in Gibraltar whose general functions would be that of an advisory and audit nature, keeping involvement in elections and referendums completely at arm's length.

There have been varied views from responders on the merits of an electoral commission with those disagreeing making the point that it is unnecessary to have yet another commission with the inherent unwarranted expenses.

We have concluded that an electoral commission should be established but such a commission must not be charged with any functions that would compromise the independence of the Electoral Registration Officer, the Returning Officer or a referendum administrator (if one is appointed in the future) in carrying out their statutory duties. As is the case with other statutory bodies e.g. the Public Service Commission, there is no reason for the commissioners to be remunerated.

Recommendation 34

We recommend the introduction of a Bill for the establishment of a statutory body to be known as the Electoral Commission with the basic provisions detailed in the outline proposals at Appendix 2.

3.13 - Legislative provisions regulating referendums.

In the light of both the 2002 and the 2006 referendums having been conducted following a resolution of the House of Assembly, we have concluded that legislation regulating the conduct of a referendum should be enacted.

There has been broad support from responders for such legislation.

Recommendation 35

We recommend that legislation permitting the holding of and regulating the conduct of referendums should be enacted.

3.14 - Residency and external electors.

In Gibraltar, a person over the age of 18 is able to be included in the register of electors provided he is British, has permanently resided in Gibraltar during a continuous period of six months and intends to make Gibraltar his or her home.

There is already a fairly-widely held view in Gibraltar that the six months residence period is too liberal and allows persons who do not have a sufficient connection with Gibraltar, to vote.

We have considered the residency qualification at length including whether the period of residency to be eligible to be registered should be increased to a continuous period of 12 months.

There has been unanimous support from responders for an increase in the residency period which they agree is too short and suggestions range from a two years to a five years residency qualification.

We have been convinced by the strong arguments from responders for an increase in the residency period beyond 12 months and we have concluded that it should be increased to a continuous period of three years.

We have also considered the concerns of some Gibraltarians living abroad who are aggrieved because they can no longer vote in our elections and hold the view that they should be allowed to register and vote if they continue to keep close ties with or interest in Gibraltar.

There has been some support from responders for extending the franchise to persons who reside outside Gibraltar and who maintain tangible connections with Gibraltar.

We have concluded that the franchise should be extended to registered Gibraltarians who live outside Gibraltar for as long as they continue to keep close ties with or interest in Gibraltar.

Recommendation 36

We recommend that the Parliament Act should be amended to increase the qualifying residency period from a continuous period of six months to a continuous period of three years.

Recommendation 37

We recommend that the Parliament Act should be amended to extend the franchise to persons residing outside Gibraltar who are 18 years of age or over, who are registered as Gibraltarians under the Gibraltarian Status Act and who are-

- (a) in permanent employment;
- (b) actively involved in carrying on a business;
- (c) exercising their profession; or
- (d) in full time education;

in Gibraltar.

3.15 - Electoral systems.

The Single Transferable Vote (“STV”) under proportional representation, was the system adopted in Gibraltar in elections to the Legislative Council from 1951 to 1964. Concurrently, a Limited Vote (“LV”) (i.e. what is colloquially referred to as a “block vote system”) was in place in elections to the City Council. Following the 1969 Constitution, the present LV or “block vote system” was adopted for the House of Assembly elections. It remains in force to this day for elections to Parliament.

We have considered whether future general elections should continue using our present electoral system or adopt one of the other eleven systems in operation globally on which we invited views in the consultation paper. This is a matter of fundamental importance in the workings of our democratic system.

There have been varied views and suggestions from responders on the electoral systems. There is a slight majority supporting the retention of the present LV system because it is best suited to Gibraltar, has worked well and the electorate is familiar with it.

Other responders oppose the present system because it provides a winner takes all situation which, they maintain, promotes internecine conflicts. Furthermore, they affirm that our electoral system throws up two conflicting blocks which are so partisan that neither appears to see good in the other and, therefore, believe that the single transferable vote should be adopted.

We have had lengthy discussions on the electoral systems that were explained in detail in the consultation paper but we have been unable to reach a consensus view. Therefore we have decided to put forward the majority and minority conclusions for Parliament’s consideration.

