

England rejects "Equality"

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Contributed by: Admin

Submission to:- The Council of Europe, Strasbourg dated 10th December 2003 in support of the eligibility of the Cornish people, as an indigenous British national minority, to the provisions of the Framework Convention for the Protection of National Minorities, by The Cornish Stannary Parliament.

1. Equality before the law and discrimination on the ground of property

(European Convention of Human Rights Article 14; Protocol 1, Article 1; Protocol 12.).

1A. Sir Hersch Lauterpacht, in his book "An International Bill of the Rights of Man," 1945, page 115, declared: "The claim to equality before the law is in a substantial sense the most fundamental of the rights of man. It occupies the first place in most constitutions. It is the starting point of all other liberties."

1B. The Cornish national minority of Britain are severely prejudiced in securing legal rights because there is no statutory guarantee of equality before the law in English law, and this discrepancy has created a constitutional anachronism out of step with the age of human rights.

1C. It permits the classification of the publicly controlled constitutional Duchy of Cornwall as a "private" profit making commercial organisation for the heir to the throne despite the fact that its history, unamended constitutional laws and current activities indicate "territorial possessions" held in trust for the Cornish people.

1D. It claims the Stannaries and the Stannary Court as the private property of the Duke of Cornwall, HRH Prince Charles, and, disregards sections of English law including the original Duchy of Cornwall Charters 1337-8/Act 1606 which provides benefits for the Cornish people.

1E. It has promoted the operation and extension of the publicly owned property of the Duchy of Cornwall in Cornwall under English laws not applicable to the Crown or public or private institutions elsewhere, leading to discrimination on the grounds of property against other landowners in Cornwall.

1F. It has created the Duchy as the largest land and mineral rights owner in Cornwall, with its royal territorial possession classified as held in a "private capacity" in order to place it beyond public and legal scrutiny.

1G. It ensures discrimination in planning laws and compulsory purchase orders in Cornwall in favour of the Duchy of Cornwall and thus attempting to legalise indirect discrimination of disproportionate impact against the Cornish people.

1H. A natural Cornish desire to question the role of the Duchy of Cornwall in Cornwall is often criticised by people of the English national majority as "anti-royal" by which they believe that such enquiries are akin to treason and should be dismissed and ignored.

1J. "Equality prohibits both direct and indirect discrimination" European Court of Justice (EJC) Case C-279/93 Koeln v. Schumacker [1995] ECR1 - 225).

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Submission to the Council of Europe, Strasbourg, by The Cornish Stannary Parliament

2. Is there any legal authority for cultural discrimination?

Despite our common British passports, English people, who do not distinguish between politics and culture, consider that Cornwall is part of England and that therefore the Cornish are of English origin. This is demonstrably not correct. The Cornish are of British origin with a Celtic culture. The government has only recently recognised our Cornish language but, despite our submissions, has nevertheless, excluded the Cornish from the provisions of the Council of Europe's Framework Convention for the Protection of National Minorities. We can find no legal or moral authority for the prevailing institutionalised discrimination against the Cornish as an indigenous British and Celtic national minority. Assurances are, therefore, necessary in matters concerning the preservation of our cultural heritage which includes, a Celtic language, archaeological sites, (under the Control of the state-funded English Heritage), Male Voice Choirs, (members required to declare English nationality in order to obtain official funding) and "the stannaries" with its pre-Roman and pre-English tradition of a Parliament. The stannaries (tin and other minerals industry authority) constitute a central part of the pre-English British culture surviving in Cornwall.

Before the advent of Christianity and the arrival of the English, tin production became the very first British export trade even if generally ignored by contemporary English historians.

3. Do the Cornish have the right to exist as a national minority?

3A. Absolute political power can no longer presume the authority to confiscate other people's cultural heritage. National majority politics is manifest in the exclusive administrative support given by British government departments of state to such cultural bodies as the state-aided English Heritage and English Nature operating in Cornwall. In addition there is the overwhelming state concern to protect the possessions and public image of the Duchy of Cornwall created to provide an income independent of Parliament for the heir to the throne.

