

## INTERNATIONAL OBLIGATIONS

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In the context of the Draft Jersey Island Plan Review

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According to Para 2.5 of the 2009 Draft Island Plan;

*“The Island is subject to more than 350 international treaties, conventions and protocols, which carry legal and moral commitments as well as rights and obligations under international law. Those particularly relevant to the Island Plan include those concerning the environment. There are other agreements covering social and economic matters, such as Human Rights, which will impact indirectly on the planning system and thus need to be taken into account.”*

A similar statement appeared in the 2002 Island Plan – which also included, under Appendix 1, a list of nine *“International Conventions and Agreements Relevant to Island Planning”* on Air Pollution, Animals, Archaeological Heritage, Biological Diversity, Climate Change, Cultural and Natural Heritage, Human Rights and Environmental Impact Assessment in a trans-boundary context.

There is no similar Appendix in the current Draft Plan and the 340 or so other international instruments are not listed or described.

Since 2002, it is also certain that the tally of 350 international instruments has been added to considerably. Is the Planning Department unaware of any further such obligations? The absence of more precise data suggests a disregard for accuracy and lack of purpose.

I have read the Draft Plan document and attended many of the Examination in Public hearings but the amount of attention devoted to the international instruments is remarkably little. Especially so since the instruments are supposed to carry legal and moral commitments and obligations under international law.

At one discussion session, Peter Troy (a lawyer I believe) expressed concern that the application of the Green Zone policy raised possible violations of Article 8 of the European Convention on Human Rights. Yet, Mr. Pilley for the Planning Department, responded that when the Island Plan is finally put to the States Assembly, the Law Officers would then be able to advise whether the Plan was compliant with Human Rights obligations or not. Presumably they would also be expected to advise re the other 350 or more instruments too at the same time – a potentially time-consuming activity.

This seems to be a bizarre way to manage matters. A more sensible approach would be that the Law Officers’ or some other legal advice had been sought long before the Plan reaches the States Assembly - otherwise it might have to be withdrawn as non-compliant.

In any case, it would be absurd if those who have drawn up this Draft Plan have not already actively considered the many relevant international obligations in some detail before publishing it in the first place. After all, that is what Para 2.5 implies has happened in accordance with the “*need to be taken into account.*”

Such an approach would have encouraged a more informed discussion on the basis of otherwise obscure international obligations.

Have the planners in fact considered the implications of all the important international obligations?

The general public finds it difficult to challenge any claim from the Planners that they have duly considered Jersey’s international obligations.

It is especially difficult in Jersey to discover details about many aspects of law. There are very few published law books at all.

There is no published book on Jersey Planning Law – although there are many published in Britain on UK Planning Law and Practice.

There is no book either on International obligations in Jersey or even on the specific area of Human Rights law.

Consulting books on UK law and practice can be dangerously misleading if applied to Jersey where laws are different and the same international obligations may not apply.

Of course, there are specialist books available in the UK on the application of international law – such as human rights – on UK Planning Law and I attended a seminar, on Human Rights and Planning Law in the UK some years ago. But, no such seminars have taken place in Jersey that I am aware of and I mention this because of the great knowledge void that exists in Jersey. Public ignorance is certainly bliss for the planners.

Thus, it is not surprising that so few people raise questions about the application of international obligations in the context of such a complicated document as the Island Plan.

I hope the Inspectors will understand therefore, that the onus on government to make this information accessible to the general public in Jersey is all the more important.

In other jurisdictions, there may well be other sources of knowledge from many very well informed, nationally resourced, lobby groups such as Greenpeace, Justice or Liberty besides campaigning lawyers, politicians, journalists and government departments. But, in Jersey, such well-informed activities are minimal and consulting a local lawyer, at £300 per hour, is a very expensive luxury, available only to major developers or very wealthy individuals.

The more so since the Jersey lawyer will most likely consult a specialist London QC for yet another £300 per hour fee for specialist advice.