The majority of members of the Commission have concluded that the present LV system has, despite its deficiencies, served Gibraltar well over the years since its inception and should be retained.

The minority view on this issue i.e. that of Mr Robert M Vasquez QC, is at page 25.

Part 4

Other pertinent matters raised by responders.

4.1 - Note on Part 4.

This Part deals with other matters that responders have raised. We have considered and assessed these suggestions for their merits and we have decided that four of them should be submitted for Parliament's consideration.

The other suggestions raised by responders have been considered as touching on matters outside our remit or as matters that do not warrant a submission to Parliament.

4.2 – Fixed term Parliaments.

We have considered a suggestion that a general election should be held not later than 60 days after the fourth anniversary of the previous general election, to prevent a Government from remaining in office beyond the 60 days.

At present, section 37(1) of the Gibraltar Constitution Order 2006 sets the maximum period of time between a dissolution of the Parliament and the issue of a writ for a general election as 30 days, and the maximum period of time between the issue of a writ and the holding of a general election as three months. We agree that the three months presently allowed for a general election to be held after the issue of a writ, should be reduced. Bearing in mind that Recommendation 28 advocates an increase from 30 days to 42 days for the organisation of an election, we believe that a total of 42 days (whether or not that recommendation is approved) between the issue of a writ and the holding of a general election, would be reasonable. These changes require an amendment to the Constitution.

<p>Recommendation 38</p>

<p>We recommend that the maximum period of time between the issue of a writ and the holding of a general election should be reduced from 3 months to 42 days.</p>

4.3 – Offices for the Leader and Members of the Opposition.

We have considered a suggestion that the Leader and Members of the Opposition should be provided with a publicly funded suite of offices together with the necessary staff and secretarial facilities, in order to better discharge their shadow duties.

We are conscious of the fact that the Leader and Members of the Opposition are not provided with suitable offices and secretarial support in any public building and we have concluded that this deficiency needs to be addressed as a matter of priority.

<p>Recommendation 39</p>

<p>We recommend that office and secretarial facilities for the Leader and Members of the Opposition should be made available near the Parliament.</p>

4.4 - Purpose built parliamentary building.

It has been suggested that it is time for Gibraltar to have a 21st century purpose built Parliamentary edifice, with all the necessary state of the art facilities and support organisations, which the modern operation of a Parliament now clearly requires.

We are also conscious of the fact that the Speaker and the Clerk of the Parliament and his staff have never had adequate offices. The Clerk shares a small office with the Speaker and the rest of the parliamentary staff have their desks in the ante chamber of the Parliament. We consider that the Speaker, the Clerk and the parliamentary staff require the modern office accommodation that a 21st century Parliament clearly demands.

The Parliament is housed in a building that was, in the past, the Exchange and Commercial Library. This was, in effect, the cradle of the democratic aspirations of the people of Gibraltar. 2017 will be the bicentenary of the Exchange and Commercial Library.

We consider that this subject matter is not within our remit but we are conscious of the fact that the present accommodation for the Speaker, the Clerk and staff needs urgent improvement.

4.5 - Composition and procedures of statutory bodies etc..

We have considered a suggestion that there should be a review of the composition and procedures of statutory bodies, authorities, commissions and government-related entities to ensure that these work better, are more responsive to the public and are more independent of Government. Where necessary their composition should be changed to improve the constitutional checks and balances on governmental power. Furthermore, the Police Authority and GBC, for example, should have members on those bodies proposed by the Leader of the Opposition;

We have concluded that these suggestions are desirable in the public interest and that the procedures broadly based on those adopted in the United Kingdom under the various Tribunals and Enquiries Acts (with the necessary legislative amendments to make them applicable to all bodies mentioned in the immediate preceding paragraph) merit serious consideration.

Adolfo J Canepa
Chairman

Charles Gomez
Member

George Mascarenhas
Member

Robert M Vasquez
Member
(excluding agreement to
Sections 2.17 and 3.15 of
this report)

Fabian Vinet
Member

Minority report of Robert Vasquez QC on sections 2.17 and 3.15.