3B. Apparently, for reasons of national pride, English historians do not accept that the largest portion of the Duke of Cornwall's income was taken from the stannaries for centuries through a tax on tin production and prerogative claims to mineral rights. The Duke of Cornwall is effectively an absentee landlord. Unlike their policy towards non-territorial, non-indigenous minorities in Britain, official English bodies are as yet not required to respect or fund, as recognisably Cornish, the indigenous Cornish culture, customs and language.

4. Ignorance of the law

No government department or Secretary of State could assert ignorance of the law in respect of the Duchy of Cornwall. The complete Duchy Charter/Act was published by HMSO in 1978 as Statutes in Force, Constitutional Law 10. Case law reveals: "A Member State is responsible for the actions of a constitutionally independent institution." (E.U. Commission v. Belgium, Case 77/69 [1970] 237, para 15). This would apply to the Duchy of Cornwall.

5. An overriding majority decision

"Respect for human rights requires that certain basic rights of individuals should not be capable in any circumstances of being overridden by the majority, even if they think that the public interest so requires. Other rights should be capable of being overridden only in very restricted circumstances. The protection of these basic rights from majority decision requires that independent and impartial tribunals should have the power to decide whether legislation infringes them and to declare that it is incompatible with the governing human rights instrument." (R (Alconbury) v. Secretary of State, 2 All ER 2001, Lord Hoffman, at 980/70)

6. Staking a claim = bounding

6A. It is contended that the Duchy of Cornwall is an unclassified, "emanation of the state," (Gilbert v. Corp of Trinity Ho. 01.01.1886; 17QBD795) operating under flexible assumptions and loosely defined laws. The Duchy of Cornwall Charter 1337 was deemed to be an Act of Parliament by Lord Coke in The Prince's Case 1606, (8 Coke's Report 13b) The Charter/Act is still in force and contains the grant of "our stannaries" as a territorial possession of the Duke. (Statutes in Force, Constitutional Law 10, HMSO, 1978).

6B. There is no grant of minerals or rivers in the Duchy Charter/Act. For centuries the Stannaries has included the legal custom of bounding, (staking a claim to recover minerals by registering the claim at the Stannary Court (located at the Truro Crown Court). "Bounding a legal custom in Cornwall." (Planning Inspectorate, Bristol, letter of 18.02.1997).

7. A Duchy ashamed of its history

7A. The provisions for the Cornish in The Duchy of Cornwall Act 1337/1606 are being seriously disregarded.

7B. The constitutional Duchy of Cornwall Act 1337/1606 reveals; "and also our Stannary in the same county of Cornwall together with the coinage (tax) of the same Stannary and with all the issues and profits thereof arising and also the esplees profits and perquisites of the Court of Stannary and Mines." "Stannaries" in The Duchy of Cornwall Act 1337/1606 gives the Duke the right to claim mineral rights and pre-emption throughout Cornwall as a territorial possession and the Cornish the right to claim minerals through bounding.

8. Cornwall, a remarkable place distinguished by its ancient Celtic origins, Kings and national status

8A. The Duchy of Cornwall Charter/Act 1337/1606 affirms; "whereby our Throne may be adorned and the same Kingdom and the holy Church thereof and also the other Lands subject to our dominion....and desiring that remarkable places of our Kingdom may be distinguished by their pristine honours....."

8B. This part of The Duchy of Cornwall Charter/Act 1337/1606 makes a clear reference to the ancient indigenous Celtic national identity of the Cornish.

9. Stannaries held in trust for the Cornish people

9A. The Duchy of Cornwall Act 1337/1606, also reveals, "lest it may in anywise hereafter be doubted what or how much the Dukes of the same place in the name of the Duchy aforesaid ought to have.we have commanded to be inserted..."