What I am suggesting, is that the lack of much more information on international obligations from the Planning Department is a major defect in this Plan specifically – and is also a general defect in the Jersey Planning process.

I referred to this failure in a previous public session in the context of SPGs (Supplementary Planning Guidance) documents and how they tend to perpetuate the lack of certainty in the planning process and in this Plan in particular. It gives encouragement to the “make it up as we go along school of planning” – in a word “uncertainty” - and there has been much criticism of this fact by others during the sessions that I have attended here.

On the other hand, international obligations are intended to establish universal certainty with minimum standards over a very wide range of activities. I should have expected that professionally trained Jersey planners would be only too happy to embrace and advertise them for that simple reason alone.

Yet, whenever international obligations make an appearance – whether in the Plan or in discussions here or anywhere else – it is always very minimally and they are never explained in any depth.

In answer to my probing, Mr Pilley suggested that details of Jersey Court judgments (for example) can be found on the Jersey Legal website – but his observation displays a remarkable lack of understanding of how virtually impossible it is for the vast majority of the Island populations to research such complex matters unilaterally.

During the discussions on climate change, planning officers Magrie and Pilley explained that Jersey is bound by the Kyoto Protocol from 1997 but offered no precise information about the implications for Jersey or if any other international obligations should be applied or how the Plan complied with them. At the public session I attended the only consensus view about climate change seemed to be that no two people could agree on anything. A clear statement of what international obligations required would at least have introduced some certainty into that discussion.

Other, similarly minimal references by Mr Pilley included the “Valetta Convention” on archaeological preservation and unspecified “international conventions and obligations to preserve architecture” as part of Jersey’s “identity and culture,” – whatever that might mean.

It is noticeable that the planners are very selective in their choice of the few international obligations that are mentioned in the Draft Plan. Almost exclusively they are environmentally or culturally orientated and used to suppress possible building development – such as Ramsar - rather than human rights or social treaties that would require the provision of adequate housing or other facilities.

To say that Jersey government generally treats international obligations with some contempt (unless they are of benefit to the finance industry) would be an understatement. Yet, the incredible burden that falls upon the general public – and even professional advisers – trying to be adequately informed, has to be experienced to be truly understood.

Of course, Jersey government claims otherwise.

The preamble to the States of Jersey Law 2005 includes;

***“And whereas Jersey wishes to enhance and promote democratic, accountable and responsive governance in the island and implement fair, effective and efficient policies, in accordance with international principles of human rights.”***

I cannot emphasise enough how necessary it is that government should show the initiative in Jersey to broadcast knowledge about international obligations - as the international obligations actually require them to do – nor can I state strongly enough how Jersey government manifestly fails to so do.

This Island Plan deals very inadequately with so many matters on the basis of uncertain data and improbable future needs, trends or ever changing and uncoordinated departmental policies.

Thus, discriminatory policies run throughout the Plan because they are an easier option than actually planning properly to solve specific problems.

It is very easy to declare that agricultural activities might enjoy a preferential treatment under the Plan so far as agricultural related developments are concerned and it satisfies that most powerful lobby group – wealthy country landowners – yet it is blatantly discriminatory against other categories of people and business. Why is an agriculturalist more entitled to enjoy a new house in the countryside than a car mechanic?

Access to adequate and secure housing is a basic human right for everybody – even car mechanics.

The UN Special Rapporteur on adequate housing has defined this human right as:

**“The right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.”**

This applies to Jersey just as much as any other place.

The Universal Declaration of Human Rights (UDHR) of 1948 states under Article 25(1) that;

**“Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing.....”**

The right is supported by many other international conventions and agreements – some of which have been ratified for Jersey – such as the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) under Article 27 (Para 3).

According to General Comment No 4 adopted by the ICESCR Committee in 1991, housing to be adequate, must provide more than just four walls and a roof but, at a minimum include; **legal security of tenure, availability of services, affordability, accessibility, habitability, location and cultural adequacy.**

Older people, those with disabilities, minorities and migrant workers are among particular categories recognised and protected under specific international obligations.

