

*REVIEW OF POLICY AND  
PROCESS FOR GRANTING  
RESIDENCY AND  
BELONGERSHIP*

PREPARED FOR THE GOVERNMENT OF THE VIRGIN ISLANDS  
SUBMITTED 24 JULY 2023 BY KEDRICK E. MALONE, REVIEWER

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**NOTES:**

1. The term Virgin Islands and British Virgin Islands (BVI) are used interchangeably in this Report. Virgin Islands is the Constitutional name for the BVI which is used to distinguish BVI from the United States Virgin Islands (USVI), who most times refer to themselves as just the Virgin Islands.
2. The terms Executive Council and Cabinet refer to the same governing body. Executive Council was used up until the 2007 Constitution when the term Cabinet was used in line with the Virgin Islands Constitution Order 2007. The Governor sits as Chairman of the meetings but has no voting authority.

## 1.0 PRELIMINARIES

### TEXT OF COMMISSION OF INQUIRY (COI) RECOMMENDATION B33:

*"I recommend that there should be a review of processes for the grant of Residency and Belongership status, and in particular the open discretion currently held by Cabinet to make grants. Any such powers should only be maintained where necessary; and, where any such powers are maintained, then they should be subject to clearly expressed and published guidance. This review could (and, in my view, should) be led by a senior public officer. As part of that review, the position with regard to the length of residence required for Belongership applications based on tenure should be clarified and confirmed by statute."*

### 1.1 NAME OF REVIEWER

Kedrick E. Malone

### 1.2 DATES OF REVIEW

15th February to 19th July 2023

### 1.3 TERMS OF REFERENCE

The following is extracted from the Terms of Reference presented to the Reviewer:

**1.3.1 Background:** *Under Section 2 of the Commission of Inquiry Act 1880 (Chapter 237 of the Revised Laws of the Virgin Islands) and via instrument dated 19<sup>th</sup> January 2021, His Excellency, Augustus J. U. Jaspert, the then Governor of the Virgin Islands appointed Sir Gary Hickinbottom as sole Commissioner to conduct a Commission of Inquiry (COI) into:*

- a. whether there was corruption, abuse of office or other serious dishonesty in relation to statutory, elected or public officials in the (British) Virgin Islands which may have taken place in recent years.*
- b. if there were such information, to consider the conditions which allowed such conduct to take place in recent years.*
- c. if appropriate, to make independent recommendations with a view to improving the standards of governance and the operation of the agencies of law enforcement and justice in the Territory.*

*The COI commenced on 22<sup>nd</sup> January 2021 and Sir Gary Hickinbottom submitted the completed COI Report ("the Report") to His Excellency the Governor, John Rankin CMG on 4<sup>th</sup> April 2022 for his consideration. Governor Rankin subsequently made the Report public on 29 April 2022. The Report highlighted very serious problems in governance across consecutive Government Administrations and several urgent issues that must be addressed.*

*In total, the Report made four primary recommendations and forty-five detailed recommendations aimed at rectifying systemic governance issues.*

**1.3.2 Scope of Work:** *The scope of work in the Terms of Reference requires the reviewer to:*

1. *Identify any policy and processes for granting Residency and Belonger status.*
2. *Review identified policy and processes, with specific focus on the open discretion exercised by the Cabinet to grant such statuses, the length of residence required for Belonger status, and consideration to other concerns highlighted in Chapter 10 of the report on the Commission of Inquiry, including:*
  - a. *The lack of published and publicised policy on the awarding of Residency and Belonger status.*
  - b. *The lack of internal policy guidelines for processing Residency and Belonger applications; and*
  - c. *That Cabinet retains the ultimate power to determine Residency and Belonger.*
3. *Evaluate whether the current policies and practices are in line with practices of good governance.*
4. *Recommend any policy and procedural changes for improvement.*

#### **1.4 DOCUMENTS PROVIDED FOR REVIEW**

The following reference documents were provided to the Reviewer by the Premier's Office:

- British Virgin Islands Commission of Inquiry Report of the Commissioner the Rt. Hon. Sir Gary Hickinbottom. Presented on 4 April 2022 and Published on 29 April 2022 **(COI Report)**
- Immigration & Passport Act, 1977 **(1977 Act)**
- Virgin Islands Constitution Order (2007) **(2007 Constitution)**
- The Complaint Commissioner's 12th Special Report to the House of Assembly - "Game of Chance" (Report of Investigation into Process of Dealing with Applications for Certificates of Residency) – September 2013 **(2013 CC Report)**

- Internal Audit Department Report on Immigration Board: Belonger Application Process – June 2012 (**2012 IAD Audit**)
- Guidelines on the Processing of Residence and Belonger Status (Board of Immigration) -2022
- Immigration Policies and Legislation from other Overseas Territories and other jurisdictions

## 1.5 STATISTICAL DATA

To provide evidence for the recommendations of this Report, the Reviewer obtained the following statistical reports from the Immigration Department, Civil Registry and Passport Office and Central Statistics Office:

- Population of BVI by Nationality (2001 to 2017), Central Statistics Office
- Number of Persons Granted Belonger Status by Birth and Descent (2012 to 2022), Civil Registry & Passport Office
- Number of Persons Granted Residency and Belonger by Tenure and Marriage (1999 to 2023), Department of Immigration
- Number of Persons Granted Belonger Status by Country (2002 to 2023), Central Statistics Office
- Demographic Profile of the BVI (2000 to 2021, Central Statistics Office

## 1.6 INTERVIEWS

As part of this Review, the Reviewer conducted interviews with the following persons:

1. Mr. Michael Anthony, Former Chairman of the Board of Immigration
2. Mr. Glenn Harrigan, Chairman of the Board of Immigration
3. Mr. Ian Penn, Chief Immigration Officer

## 1.7 CONCLUSIONS OF CHAPTER 10 OF THE COI REPORT

The following is the Conclusion section of chapter 10 of the COI REPORT entitled Residence and Belongership Status taken from the report. The full text of the chapter is attached as **Appendix 1**:

### **Conclusion**

*10.83 Whilst in respect of most residence and Belongership applications, the Board is allowed to play its full role, and the Cabinet follows the Board's recommendation in most cases, evidence was presented to the COI that shows that Cabinet has been and is prepared to exercise its discretion in a legally arbitrary way – and, if necessary, in a manner which is inconsistent with the statutory criteria for these important statuses. On the evidence, it seems quite clear that at least 224 applicants for Belongership were granted that status “outside the framework of the law” in 2011. Even if in 2011 Cabinet was moved by the failure to process applications promptly – which does not seem to fit in with the system they adopted, which involved considering those who had made no application – their willingness to move outside the framework of the law to do it is worrying. In the event, the unlawfulness appears to have been recognised by the succeeding administration, and at least some audit of the relevant applicants was done against the statutory criteria.*

*10.84 The cases of Mr A and Ms C are strongly suggestive that Cabinet is willing to act outside the statutory criteria where it wishes to do so. In each case, the grounds for doing so appear to have been based upon the personal knowledge of the applicant by one or more Cabinet members. Cabinet appears to be willing to act in a legally arbitrary manner.*

*10.85 The exercise of this discretion in the context of the Fast Track process (into which Mr A, of course, fell) was even more concerning, because in that process there was no assessment of applications by the Board.*

*10.86 Whilst the intention to clear the backlog of applications was understandable – even, commendable – the method in which it was done was curious. First, as I have described, as with the 2011 initiative, it did not focus on the backlog. It focused on all people who had 20 years' residence, whether they had previously applied (and thus formed part of the backlog) or not. Whilst the Premier suggested that the manner in which the Fast Track scheme was designed was restricted by a lack of policy formulation or implementation capacity in the Public Service, if it had been the intention to clear the backlog, it did not need any great input to exclude those not within the backlog. Second, the primary reason given by Hon Vincent Wheatley for the backlog was a lack of staff in the Immigration Department. It is not clear why the backlog was not cleared by simply retaining more such staff (as was, in fact, done in the Fast Track scheme). That would not have involved any policy planning or implementation resources. There does not appear to be any evidence that delays were caused at the stage of assessment by the Board, which was the stage omitted in the Fast Track process compared with*

*the standard system. Again, focus on the reason for the delays and backlog did not require any input from the public officials: it was fully recognised during the Fast Track scheme, when substantial more staff were drawn in to assist the Immigration Department not only with the backlog but also the new applicants that the Fast Track scheme encouraged to apply.*

**10.87** *In any event, the result was that, on scant information (some of which, the Minister accepted, was incorrect even as to whether the 20-year residence criterion was satisfied), the Cabinet exercised its unfettered discretion. The consideration Cabinet members could give to any particular applicant was constrained by the limited amount of information provided to them and the limited time they had to consider it. Any consideration appears to have been based on the happenchance of personal knowledge a Cabinet member (or the Attorney General advising Cabinet) had of an applicant. Therefore, in the Fast Track scheme, whilst the discretion exercised by the Cabinet was the same (i.e., unfettered), it was exercised on less RESIDENCE AND BELONGERSHIP STATUS 573 information and absent any assessment such as the Board would usually perform. The result was that the process involved an even greater exercise of discretion, with greater risks of errors, inconsistent decision making and, indeed, dishonesty.*

**10.88** *It is unknown whether there are any applicants under the Fast Track scheme still in the system and, if so, how many; but the Fast Track scheme has more or less run its time-limited course. However, (i) granting the Cabinet this sort of discretion, at the cost of any proper assessment of applications, is something which the House of Assembly will wish to consider very carefully if it is asked again to give the executive these sorts of powers over such an important aspect of government decision-making; and (ii) given that the Minister accepts that mistakes may have been made in the information upon which Cabinet made decisions on applications, it seems to me to be vital that an independent audit is performed on the Fast Track scheme and on each of the applications that ran through that scheme. I understand that that course may cause some successful applicants' anxiety; but such an audit would not only be in the interests of good governance in such an important area of public life as Belongership, but also in the interests of those successful applicants themselves, upon whose status the Minister has cast a shadow of doubt. It is vital for them that the "sacred gift" that they have been given is not subject to any such shadow.*



## 2.0 EXECUTIVE SUMMARY

### 2.1 Background

This Review seeks to address the conclusions on Residence and Belonger Status presented in chapter 10 of the COI Report. It is guided strictly by the section of the Terms of Reference set out in Section 1.3.1 and 1.3.2 of this Report. Immigration is an emotive issue and to help bring some level of objectivity to the recommendations of this Report, the Reviewer obtained official Government statistical data and the assistance of a professional data analyst, to ensure that the recommendations of this review were backed by evidence.

Effort was made to minimise the legalistic language that normally accompanies the issue of immigration and present the information in plain language so that all members of the public can read and understand it as everyone is affected by it, directly or indirectly.

The background information presented in this Report is equally important as the recommendations presented.

**Context:** The concerns raised in Chapter 10 of the COI Report evolved over a fifty-six (56) year period which began with the advent of Ministerial government in 1967. Throughout this Report, it will become evident that the grant of local governmental autonomy in 1967 was not accompanied by a fit for purpose governance system capable of avoiding much of what has been documented in the COI Report regarding Residence and Belongership. Much of the success the Territory has experienced since the advent of Ministerial Government has been over reliant on individual initiative and capability, rather than on an effective and efficient governance system.

The evolution of immigration issues and the journey of self-government paralleled each other. As time passed, the deficiencies of the governance system became more apparent and began to erode the effectiveness of the political leadership of the Territory as this Review will show. This systemic erosion of political and indeed, administrative effectiveness has over time, undermined governance and became a contributing factor to the immigration issues that eventually found their way into the COI Report. It is therefore important to include historical context in the background section of this Report so that the way forward could be crafted in a manner reflective of a true partnership between the Virgin Islands and the United Kingdom.

### 2.2 Migration, Immigration, Economy and Population

**Migration and Immigration:** The movement of people to a country for work or better living conditions (migration) and the process through which those persons become

permanent residents or citizens of another country (immigration), are global issues. Both have a direct impact on the social, economic and cultural life and development of a country. The Virgin Islands is no exception and has been on both ends of the migration spectrum with significant migration out of the Territory well into the advent of Ministerial government in 1967 and significant migration into the Territory beginning in the same decade as the Territory accelerated its economic journey under Ministerial government.

**Economy and Development:** The advent of Ministerial Government in 1967 was the catalyst for the Territory's economic development and growth. This continued through the 1970s with tourism and infrastructure driving labour demands and into the 1980s where it was accelerated by financial services and continued a steady growth path to this day. This economic growth drove the demand for labour through migration, mostly from other Caribbean countries who had recently obtained independence and whose economies were transitioning.

The robust economic growth beginning in the 1960s resulted in a surge in demand for labour that surpasses the available local workforce. The industries such as tourism, financial services, and construction have experienced high demand for employees, necessitating the recruitment of a significant number of workers from other countries.

**Population and Economy:** The large influx of foreign labour has significantly increased the population numbers in the BVI. Individuals from various countries have migrated to the BVI in search of employment opportunities. This has led to a diverse and multicultural society within the BVI.

Over the last twenty years, the population of BVI has grown by 68%, from roughly 22,000 in 2000 to 37,000 in 2021. With low average fertility rate (9.88 per 1,000) and low average death rate (3.89 per 1,000) over the same period, the growth has been most significantly influenced by the demand for foreign labour.

The cross-cultural exchange enhances the social fabric and adds to the vibrant tapestry of the BVI. However, this demographic change in the recent history has solely been governed by the need for foreign workers without any considerations to other aspects of the BVI's social, cultural, and capacity impacts. The focus on meeting labour needs has overshadowed the importance of holistic planning and policies that consider the long-term sustainability and well-being of the community.

**Migration to Residency and Belongership:** Many foreign workers stay long term in the BVI and eventually apply for residency and belongership. The exploratory

analysis of work permit data in 2016 revealed an interesting pattern in the Wholesale & Retail and Construction industries, where foreign workers tend to spend ten or more years on average renewing work permits year after year. It remains unclear whether these long-term foreign workers eventually leave the BVI after reaching the 10-year mark or if they are granted work permit exemptions based on their long-term residency. The lack of data on work permit exemptions makes it challenging to accurately predict the impact of the current volume of the foreign labour force on potential volumes of belongingship applications.

**Population Growth and Impact:** From 2005 to 2015, the BVI nationals' population grew at an average annual rate of 1.8%, while the expatriate population increased at a much higher average rate of 3.8%. This indicates that the expatriate population is growing more than two times faster compared to the growth of the BVI nationals. Such a trend can have implications for various aspects of the society and economy. It may impact cultural dynamics, strain social integration efforts, and create challenges in resource allocation and infrastructure development.

The significant presence of foreign individuals who have migrated to the territory to meet the labour demands for various industries is reflected in the overall composition of the BVI population. In 2015, BVI population consisted of 36% nationals and 64% expatriates.

The above information highlights the need for further investigation and a comprehensive understanding of the dynamics surrounding long-term foreign workers, their eventual status in the BVI, and their potential eligibility for belongingship. Such insights are key for accurately assessing the future impact on belongingship applications and formulating effective policies that consider both the needs of the foreign labour force and the interests of the BVI community.

### **2.3 Laws on Residency and Belongership**

In the Virgin Islands, belongingship is determined by the Virgin Islands Constitution Order 2007, Section 2(2), part Four of the Immigration and Passport Act (1977 Act), Sections 16 to 19, governs the grants of Residence and Belongership status and Part Three, Sections 11 to 15, governs the function of the Department and Board of Immigration. A copy of both parts is provided at **Appendix 4**.

### **2.3 Policies Governing Residency and Belongership**

There is a single nineteen (19) year old policy governing both residency and belongingship application processing and the grant of status which was passed in 2004 and conflicts with both Section 18 for residency and Section 16 for belongingship.