9B. "In the name of the Duchy" in The Duchy of Cornwall Charter/Act 1337/1606 is clearly indicative of Duchy property in Cornwall held in trust on behalf of the Cornish people. Also an important supporting legal declaration is disregarded.

9C. "Although the King has some profit of tin, this is not in respect of any interest which the King had in the thing itself." (Case of Mines 1568, Plowden Commentaries, 1761, p.330).

10. Duty to support the property and customs of the Cornish people

10A. The Duchy Act continues:- "and more easily to support the charges in this behalf incumbent...to appoint the Sheriff of Cornwall.....we annex and unite to the same for ever to remain, so that from the same Duchy at any time they shall in nowise be separated..we grant and will the same Duchy to be delivered..."

10B. If a mere 'private estate', had been intended, the entry would read; "we grant and will" the said properties of "the same Duchy to be delivered." The Duchy of Cornwall Charter/Act 1337/1606 recognises the existence of the Cornish people and the Duke's duty incumbent to act in a fiduciary capacity towards them.

11. Equality in European law

The current E.U. Directive 2000/43; Article 8, provides that any discriminatory laws passed by the Parliament of a Member State are to be the subject of repeal. This Directive is supported by European Union case law covering repeal of legislation made by a Member State held to be in conflict with the Treaty. (Regina v. Secretary of State for Transport, Ex Parte Factortame Ltd, Joined cases, C-46 & 48/93).

12. The good, the bad and the Duchy

Case law reveals, "When the Crown elects to act under the authority of a Statute, it, like any other person, must take the powers it thus uses 'cum onere' "This means the Crown must accept

the disadvantages as well as the advantages arising from an Act, (*A-G v. De Keyser's Royal Hotel Ltd.*, [1920] AC 508 at 549-550; HL, per Lord Moulton). Our evidence reveals that this principle does not apply to the Duchy of Cornwall. E.g., In the case of *bona vacantia*, the Duchy inherits the assets but not the liabilities of any bankrupt company throughout the whole of Cornwall, (Companies Act 1985, s.654-658).

13. The unwritten Bill of Rights

"Dispensing with and suspending laws," contrary to the Bill of Rights 1688, places the other landowners of Cornwall, in relation to the Duchy of Cornwall, as the largest landowner in Cornwall, at a financial and cultural disadvantage. A statutory guarantee of equality before the law, a central principle of democracy, is confirmed as not available in English law by; The Department for Constitutional Affairs, (London SW1P 1SB, phone 020 7960 6517) who, in response to an enquiry on the subject, responded on 25th November 2003 with, "we are unable to help in this matter." The example of an unwritten constitution has not been adopted by any member of the Commonwealth because that would have been contested by the indigenous minorities. The Cornish are an indigenous minority of Britain.

14. Universal equality in dignity and rights except Cornwall

The absence of equality before the law in English law is not remedied by the relevant Protocol 12 of the Council of Europe's Convention for the Protection of Human Rights, which, in addition to Article 13, is not included in the Human Rights Act 1998. The United Nations Universal Declaration of Human Rights 1948 asserts, Article 1, "All human beings are born free and equal in dignity and rights" as, "inalienable rights," and Article 7; "All are equal before the law."

15. The appropriate authority v. a government department

15A. The Propriety and Ethics Unit at the Cabinet Office, (London SW1A 2AS, phone 020 7276 2471) by letter of 11th September 2003, asserted that the Duchy of Cornwall is not a Government Department. The letter also stated that the Duchy is not eligible for Ombudsman investigation but no reasons or statutory references were given.

15B. The Highways Act 1980 section 327 (4) covers, 'Application of Act to Crown land'. This, and many similar sections in other Acts, refers to Her Majesty, the Duchy of Lancaster, the Duke of Cornwall and a government department as "the appropriate authority" for negotiating a planning agreement, "but," it states, "provisions of a financial character shall not be included in an agreement made by a government department without the approval of the Treasury."