1 – Introduction.

The Commission in its majority report has concluded that it does not recommend any fundamental change to the existing electoral system. I would like to place my minority views on the need to reform the electoral system in context by reference to the manifesto commitments of the three main political parties who stood for election in 2011, the GSLP Liberals, the GSD and the PDP. My quotes from each Manifesto are of necessity brief:

The GSLP Liberals-

*“We are committed to a **more inclusive, less divisive and positive style of Government**...out goes the secretive style, out goes the confrontational style. Instead, **we will return Government to the people** by the implementation of a series of measures designed to **ensure that Ministers are servants of the people** because **a Government is not elected to “reign” over the citizens ... We do not believe that one man should be the Government**”*

*“The GSLP Liberals are **committed to a root and branch reform** of the way our democracy works. **Such reform must be designed to give people a greater voice in the way Government and Parliament function** and to modernise and bring into the 21st Century the many arcane procedures that make Government and Parliament remote from people. ”*

*“We will therefore **promote free speech amongst all citizens** and will ensure that no-one in Gibraltar is afraid to speak their mind.”*

The GSD-

*“**Reform Parliament to increase its relevance in peoples’ lives** and **to encourage as many people as possible to take an interest in participating in active politics.**”*

*“...**To increase the number of MPs at minimal extra cost to enable there to be backbenchers on both sides** thus making it possible for people to get into parliamentary politics even if they do not wish to form part of the Government”.*

*“**Consider other reform suggestions** that may be proposed by other political parties, individuals or groups in the community.”*

The PDP-

*“... There was a need to introduce more **specific reforms to foster more democracy in Gibraltar.**”*

*“We consider that **we should enjoy more democracy in Gibraltar**”*

*“... To increase **parliamentary accountability, better participation in the democratic process, more democratic checks and balances** on the power of Government and **electoral reforms**”*

*“**Having more democracy does not mean that the Government is unable to govern. That will improve the quality of governance all citizens enjoy.**”*

How will these objectives and promises be achieved without fundamental reforms to the current system? Do we simply rely on the beneficence of those in power or should objective electoral and democratic safeguards and checks and balances be introduced to improve the delivery of these objectives? I believe that a reform of the present electoral system is required in order to improve areas in which the present system is lacking in these matters.

It is not appropriate to enter into a detailed debate or argument about the merits or failings of the existing system but I believe that it is necessary to briefly list a few examples-

- (a) The present ten votes per elector system essentially translate into a vote for one or other party leader to be Chief Minister, irrespective of the individual qualities of each candidate. Gibraltar's small size may require the casting of more than 1 vote by each voter to be part of the system but not to the exclusion of democratic enhancements to such a system.
- (b) Lack of proper individualised representation in Parliament.
- (c) Lack of adequate independent supervision of the exercise of power by the executive arm of government.
- (d) Lack of any separation of powers between the executive arm of government and the majority party in the Legislative arm. This gives rise to breaches of the basic requirement of any democracy, namely government under the rule of laws passed by Parliament as opposed to by dictates.
- (e) It discourages active participation in politics by many worthy individuals who would otherwise offer themselves as candidates to contribute to Parliament as opposed to the executive arm of Government.

My view is that the cumulative effect of all these factors results (and has historically been seen to result) in overbearing government by one individual, namely, the Chief Minister from time to time.

Many of these failings in my view result in, for example, mediocrity, over-zealous partiality, patronage, distorted politics to ensure the capture of the votes of groupings in society (be it religious or other groupings). The consequence is reactionary rather than progressive government and to an inability to enact necessary but unpopular measures for the good governance of Gibraltar.

Many say that Gibraltar requires a strong Government at all times to face the Spanish threat. I do not disagree but it cannot be at the expense of basic democratic rights of individuals. Strong Government can be delivered with democracy. Strong Government is not dependent on a system that, to quote from the GSLP Liberal manifestos, delivers that "*...one man should be the Government...*" On the sovereignty issue, the present unity that exists in Gibraltar and has done so for years will not be undermined by any government, however elected.