In October 2004, Executive Council issued the following Administrative Guidelines to the Board of Immigration for the processing of Applications for Residence and Belonger Status:

- a. Applicants who applied before 1<sup>st</sup> January 2003, should be recommended for Residence Status if residing in the Territory continuously for over 20 years.
- b. The backlog should be cleared, in chronological order, and in batches of 50's during 2005. Once cleared, recommendations should be made as applicants reach their 20<sup>th</sup> anniversary; and

For applicants applying after 31<sup>st</sup> December 2002, recommendations for Residency Status should be made for not more than 25 persons per year. Applicants for Belonger Status, who are already in possession of Residence Status, should be made for no more than 25 persons per year. The Executive Council also made the following points which are still very relevant today in looking at future policy:

- a. An Immigration policy should be part of the Territory's national goals and objectives.
- b. The Policy should be informed by statistical information.
- c. Policies which controlled the inflow of potential immigrants should be in place, by having proposed fixed terms for Work Permits.
- d. The Finance and Tourism Sectors should have specific skill needs met, with linkages to personal development plans for Virgin Islanders; and
- e. Children of Non-Belongers born in the BVI should receive Belonger Status; and
- f. Belonger Status should be given to children born overseas to parents who were Belongers-by-descent.

#### **2.4 Processes Governing Residency and Belongership**

The processing of residence and believer status is handled by the Department of Immigration. In the case of believer status, the Department only processes applications for believership by tenure and marriage.

The process of an application is clearly outlined in the document, Guidelines for the Processing of Residence and Belongers issued by the Board of Immigration in 2022.

The process is summarised as follows:

1. The applicant leaves an application form at the department office.
2. The secretary to the Board (an Immigration Officer) checks it for "qualification" (applicants with less than 20 years residence are deemed "unqualified) and acknowledges it, opens a file, places the application (if qualified) on a list that goes to the Board.

3. Before consideration by the full Board, a panel of assigned members reviews the application, interviews the applicant, and requires him or her to complete a Culture Test.
4. Finally, the Board meeting considers the application and applies a Point scale to the application for a score. The system gives or deducts points for employment status, financial standing, contributions to the community, culture and general knowledge of the Territory, and other considerations.
5. The Board then either defers the application to request more information or recommends either approval or denial. In the latter case, the minutes may indicate a reason.
6. The application then goes with others to the Premier's Office where it is put to Cabinet, generally within a month of receipt and a decision rendered. That is conveyed to the Chief Immigration Officer who then informs the successful applicants, collects the fees, and prepares the certificates and identification cards to await a presentation ceremony. He also writes to inform the unsuccessful applicants of the disapproval.

The process outlined above is one that evolved over a period as members of the various Boards sought to institute measures to provide more definition to the process to increase transparency, objectivity and fairness.

There are no administrative guidelines stipulating the amount of time the public can expect to an application processed. There is also no policy of communicating at intervals with the applicant. Both deficiencies in the process affect both residency and belongership applications.

## **2.5 Review of Policies, Processes and COI Concerns**

Having identified the laws, policies and processes for granting residence and belongership status, a review of policies and processes was undertaken, including:

1. The open discretion exercised by Cabinet.
2. The length of residence required for Belonger status.
3. Lack of published and publicised policy.
4. Lack of internal policy guidelines.
5. Cabinet's ultimate power to determine status.

Each of the above will be addressed in the Review, evaluated in the following section and the way forward in the recommendation section.

**Open Discretion by Cabinet:** Open discretion by Cabinet was the central issue in the COI Report chapter on residency and belongership. It was 1990 that the Government

of the day changed the law to reflect that the Governor in Council (Executive Council at the time, now Cabinet), was given the power to grant status “having regard to any observation of the Board”. Before that, the granting of status was on the “recommendation of the Board”, thus entrusting the Board with the power to grant status. Over the past twenty three years, Cabinet’s use of its discretionary powers increased in an attempt to manage population growth in the absence of an Immigration Policy and increasing pressures from both Virgin Islanders and expatriates.

**COI Report Concerns:** The COI Report, in the Conclusions section of chapter 10 on Residence and Belongership Status, cites several instances where Cabinet exercised its discretions. The Conclusions are included in this Report at Section 1.7 and the full text of Chapter 10 of the COI Report which is at Appendix 1. These Conclusions can be summarised as follows:

1. Cabinet exercised its discretion in a legally arbitrary way and in a way that is inconsistent with and outside statutory criteria and the framework of the law.
2. Cabinet’s intention to clear the backlog of applications was “understandable – even commendable” but the method used did not align with their intention and good governance practices.
3. The major cases used to support the COI Conclusions in Chapter 10 were the 2011 belongership applications initiative and the 2019 Fast Track programme.
4. Some of the actions of Cabinet that illustrated abuse of its discretionary powers, include:
  - a. No assessment of applications by the Board of Immigration in executing the Fast Track programme.
  - b. Over reliance on personal knowledge of applicants and less information to grant status which increased the risk of error.
5. The House of Assembly gave Cabinet discretionary powers it should not have and that was a mistake.
6. The political excuses provided are not credible, namely that:
  - a. There is a lack of policy formulation and implementation capacity in the public service.
  - b. Lack of staff in Immigration.

Items (1) to (4) provide very compelling evidence in support of the conclusion that Cabinet exercised its discretionary powers in a legally arbitrary way and in a way that is inconsistent with, and outside statutory criteria and the framework of the law.

Regarding item (6), lack of policy formulation and by extension, a lack of policy support and advice, this is evidenced by the absence of a Policy Unit within the Government to this day. This is despite strong and longstanding recommendations from civil servants of the need to address this issue and the failure to approve the establishment of one, even with concrete plans submitted in the 2019 draft budget by the Premier's Office.

**First Policy Responses to Immigration Issues:** The 2004 policy on Residency and Belongership was a well-intended response to establish a policy in the absence of no clear policy after thirty twenty (37) years of ministerial government.

The Executive Council decision of 2004 was a clear response to the population make-up and demographic shift in the Territory that was driven by migration. By this time, the evidence was clear that a policy shift was needed. The decision to increase the Residency requirement to twenty years (20) from the ten (10) stated in the law was a stop gap measure to clear the backlog by processing those applicants in batches of 50 (if they applied before 1 January 2003) or 25 (if they applied after 31 December 2002). However, the action required to prevent the queue from filling was not explicitly stated as a directive.

Executive Council did not intend for their decision to be a long-term solution as evidenced by the additional Points of information issued with their decision, the text of which above. The absence of an Immigration Policy to this day has been the most significant cause of the accumulated backlog of applications and the genesis of the concerns expressed in the COI Report chapter on Residency and Belongership. There was clearly a breakdown in governance and a clear absence of the checks and balances between the political establishment (Cabinet) and the permanent establishment (Civil Service) that must be resolved.

**Second Policy Response to Immigration Issues:** In 2016, twelve (12) years after the 2004 policy decision, Government started to address the longstanding issues related to residence and Belongership. The effort arose out of a recommendation in the report produced by McKinsey & Co for the Government of the Virgin Islands entitled, *'Building a Thriving & Sustainable Financial Services Sector in the British Virgin Islands'*, dated 3<sup>rd</sup> November 2014. (The McKinsey Report). The McKinsey Report and its recommendations were approved and adopted by Cabinet in January 2015 and the House of Assembly in February 2015.

The Report identifies immigration and labour issues as a major impediment to the growth and development of the Territory financial services sector, its main driver of government revenues. It was noted in the McKinsey Report that *“improved immigration and labour policies and processes are critical to attracting and retaining the necessary talent to support a substantive Financial Services industry. However, improved access and increased freedom for skilled workers is a heated issue amongst our people. It is clear that the BVI must take a thoughtful approach to solving the issue by first agreeing on a vision for the role of skilled labour in the BVI and then putting in place the necessary policy and process changes to realize that vision”*.

The Government invested in establishing the Financial Services Implementation Unit (FSIU) and charged it with implementing the recommendations of the Report. A special committee consisting of representatives from Immigration and Labour departments, other Government Departments and representatives from all major private sector groups was established to implement one of the twelve major recommendations of the Report dealing with Immigration and Labour issues. They met for many months under the chairmanship of Mr. Gerard Farara, KC, to produce the *“REPORT OF THE INITIATIVE WORKING TEAM ON IMMIGRATION AND LABOUR REFORM” (Report of the IWTIL)*. This was a very significant and substantive report with thirty (30) recommendations covering both immigration and labour and all the interrelated issues between the two subjects. A copy of the report is attached as **Appendix 7**.

The Report of the IWTIL drove the following three significant Cabinet Decisions that represented an opportunity to address wider issues of Immigration and Labour, many directly related to residence and belongingship:

1. Cabinet Memo No. 075/2016, dated 29 April 2016 - Accepting the Report and its 30 Recommendations of the Report of the IWTIL
2. Cabinet Memo No. 316/2016 dated 13 October 2016 - Amending the Immigration and Passport Act 2013
3. Cabinet Memo No. 346/2016, dated 9 November 2016 - Amending the Labour Code 2010,

Some of the recommendations spoke specifically to the Points that accompanied the 2004 Executive Council Decision on Residence and Belongership such as:

**2.5 Length of Residence for Belongership:** The 2004 policy changed the requirement from 10 years as stated in the law to 20 years which is a policy. Despite the publication of the 2012 IAD Audit and the 2013 CC Report and the clear and strong positions of those two official documents, there is little evidence of strong



movement to reconcile the conflict between law and policy regarding the length of time required to attain Belonger status.

The fact that a policy has stood contrary to law for nineteen years is one that begs the question: what happened to the checks and balances in the governance system that are supposed to identify and correct such breaches of authority. There was obviously a failure of institutions to function as intended.

## **2.6 Published and Publicised Policy**

There is little evidence that the Government, through the Department or Ministry of Immigration executed any concerted effort to communicate its policies and processes on residence and Belongership to the public in any concrete and consistent ways. There is also great frustration on the part of the public in trying to get information on the status of their applications and where they are in the process. The lack of information management tools and processes available to the staff of the Department made it challenging to manually manage the process and provide information to the public in an efficient manner.

The Reviewer is personally aware of an initiative undertaken by the Deputy Governor's Office as part of the Public Sector Transformation Programme which organised a committee for the purpose of producing a communication brochure and communication plan to address the communication deficit between the Government and the public. However, the Reviewer is not aware of any evidence that this 2019 initiative was ever launched to the wider public. If it was not, the brochure produced from the initiative can be reviewed and updated for use. It is attached as Appendix 8.

## **2.7 Internal Policy Guidelines**

The Board of Immigration was commended in both the 2013 CC Report and the 2012 IAD Audit for its initiatives in developing internal processes such as a Point System, a Culture Test and other tool to create greater transparency in the process of reviewing and recommending applications for Residency and Belongership. Whilst the scope of their authority was questioned, their intent was clear and consistent with processes in other countries to screen applicants.

## **2.8 Cabinet's Ultimate Power**

Deficiencies in processes appear to be a significant driver of Cabinet's use of its discretionary powers to address what they perceived to be lack of response from the Board. Clearly the volume of applications is the paramount and overarching issue that plagued both the Board and the Cabinet. The Board was highly praised for instituting measures for increasing transparency and fairness in its Points system

which added time to the process. This contributed to the response from Cabinet's view.

The decision of whether to keep the power of residency decisions with the Immigration Board or transfer it to the Cabinet is a complex matter that involves considering various factors. Keeping the decisions with the Immigration Board may provide a more impartial and expert-based approach to evaluating applications. This approach could lead to decisions that are based on merit, adherence to immigration policies, and the overall needs of the country.

On the other hand, transferring the power to the Cabinet may allow for more flexibility in decision-making and enable a broader consideration of political, social, and economic factors. However, this approach is susceptible to political influence and temptations to use residency decisions for political gains, especially in the context of elections.

Ultimately, the choice depends on finding a balance between maintaining fairness and objectivity in decision-making while ensuring that broader national interests are also considered. Establishing a clear immigration policy as stated above with implementation guidelines for the Board and supervision mechanisms for the Cabinet would ensure transparent and accountable outcomes.

## **2.9 Good Governance Evaluation of Policies and Processes**

In evaluating the handling of the residency and belongingship application and grant of status policies and processes, there were several missed opportunities to address the issues along the way. This has produced significant opportunities to make policy and process changes that will correct many issues and to address the systemic issues that continue to undermine good governance.

In reviewing the policies and practices of the Government of the Virgin Islands in the handling of residence and belongingship applications, and the associated grant of status for both, there were three significant missed opportunities to address the longstanding Immigration issues. Those missed opportunities appear to be caused by systemic governance issues that did not equip Ministries to respond effectively to directions from Cabinet and capitalize on opportunities to make changes, The Government missed opportunities in:

1. 1990 with Executive Council's decision to amend the law to introduce discretionary powers for ministers.
2. 2004 with Cabinet decision to introduce a policy contrary to law.
3. 2016 with Cabinet decision to reform Immigration and Labour functions in an integrated way.

These missed opportunities can mostly be attributed to systemic weaknesses exemplified by the absence of a structured and equipped policy function and the absence of a functioning system of checks and balances.

**2.10 Serious Governance Issue:** The absence of any substantial changes to the governance system since the introduction of Ministerial government in 1967, the Territory continues to operate what is an essentially a 1960s governance system with no substantial structural changes. This was evidenced by the taking away of Board powers as far back as 1990.

The absence of any substantial changes to the systemic issues since the introduction of Ministerial authority in 1967, basically a 1960s system with no fundamental changes. This was evidenced by the taking away of Board powers as far back as 1990.

What followed in the ensuing fifteen (15) years following the 2004 policy decision can only be described as a failure of the checks and balances of the system to correct the various violations of law, policies, procedures and processes. Even with the publication of official reports such as the 2013 CC Report and the 2012 Internal Audit Department Report on the Immigration Board Application Process (2012 IAD Audit), these systemic failures were not addressed.

Under a system of checks and balances that is part of the governing structure of a mature democracy, the executive, judicial and legislative functions are separate, and each branch's independence helps keep the others from exceeding their power, thus ensuring the rule of law and protecting individual rights. Under section 64 of the Constitution of the Virgin Islands 2007, the executive authority is vested in His Majesty the King and exercised through the Governor. Cabinet is an executive function, and the public service is also one of the functions for which the Govern is responsible.

**2.11 Policies and Processes:** In evaluating the handling of the residency and belongingship application and grant of status policies and processes, there were many issues along the way. This has produced significant opportunities to make policy and process changes that will correct many issues and address some of the systemic problems that continue to undermine good governance.

## **2.10 Recommendations**

The following recommendations encompass all the key policies identified in Section 9 Of this Report and capitalize on the opportunity to make significant changes which are in the following recommendations:

### **2.10.1 Establish a Clear and Comprehensive Immigration Policy**

Establish a clear and comprehensive Immigration Policy considering demographic and immigration trends in the Territory and using the (8) factors below to support decision-making and public policy development needs so that the best interest of the Virgin Islands is protected.

The Immigration policy development must include public consultations, consider the views of the people and engage in public education and awareness campaigns to promote understanding and acceptance of immigration.

### **2.10.2 Incorporate Policy of No Automatic Path from Work Permit to Belongership**

Establish a clear and differentiated pathway to citizenship from work permits. Work Permits should be limited to a period under the ten (10) year requirement for the application for Belongership. This entails differentiating between residing for the purpose of work and residing without the need to work. The person entering the Territory without the need to work can earn time towards the eligibility to apply for Belongership at the ten (10) year mark as the law currently requires. The person entering for work does not automatically accumulate time towards the eligibility to apply for residence. This means that the eligibility to apply for Residency and Belongership status for persons entering for work should not be based solely on years of residing in the Territory. By separating the work permit process from that of Residency and Belongership, it becomes possible to protect Belongership status while creating a distinct Residency status for non-nationals residing in the BVI long term. This approach ensures that the process for attaining citizenship is neither guaranteed nor automatic, promoting a more balanced and thoughtful approach to immigration and population growth in the BVI.