16. Profits v. Charity

The Annual Accounts of the Duchy of Cornwall 1998 reveal: "Accounts are prepared in accordance with instructions issued by H.M. Treasury. The Duchy's primary function is to provide an income for present and future Dukes of Cornwall. The Duke is only entitled to the net income." The Duke is, therefore, not the owner of a private estate while the Treasury deals with the Duchy as if it were a government department. The legal parameters for the Duchy of Lancaster are quite different; "no lease shall be granted unless for public or charitable purposes," (Duchy of Lancaster Act 1998).

17. Territorial possession v. Commercial possession

17A. 'The Cornish Question' by Mark Sandford, published by the Constitutional Unit, School of Public Policy, University College London, 2002, asserts on page 38, "The existence of the Duchy of Cornwall was once of constitutional significance, but is now essentially a commercial organisation." There is no record of a date, legislative authority or a comment on the propriety and ethics of a transformation from an official body of constitutional significance into a purely private commercial organisation.

17B. This particular "commercial organisation" claims for itself in Cornwall, the right to appoint the Sheriff of Cornwall; the foreshore of Cornwall; bona vacantia, gold and silver; treasure trove and intestate estates in Cornwall, (Inland Revenue Form RE2152); as well as; regalities; castles; lands, rights of common; rights in respect of mines and minerals; possessions reputed or claimed to be parcel of the Duchy of Cornwall, etc," (Duchy of Cornwall Management Act 1863, Published by Her Majesty's stationery Office 1978, Statutes in Force, Constitutional Law 10).

17C. The English academic world at the University College London would appear to accept, without challenge, an unofficial, once upon a time transformation in the status of the Duchy of Cornwall from a 'territorial possession', as in the Cornwall Submarine Mines Act 1858, and therefore, held in trust for the Cornish people, into a 'commercial organisation' for the heir to the throne.

17D. No attention is given to the possibility of 'Discrimination on the grounds of property', Human Rights Act 1998, (Article 14 and Protocol 1, Article 1 ECHR).

18. Without prejudice to the House of Commons

A Trial at Bar affirmed in 1828 (Rowe v. Brenton, Concanen Edition 1930) that everything connected with the Duchy is "of public interest," and "all the Kingdom should take notice," (The Prince's case 1606, 8 Coke's reports 13b) and yet, there remains an injunction in the House of Commons (Letter from the House of Commons Library to Andrew George M.P. 16th June 1997), apparently designed to prevent scrutiny of the role of the Duchy of Cornwall in Cornwall. The Duchy Charter/Act is reinforced by "rights, powers privileges, authority and exemptions" and Acts are; "without prejudice to the general law concerning the applicability of statutes to the Duchy of Cornwall," (Tamar Bridge Act 1998 s.41; S.I. Padstow Harbour Revision Order, 1987 No. 420 para.46 and The British Waterways Act 1995, s.34). This Duchy "general law" clearly rests on the authority of the three original Duchy Charters/Act which grant the Stannaries as well

as Stannary Courts etc., to the Duke. But, even so, The Court of Stannary and Mines has never authorised the Duke to claim mineral rights throughout Cornwall as personal property.

19. Local unofficial taxation

Domesday in 1086, did not include the Stannaries, foreshore or minerals. This fact alone deprives the Crown of a legitimate claim to these assets as private Crown property, (Halsbury's Laws of England, 4Ed; Vol.8, Constitutional Law, para 1420, n.2). The "general law" (British Waterways Act 1996,s.34) is apparently in place to provide new Duchy income from minerals and land. (Halsburys Laws of England, Ed.4; Vol.8; para.1418, note 2). The failure to apply the provisions of "the general law" (Tamar Bridge Act 1998, s.41) of the Duchy Charter applicable to the Cornish means that compulsory purchase discriminates against other land owners and mining operations in Cornwall. The resulting income helps to avoid the onerous burden for M.P.s and government of imposing taxation on the English national majority for the upkeep of the heir to the throne.