According to Agenda 21 from the Rio Conference and Earth Summit of 1992, Jersey was supposed to draw up a plan to provide that ALL inhabitants of the Island should be adequately housed. No such plan has been produced.

Jersey has had a Housing Law since 1949. It is supported by policies under the Island Plan. Without a proven “housing shortage” there is no purpose for that law because its primary purpose is to “*prevent further aggravation of the housing shortage.*” It follows, therefore, that there is an inherent reluctance to end that housing shortage because this will remove the pretext for discriminatory “anti-immigration” laws and policies which are built around the Housing Law and Regulations. No shortage = no discriminatory laws.

The law was originally introduced, supposedly as a temporary measure in 1949 to deal with particular post-war difficulties.

Yet in the Jersey judgment re BBC v Housing Committee the Bailiff declared that the Housing law should only be used for the purposes of housing people and not as an immigration control at all.

Mr Pilley and his team would seem not to have studied this case before drawing up their discriminatory policies though they are not unique in that regard within Jersey’s administration.

The extent of the “housing shortage” has never been precisely defined.

Successive Island Plans have never attempted to end the “housing shortage” or to determine how many people live in inadequate housing.

There has never been a plan to house all Island residents.

As previously explained, one-fifth of the adult working population, in excess of 10,000 people, do not have “housing qualifications” and are therefore prevented from renting or buying adequate housing accommodation. This is a deliberate discriminatory policy and is incompatible with the declared aims of the Strategic Plan or international agreements.

The Planners claim that they are carrying out the instructions of the Council of Ministers and implementing the Strategic Plan “*working together to meet the needs of the community.*” But it is based upon a very incomplete view of “*community.*”

Although the Strategic Plan includes such laudable sounding aims as “***Adequately housing the population,***” “***increasing social inclusion and reduce social deprivation***” and “***sustainable population levels,***” the reality, so far as the Island Plan is concerned, is to achieve none of these objectives. Discriminatory policies run throughout the document and the policies of various States departments.

Yet according to Commitment Three of the Strategic Plan 2006 to 2011 (P.40/2006);

*“We will promote a safe, just and equitable society – the Government signalled its commitment to protecting the rights of all individuals in the community with the enactment of the Human Rights Law in 2004, which will be brought into force in 2006, ensuring the basic principles of respect and equality for all...Important in the reduction in inequalities is the provision of a good standard of secure and affordable accommodation for all...Home ownership will be encouraged.”*

The commitment continued under 3.1 *“Basic Rights and equal opportunities are established for all sectors of society”* and referred particularly to employment protections legislation *“in line with the best practice worldwide,- policies compliant with equal opportunities legislation and anti-discrimination legislation, - and to ensure that planning and resource priorities reflect the needs of people with disabilities.”*

The Planning Department has, since the 1960s, prepared a very inadequate succession of Island Plans but it is evident that they have failed to satisfy the objectives required under international obligations or declared aims of the local Strategic Plan. One wonders how professionally qualified officers are able to reconcile such conduct with their codes of professional conduct?

Of course, in my initial written submission I referred to the behaviour of Minister of Planning Freddie Cohen with regard to his own “particularly fine SSI house” in Green Zone, leafy St John, without the benefit of mains drainage or water services.

This now sports a high fence to the public road (thus denying a public view as is usually required for SSI buildings), and has also been developed with a covered swimming pool, garages, stables and a flat in the rear garden and the adjacent agricultural land has been domesticated for equine purposes. Permission to build a house in the garden has also been recently granted.

Whilst it is not claimed that anything illegal has occurred, the behaviour of Senator Cohen does seem to be at variance with the policies he seeks to apply to others. It is at least hypocritical and patently discriminatory too.

The resident Island population was about 60,000 in 1960 and is now in excess of 92,000 but whether the “housing shortage” is diminishing or expanding is not clearly explained. No planned date is offered when Jersey will cease to have a “housing shortage” even on current population statistics. Yet, the official economic plan for Jersey is based upon a population expansion to 100,000.