### **2.10.3 Establish a Clear and Comprehensive Labour Policy**

Establish a clear and well-defined labour policy to support the long-term development goals of the British Virgin Islands (BVI) and to manage population growth effectively. This Policy must recognize and facilitate the interdependence of Immigration and Labour.

### **2.10.4 Strengthen the Point System for Residency/Belongership Applications**

Re-evaluate and update the existing Point System incorporating the factors below to produce an Interim Point System to protect and grow BVI interests. The revised Point System should be submitted to Cabinet for approval and the used until the final Point System is determined by the new Immigration Policy. The Interim Point System should be used to process existing backlog of residence and Belongership applications incorporating Recommendation 10.5 below.

### **2.10.5 Establish an Annual Quota for Residency (Permanent Residence) and Belongership (Citizenship)**

Require the Board of Immigration to establish an Interim Quota Policy for Cabinet's approval and use the approved Interim Quota Policy to set the number of approved Residency and Belongership applications that can be safely integrated into the BVI society annually based on a cursory evaluation of economic, social, security, and national development objectives. The final Quota Policy will be determined by recommendations 10.1, 10.3 and 10.6. The annual quota recommendation is to be submitted to Cabinet for approval. An independent Immigration Appeal Tribunal is to be established to allow applicants the opportunity to have their case reviewed outside of the standard process.

### **2.10.6 Establish a Population Policy**

Establish a Population Policy to guide the Territory's overall development for the next eleven (11) years considering its current population composition, trends and drivers, inform its Labour and Immigration policies, and consider its social, economic, health, education and other needs to achieve a balanced, healthy, socially cohesive, thriving and prosperous society. The Population Policy will reflect the Territory's vision, aspiration of its people and the population needed to support them and the parameters that need to guide population size and demographics.

### **2.10.7 Correct the Inconsistency between Law and Policy**

Correct the inconsistency between a 20-year residence requirement, which Cabinet has required to be applied since 2004, and apply the statutory criteria in section 16(3) of the 1977 Act in concert with recommendations 10.1 to 10.5 to provide clear policy and guidance in accordance with the law to ensure transparency and accountability in the process.

### **2.10.8 Address the Disconnect between Cabinet and Senior Public Service Leadership**

Establish a clear and structured process of tracking and ensuring follow-through and implementation of Cabinet Decisions and directives or any guidance to ensure Cabinet's full authority is fully executed. Cabinet should include specific requests that the status of their decisions and reports, presentations letters, data, etc of the actions taken after a period. The Cabinet Secretary should also hold regular Policy briefings, discussions and follow-up sessions with the senior leadership of the Civil Service to include the Deputy Governor, Attorney General, Financial Secretary and Permanent Secretaries.

### 2.10.9 Strengthen the Role of the Board of Immigration

Cabinet should empower the Board of Immigration to carry its critical national function by:

- a. **Legislation:** Amend the 1977 Act to require that the grant of status for all Residency and Belongership applications must have both the recommendation of the Board of Immigration and the approval of Cabinet.
- b. **Executive Authority:** Give the Board the executive authority to make policy recommendations directly to Cabinet on immigration matters within its purview, including matters such as Point Based Systems and Quotas.
- c. **Financial and Technology Resources:** Provide the Department of Immigration with the technological and financial resources needed to properly staff the Status Unit within the Department and implement the technology required to enhance its application processing security, standards and efficiency.
- d. **Organisational Structure:** Give the Board more Autonomy to allow it to function more as an independent body than a function within a department. In this regard, the Cayman Island Model should be investigated.
- e. **Training:** Provide the staff with the functional training to build their expertise on immigration policy and process, not just administrative.

### 2.10.10 Redefine Cabinet's Ultimate Power

The following recommendations should be directed by Cabinet immediately:

1. Amend the 1977 Act to require that the grant of status for all Residency and Belongership applications must have both the recommendation of the Board of Immigration and the approval of Cabinet.
2. Cease the twenty (20) year Residency requirement for Belongership policy and apply the ten (10) year requirement in the law.
3. Direct that the recommendations of this report be implemented as soon as possible.
4. Direct that the existing backlog of Residency applications be processed in line with Recommendation x, the Point Based System to be developed and approved by Cabinet, and Recommendation x, the Quota System, to be developed by the Board of Immigration and approved by Cabinet.
5. Add regulations to the law that governs timeframe for processing, communication requirements, quotas, point system and other issues which can be amended without HOA law changes but through Cabinet.

### **2.10.11 Immediately Improve Public Communication and Engagement**

The following measures should be implemented forthwith to build transparency, public awareness and participation in Immigration matters:

- a. Develop a Public Communication and Engagement Strategy and Plan to improve awareness, transparency and participation of the public on Immigration matters.
- b. Public Engagement plan to include publishing names of applications under review and the requirement for recommendations by 3 to 5 native Virgin Islanders.

### **2.10.12 Fast-Track Initiative to Bring Virgin Islanders Home**

Develop a government incentive and endorsed and private sector operated initiative to attract Virgin Islanders to return to the Territory to live and work.

### **2.10.13 Fast-Track Public Service Reform**

Give urgent priority to reform of the public service system, with focus on the senior management structure and the interrelationship between and with Ministers, Cabinet Secretary, Permanent Secretaries, the Deputy Governor, the Attorney General and the Governor.

## **10.14 Complete Immigration and Labour Recommendations**

Complete the implementation of the Recommendations in the Report of the Initiative Working Team on Immigration and Labour.

## **10.15 Review VI Constitution for Separation of Powers and Checks and Balances**

Review the relevant sections of the Constitution regarding Separation of Powers and to ensure that the requisite checks and balances needed to ensure transparency, accountability and the rule of law can be upheld in the context of the Virgin Islands.

### 3.0 METHODOLOGY

The issue of immigration is a complex and integrated issue with many interrelated economic, social, political and administrative considerations. To effectively address the residence and Belongership issues raised in the COI Report, the following methodology was employed:

1. Identify the core historical issues driving law and policies on residence and Belongership.
2. Consider political motivations and intentions driving laws and policies on residence and Belongership.
3. Look at laws, policies and processes applied to residence and Belongership.
4. Consider the economic, social and developmental impacts of laws and policies on residence and Belongership.
5. Consider administrative capacity, capability and resources to execute laws, policies and processes related to residence and Belongership.
6. Consider public communication and engagement on residence and Belongership.
7. Assess the concerns raised in section 10 of the COI Report in the context of the above points.
8. Make recommendations that balance the obligations to expatriates and the interests of Virgin Islanders for a sustainable society rooted in Virgin Islands values and culture.



#### **4.0 BACKGROUND**

The background information on the issue of residence and Belongership application processing and the grant of immigration status is equally important as the recommendations presented in this Report.

#### **4.1 INTRODUCTION**

This Review seeks to address the conclusions on Residence and Belonger Status presented in chapter 10 of the COI Report. It is guided strictly by the section of the Terms of Reference set out in Section 1.3.1 and 1.3.2 of this Report. To bring some level of objectivity to the recommendations of this Report, given the importance of the issue of Residency and Belongership to the Virgin Islands and the emotive nature of immigration issues, the Reviewer obtained official Government statistical data and the enlisted assistance of a professional data analyst the issue of residence and Belongership application processing and the grant of immigration status is to ensure that the recommendations of this review were backed by evidence.

Effort was made to minimise the legalistic language that normally accompanies the issue of immigration and present the information in plain language so that all members of the public can read and understand it as everyone is affected by it, directly or indirectly.

#### **4.2 CONTEXT**

The concerns raised in Chapter 10 of the COI Report evolved over a fifty-six (56) year period which began with the advent of Ministerial government in 1967. Throughout this Report, it will become evident that the grant of local governmental autonomy in 1967 was not accompanied by a fit for purpose governance system capable of avoiding much of what has been documented in the COI Report regarding Residence and Belongership. Much of the success the Territory experienced was over reliant on individual initiative and capability within Ministries and Departments rather than an effective and efficient governance structure.

The evolution of immigration issues and the journey of self-government paralleled each other. As time passed, the deficiencies of the governance system became more apparent and began to erode the effectiveness of the political leadership of the Territory as this Review will show. This systemic erosion of political and indeed, administrative effectiveness has over time, undermined governance and became a contributing factor to the immigration issues that eventually found their way into the COI Report. It is therefore important to bring historical context to this Review so that the way forward could be crafted in a manner reflective of a true partnership between the Virgin Islands and the United Kingdom.

#### 4.2 BVI IMMIGRATION ISSUE: ITS BEGINNING

The movement of people to a country for work or better living conditions (migration) and the process through which those persons become permanent residents or citizens of another country (immigration), are global issues. Both have a direct impact on the social, economic and cultural life and development of a country. The Virgin Islands is no exception and has been on both ends of the migration spectrum with significant migration out of the Territory well into the advent of Ministerial government in 1967 and significant migration into the Territory beginning in the same decade as the Territory accelerated its economic journey under Ministerial government.

The then Complaints Commissioner, Mr. Elton Georges, cited this fact in *The Complaint Commissioner's 12th Special Report to the House of Assembly - "Game of Chance" (Report of Investigation into Process of Dealing with Applications for Certificates of Residency) - September 2013* (2013 CC Report). In the following excerpt from the 2013 CC Report, he refers to the rapid increase in population in the 1960s as a result of economic development: "High levels of inward migration naturally accompanied this fast expansion. The population census of 1960 counted 7,340 souls, whereas the census of 1970 recorded 10,030 a growth of some 2,700 or 37%, mostly due to immigration. (Net inward migration was almost certainly higher, since the figures do not show how many Virgin Islanders emigrated during this period to the USA and USVI.)" (p. 7, Sec. A). By the time BVI economic growth got into full swing with tourism in the 1960s and financial services in the 1980s, many Virgin Islands had migrated out in search of opportunities and had settled their lives outside the BVI.

#### 4.3 MINISTERIAL GOVERNMENT AND THE RESPONSE TO MIGRATION

The advent of Ministerial Government in 1967 was the catalyst for the Territory's economic development and growth. This continued through the 1970s with tourism and infrastructure driving labour demands and into the 1980s where it was accelerated by financial services and continued a steady growth path to this day. This economic growth drove the demand for labour through migration, mostly from other Caribbean countries who had recently obtained independence and whose economies were transitioning.

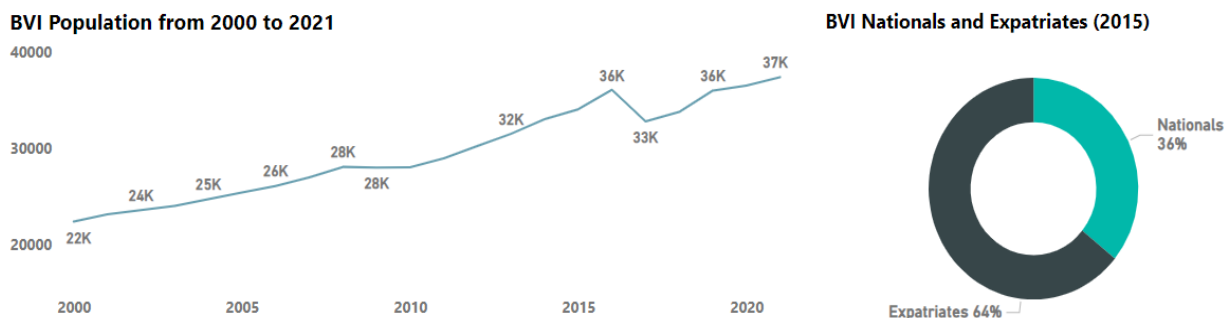
The 2013 CC Report goes on to note the political response to immigration developments: "The fast pace of growth and migration combined with a brisk trade in land generated a reaction of concern that the islands were fast slipping away from the grasp of the traditional islanders, giving rise to calls for controls and curbs. The first ministerial Government of 1967 -1971 responded with restrictive or protective policies passed into law" (p. 7, Sec. a).

The 2013 CC Report provides clear and still relevant context to the political response to migration with this quote from the 1970 Territorial Report where it references "an honest attempt by government to take steps to protect the essential character of the British Virgin Islands way of life against external pressures..." The operative words in this statement are "honest attempt" and speaks to the motivation and intent of the leaders at the time in response to what can be classified as a natural and human instinct to protect oneself against what are perceived as external threats.

#### 4.4 BVI IMMIGRATION, THE ECONOMY AND POPULATION GROWTH

The robust economic growth beginning in the 1960s resulted in a surge in demand for labour that surpasses the available local workforce. The industries such as tourism, financial services, and construction have experienced high demand for employees, necessitating the recruitment of a significant number of workers from other countries. The large influx of foreign labour has significantly increased the population numbers in the BVI. Individuals from various countries have migrated to the islands in search of employment opportunities. This has led to a diverse and multicultural society within the BVI.

**4.4.1 Economic Needs Created the Population:** Over the last twenty years, the population of BVI has grown by 68%, from roughly 22,000 in 2000 to 37,000 in 2021. With low average fertility rate (9.88 per 1,000) and low average death rate (3.89 per 1,000) over the same period, the growth has been most significantly influenced by the demand for foreign labour.

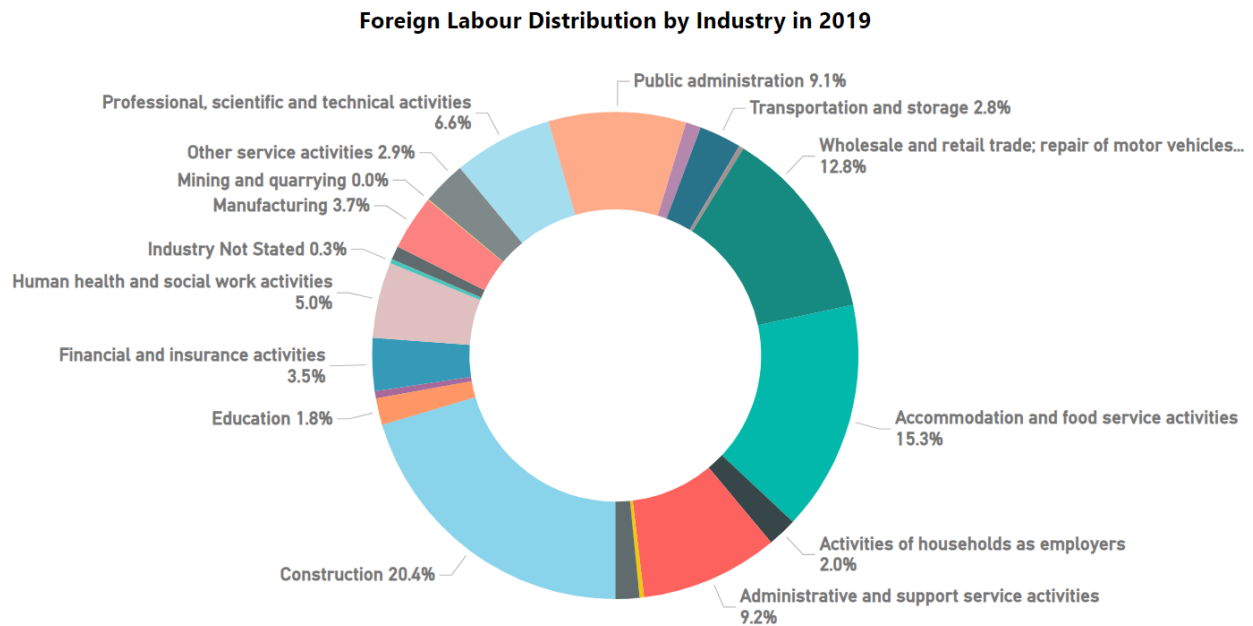


**Figure 1** Population growth from 2000 to 2021. In 2015, of the total population 36% were BVI nationals and 64% were expatriates. Source: BVI Central Statistics Office & Department of Immigration

The significant presence of foreign individuals who have migrated to the territory to meet the labour demands for various industries is reflected in the overall composition

of the BVI population. In 2015, BVI population consisted of 36% nationals and 64% expatriates.