20. History repeating itself

The intent of the English King Edward III in granting the Duchy of Cornwall Charters in 1337/8, was that bounded land, as part of "our stannaries," should be the working tool whereby income from the wealth of Cornish tin and other minerals should be won to provide for the upkeep of his, and subsequent, eldest sons of the King being Dukes of Cornwall and heirs to the throne, as an inalienable right. A further aspect of royal intent in 1337 was to avoid repeated appeals to Parliament for subsidies for the royal family. In 1337 the large quantities of tin produced by the Cornish speaking Celtic minority was intended to provide a private Duchy income in place of the general taxation which would otherwise have been demanded from the English national majority. Elsewhere, the Monarch is limited to; "rights to minerals in her political capacity." (Halsburys Laws, Vol.12(1), para. 278; Crown Estate Act 1961, s.1).

21. Disregarding the Royal Mines Act 1688

Michael William's book "Charles, Duke of Cornwall," (Bossiny Books, Bodmin 1977) reveals, "In Cornwall the Duchy owns 54,000 acres of mineral rights, 160 miles of foreshore, and 11,300 acres of fundus." But, the Royal Mines Act 1688, still in force, presents a legal challenge to the royal claims to minerals in Cornwall as private property, since, the Act declares, "No mine of copper, tin, iron or lead shall hereafter be adjudged reputed or taken to be a royal mine although gold and silver may be extracted out of the same." Since the Duke of Cornwall is acknowledged to be royal, then he has, for the past three centuries at least, had no legitimate claim to base minerals, including tin, in Cornwall.

22. The road from public to private ownership

The Duchy has had the advantage of exemption from planning laws and the Nullum Tempus Acts, 1623 and 1769, though effective against property claims by the Crown in the rest of Britain, did not protect the landowners of Cornwall from Duchy acquisitions for a further 210

years. (Cornwall in the Age of the Industrial Revolution, John Rowe, Liverpool University, Cornish Hillside Publications, 1993, page 191). The Limitation Act 1860, declared as its objective; "to quiet titles in the county of Cornwall as against the Duchy," while the current Duchy of Cornwall Management Act 1863-1982, ss. 33-37, affirms the right to back date claims to land reputed to be Duchy property. The Land Registration Act 2002, s. 79, provides for the "Voluntary registration of demesne land" by the Crown. This represents a transfer of property from "public" to "private" ownership contrary to Protocol 1, Article 1 European Convention of Human Rights. Demense land was land claimed as inalienable under feudal rights by the Crown in its political capacity as the government.

23. The Crown v. The Duchy

23A. 'The Cornwall Foreshore' dispute between the Crown and the Duchy 1854-58 culminated in the "Articles of Agreement" between the Crown and the Duchy in the Cornwall Submarine Mines Act 1858 which reveals: "All mines and minerals within Cornwall under the seashore..estuaries and tidal rivers and other places (below high-water mark) are part of the soil and 'territorial possessions' of the Duchy."

23B. "Foreshore" is not mentioned in the Duchy Charters, but the intent of the Charters to recognise Cornwall as a "territorial possession" is confirmed by the 1858 Act, the "general law" of the Duchy and the ruling in "The Prince's Case 1606"; that "all Cornwall is the Duchy of Cornwall." Minerals are, therefore, only of constitutional interest to the Duke in his political capacity.

24. The Crown in its political capacity

24A. The Rivers of Cornwall are claimed as the property of the Duchy of Cornwall. By the Water Industries Act 1991, s.221, the Duchy is "the appropriate authority." The non-statutory procedure for securing this acquisition is revealed in; Halsbury's Laws of England, Volume 12 (1) (1998), para. 268 note (6), which declares:- "The Cornwall Submarine Mines Act 1858 was based on a Charter of Edward III. The seaward limits of Cornwall were settled between the Crown and the Duchy by an award of Sir John Coleridge of 28.10.1869..The majority of rivers in the county also form part of those possessions. The main rivers are, Camel, Gannel, Helford, Fal, Porthcuel, Foy, East & West Looe, Tresillian and Tamar."