I do not believe that coalition government delivers weak government. I hold the view that a system that might result in coalition government delivers strength in its diversity, especially in Gibraltar where there is no deep difference of opinion on fundamentals. I believe that a system that leaves open the possibility of coalition government promotes the involvement and participation of more able and interesting candidates in the political arena. It is often said, "*Why do we not have a system that allows government by the best brains?*" This is to put the cart before the horse because it expresses the desired result without suggesting a system to achieve it, so I do not subscribe to that saying in isolation. What I do subscribe to is a system that encourages such persons to put themselves forward into the electoral arena with some prospect of being elected. My view is that the argument against a system that might deliver coalition government because it delivers weak government is a fallacious argument.

I do not profess that there is a perfect system. What I do advocate is that there are many ways in which the existing system can and should be improved. My suggestions are but ones that I have learnt about and adapted from recognised electoral systems. I have not invented them simply adjusted them to the circumstances of Gibraltar. I put them forward because I believe that Parliament should not gain the impression that the issue of and debate about electoral reform should now be closed by reason of the views expressed by the majority of the Commission. In the end it is Parliament that will decide what reforms (if any) will be enacted before the next election. It is the Members of Parliament who will be answerable to the electorate at that time, if the measures that the majority in Parliament adopts fall short of the expectations of the electorate. I trust that by putting forward an honestly held minority view, debate and further thought will be given to this important issue both within and without Parliament, with the result that some fundamental reforms are made to the present electoral system that will improve democracy in Gibraltar.

2 - Section 2.17 – Constituencies and the number of Members of Parliament.

As stated in the majority view, there is no constituency (I prefer to use the description “ward” in light of the size of Gibraltar and so will do so) representative of the people in our Parliament, as exist in the United Kingdom and many other western democracies. I feel this is a deficiency in our system, primarily because in a democracy it is important that the voice of individuals should be capable of being heard. It is also important that individual problems should be communicated efficiently to Parliament so that needs and deficiencies in the community can be considered and taken into account when policies are being formulated and, if necessary dealt with. Of the utmost importance is that an individual should be capable of having his individual issues and problems dealt with through the democratic process, namely his own directly elected representative in Parliament.

The majority report of the Commission admits that no such system exists in Gibraltar. It then goes on to suggest that this is not such a major issue as there is direct recourse to Ministers and to Opposition Members. I am of the view that such access is more available to some than to others. Additionally, such access may well have a mitigating effect but it does not resolve the failing that I have outlined. Ministers are tasked with certain Ministerial roles. They have a limited time to attend to individual representation of individual problems. Opposition Members will do some of the work usually but their representations adopt, of necessity, a party political bias, which would not be so palpable if the issue was taken up by a ward representative. Additionally, because views expressed by them are tainted by coming from the Opposition, the governing party will have a tendency to analysis them with suspicion and scepticism and possibly in a negative light.

The majority report suggests that backbenchers may be a good idea. It debates whether this can be done either by limiting the number of Ministers to eight and thus not increasing the size of Parliament or increasing the size of Parliament slightly to allow for ten Ministers and two backbenchers, with a commensurate increase in the number of Opposition members. However no recommendation is made in this regard. I disagree with there being no increase in the size of Parliament and to the manner in which the majority argues that backbenchers could be provided. I think it is important that backbenchers should be elected by direct election in wards, thereby representing their respective constituencies, and that such elected representatives should not be eligible to be Ministers. I explain the system in section 3 below.

This proposal serves various purposes-

- (a) It ensures that the additional expenditure (one of the concerns expressed in the majority report) will be low and certainly manageable.

- (b) It counterbalances the possibility of government by one individual, the Chief Minister.
- (c) It provides for greater direct representation in Parliament of individual constituents.
- (d) Those elected in this manner will always retain their status as backbenchers thus delivering the requirement of an element of separation of powers between the executive and the legislature that is presently lacking in Gibraltar's Parliament.
- (e) It will provide also a greater element of supervision of the exercise of power by the executive arm of Government.
- (f) It encourages active participation in politics by worthy and capable individuals within each subset of our community.