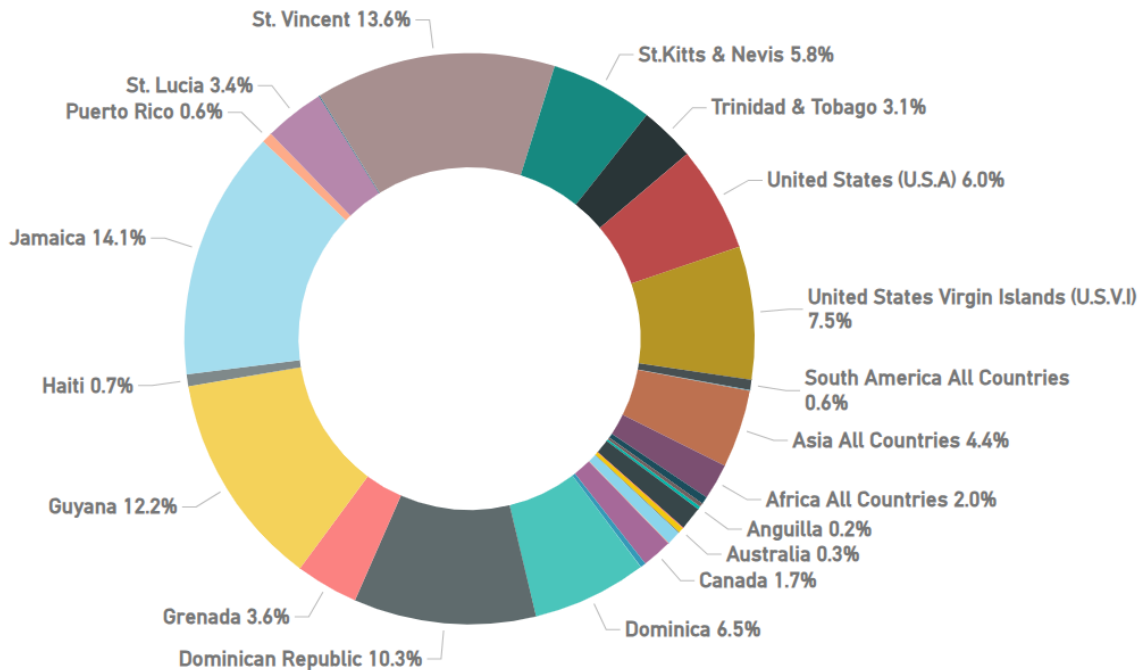
The industries leading the employment of expatriates are construction, accommodation and food services, and wholesale and retail. These sectors have a significant demand for foreign workers to meet their staffing needs and support their operations.



*Figure 2* The largest sectors employing foreign labour in BVI are construction, accommodation and food service activities, and wholesale and retail trade. Source: BVI Central Statistics Office

Strong economy and employment demand attract workers from various parts of the world, resulting in a highly multicultural environment. Many of the foreign workers in the BVI come from the other Caribbean countries primarily Jamaica, St. Vincent, Guyana, Dominican Republic, US Virgin Islands, Dominica, and St. Kitts & Nevis. These countries play a significant role in providing a workforce for various industries in the BVI.

**Foreign Labour Force by Country of Origin in 2015**



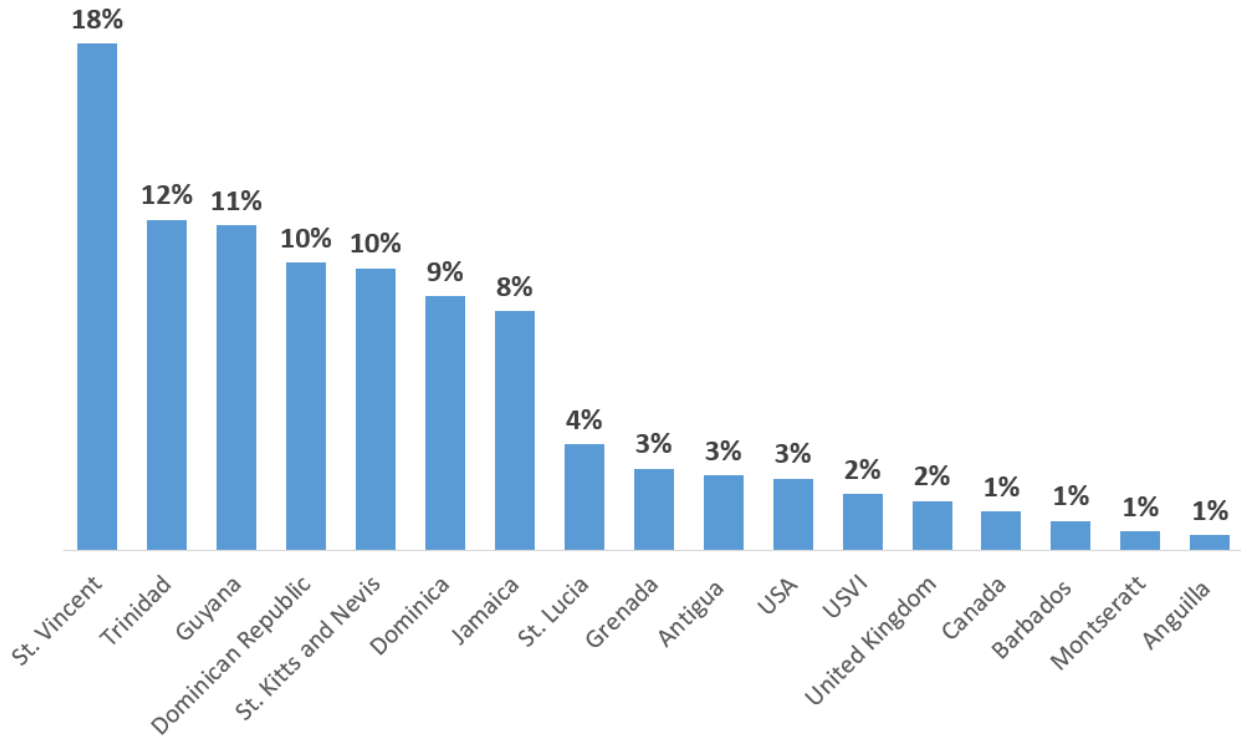
*Figure 3 Overview of the leading countries of origin for the BVI workforce. Source: BVI Central Statistics Office*

The cross-cultural exchange enhances the social fabric and adds to the vibrant tapestry of the BVI. However, this demographic change in the recent history has solely been governed by the need for foreign workers without any considerations to other aspects of the BVI’s social, cultural, and capacity impacts. The focus on meeting labour needs has overshadowed the importance of holistic planning and policies that consider the long-term sustainability and well-being of the community.

**4.4.2 Economic Needs are Driving Belongership:** It is notable that these countries, which serve as significant sources of labour, are also prominently represented among the countries of origin for individuals granted Belongership status in the past two decades.

The fact that these countries feature significantly in both the foreign labour supply and the granting of Belongership status suggests a degree of integration within the BVI community. This also highlights the importance of acknowledging the valuable contributions made by foreign workers and providing opportunities for them to establish deeper roots and become part of the fabric of society.

**Granted Belonger Status 2003 - 2023: Contribution by Country of Origin**



*Figure 4* Granted Belongship by country of origin from 2003 – 2023. Source: Department of Immigration

Many foreign workers stay long term in the BVI and eventually apply for Residency and Belongship. The exploratory analysis of work permit data in 2016 revealed an interesting pattern in the wholesale and retail and construction industries, where foreign workers tend to spend ten or more years on average renewing work permits year after year. It remains unclear whether these long-term foreign workers eventually leave the BVI after reaching the 10-year mark or if they are granted work permit exemptions based on their long-term Residency. The lack of data on work permit exemptions makes it challenging to accurately predict the impact of the current volume of the foreign labour force on potential volumes of Belongship applications.

Nevertheless, it is known that these two industries employed approximately 4,500 foreigners as of 2021, and their average Residency exceeded 10 years. This suggests that the demand for Belongship based on the duration of time spent in the BVI alone is likely to increase in the next 5 to 10 years.

**4.4.3 Expatriates are Driving Population Growth:** From 2005 to 2015, the BVI nationals' population grew at an average annual rate of 1.8%, while the expatriate population increased at a much higher average rate of 3.8%. This indicates that the

expatriate population is growing more than two times faster compared to the growth of the BVI nationals. Such a trend can have implications for various aspects of the society and economy. It may impact cultural dynamics, strain social integration efforts, and create challenges in resource allocation and infrastructure development.

This information highlights the need for further investigation and a comprehensive understanding of the dynamics surrounding long-term foreign workers, their eventual status in the BVI, and their potential eligibility for Belongership. Such insights are key for accurately assessing the future impact on Belongership applications and formulating effective policies that consider both the needs of the foreign labour force and the interests of the BVI community.

## 5.0 LAWS ON RESIDENCY AND BELONGERSHIP

This section presents the laws governing residence and Belongership in the Virgin Islands. Copies of the relevant sections of the law are presented in the appendices and this section provides a synopsis of the relevant sections in plain language for public consumption.

### 5.1 IMMIGRATION AND PASSPORT ORDINANCE, 1969

The beginning of the political and legislative response to immigration, as outlined in the 2013 CC Report, was the landmark Immigration and Passport Ordinance, 1969 (IPO, 1969). This legislation passed two years after the advent of Ministerial government, and it narrowed the definition of a person “deemed to belong to the Virgin Islands”. It includes strict controls on entry and stay with the introduction of a Chief Immigration Officer to administer the new law. Prior to that, immigration was governed by the Immigration and Passport Ordinance, 1946 passed by the Legislative Council of the Leeward Islands. Under that law, all citizen of the UK and colonies (the Commonwealth) with seven (7) years of continuous ordinary residence in the Virgin Islands became a person “deemed to belong to the Virgin Islands” (a believer).

The IPO, 1969 also introduced a Certificate of Residence which, could be approved by a newly established Immigration Board which had a decisive role in the grant of residence as the law stated that grant of residence was “on the recommendation of the Board”. This power was curtailed in 1990 when the Government had the law changed for the Governor in Council\* to grant the Certificate “having regard to any observations of the Board”. The language was further changed in 2000 to “after consultation with the Board”. The shift in power from the Board of Immigration to Executive Council (became Cabinet in 2007 with the Constitutional change), remains to this day.

### 5.2 VI CONSTITUTION ORDER 2007

In the Virgin Islands, Belongership is determined by the Virgin Islands Constitution Order 2007, Section 2(2), which is attached as **Appendix 2**. A chart has been created and is attached as **Appendix 3** so anyone can determine if they qualify for Belongership status. In short, a person can belong to the Virgin Islands by Birth, Decent, Adoption, Registration and 1977 Constitution as below:



## Government of the Virgin Islands

### Birth

If you are:

- A.** Born in the Virgin Islands to a mother or father who is:
  - a. a BOTC by birth, registration, naturalisation or descend from a father or mother who was born in the Virgin Islands.
  - b. settled in the Virgin Islands (ordinarily resident in the Virgin Islands without being subject under the law in force to any restrictions on the period for which he or she may remain).
- B.** Born in the Virgin Islands to a mother or father who is a Belonger by birth or descent.

### Adoption

If you are:

Adopted in the Virgin Islands by a person who is a Belonger by birth or descent.

*You are: Belonger by Adoption*

### Descent

If you are:

Born outside the Virgin Islands to a mother or father who is:

- a. a BOTC born in the Virgin Islands or who descend from a mother or father who was born in the Virgin Islands or.
- b. a Belonger born in the Virgin Islands or descend from a father or mother born in the Virgin Islands.

*You are: Belonger by Descent*

### Registration\*

If you are:

- A.** Registered in the Virgin Islands as a BOTC and:
  - a. born in the Virgin Islands on or after 1st January 1983 (Section 15(3) of the British Nationality Act) to non-BOTC or settled parents and:
  - b. is under age 10 at the time of application and.
  - c. mother or father became settled in the Virgin Islands since the applicant's birth (excludes Work Permit holders).
- B.** Registered in the Virgin Islands as a BOTC and:

## Government of the Virgin Islands

- a. is born in the Virgin Islands on or after 1st January 1983 (Section 15(4) of the British Nationality Acts (BNA)) to non-BOTC parents.
- b. is of good character
- c. . spent their full first ten (10) years of his/her life in the Virgin Islands with no absences greater than 90 days in any one of those years (some discretion available under Section 15(7) BNA.
- d. mother or father has NOT become settled in the Virgin Islands since applicant's birth (e.g., Parents are still Work Permit Holders, Work Permit Exempt or still subjected to Immigration time restrictions).

### *You are: Belonger by Registration*

*\*Children born in the Virgin Islands who acquire BOTC either at birth or through registration provisions automatically acquire belongship status as part of this process regardless of their parent's status.*

### Constitution Order 1977

If you are:

- G. A Belonger (under the Virgin Islands Constitution Order 1977) immediately before the commencement of the Virgin Islands Constitution Order 2007.

*You are: Belonger by virtue of 1977 Constitution.*

## 5.3 THE IMMIGRATION AND PASSPORT ACT, 1977

Part Four of the Immigration and Passport Act (1977 Act), Sections 16 to 19, governs the grants of Residence and Belongship status and Part Three, Sections 11 to 15, governs the function of the Department and Board of Immigration. A copy of both parts is provided at **Appendix 4**.

### 5.3.1 Residence

Under **Section 18(1)** of the 1977 Act, persons may apply to be granted a certificate by the Governor in Council (Cabinet) after consultation with the Immigration Board, where he/she:

1. Is of good character; and
2. States his/her intention to reside permanently in the Territory.

A chart was created so anyone can determine if they qualify for Residency and is attached as **Appendix 5**.

Under **section 18(2)** the spouse and dependent children under 18 that are ordinarily resident with the applicant may also be granted residence status. A dependent child can apply for a Certificate of their own within six (6) months of their 18 birthdays.

Section 19(a), (b) and (c) sets out the conditions under which Residence can be revoked. This includes being ordinarily resident outside the Territory for three (3) years, imprisonment for a criminal offense and conduct not in the public interest.

### **5.3.2 Belongership**

Part One, **Section 3(1)** of the 1977 Act states, "For the purpose of this Ordinance a person shall be deemed to belong to the Territory if that person so qualifies under section 2(2) of the Virgin Islands (Constitution) order 2007.

The 1977 Act makes provision for persons to obtain Belonger Status by Tenure or Marriage.

**Tenure:** In the case of Tenure, under **section 16(3)**, the person may apply to be granted a certificate by the Governor in Council (Cabinet) after consultation with the Immigration Board, where he/she:

1. Is of good character.
2. Is 18 years or older.
3. Had been ordinarily resident in the Territory **for ten (10) or more years** immediately prior to application.
4. Has held a Certificate of Residence for one year or more years immediately before applying for belonger.
5. Has restated his/her intention to make the Territory their permanent home.

A certificate may also be granted in exceptional circumstances under **section 16(4)** by Cabinet, after consultation with the Immigration Board, where a person applies and he/she:

1. Is of good character
2. Has been ordinarily resident in the Territory **for seven (7) or more years** immediately prior to application.
3. Has restated his/her intention to make the Territory their permanent home.

Cabinet, in its own discretion and as it considers it fit to do so under **section 16(4)**, grant a Certificate to a person who has made significant and consistent contributions to the economic and social development of the Territory over a period of at least 50 years. No application is required and there is no consultation with Immigration Board.

**Marriage:** A Certificate may also be issued to the spouse of a Belonger under **sections 16(5) and 16(6)**, provided he/she has been ordinarily resident with the spouse in the Territory and living together for five (5) years. The certificate can be granted in two and a half (2.5) years if the Belonger spouse dies before five years.