Such bland figures say little about specific housing type needs – such as accessible homes for people with disabilities or for their resident carers.

The “housing shortage” is the basis of a substantial business for those who own properties for rent, lodging houses, rooms to let etc and accommodation tied to employment.

Non-qualified persons living in digs (not all are registered lodging houses as claimed by Mr Pilley) probably put £30 Millions or more into property-owners' pockets each year as lodgers with no rights to privacy or security of tenure. Yet, not only are these lodgings often dingy and over-priced but that £30 millions in any normal community would be contributing towards the construction of proper flats and dwellings which the whole population might enjoy.

In other words, the discriminatory policies – perpetuated by this Island Plan, are actually a major aggravator of the housing shortage and of inflated prices. The “qualified” housing market is starved of essential funding from a fifth of the working population (many of whom have children), who otherwise contribute fully with taxes and social security payments into the local economy.

Jersey has a significant, permanent under-class of inadequately housed residents – contrary to international human-rights obligations or the Mission Statement of the States of Jersey. Other housing policies, such as J and K categories under the Housing Law and rent rebates also encourage higher rents. They also stimulate an over active movement of residents who stay for a few years only in Jersey being unable to enjoy equal housing and employment rights (under the Regulations of Undertakings Law). This is socially divisive, unsettling and destructive of the well being of the community as a whole.

Discrimination and unfairness under the pretext of a “housing shortage” is not just manifested under the Housing law qualifications system. The obsession with brown cows in green fields is another form of prejudice exploited by Jersey’s planners and others. Although agriculture and horticulture are diminishing activities and almost insignificant in Island economic terms, they enjoy an absurd preference so far as the use of land is concerned.

In spite of providing some of the worst housing accommodation in Jersey for their own employees (Portakabins and suchlike), the agriculturalists of Jersey have enjoyed an absurd planning priority for decades to develop their lands, to construct enormous sheds or glasshouses and receive all manner of subsidies.

Other, more beneficial businesses, trades or activities receive no such help or little encouragement and the agriculturalists, by their animals and crops, pollute the land and water supplies too with impunity. They are also, likely as not, to receive planning permissions to redevelop old glass for houses or to convert empty sheds into data stores or mini-industrial centres.

It is not my task to demonstrate that the Island Plan does not comply with international obligations. The onus rests, I suggest, with the Planners to show that these obligations are satisfied and that their policies are legitimate and morally compatible.

However, I would point out that obligations to house people adequately arise under many international obligations beyond those already referred to, such as;

**UN Convention on the Rights of the Child**

**UN Convention on the Elimination of all forms of Discrimination against Women**

**UN International Convention on the Elimination of all forms of Racial Discrimination**

**UN Convention on the Rights of Disabled Persons**

**UN Declaration on Social Progress and Development**

**UN Vancouver Declaration on Human Settlements**

**UN Convention on the Protection of all Migrant Workers and Members of their Families**

**ILO Recommendation No 115 on Workers Housing together with 36 other ILO conventions and recommendations that refer to housing rights**

**Council of Europe Convention on Human Rights and Fundamental Freedoms**

**Council of Europe Social Charter.**

Some, but not all of these, have been ratified for Jersey - which still has not even introduced anti-discrimination legislation, supposedly because the Island lacks the resources.

Until the Island publishes a complete list with details of all the international obligations that apply to Jersey now or are likely to apply to Jersey by the end of the 10 year Plan period, no comprehensive appraisal is really possible.

It is typical of the lack of reliable evidence that runs throughout so many chapters of this Draft Plan.

I have previously stated that there is no urgency to implement this inadequate Plan.

No greater harm will be caused if the existing 2002 Plan is allowed to remain in place for another 12 months or so in order that adequate information is collated and;

- 1) a comprehensive Plan prepared for the development and improvement of St Helier only
- 2) the remainder of the Island Plan is then considered afresh.