The fear that these ward Members of Parliament will act as Commissars, which was one criticism levelled by the GSD at the suggestion of having ward representatives when a similar suggestion was made by the GSLP prior to the 1996 election, is dealt with by the electoral system that is explained in section 3 below. A dual system of election ensures that power is not concentrated in the hands of any individual. Ward representatives will have other considerations (more directly connected to those whom each represents) to ensure re-election than those that are standing for election with the whole of Gibraltar as their constituents.

I accept that this suggestion is open to the criticism that one set of Members of Parliament is elected by more electors than another. This is a valid criticism mathematically but not qualitatively. Qualitatively this suggestion resolves the issues highlighted by me in section 1 above (and in some regard recognised in the majority report). The effect of election by a reduced number of voters is ameliorated also by the fact that ward Members of Parliament are not eligible to be Ministers and so cannot form part of the executive arm of government. Finally, democracy is not measured in numbers. It is measured in the means by which proper representation is delivered to the people. The question is: does the present system deliver to Gibraltar the level of democracy that it deserves based on principles generally accepted in a western democracy? I think not. I think my suggestion, or a variation of it, delivers an additional degree of democracy that is missing presently in Gibraltar.

I am of the opinion that the size of Parliament should be increased to 25 by the creation of eight wards in Gibraltar, each of which would elect its own Member of Parliament. Ward Members of Parliament should be by law prohibited from accepting a ministerial position. Eligibility rules for candidates, i.e. residency requirements, will need to be decided, if this suggestion is to be adopted.

3 - Section 3.15 – Electoral systems.

Gibraltar should adopt what is commonly called a "*Parallel System*", which is a combination of Proportional Representation ("**PR**") with First Passed the Post system ("**FPP**"). PR has the advantage that it translates votes and so opinions of the electorate proportionally into seats in Parliament. It facilitates representation by minority parties and so minority views achieve a hearing. A Parallel System has the advantages attaching to a PR system, in that it reflects proportionality, with an added element of ward representation that provides a degree of representation in Parliament of individual voters.

Admittedly the system is more complicated and so more difficult for voters to understand but it becomes the responsibility of government to ensure that adequate explanation, guidance and education is provided to voters.

In such a system voters would elect 25 Members of Parliament. Seventeen would be elected using PR, on a Gibraltar wide basis (these Members of Parliament would be eligible to be Ministers). These 17 Members of Parliament would be elected using either a Single

Transferable Vote system (“**STV**”) or a List Proportional Representation system (“**LPR**”). The preferred method, either STV or LPR, needs some consideration. I prefer STV as it provides a greater degree of direct election of individual candidates by voters. Additionally, one ward Member of Parliament in each of eight wards would be elected by residents of each ward using the FPP (these Members of Parliament would not be eligible to be Ministers). This arrangement has the advantage of not impacting too greatly on the party system.

For the sake of completeness and understanding I will explain briefly how each system would operate, save for the FPP, which is the existing method of election and is well known to all.

STV, as stated in the majority report, is a system that was in use in Gibraltar prior to the 1969 Constitution. In this system voters will rank candidates in order of preference. A candidate who passes a quota of votes that is specified in the first votes is elected. Successive counts are then carried out in which votes are redistributed to the second vote and so on to the third, fourth and further preferences until all seats are filled. In this system voters can choose candidates in order of preference rather than on the basis of party allegiance.

LPR would be new to Gibraltar. In this system each party presents a list of candidates. Voters select and vote for a party. Each party receives the number of seats proportional to the number of votes that the party has received. There are two sub-systems. In the “open” list system voters can influence the order of candidates elected by indicating their preference. In a “closed” list system the party decides which candidates are elected in the order chosen by the party. Usually there is a threshold below which a party will not have any candidates elected. A high threshold usually excludes smaller parties and a low threshold can have the effect of assisting representation by smaller parties. Again which sub-system is adopted is an issue for further debate and decision.

4 - Conclusion.

I believe that the existing FPP system to elect all Members of Parliament has too many democratic shortcomings to continue it. Reform is called for and the requirement for that reform is recognised by all political parties in their respective election manifestos. The existing system should be reformed to deliver greater democracy whilst not undermining the requirement for strong government on fundamentals. The suggestions contained in this minority report, a combination of PR with FPP, achieve that objective. It will deliver strong executive government whilst ensuring an adequate level of democratic and legislative oversight.