In considering the grant of Belongership under **sections 16(3) for ten (10) years and 16(4) for seven (7) years**, Cabinet is to consider the following under section 16(7):

1. The impact on persons in the Territory engaged in the profession or trade the new Belonger is likely to engage.
2. The applicant's close connection with the Territory.
3. The applicant's character and previous conduct.
4. The advantages to the Territory from the applicant's continued residence.

Belonger status by descent, adoption, registration and the 1977 Constitution is processed by the Civil Registry and Passport Office and is not a subject of this Review.

The 1977 Act goes on to define ordinarily resident in section **16(8)** and **16(9)** and the conditions under which the Certificate may be revoked under **section 17(1) and 17(2 to 5)**. This includes disloyalty to His Majesty, communicated with or assisted the enemy during a war, imprisonment for a crime and sentenced to prison within five (5) years of the grant and obtaining the certificate by fraudulent means.

### **5.3.3 Department and Board of Immigration**

The law governing the operation of the Department and Board of Immigration is found in Part III of the 1977 Act. Section **13(5)** gives the Board "the power to regulate its own procedure". However, Section 14(1) restricts its powers and states that "the Board shall be advisory and consultative and shall have no executive or administrative functions".

## 6.0 RESIDENCY AND BELONGERSHIP POLICY

There is a single nineteen (19) year old policy governing both Residency and Belongership application processing and the grant of states which was passed in 2004 and conflicts with both the Section 18 for Residency and Section 16 for Belongership.

### 2004 RESIDENCE AND BELONGERSHIP POLICY

In October 2004, Executive Council issued the following Administrative Guidelines to the Board of Immigration for the processing of Applications for Residence and Belonger Status:

- c. Applicants who applied before 1<sup>st</sup> January 2003, should be recommended for Residence Status if residing in the Territory continuously for over 20 years.
- d. The backlog should be cleared, in chronological order, and in batches of fifty's during 2005. Once cleared, recommendations should be made as applicants reach their 20<sup>th</sup> anniversary; and
- e. For applicants applying after 31<sup>st</sup> December 2002, recommendations for Residency Status should be made for not more than twenty-five persons per year. Applicants for Belonger Status, who are already in possession of Residence Status, should be made for no more than twenty-five persons per year.

The Executive Council also made the following points which are still very relevant today in looking at future policy:

- f. An Immigration policy should be part of the Territory's national goals and objectives.
- g. The Policy should be informed by statistical information.
- h. Policies which controlled the inflow of potential immigrants should be in place, by having proposed fixed terms for Work Permits.
- i. The Finance and Tourism Sectors should have specific skill needs met, with linkages to personal development plans for Virgin Islanders; and
- j. Children of Non-Belongers born in the BVI should receive Belonger Status; and
- k. Belonger Status should be given to children born overseas to parents who were Belongers-by-descent.

## 7.0 RESIDENCY AND BELONGERSHIP PROCESS

The processing of residence and belonger status is handled by the Department of Immigration. In the case of belonger status, the Department only processes applications for Belongership by tenure and marriage.

### 7.1 Application Process

The process of an application is clearly outlined in the document, Guidelines for the Processing of Residence and Belongers issued by the Board of Immigration in 2022. The process is summarised as follows:

7. The applicant leaves an application form at the department office.
8. The secretary to the Board (an Immigration Officer) checks it for "qualification" (applicants with less than 20 years residence are deemed "unqualified) and acknowledges it, opens a file, places the application (if qualified) on a list that goes to the Board.
9. Before consideration by the full Board, a panel of assigned members reviews the application, interviews the applicant, and requires him or her to complete a Culture Test.
10. Finally, the Board meeting considers the application and applies a Point scale to the application for a score. The system gives or deducts points for employment status, financial standing, contributions to the community, culture and general knowledge of the Territory, and other considerations.
11. The Board then either defers the application to request more information or recommends either approval or denial. In the latter case, the minutes may indicate a reason.
12. The application then goes with others to the Premier's Office where it is put to Cabinet, generally within a month of receipt and a decision rendered. That is conveyed to the Chief Immigration Officer who then informs the successful applicants, collects the fees, and prepares the certificates and identification cards to await a presentation ceremony. He also writes to inform the unsuccessful applicants of the disapproval.

The process outlined above is one that evolved over a period as members of the various Boards sought to institute measures to provide more definition to the process to increase transparency, objectivity and fairness. A chart was created to show the process and is attached as **Appendix 6**.

The institution of measures such as a point system and a culture test to evaluate applicants' suitability for the award of status are normal practices in countries around the world. The 2013 CC Report raised the question as to whether the Board acted within the scope of its powers under the law in instituting such measures. The Board

cited section 13 (5) of the 1977 Act, which states, “the Board shall have power to regulate its own procedure”.

The 2013 CC Report goes on to point out that the Board is limited in its effectiveness because of resource constraints. “The Board is part time, meeting monthly with possibly a committee meeting or two as well. Even at this pace, support by only one full time officer (who must be absent at times for the usual reasons) at Senior Executive Officer level is completely inadequate. In order to efficiently carry out its mandate, the Board needs to be adequately staffed. A staff of at least three under an officer at Assistant Secretary rank and a Board that meets weekly, or every two weeks would seem to be indicated.” (p. 15, Sec. 19)

## **7.2 Processing Time and Communication**

The 2013 CC Report correctly points out that there are no administrative guidelines stipulating the amount of time the public can expect for an application to be processed. They confirmed this in the Report. “There is no time frame given in the law, nor in administrative documents, for processing of applications. For their part, neither the Board nor the Ministry for Immigration has seen it necessary to publish any such time frames (for the period pertaining to their part of the process). An applicant therefore has little indication as to what to expect when he or she applies. The process is the opposite of transparent.” (p. 12, sec. 12) It goes on to give some insight into the timing of processing, saying “Of 5 applications that the Board reported out in 2012, for example, the periods between receipt of application and presentation to and/or consideration by the Board (usually resulting in recommendation by the Board to Cabinet) ranged from 1 year to 21 years, with an average of 7.2 years”. (p. 13, sec. 14)

In terms of communication, the 2013 CC Report pointed out that, “There is also no policy of communicating at intervals with the applicant. The latter is the one who must try, often repeatedly and unsuccessfully, to get information on the status of the application. The involvement of the Premier's Office and the Cabinet Office makes it difficult to predict a time”. (p. 12, sec 12) It goes on to say that “

Both deficiencies in the process, timing and communication, pertain to both Residency and Belongership applications.

## **8.0 REVIEW OF POLICIES, PROCESSES AND COI CONCERNS**

Having identified the laws, policies and processes for granting residence and Belongership status as required by item 1 of the Scope of Work, this section focuses on their review, as well as other items in the Scope of Work, namely:

- The open discretion exercised by Cabinet.
- The length of residence required for Belonger status.
- The consideration to other concerns highlighted in Chapter 10 of the COI Report, Conclusions section which is at Section 1. 7..

This section will also focus on a review of the other considerations specified in the Scope of Work as follows:

- Lack of published and publicised policy on the granting of Residency and Belonger status.
- Lack of internal policy guidelines for processing for processing Residency and Belonger applications; and
- That Cabinet retains the ultimate power to determine Residency and Belonger status.

Each of the above will be addressed in this section of the Review, evaluated in Section 9 and the way forward in Section 10, the recommendation section.

### **8.1 OPEN DISCRETION BY CABINET**

Open discretion by Cabinet was the central issue in the COI Report chapter on Residency and Belongership. This section looks at the issue as highlighted in the COI Report and as covered in the 2012 IAD Audit and 2013 CC Report. It also looks at Cabinet's efforts over the years in relation to the issue.

#### **8.1.1 THE BEGINNING OF OPEN DISCRETION BY CABINET - 1990**

In reviewing Cabinet's role in the policies and processes of granting Residency and Belongership status, it seems necessary to consider the genesis of the issue and how Cabinet discretion developed and evolved. In doing so, I refer to the 2013 CC Report which pointed out that it was 1990 that the Government of the day changed the law to reflect that the Governor in Council (Executive Council at the time, now Cabinet), was given the power to grant status "having regard to any observation of the Board".



Before that, the granting of status was on the “recommendation of the Board”, thus entrusting the Board with the power to grant status. The 2013 CC Report went on to point out that “in the first decade of the certificate’s (Residency) existence, grants were often made within the first two to ten years of a person’s continuous residence, provided that he or she had a clean police record” (p. 9, item 5). However, as the report points out in the same paragraph, processing time increased as the number of applications continued to increase and “from the deliberate slowing down of the process”.

The other contributory Issue that seems to have fed into the 1990 decision was the desire on the part of Cabinet to be able to respond to exceptional circumstances of applicants who brought their cases to their attention. The 2013 CC Report alluded to this in its report which stated that “there is strong anecdotal evidence that a few applicants who had the ear of a politician or an influential member of the Board of Immigration could still get a certificate approved within two years”. (p. 8, sec. 5)

### **8.1.2 COI REPORT CONCERNS**

The COI Report, in the Conclusions section of chapter 10 on Residence and Belongership Status, cites several instances where Cabinet exercised its discretions. The Conclusions are included in this Report at Section 1.7 and the full text of Chapter 10 of the COI Report which is at Appendix 1. These Conclusions can be summarised as follows:

7. Cabinet exercised its discretion in a legally arbitrary way and in a way that is inconsistent with and outside statutory criteria and the framework of the law.
8. Cabinet’s intention to clear the backlog of applications was “understandable – even commendable” but the method used did not align with their intention and good governance practices.
9. The major cases used to support the COI Conclusions in Chapter 10 were the 2011 Belongership applications initiative and the 2019 Fast Track programme.
10. Some of the actions of Cabinet that illustrated abuse of its discretionary powers, include:
  - a. No assessment of applications by the Board of Immigration in executing the Fast Track programme.
  - b. Over reliance on personal knowledge of applicants and less information to grant status which increased the risk of error.

11. The House of Assembly gave Cabinet discretionary powers it should not have and that was a mistake.
12. The political excuses provided are not credible, namely that:
  - a. There is a lack of policy formulation and implementation capacity in the public service.
  - b. Lack of staff in Immigration.

Items (1) to (4) provide very compelling evidence in support of the conclusion that Cabinet exercised its discretionary powers in a legally arbitrary way and in a way that is inconsistent with, and outside statutory criteria and the framework of the law.

Regarding item (6), lack of policy formulation and by extension, a lack of policy support and advice, this is evidenced by the absence of a Policy Unit within the Government to this day. This is despite strong and longstanding recommendations from civil servants of the need to address this issue and the failure to approve the establishment of one, even with concrete plans submitted in the 2019 draft budget by the Premier's Office.

Implementation capacity is also a longstanding issue within Government with numerous examples of plans and consulting reports not implemented. From the Reviewer's experience as a senior Civil Servant, including that of Permanent Secretary in the Premier's Office, item 6a above is completely valid. The issue of lack of staff in Immigration is a matter over which the Cabinet has full control and therefore cannot be accepted as a valid excuse.

Both the 2012 IAD Audit and the 2013 CC Report also cite instances where Cabinet exercised its discretion in an arbitrary way outside of statutory guidelines and the law. The fact that both documents were issued over a decade ago and the issues remained up until the COI Report was published indicate a serious breakdown of the governance and the absence of the checks and balances that are a part of our democracy and the 2007 VI Constitution.

**2013 CC Report:** The 2013 CC Report cites the following which indicates that there is a level of frustration Ministers feel in relation to the Board of Immigration process. They tend to exercise their discretionary powers in these situations stemming from unclear communication over the process, timing, priorities and status of applications. The 2013 CC Report cites the following in relation to the award of Residency: "It would appear that some Ministers consider the Board process to be unsatisfactory. Premiers have apparently on occasion taken to Cabinet, which has approved for certificates, the names of persons whose applications had not yet emerged from out

of the Board process. In some cases, applications, it would appear, had not even been filed at the Department at all. <sup>10</sup> The 2011 Annual Report of the Department of Immigration refers to a ceremony on 19<sup>th</sup> July at which 24 persons 'received' Belonger status and 39 'received' certificates of residence "outside of the ordinary procedures". Further records appear to show grants of certificates of residence in August 2011 to over 200 persons whose applications had not yet been reported out by the Board; and a smaller number in July 2012." (p. 14, sec. 17)

The links between the Cabinet, the Ministry, the Board and the Department can certainly benefit from more definition of structure, processes, communication, protocols and executive direction.

**2012 IAD Audit:** The 2012 IAD Audit also captured instances in relation to the grant of Belongership in which Cabinet discretion exceeded its statutory authority under the same conditions described in the 2013 CC Report: "A second listing outlining the names of persons to whom status was awarded outside the established framework of the law was also submitted. This list totalled two hundred and twenty-four (224) persons. From this listing, the audit team identified one hundred and ninety (190) instances where, at the date of the audit exercise, persons did not apply or supporting documentation. The audit team also identified one (1) instance where an individual already possessed Belonger Status." (p.8, sec. 9.11.

The 2012 IAD Audit places the issue of Cabinet's reactionary and improper use of its discretion in proper context when it concluded that "We are not questioning Cabinet's authority to approve status as it is their privilege to approve or disapprove an application. However, we are concerned that when this is done contrary to the law and policy and there is no sound basis or reason given for the decisions made it erodes the integrity of the process. If Cabinet, as a matter of their right, disregards a process after the process is established in law and policy, then the fundamental principle of the transparency and equity within the process is severely undermined, if not destroyed." (p. 15, sec. 11.2)

Clearly all three reports confirmed that Cabinet did exceed its statutory authority. However, there remains the question of how this could have occurred without the earlier intervention of the Constitutional head of the Executive branch of Government, under which Cabinet sits.

## **8.2 CABINET'S RESPONSE TO IMMIGRATION ISSUES**

In 2004 and 2016, Cabinet made concerted efforts to address the Immigration issues in the Territory. Both of these efforts were significant initiatives that were never fully completed and followed through for various reasons which will be addressed.

### **8.2.1 CABINET'S 2004 RESPONSE TO IMMIGRATION ISSUES**

The 2004 policy on Residency and Belongership was a well-intended response to establish a policy in the absence of no clear policy after thirty two (32) years of ministerial government.

The Executive Council decision of 2004 was a clear response to the population make-up and demographic shift in the Territory that was driven by migration. By this time, the evidence was clear that a policy shift was needed. The decision to increase the Residency requirement to twenty years (20) from the ten (10) stated in the law was a stop gap measure to clear the backlog by processing those applicants in batches of 50 (if they applied before 1 January 2003) or 25 (if they applied after 31 December 2002). However, the action required to prevent the queue from filling was not explicitly stated as a directive.

Executive Council did not intend for their decision to be a long-term solution as evidenced by the additional points of information issued with their decision, the text of which is at section 6.0. The absence of an Immigration Policy to this day has been the most significant cause of the accumulated backlog of applications and the genesis of the concerns expressed in the COI Report chapter on Residency and Belongership. There was clearly a breakdown in governance and a clear absence of the checks and balances between the political establishment (Cabinet) and the permanent establishment (Civil Service) that must be resolved.

### **8.2.2 CABINET'S 2016 RESPONSE TO IMMIGRATION ISSUES**

In 2016, twelve (12) years after the 2004 policy decision, Government started to address the longstanding issues related to residence and Belongership. The effort arose out of a recommendation in the report produced by McKinsey & Co for the Government of the Virgin Islands entitled, '*Building a Thriving & Sustainable Financial Services Sector in the British Virgin Islands*', dated 3<sup>rd</sup> November 2014. (The McKinsey Report). The McKinsey Report and its recommendations were approved and adopted by Cabinet in January 2015 and the House of Assembly in February 2015.

The Report identifies immigration and labour issues as a major impediment to the growth and development of the Territory financial services sector, its main driver of government revenues. It was noted in the McKinsey Report that "*improved immigration and labour policies and processes are critical to attracting and retaining the necessary talent to support a substantive Financial Services industry. However, improved*

*access and increased freedom for skilled workers is a heated issue amongst our people. It is clear that the BVI must take a thoughtful approach to solving the issue by first agreeing on a vision for the role of skilled labour in the BVI and then putting in place the necessary policy and process changes to realize that vision”.*

The Government invested in establishing the Financial Services Implementation Unit (FSIU) and charged it with implementing the recommendations of the Report. A special committee consisting of representatives from Immigration and Labour departments, other Government Departments and representatives from all major private sector groups was established to implement one of the twelve major recommendations of the Report dealing with Immigration and Labour issues. They met for many months under the chairmanship of Mr. Gerard Farara, KC, to produce the “*REPORT OF THE INITIATIVE WORKING TEAM ON IMMIGRATION AND LABOUR REFORM*” (*Report of the IWTIL*). This was a very significant and substantive report with thirty (30) recommendations covering both immigration and labour and all the interrelated issues between the two subjects. A copy of the report is attached as **Appendix 7**.

The Report of the IWTIL drove the following three significant Cabinet Decisions that represented an opportunity to address wider issues of Immigration and Labour, many directly related to residence and belongingship:

4. Cabinet Memo No. 075/2016, dated 29 April 2016 - Accepting the Report and its 30 Recommendations of the Report of the IWTIL
5. Cabinet Memo No. 316/2016 dated 13 October 2016 - Amending the Immigration and Passport Act 2013
6. Cabinet Memo No. 346/2016, dated 9 November 2016 - Amending the Labour Code 2010,

Some of the recommendations spoke specifically to the Points that accompanied the 2004 Executive Council Decision on Residence and Belongership such as:

1. Formulate policies specific to persons with Residency status, persons born in BVI but no status, persons not born in BVI but who have lived and been schooled in BVI from a very young age and long-term residents of the BVI without status.
2. Provide for multiple year Work Visas up to 3 years initially and up to 5 years in certain categories.
3. Design and implementation of a comprehensive and practical programme or plan, with input from employers, intended to enhance and achieve a greater participation by Virgin Islanders and belongers in certain key

sectors of the economy, for training locally and abroad, and for succession planning within sectors and businesses, and for facilitating mid and top tier management jobs being filled over time by an increasing number of qualified Virgin Islanders and belongers. This may include at times, setting quotas or ratios of belonger to non-belonger employees in any approved business or industry.

The other 27 recommendations can be found in the Report and addressed legislative, policy and process issues, most of which are still relevant.

## **8.2 LENGTH OF RESIDENCE FOR BELONGER STATUS**

The 2004 policy changed the requirement from 10 years as stated in the law to 20 years which is a policy. Despite the publication of the 2012 IAD Audit and the 2013 CC Report and the clear and strong positions of those two official documents, there is little evidence of strong movement to reconcile the conflict between law and policy regarding the length of time required to attain Belonger status.

The fact that a policy has stood contrary to law for nineteen years is one that begs the question: what happened to the checks and balances in the governance system that are supposed to identify and correct such breaches of authority. There was obviously a failure of institutions to function as intended.

## **8.3 PUBLISHED AND PUBLICISED POLICY**

There is little evidence that the Government, through the Department or Ministry of Immigration executed any concerted effort to communicate its policies and processes on residence and Belongership to the public in any concrete and consistent ways. There is also great frustration on the part of the public in trying to get information on the status of their applications and where they are in the process. The lack of information management tools and processes available to the staff of the Department made it challenging to manually manage the process and provide information to the public in an efficient manner.

The Reviewer is personally aware of an initiative undertaken by the Deputy Governor's Office as part of the Public Sector Transformation Programme which organised a committee for the purpose of producing a communication brochure and communication plan to address the communication deficit between the Government and the public. However, the Reviewer is not aware of any evidence that this 2019 initiative was ever launched. If it was not, the brochure produced from the initiative can be reviewed and updated. It is attached as Appendix 8.

## **8.4 INTERNAL POLICY GUIDELINES**

The Board of Immigration was commended in both the 2013 CC Report and the 2012 IAD Audit for its initiatives in developing internal processes such as a Point System, a Culture Test and other tool to create greater transparency in the process of reviewing and recommending applications for Residency and Belongership. Whilst the scope of their authority was questioned, their intent was clear and consistent with processes in other countries to screen applicants. The 2012 IAD Audit commended the Board's initiatives and stated, "We applaud the efforts of the Board in implementing tools to bring transparency, equity and to assist with the decision-making process on Belonger status applications. The Board's role within the process creates a level of control where the information on applications is reviewed, verified and validated. It forms a central basis on which Cabinet can make a sound and accurate decision on an application. The law, policy and formal processes and procedures create a structured environment in which decisions can be made and transparency and equity can be established." (p. 15, sec. 11.2).

On the other hand, communication between the Board and Cabinet seem reactionary and lacked structure, protocols and processes whereby Cabinet was able to get timely information to respond to concerns coming from members of the public. For the most part, the ability of the Board to respond to Cabinet was hampered by the manual nature of the Board's processes, its limited staffing and the efficiency of the communication channel between the Ministry, the Department, Cabinet Office and the Board.

#### **8.5 CABINET'S ULTIMATE POWER**

As documented in the 2012 IAD Audit, the 2013 CC Report and the COI Report, Cabinet exercised ultimate power in the issuance of residence and Belongership status. This included the issuance of both without the benefit of due diligence of the Board of Immigration and over reliance on personal information.

In the case of the 2012 IAD Audit and the 2013 CC Report, these documents created an obligation to act by both the Executive and Legislative branches of Government. This lack of action contributed significantly to the evidence presented in the COI Report.

Deficiencies in processes appear to be a significant driver of Cabinet's use of its discretionary powers to satisfy their perceived lack of response from the Board. Clearly the issue of the volume of applications is the paramount and overarching issue that plagued both the Board and the Cabinet. The Board was highly praised for instituting measures for increasing transparency and fairness in its Points system which added time to the process. This contributed to the response from Cabinet's view. The Cabinet and the Board is looking at the same issue from two different lens.

This disconnect between the Board and Cabinet was referenced in the 2013 CC Report which quoted the response of the Premier in a House of Assembly session: “The Cabinet in its constitutional position can authorize the grant of belonger status to persons who they know or who they feel (sic) have at least the minimum requirements. And then you come to someone who has been in the territory for 35 years, never been in trouble with the law or Government, has contributed financially to the economic development of the Territory or otherwise, the Cabinet exercises its responsibility to grant those people belonger status who have applied for it and have never been answered.” (p. 14, sec. 18)

As the volume of applications grew, both the Board and Cabinet became reluctant to proceed with processing, overwhelmed by the question of how many new residents and belongers can BVI really integrate. Therefore, the Cabinet took over the power and extended the timeline. The crux of the problem is that no one has the answer to what is the correct number of new belongers/residents that can safely be approved, what criteria they should satisfy, etc.

The right way to answer these questions is to formulate an immigration policy through a public policy development process involving various stakeholders, including government departments, employers, community representatives, and experts, to ensure that policy reflects the diverse needs and interests of the population and helps build public support for the decision-making process. Furthermore, a clear immigration policy helps in avoiding ad-hoc decisions and prevents the misuse of residency decisions for political gains. It establishes a standardized process that is less susceptible to undue influence and ensures that all applicants are treated fairly and equitably.

The decision of whether to keep the power of residency decisions with the Immigration Board or transfer it to the Cabinet is a complex matter that involves considering various factors. Keeping the decisions with the Immigration Board may provide a more impartial and expert-based approach to evaluating applications. This approach could lead to decisions that are based on merit, adherence to immigration policies, and the overall needs of the country.

On the other hand, transferring the power to the Cabinet may allow for more flexibility in decision-making and enable a broader consideration of political, social, and economic factors. However, this approach is susceptible to political influence and temptations to use residency decisions for political gains, especially in the context of elections.

Ultimately, the choice depends on finding a balance between maintaining fairness and objectivity in decision-making while ensuring that broader national interests are also considered. Establishing a clear immigration policy as stated above with



implementation guidelines for the Board and supervision mechanisms for the Cabinet would ensure transparent and accountable outcomes.

## **9.0 GOOD GOVERNANCE EVALUATION OF POLICIES AND PROCESSES**

In evaluating the handling of the Residency and Belongership application and grant of status policies and processes, there were several missed opportunities to address the issues along the way. Had the Government capitalised on the opportunities, it would have address some of the systemic issues that continued to undermine good governance in relation to Residency and Belongership application processing and grant of status.

### **9.1 MISSED OPPORUNITIES**

In reviewing the policies and practices of the Government in the handling of residence and Belongership, there were three significant missed opportunities to address the longstanding Immigration issues. Those missed opportunities appear to be caused by systemic governance issues that did not equip Ministries to respond effectively to the policy formulation and directions of Cabinet to make changes, The missed opportunities occurred in:

4. 1990 when Executive Council's decided to amend the law to introduce discretionary powers for ministers.
5. 2004 when Cabinet decided to introduce a policy contrary to law.
6. 2016 when Cabinet decided to reform Immigration and Labour functions in an integrated way.

These missed opportunities can mostly be attributed to systemic weaknesses exemplified by the absence of a structured and equipped policy function and the absence of a functioning system of checks and balances.

#### **9.1.1 1990 MISSED OPPORTUNITY - MINISTERIAL DISCRETION**

This shift in the power to grant status from the Board of Immigration to the Cabinet (then Executive Council) in 1990 appears to have been a well-intended response by Ministers to manage the volume of grants and the evolving impact on the Territory's population make-up and demographic shift. This was a legitimate concern to ensure sustainability and stability required to secure the future social fabric of the society. We now know from present circumstances and the evidence presented from Section 4.4 that this was not an effective decision as it did not solve the issue of the volume of applications and their subsequent approval for Residency, and eventually Belongership.

Clearly there was a need for a shift in policy to address the legitimate concerns of Ministers in 1990 and the rather blunt instrument of curtailing the powers of the Board of Immigration to grant status and vesting that power in the Cabinet has proven not to solve the problem.

The perpetual cycle of increased applications for Residency driven by increased work permit holders remaining in the Territory driven by increased demand for their services has no end. This period during the 1990s was the time when a policy shift was needed to address the legitimate need for political leaders to manage the path from migration to the permanent status of Residency and subsequently, Belongership. However, the situation continued unabated until 2004 without a policy or legal response to address the grant of status.

### **9.1.2 2004 MISSED OPPORTUNITY - RECONCILE LAW AND POLICY**

The 2004 policy decision on the grant of Residency and Belongership, and the accompanying Points attached to that decision made by Executive in the same decision, had the potential to start the process of resolving the then longstanding immigration issues associated with the grant of residence and Belongership. This could have happened through a partnership between the political establishment (Cabinet on behalf of the House of Assembly) and the permanent establishment (Ministry of Immigration on behalf of the Civil Service). The fact that the policy was executed, and the supporting Points not followed through, indicates deficiencies in the public service governance structure whereby Cabinet Decisions are not monitored and followed through to ensure their effective and implementation. This could have been avoided had there been a structured coordination mechanism and follow-through between the Cabinet Office and the Ministry responsible for Immigration.

### **9.1.3 2016 MISSED OPPORTUNITY - FIX IMMIGRATION & LABOR**

The thirty (30) recommendations of the Initiative Working Team on Immigration and Labour (IWTEL) addressed Immigration and Labour issues in an integrated way and took full consideration of the relationship between and the interdependence of the two functions. Their full implementation would have addressed the full range of immigration and labour issues facing the Territory today. The unfortunate disruption of the FSIU caused by the destruction of the office by the 2017 hurricanes did not allow for the completion of the important work approved by Cabinet.

## **9.2 POLICY AND PROCESS ISSUES**

The many policy and process issues coming out of Section 8 of this report will be evaluated in this section and guide the recommendations to be presented in Section 10. These policy and process issues in total reflect the various concerns needed to

provide good governance for immigration issues that have led to the COI Report Conclusions on Residency and Belongership.

### **9.2.1 No Comprehensive and Clear Immigration Policy**

The immigration to the BVI over the past 20 years has mostly been governed by economic needs to attract foreign workers. While that is an important consideration, it is not the only one that the law, policy, and guidance need to protect. It is necessary to reassess the Residency requirements and the overall immigration policy in the BVI to find a balanced approach that considers the interests of both the local population and the foreign residents. This could involve considering alternative solutions that encourage long-term commitment, integration, and contribution to the community, while still maintaining the integrity of Belongership status.

The policy should also integrate the requirements of Labour recognising the interdependent link between them.

An immigration policy typically contains a set of guidelines, rules, and regulations that govern the entry, stay, and integration of foreign nationals into a country. It serves as a framework for managing immigration in a manner that aligns with the country's social, economic, and security objectives.

An effective immigration policy aims to strike a balance between welcoming immigrants who can positively contribute to the country and safeguarding the interests of its citizens and residents. It reflects the country's values, needs, and aspirations, while also addressing the challenges and opportunities associated with immigration.

### **9.2.2 No Automatic Progression from Work Permit to Belongership**

The current Residency and Belongership application process, which emphasizes the length of time spent in the territory as the main requirement for obtaining immigration status, has led to population growth being largely dictated by the influx of foreign workers, with inefficient and often overlooked consideration of the social, cultural, or capacity impacts associated with such growth.

The problem is made worse by lack the of comprehensive labour policy that protects local workforce and a skill-based immigration system that prioritizes the admission of individuals with specific skills or qualification that are in demand in the BVI and aligned with BVI development goals. Without limitation on number of years foreigners can stay working in the BVI, there is a direct path from work permits to Belongership (citizenship).

To maintain a balanced approach, it is important to ensure that the path to citizenship from work permits in the BVI is possible but not guaranteed or automatic, but rather one that considers various factors and requirements. It should be recognized and established that eligibility for entry as a work permit holder is not the same as eligibility for Residency or Belongership status based solely on years of Residency. This approach would ensure that individuals can pursue Residency and Belongership while also recognizing the need for careful assessment and consideration of their contributions, integration into local community, and adherence to the BVI's laws, regulations and values.

By implementing a clear distinction between work permits and Residency or Belongership requirements, the BVI can ensure that individuals could contribute to the local economy while also maintaining a fair and considered approach to granting long-term Residency and Belongership. This differentiation acknowledges that work permits serve a specific purpose of meeting temporary labour needs, while Residency and Belongership entail a deeper level of commitment and integration into the BVI community. It allows for a more deliberate evaluation of an individual's contributions, skills, qualifications, and overall integration before granting long-term Residency or the possibility of citizenship (citizenship).

Such an approach can help strike a balance between providing opportunities for foreign workers and safeguarding the interests, culture, and social fabric of the BVI community. It ensures that individuals who have made significant contributions and have a genuine commitment to the BVI are given consideration for long-term Residency or citizenship, while also recognizing that not all work permit holders will automatically progress to these statuses.

Whilst persons may have earned the right to be free of Immigration control and the requirement to need permission to work by virtue of the time they have lived in the Territory, they have not necessarily earned the right to citizenship/Belongership, which is a privilege and not a right.

### **9.2.3 No Comprehensive and Clear Labour Policy**

The Territory needs to develop a comprehensive and clear Labour Policy

The policy should integrate the requirements of Immigration recognising the interdependent link between them.

### **9.2.4 No Population Policy to Guide its Development.**

Population Policy is part of a country's economic planning and development strategy. The way Government manages population growth, demographic and workforce dynamics can significantly impact the overall economic well-being of the nation.