Robert M. Vasquez

Appendix 1

Registration of political parties - Outline proposal for subsidiary legislation.

A. Requirements for political party to be registered.

1. The name of the party, and any emblem of the party, must not be offensive, obscene or otherwise inappropriate or be either identical to, or similar to that of any other organisation.
2. The party must have at least three office holders, namely the leader, treasurer and secretary and these persons must be on the register of electors.
3. The party must have an address in Gibraltar for the delivery of communications.
4. The party must have a written constitution which must make provision for-
 - (a) its executive committee to consist of a leader (by whatever title known) and a specified number of members elected at least every two years by a ballot of the membership at an assembly convened for that purpose;
 - (b) members to be required to signify their acceptance in writing of the constitution of the party. This need not preclude their paying a subscription;
 - (c) one assembly being called at least once in a calendar year;
 - (d) all members to be entitled to attend an assembly of the party, subject to the member being up-to-date with his¹ subscription (if applicable);
 - (e) the maintenance of proper accounting records; and
 - (f) the selection of parliamentary candidates by the party's executive committee and their subsequent endorsement by the membership at an assembly of the party convened for that purpose.

B. Restriction on name and emblem used by registered political party.

1. A registered political party must not use or otherwise hold itself out as known by any name other than the name that it is registered under nor use or hold itself out as associated with any emblem other than the emblem that is registered for it.

C. Application for registration.

1. An application for registration, signed by not less than 20 persons, must be made to the Registrar and must contain-
 - (a) the full name of the party and its emblem, if any;
 - (b) the address under which it wants to be registered; and
 - (c) the full names of all office holders.
2. An application must be accompanied by a copy of the party's constitution and a copy of the party's most recent statement of accounts (if appropriate);
3. A person can only sign an application if he is registered as an elector.

¹ In this Appendix, words importing the masculine gender include females.

D. Registration of political party.

1. The Registrar must maintain a register of political parties containing all the particulars regarding the political party as are required by the preceding paragraphs.

E. Application for change of name or emblem of registered political party.

1. A registered political party may apply to the Registrar for its name or emblem to be altered or substituted.

F. Changes in particulars of registered party.

1. The Registrar must be notified, in writing, of a change in the constitution of a registered political party and of a change of any of its office holders and of a change of address.

2. A notice under paragraph F.1. must be delivered to the Registrar within 10 working days following the change and be signed by two registered office holders; and in the case of a change in the constitution of a registered political party, the notice must be accompanied by a copy of the constitution as changed.

G. Accounts to be filed.

1. A copy of the audited accounts in respect of an accounting period of a registered political party must be delivered to the Registrar within three months following the end of the accounting period.

H. Removal from the register.

1. The Registrar must remove a registered political party from the register upon an application signed by the three registered office holders mentioned in paragraph A2.

2. The Registrar may remove a registered political party from the register if he is satisfied that the party no longer complies or has not complied with any of the requirements in the preceding paragraphs.

I. Inspection of the register.

1. Any person may inspect the register at Parliament House during its normal working hours.

J. Offences.

1. A person who, knowingly or recklessly, makes any application to the Registrar which is false in a material particular or acts in contravention of paragraph B1, shall be guilty of an offence and liable to

K. The registrar.

1. The registrar shall be the Clerk of the Parliament.

Appendix 2

Establishment of an electoral commission - Outline proposal for a Bill.

A. Establishment of electoral commission.

1. The Electoral Commission ("the Commission") shall be a statutory body.
2. The schedule provides for the status, powers, composition and other matters relating to the Commission.
3. The Commission shall consist of not less than three members to be known as Electoral Commissioners.
4. One of the electoral commissioners shall be the chairperson of the Commission.