Given the Territory's population composition, trends, drivers and the strong correlation between population and economic development, there is need for a population policy to guide its overall development and inform its labour and immigration policies. The Population Policy will reflect the Territory's vision, aspiration of its people and the population needed to support them within a fixed timeframe. It will define the parameters that need to guide population growth taking into consideration the social, economic, health, education and other needs to achieve a balanced, healthy, socially cohesive, thriving and prosperous society.

### **9.2.5 Current Point System**

In many countries, especially small island states like BVI, the path to citizenship is rigorous and competitive, and not all applicants are successful. Individuals who are interested in obtaining Residency/Belongership status should be prepared to meet the eligibility criteria and demonstrate their commitment to BVI society and values. They should also be aware that the process can take several years and may require a significant investment of time and resources.

The current Point System developed by the Board of Immigration is good and needs to be reviewed with the aim of strengthening its ability to increase its effectiveness until the forementioned policies inform its final form. The Board should be empowered by Cabinet to review the current factors and enhance them to produce an interim Point System to address the current backlog of applications.

Each criterion must be accompanied by a set of metrics that will be uniformly applied to all applicants. Providing clear guidance on the process and metrics are key in protecting the BVI and ensuring that eligible applicants have a seamless experience during the process.

### **9.2.6 Inconsistency between Law and Policy**

The 2004 decision by Cabinet was on the right track in terms of beginning the process of bringing structure, transparency and order to the process of granting Residency and Belongership, given the BVI's circumstances and needs. Had there been proper follow through on the notes accompanying the 2004 Cabinet decision, it is highly likely that the previous five issues of this section would have evolved to the implementation stage in the ensuing nineteen (19) years following that policy decision. The previous five recommendations of this Report are clearly within the scope of Cabinet's 2004 issues, and had they been implemented, the current concerns with Residency and Belongership applications would pale in comparison to what was documented in the COI Report.

Notwithstanding the current backlog of applications for Residency and Belongership, the inconsistency between the law and policy must be corrected forthwith. The

implementation of this review would address the issues driving Cabinet's 2004 decision and therefore alleviate the legitimate concerns that existed then and subsequently.

### **9.2.7 Disconnect Between Cabinet and Senior Public Service Management**

Cabinet produced a very clear decision and supporting guidance in its 2004 decision that had the potential to begin the process of addressing the then longstanding issues associated with the handling of residence and Belongership applications. Similarly, the 2016 decision by Cabinet to accept the recommendations of the Initiative Working Team on Immigration and Labour and begin the process of addressing the interrelated issues of immigration and labour presented an opportunity to once again advance the issues. However, the administrative systems that would facilitate tracking and follow-through of Cabinet's deliberations and decisions were deficient in ensuring follow-up and follow through. As a result, there were missed opportunities to advance the reform of Immigration.

### **9.2.8 Role of the Board of Immigration**

The Board of Immigration is the gatekeeper of the Territory's most treasured resource, its citizenry. The citizenry of any country is its anchor and the source of its sustenance and sustainability. Therein lies its values, culture, traditions, customs, history and all that gives it its unique identity and the source of its pride. This must be guarded at all cause because it is the fabric that keeps the society together and fosters stability and a good quality of life. Admission to the citizenry must therefore not circumvent the gatekeeper or you place the citizenry at risk.

It is necessary that all applications go through the due diligence processes of the Board and Department of Immigration to protect the integrity, transparency and fairness of the process. Whilst Cabinet has the right to accept or reject any application, it should do so within its statutory authority or seek guidance and get legal sign-off from the Attorney General and the Governor as the head of the Executive function of the Government. Should Cabinet wish to change a decision of the Board, it should state the reason and share any new information available to it with the Board or request their reconsideration.

### **9.2.9 Cabinet's Ultimate Power**

Cabinet retains the ultimate power to make decisions on residence and Belongership applications, regardless of any recommendations made by the Board. This concentration of decision-making authority has raised well documented concerns and issues about accountability and transparency in the process.

In a parliamentary democracy such as BVI, there should not be a breakdown in the checks and balances that are designed to safeguard the public interest and preserve

the rule of law. The Separation of Powers between the Executive branch where Cabinet resides, and the Legislative branch must work effectively to curb Cabinet's discretionary powers. The balance between these two branches of Government is set out in the VI Constitution and between them and the judiciary, which is independent. If the VI Constitution is deficient in its clarity on this matter, then it should be addressed in the current Constitutional Review.

Cabinet has ultimate power to make executive decisions and set policies within the statutory limits of laws approved by the house of Assembly. From time to time, Cabinet may have the need to act in exceptional circumstances out of legitimate concerns and needs as elected representatives of the people of the Virgin Islands. In such circumstances, Cabinet must act within the scope of existing policies and the law and not circumvent law, policies or the Board of Immigration.

Cabinet retains the ultimate power to make decisions on residence and Belongership applications, regardless of any recommendations made by the Board. This concentration of decision-making authority has raised well documented concerns and issues about accountability and transparency in the process.

From time to time, Cabinet may have the need to act in exceptional circumstances out of legitimate concerns and needs as elected representatives of the people of the Virgin Islands. In such circumstances, Cabinet must act within the scope of existing policies and the law and not circumvent law, policies or the Board of Immigration.

The recommendations of this Report in Section 10 provide strong support for existing legislative, policy and process tools that strengthens the mechanism for handling Immigration matters and strengthens Ministries' ability to respond to Cabinet. The recommendations should alleviate Cabinet's historical concerns about the systemic issues and give them the assurance that their decisions and directives will be properly and completely implemented. In summary, the recommendations give Cabinet the power to:

- a. Stop the automatic progression from work permit to Belongership.
- b. Establish an Immigration Policy to direct the handling of immigration matters.
- c. Establish a Labour Policy to direct the handling of Labour Matters.
- d. Approve a Population Policy to guide Immigration and Labour policies and the human development of the Territory.
- e. Approve a Point-Based System as recommended by the Board of Immigration to guide the quality and pace of recommendations for grant of Residency and Belongership status.

- f. Approve Quotas for the annual issuing of the grant of Residency and Belongership to ensure the growth of the population in a sustainable way that works in the best interest of the Virgin Islands.
- g. Reconcile inconsistencies between law and policies that will ensure that Cabinet operates within the statutory limits of the law.
- h. Approve the administrative system to ensure add efficiency, protocols, procedures and certainty that its decisions, directives and supporting notes are followed through to implementation with reporting back to Cabinet.
- i. Approve a Population Policy to guide Labour and Immigration policies and direction.

Should Cabinet wish to act outside existing laws, policies and those proposed in this Report, they should issue an Executive Order which must be vetted and signed off by the Attorney General and the Governor in his capacity as the constitutional head of the Executive branch of the Government of the Virgin Islands.

In a parliamentary democracy such as BVI, there should not be a breakdown in the checks and balances that are designed to safeguard the public interest and preserve the rule of law. The Separation of Powers between the Executive branch where Cabinet resides, and the Legislative branch must work effectively to curb Cabinet's discretionary powers. The balance between these two branches of Government is set out in the VI Constitution and between them and the judiciary, which is independent. If the VI Constitution is deficient in its clarity on this matter, then it should be addressed in the current Constitutional Review.

### **9.2.10 Quota System and The Backlog of Applications**

In addition to evaluations of applicants, BVI must consider the pace at which the population can sustainably grow. When we look at the countries, we find that the number of individuals granted citizenships in any given year is a small percentage of the overall population (<0.5%). To list a few:

- Iceland: The population of Iceland was estimated to be around 387,758 in 2021. In the same year, a total of 905 people were granted Icelandic citizenship.
- Luxembourg: The population of Luxembourg was estimated to be around 640,000 in 2021. In the same year, a total of 6,801 people were granted Luxembourgish citizenship.
- Cayman Islands: The population of Cayman Islands was estimated to be around 71,104 in 2021. In the same year, a total of 546 people applied for permanent Residency and 392 were approved. From 2009 to



2022 Cayman Islands recorded a total of 6,575 processed applications of which 3,788 were approved and 2,787 were refused.

The BVI should establish a quota for the number of approved Residency and Belongership applications. With 2021 BVI population at 37,408 and taking guidance from the <0.5% threshold limit, the number of applications approved per year should be less than 187, bringing it in line with practices in other small countries.

In processing the current backlog of applications, the Board of Immigration should take consideration of the relevant recommendations of this Review, particularly 9.4.1, 9.4.5, 9.5.2 and 9.5.3.

### **9.2.11 Public Communication and Engagement**

Immigration is an emotive issue and strong communication, and public engagement, awareness and participation are key to finding the right balance between the needs of citizens and obligations to immigrants. A well thought out communication strategy and public awareness and engagement programme is key to bringing rationality, and objectivity to the immigration issue and should be carried out using all social media tools. Elements of the strategy and engagement plans should include:

- a. Publish information explaining laws and policies related to knowing and obtaining immigration status and the related processes and contact information.
- b. Publishing the names of persons whose applications are up for review and inviting the community to give feedback on the application.
- c. Requiring references from three (3) to five (5) native Virgin Islanders
- d. other measures that promote awareness, engagement of Virgin Islanders and active participation of the community in building its citizenry.
- e. Messaging to correct the expectations regarding the grant of status such as:
  1. Government's responsibility to step up due diligence to protect the interest of the overall society and all who live in it.
  2. That Residency and Belongership are privileges that are earned, and not automatic rights granted for time in the Territory. The right is to apply, the grant is a privilege.
  3. Pointing out the challenges with growing the population too fast and how it can degrade the quality of life for everyone. This includes

housing, infrastructure, health, education and other aspects of living in the Territory.

4. Creating awareness of the social issues that comes from rapid population growth and the importance of protecting the values, social fabric and culture of the society.

5. Warnings about trying to circumvent the system and the possibility of losing the privilege through anti-social and illegal behaviour.

This is not an exhaustive list but highlights the importance of education.

### **9.2.12 Balancing the Population**

The primary factor driving the reactive actions related to the issuance of residence and Belongership status is the perceived threat it poses to Virgin Islanders who are now a minority in their own country. As the data shows, the growth of the population is through emigration and not births by Virgin Islanders.

The BVI diaspora is significant in size, diverse in skills and talents and concentrated in a limited number of places. Many in the diaspora maintain strong ties to the Territory and may welcome the opportunity to participate in the growth and development of the Territory and possibly return, particularly at this time of need and opportunity.

If there was a government endorsed and participatory but private sector operated programme to engage the diaspora, it could be a source of attracting Virgin Islanders back to the shores to begin the process of changing the balance between Virgin Islanders and expatriates. It could also reduce the need to issue Work Permits and you will be able to tap into a pool of qualified Virgin Islanders.

Some tangible ways such a programme could work, includes:

1. Assigning a Liaison person in the Premier's Office who will be the Government focal point and contact for assisting and supporting the private sector Program Coordinator working directly with persons wishing to transition back home. They will assist as requested with all issues and operate with the authority of the Government office. A Fast-Track service for Returning Virgin Islanders.
2. Establishing a resume bank and giving the same preference to diaspora Virgin Islanders as local Virgin Islanders. It will mean alerting them to opportunities and encouraging the private sector to make use of the resume bank and giving the same preference.

3. Offering duty-free shipping of household items back to BVI and duty-free importation of materials to build a home.
4. Offering the same housing assistance and other settling allowance as offered to persons not from the Virgin Islands.

This is not an exhaustive list but one to show the considerations that are important and to stimulate other ways of bringing the diaspora back to the shores of the VI.

### **9.2.13 Fast Track Government Reform**

The reform of Government's public service system is now urgent. It is clearly not operating at the level Cabinets need to manage and develop the Virgin Islands in a sustainable way. The priority is reform at the senior level involving the roles and responsibility of the Governor, Ministers, House of Assembly Members, Deputy Governor, Permanent Secretaries, Cabinet Sectary and Attorney General and the Financial Secretary. If the head is not working as it should, then the body will not.

It should be clear that reform that should have accompanied Ministerial government has not happened to the level required to equip the public service to operate at the level needed by Cabinet. The system is not fully fit for to provide the level of support needed by Cabinet. The public Service system is at the root of many of the causes that gave rise to the COI issues related to Residency and Belongership application processing and grant of status. This includes the following:

- a. The disconnect between Cabinet and Executive administration that did not provide a follow-up mechanism for fully carrying out Cabinet Decisions.
- b. The apparent absence of the checks and balances that allowed statutory limits to be violated with no consequences or accountability.
- c. The lack of response to official Audits and Reports, the triggers for action.

The Public Service Transformation Programme, executed as designed and intend, can provide the systemic strengthening needed for the public service to provide the level of support needed by Cabinet and to move the Territory forward.

### **9.2.14 Recommendations of the Report of IWTIL**

The work of the Financial Services Implementation Unit was not completed due to the hurricanes and the recommendations of the IWTIL were not all implemented. However, many of the recommendations and the Cabinet decisions are still very relevant and can add significant value to the Immigration and Labour challenges that still exist, if they are fully implemented.

### 9.3 SERIOUS SYSTEMIC GOVERNANCE ISSUE

The absence of any substantial changes to the governance system since the introduction of Ministerial government in 1967, the Territory continues to operate what is an essentially a 1960s governance system with no substantial structural changes. This was evidenced by the taking away of Board powers as far back as 1990. The absence of any substantial changes to the systemic issues since the introduction of Ministerial authority in 1967, basically a 1960s system with no fundamental changes. This was evidenced by the taking away of Board powers as far back as 1990.

What followed in the ensuing fifteen (15) years following the 2004 policy decision can only be described as a failure of the checks and balances of the system to correct the various violations of law, policies, procedures and processes. Even with the publication of official reports such as the 2013 CC Report and the 2012 Internal Audit Department Report on the Immigration Board Application Process (2012 IAD Audit), these systemic failures were not addressed.

Under a system of checks and balances that is part of the governing structure of a mature democracy, the executive, judicial and legislative functions are separate, and each branch's independence helps keep the others from exceeding their power, thus ensuring the rule of law and protecting individual rights. Under section 64 of the Constitution of the Virgin Islands 2007, the executive authority is vested in His Majesty the King and exercised through the Governor. Cabinet is an executive function, and the public service is also one of the functions for which the Govern is responsible.

## 10.0 RECOMMENDATIONS FOR POLICY & PROCESS CHANGES

The following recommendations on the laws, policies and processes driving residence and Belongership application processes and the grant of status made in the context of immigration being complex and intricately related to and integrated with labour. It also considers the interrelated economic, social, political and administrative issues and the following:

1. Origin and ongoing historical issues.
2. Political motivations and intentions.
3. Laws, policies, processes and practices applied to the issue.
4. Economic, social and developmental impacts of laws and policies.
5. Administrative capacity, capability and resource.
6. Public awareness, understanding and engagement.
7. Concerns raised in section 10 of the COI Report
8. Balancing the obligations to expatriates and the interests of Virgin Islanders

The following recommendations are made based on a review and evaluation of the laws, policies and processes related to applications for residence and Belongership applications and award of status:

### 10.1 Establish a Clear and Comprehensive Immigration Policy

Establish a clear and comprehensive Immigration Policy considering demographic and immigration trends in the Territory and using the (8) factors below to support decision-making and public policy development needs so that the best interest of the Virgin Islands is protected. The Immigration Policy must give due consideration to the following eight (8) factors.