B. Appointment of electoral commissioners.

1. An electoral commissioner shall be appointed by the Speaker of the Parliament in consultation with the Chief Minister and the Leader of the Opposition and on a resolution of Parliament.
2. The Speaker of the Parliament shall appoint one of the electoral commissioners as chairperson of the Commission
3. An electoral commissioner shall be appointed (and re-appointed) for a period not exceeding 3 years.
4. A person may not be so appointed if he¹-
 - (a) is a member of a registered political party;
 - (b) is an officer or employee of a registered political party;
 - (c) has at any time within the previous ten years been such an officer or employee as is mentioned in sub-paragraph 4(b).

C. Report of elections and referendums.

1. The Commission shall, after each parliamentary and European parliamentary election and each referendum prepare and publish a report on the administration of the election or referendum.

D. Review of electoral and political matters.

1. The Commission shall keep under review and, from time to time, submit reports to the Chief Minister on the following matters-
 - (a) such matters relating to elections or referendums as the Commission may determine;
 - (b) the registration of political parties and the regulation of their income and expenditure;
 - (c) political advertising in the broadcast and other electronic media;

¹ In this Appendix, words importing the masculine gender include females.

(d) the law relating to the matters mentioned in each of sub-paragraphs 1(a) to (c).

2. At the request of the Chief Minister, the Commission shall review and submit a report to him on such matter or matters as he may specify.

E. Commission to be consulted on changes to electoral law.

1. Before the publishing of a bill or the making of subsidiary legislation to which paragraph 2 applies, the Commission shall be consulted by the Government.

2. Paragraph 1 shall apply to any bill or subsidiary legislation amending, substituting or revoking any primary or subsidiary legislation regulating the registration of electors, parliamentary elections or the conduct of referendums.

F. Involvement of Commission in changes in electoral laws and procedures.

1. The Commission may submit to the Chief Minister proposals for legislation.

2. The Commission may, in connection with changes to or the implementation of electoral procedures, provide any of the following persons with such assistance as the Commission may think fit-

- (a) the electoral registration officer;
- (b) the returning officer; or
- (c) the referendum administrator.

G. Giving of advice and assistance.

1. The Commission may provide advice and assistance as respects any matter in which the Commission have skill and experience.

2. The Commission may also-

(a) provide advice and assistance to-

- (i) Parliament;
- (ii) the electoral registration officer;
- (iii) the returning officer;
- (iv) the referendum administrator;
- (v) the registrar of political parties;
- (vi) any registered political party; and

(b) provide advice and assistance to other persons which is incidental to, or otherwise connected with, the discharge by the Commission of its functions.

H. Education about electoral systems.

1. The Commission may promote public awareness of current electoral systems in Gibraltar together with such matters connected with any such existing systems as the Commission may determine.

I. Financing of the Commission.

1. The expenditure of the Commission shall be met out of money provided by the Consolidated Fund.

Schedule The Electoral Commission

Status of Commission.

1. The Commission shall not be regarded-
 - (a) as the servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.

Powers.

2. The Commission may do anything (except borrow money) which is calculated to facilitate, or is incidental or conducive to, the carrying out of any of its functions.

Term of office etc. of electoral commissioners.

- 3.(1) An electoral commissioner shall hold office for the period for which he or she is appointed, and otherwise in accordance with the terms of the appointment.
- (2) An electoral commissioner shall cease to hold office on the occurrence of any of the following events-
 - (a) he consents to being nominated as a candidate at a Parliamentary or European Parliamentary election;
 - (b) he takes up any office or employment in or with a registered political party; or
 - (c) he becomes a member of a registered political party.
- (3) An electoral commissioner shall be removed from office by the person appointing him if he-
 - (a) has failed to discharge the functions of his office for a continuous period of at least six months;
 - (b) has failed to comply with the terms of the appointment;
 - (c) has been convicted of a criminal offence;
 - (d) has been declared bankrupt and he has not been discharged;
 - (e) has made an arrangement with his creditors; or
 - (f) is otherwise unfit to hold office or unable to carry out his functions.
- (4) An electoral commissioner may be relieved of his office at his own request.

Procedure and proceedings.

- 4.(1) The Commission shall regulate its own procedure including the quorum for meetings.
- (2) The validity of any proceedings of the Commission shall not be affected by-
 - (a) any vacancy among the members of the Commission; or
 - (b) any defect in the appointments of any such member.