1. **Economic needs:** *BVI needs to attract foreign workers to meet labour shortages and promote economic growth. Immigration policies should be designed to attract skilled workers who can contribute to the country's economy.*
2. **Social and cultural impact:** *Immigration can have a significant impact on a country's social and cultural fabric. BVI must consider the impact of immigration on social cohesion, community relations, and cultural diversity.*
3. **Security concerns:** *BVI must ensure that their immigration policies do not compromise national security. Policies should be in place to screen and vet applicants to ensure that they do not pose a threat to public safety and revoke their status and dispel violators.*

4. **Legal framework:** *Immigration policies must be consistent with international human rights standards and domestic laws. BVI should ensure that their policies comply with international treaties and conventions.*
5. **Capacity and resources:** *BVI have limited capacity and resources to manage immigration. Policies should be designed to ensure that the country can manage the influx of immigrants and provide necessary services.*
6. **Political considerations:** *Immigration policy can be a contentious political issue. BVI should consider the political implications of their policies and engage in a transparent and inclusive decision-making process.*
7. **International relations:** *Immigration policies can affect a country's relations with other countries. Small countries should consider the impact of their policies on diplomatic relations and regional cooperation.*

The Policy should consider the following elements:

1. **Policy Objectives and Priorities:** Clearly states the overall objectives and priorities of the immigration policy, including considerations related to economic development, cultural diversity, family reunification, and national security.
2. **Visa and Entry Requirements:** Specifies the different types of visas available for various purposes (e.g., work, study, tourism) and outlines the eligibility criteria for each visa category. It may also include entry requirements such as passport validity, health checks, and visa application procedures.
3. **Temporary and Permanent Residency:** Defines the criteria and conditions for foreign nationals to obtain temporary and permanent residency status in the BVI, including pathways to residency or belongingship.
4. **Residency and Belongership Decision-Making Process:** Outlines the roles and responsibilities of each entity in the residency application process, including the criteria they use to evaluate applications, the level of transparency and accountability required, and any checks and balances in place to ensure fair and consistent decision-making.
5. **Belongership Quota:** Establishing a quota that sets a reasonable quota for granting belongingship status each year, considering the country's long-term development goals, social integration, and economic sustainability.
6. **Work Permits and Employment Authorization:** Sets out the conditions for foreign nationals to obtain work permits and the process for employers to hire foreign workers. This includes requirements for labor market testing, skill shortages, and employer sponsorship. Immigration policy could specify some of these requirements or reference a separate Work Permits Policy if such policy exists.

7. Enforcement and Border Control: Details measures for monitoring immigration compliance, including border security, visa overstay tracking, and deportation procedures for those violating immigration laws.
8. Family Reunification: Outlines the rules and procedures for family members of belongers or residents to join them in the BVI, including requirements for spousal, child, and parent reunification.
9. Refugee and Asylum Policies: Establishes procedures for granting asylum or refugee status to individuals fleeing persecution or seeking protection due to well-founded fear in their home country.
10. Integration and Settlement Programs: Outlines initiatives to facilitate the integration of immigrants into the society, including language classes, cultural orientation, and social support services.
11. Investor and Entrepreneur Programs: Outlines special programs to attract foreign investors or entrepreneurs who can contribute to the country's economic growth.
12. Collaboration and International Agreements: Specifies how the country collaborates with international organizations and other countries on migration issues, including bilateral or multilateral agreements and cooperation on migration management.

The Immigration policy development must include public consultations, consider the views of the people and engage in public education and awareness campaigns to promote understanding and acceptance of immigration.

#### **10.1 Incorporate Policy of No Automatic Path from Work Permit to Belongership**

Establish a clear and differentiated pathway to citizenship from work permits. Work Permits should be limited to a period under the ten (10) year requirement for the application for Belongership. This entails differentiating between residing for the purpose of work and residing without the need to work. The person entering the Territory without the need to work can earn time towards the eligibility to apply for Belongership at the ten (10) year mark as the law currently requires. The person entering for work does not automatically accumulate time towards the eligibility to apply for residence. This means that the eligibility to apply for Residency and Belongership status for persons entering for work should not be based solely on years of residing in the Territory. By separating the work permit process from that of Residency and Belongership, it becomes possible to protect Belongership status while creating a distinct Residency status for non-nationals residing in the BVI long term. This approach ensures that the process for attaining citizenship is neither guaranteed nor automatic, promoting a more balanced and thoughtful approach to immigration and population growth in the BVI.

## 10.2 Establish a Clear and Comprehensive Labour Policy

Establish a clear and well-defined labour policy to support the long-term development goals of the British Virgin Islands (BVI) and to manage population growth effectively. This Policy must recognize and facilitate the interdependence of Immigration and Labour. It should incorporate the following steps:

1. *Strategic workforce planning: Develop a comprehensive workforce plan that aligns with the BVI's long-term development goals. This involves identifying the skills and sectors that are essential for sustainable growth and setting targets for the recruitment and retention of both local and foreign workers.*
2. *Balancing local and foreign labour: Strike a balance between protecting job opportunities for residents while acknowledging the need for foreign labour to fill skill gaps. Implement measures that prioritize hiring and training locals for available positions, while providing avenues for foreign workers to contribute to the BVI's economy and society. Limits on Work Permits are necessary to create motivation for employers to commit to transitioning from foreign to local employment where this is possible.*
3. *Transparent work permit system: Establish a transparent and efficient work permit system that sets clear guidelines, criteria, and procedures for obtaining work permits. Ensure that the system is fair, non-discriminatory, and encourages compliance with labour laws and regulations.*
4. *Skills development and training: Invest in training and skills development programs to enhance the capabilities of the local workforce. This can include vocational training, apprenticeships, and partnerships with educational institutions to align skills training with industry needs.*
5. *Monitoring and evaluation: Regularly monitor and evaluate the impact of the labour policy on population growth, employment, and the overall economy. This includes assessing the effectiveness of work permit regulations, identifying areas for improvement, and adjusting policies as needed.*
6. *Engage stakeholders: Involve key stakeholders such as employers, labour groups (financial services, tourism, construction, etc.), community organizations, and government agencies in the formulation and implementation of labour policies. Foster open dialogue and collaboration to ensure that policies reflect the diverse perspectives and needs of the BVI's population.*
7. *By establishing a clear labour policy that supports the BVI's long-term development goals, the government can effectively manage population growth, promote sustainable*



*economic growth, and create a conducive environment for both local and foreign workers to thrive.*

#### **10.4 Strengthen the Point System for Residency/Belongership Applications**

Re-evaluate and update the existing Point System incorporating the factors below to produce an Interim Point System to protect and grow BVI interests. The revised Point System should be submitted to Cabinet for approval and the used until the final Point System is determined by the new Immigration Policy. The Interim Point System should be used to process existing backlog of residence and Belongership applications incorporating Recommendation 10.5 below and include the following factors:

1. **Residence:** *individuals must have lived in BVI for a certain period (which will be synchronized between statute, policy, and guidance). This time can be reduced for those who have made exceptional contributions to BVI society, have BVI ancestors, or have married a believer.*
2. **Language skills:** *individuals must be able to speak English.*
3. **Integration:** *individuals must demonstrate that they are well-integrated into BVI society.*
4. **Good conduct:** *individuals must have a clean criminal record and must not have any outstanding debts or legal obligations.*
5. **Contributions to society:** *individuals must have made a positive contribution to BVI society through their work, community service, or other activities.*
6. **Financial stability:** *individuals must be able to support themselves and their families financially, without relying on social assistance or other forms of public support.*
7. **Citizenship test:** *individuals may be required to take a citizenship test to demonstrate their knowledge of BVI history, culture, and values.*

#### **10.5 Establish an Annual Quota for Residency (Permanent Residence) and Belongership (Citizenship)**

Require the Board of Immigration to establish an Interim Quota Policy for Cabinet's approval and use the approved Interim Quota Policy to set the number of approved Residency and Belongership applications that can be safely integrated into the BVI society annually based on a cursory evaluation of economic, social, security, and national development objectives. The final Quota Policy will be determined by recommendations 10.1, 10.3 and 10.6. The annual quota recommendation is to be

submitted to Cabinet for approval. An independent Immigration Appeal Tribunal is to be established to allow applicants the opportunity to have their case reviewed outside of the standard process.

The Interim Quota Policy is to look at:

- **Residence:** individuals must have lived in BVI for a certain period (which will be synchronized between statute, policy, and guidance). This time can be reduced for those who have made exceptional contributions to BVI society, have BVI ancestors, or have married a believer.
- **Language skills:** individuals must be able to speak English.
- **Integration:** individuals must demonstrate that they are well-integrated into BVI society.
- **Good conduct:** individuals must have a clean criminal record, not engaged in socially deviant behaviors and must not have any outstanding debts or legal obligations.
- **Contributions to society:** individuals must have made a positive contribution to BVI society through their work, community service, or other activities.
- **Financial stability:** individuals must be able to support themselves and their families financially, without relying on social assistance or other forms of public support.
- **Citizenship test:** individuals may be required to take a citizenship test to demonstrate their knowledge of BVI history, culture, and values.

Each criterion must be accompanied by a set of metrics that will be uniformly applied to all applicants. Providing clear guidance on the process and metrics are key in protecting the BVI and ensuring that eligible applicants have a seamless experience during the process.

For example, an individual's contribution to BVI society can be measured through:

- **Employment:** The individual's work history and contributions to the BVI economy, including paying taxes and creating jobs. (Scoring based on occupation, job level, salary)
- 
- **Education:** The individual's educational qualifications and any contributions they have made to the education system in BVI, such as volunteering at schools or participating in community education programs. (Scoring based on educational level and volunteering at schools)
- 
- **Community service:** The individual's involvement in community service activities, such as volunteering at local charities or participating in community events. (1 point for each year, min 7 days/year, max 10 points)

- Cultural or artistic contributions: The individual's contributions to BVI culture or the arts, such as performing in local theatre productions or creating works of art that are displayed in public spaces. (1 point for each contribution, max 10 points)
- Social contributions: The individual's involvement in social causes that benefit BVI society, such as volunteering or working to protect the environment. (1 point for each year, min 7 days/year, max 10 points)
- Sports or recreation: The individual's involvement in sports or recreational activities that promote physical fitness and healthy living in the BVI community or representing the Territory in sporting activities. (1 point for each year, min 7 days/year, max 10 points)

*\*\*\*These are scoring example for illustration purposes; these need to be discussed and defined.*

For each of the other criteria: Residence, Language, Integration, Good Conduct, Financial Stability, Citizenship Test, there must be a specific set of metrics to evaluate applicants. Residence, Language, Financial Stability, Citizenship Test are straightforward topics for which points can easily be assigned. Like the example above for Contribution to Society, important characteristics can be summarized and assigned values. At the end, the total score is calculated and must be used to prioritize applicants.

#### **10.6 Establish a Population Policy**

Establish a Population Policy to guide the Territory's overall development for the next eleven (11) years considering its current population composition, trends and drivers, inform its Labour and Immigration policies, and consider its social, economic, health, education and other needs to achieve a balanced, healthy, socially cohesive, thriving and prosperous society. The Population Policy will reflect the Territory's vision, aspiration of its people and the population needed to support them and the parameters that need to guide population size and demographics.

#### **10.7 Correct the inconsistency between Law and Policy**

Correct the inconsistency between a 20-year residence requirement, which Cabinet has required to be applied since 2004, and apply the statutory criteria in section 16(3) of the 1977 Act in concert with recommendations 10.1 to 10.5 to provide clear policy and guidance in accordance with the law to ensure transparency and accountability in the process.

### **10.8 Address the Disconnect between Cabinet and Senior Public Service Leadership**

Establish a clear and structured process of tracking and ensuring follow-through and implementation of Cabinet Decisions and directives or any guidance to ensure Cabinet's full authority is fully executed. Cabinet should include specific requests that the status of their decisions and reports, presentations letters, data, etc of the actions taken after a period. The Cabinet Secretary should also hold regular Policy briefings, discussions and follow-up sessions with the senior leadership of the Civil Service to include the Deputy Governor, Attorney General, Financial Secretary and Permanent Secretaries.

### **10.9 Strengthen the Role of the Board of Immigration**

Cabinet should empower the Board of Immigration to carry its critical national function by:

- a. **Legislation:** Amend the 1977 Act to require that the grant of status for all Residency and Belongership applications must have both the recommendation of the Board of Immigration and the approval of Cabinet.
- b. **Executive Authority:** Give the Board the executive authority to make policy recommendations directly to Cabinet on immigration matters within its purview, including matters such as Point Based Systems and Quotas.
- c. **Financial and Technology Resources:** Provide the Department of Immigration with the technological and financial resources needed to properly staff the Status Unit within the Department and implement the technology required to enhance its application processing security, standards and efficiency.
- d. **Organisational Structure:** Give the Board more Autonomy to allow it to function more as an independent body than a function within a department. In this regard, the Cayman Island Model should be investigated.
- e. **Training:** Provide the staff with the functional training to build their expertise on immigration policy and process, not just administrative.

### **10.10 Redefine Cabinet's Ultimate Power**

The following recommendations should be directed by Cabinet immediately:

6. Amend the 1977 Act to require that the grant of status for all Residency and Belongership applications must have both the recommendation of the Board of Immigration and the approval of Cabinet.

7. Cease the twenty (20) year Residency requirement for Belongership policy and apply the ten (10) year requirement in the law.
8. Direct that the recommendations of this report be implemented as soon as possible.
9. Direct that the existing backlog of Residency applications be processed in line with Recommendation x, the Point Based System to be developed and approved by Cabinet, and Recommendation x, the Quota System, to be developed by the Board of Immigration and approved by Cabinet.
10. Add regulations to the law that governs timeframe for processing, communication requirements, quotas, point system and other issues which can be amended without HOA law changes but through Cabinet.

#### **10.11 Immediately Improve Public Communication and Engagement**

The following measures should be implemented forthwith to build transparency, public awareness and participation in Immigration matters:

- a. Develop a Public Communication and Engagement Strategy and Plan to improve awareness, transparency and participation of the public on Immigration matters.
- b. Public Engagement plan to include publishing names of applications under review and the requirement for recommendations by 3 to 5 native Virgin Islanders.

#### **10.12 Fast-Track Initiative to Bring Virgin Islanders Home**

Develop a government incentive and endorsed and private sector operated initiative to attract Virgin Islanders to return to the Territory to live and work.

#### **10.12 Fast-Track Public Service Reform**

Give urgent priority to reform of the public service system, with focus on the senior management structure and the interrelationship between and with Ministers, Cabinet Secretary, Permanent Secretaries, the Deputy Governor, the Attorney General and the Governor.

#### **10.13 Complete Immigration and Labour Recommendations**

Complete the implementation of the Recommendations in the Report of the Initiative Working Team on Immigration and Labour.

#### **10.14 Review VI Constitution for Separation of Powers and Checks and Balances**

Review the relevant sections of the Constitution regarding Separation of Powers and to ensure that the requisite checks and balances needed to ensure transparency, accountability and the rule of law can be upheld in the context of the Virgin Islands.

## **11.0 APPENDICES**

1. Chapter 10 - Commission of Inquiry Report of the Commissioner the Rt. Hon. Sir Gary Hickinbottom
2. Section 2.2 - Virgin Islands Constitution Order 2007
3. Chart of Belongership Status
4. Sections 11-14 and Sections 16-19 of the Immigration and Passport Act 1977
5. Chart of Residency Status
6. Chart of Immigration Application Process
7. Report of the Initiative Working Team on Immigration and Labour
8. Virgin Islands Immigration and You Official Guide

## **12.0 DATE OF SUBMISSION**

**24 July 2023**

Signature of Reviewer:

## **13.0 ACKNOWLEDGEMENTS**

1. I wish to thank the Government of the Virgin Islands and the Government of the United Kingdom, through the Governor, for entrusting me with this important Review. I think it is important for Virgin Islanders to actively participate in this process of redefining and creating the governance system that will support our aspirations and journey of self-determination.
2. I would like to express my sincere appreciation for the technical and research support provided by Ms. Aida Biberic during the development of this Report. Her expertise and assistance in labour and immigration policy and data analysis have greatly enhanced the quality and integrity of this Report.
3. I would like to thank the following persons for for taking time to give their input to this Report:
  1. Mr. Michael Anthony, Former Chairman of the Board of Immigration
  2. Mr. Glenn Harrigan, Chairman of the Board of Immigration
  3. Mr. Ian Penn, Chief Immigration Officer