24B. For the Crown, in its political capacity, the foreshore extends only "as far up every navigable river of the U.K. as the tide flows," (Crown Lands Act 1866,s.7). To provide income for the Duke, the 1869 Cornish rivers "award" gave the Duke more "power and authority" (Tamar Bridge Act 1998) over foreshore and rivers in Cornwall than intended for Crown rivers in the U.K. and thereby, disregarding the Crown Lands Act 1866 in Cornwall.

24C. The absence of equality before the law over centuries is clearly apparent. It has enabled with impunity the authorities to disregard certain parts of selected Acts of Parliament. This includes legislation defining as "territorial" the Duchy possession of Cornwall as well as excluding "Articles of Agreement" from the Cornwall Submarine Mines Act 1858. Those concerned have clearly acted in the firm belief that "the general law" of the Duchy, (British

Waterways Act 1995, s.34) and similar provisions, can be applied to protect and justify any promotion of England at the expense of Cornwall.

25. Promoting English traditions at the expense of the Cornish

25A. The non-statutory award to the Duke of Cornwall of rivers in Cornwall by Sir John Taylor Coleridge in 1869, is clearly intended to augment the perceived financial limitations of the original Duchy Charter of 1337. It cannot be regarded as common legal practice or adherence to an Act of Parliament. This constitutes; "interference with the enjoyment of property rights." (Chassagnou v. France, Judgement European Court of Human Rights, 29.04.1999, para.74).

25B. The estuaries of Cornish rivers were known to be rich in tin. The possibility of increased income from mineral rights etc., provides the most likely reason for making a non-statutory award of Cornish rivers to the Duchy of Cornwall. There is a history of inequality in the English system. Cornish people, working in the stannaries were considered to be foreigners, and as such charged the conventional English double tax on foreigners. (4 Coke's Reports 33). Up to the year 1838, a Duchy double tax on tin production was levied (V solidi; 5 shillings) in Celtic Cornwall compared to the rate levied (xxx denari; thirty pence) in Anglo-Saxon Devon.(G.R. Lewis, The Stannaries, Harvard Uni, U.S.A, 1908, pp 85 & 234/5).

25C. The provision; "All mines and minerals in Cornwall as the territorial possessions of the Duchy," written into the Cornwall Submarine Mines Act 1858, reveals that such possessions are officially recognised as "territorial" and, therefore, held in trust for the Cornish people. Unlike the Crown, (Crown Estate Act 1961) the Duke, has the means, and is, apparently, encouraged to ignore the law, to claim minerals in a private rather than in a political capacity in order to increase Duchy profitability currently or in the future.

26. Deprivation on presumption of state ownership

By the Royal Mines Act 1693, Statutes in Force, Constitutional Law 7; HMSO 1978, "Owners of Mines shall enjoy them," and "nothing in this Act shall alter the constitutions or laws of the Stannaries." Even so, the Duchy claims pre-emption of all tin, although "children of the royal family" were debarred by the Tenures Abolition Act 1660. (Refer:- Stannary Charter 1305 in R.v. East Powder Magistrates Court, Lord Widgery, 2 All ER 331, 1979). However, the law states; "The King (or Duke) has no interest in tin," (Case of Mines 1568; Plowden, Commentaries, 1761, page 330). In Human Rights case law, pre-emption is considered to be "Deprivation on presumption of state ownership," (Holy Monasteries v. Greece, [1995] 20 E.H.R.R. 1). The above facts reveal property discrimination disproportionately imposed on Cornish people.

27. The catch all general law

27A. The territorial possessions of the Duchy of Cornwall have recently been extended by The Treasure (Designation) Order 2002, No. 2666, to include "base metal of prehistoric date," in addition to gold and silver, The Treasure Act 1996, s.5(2). "Base metal objects of prehistoric date" are likely to be of tin and may be discovered in the Cornish rivers or at a bounded site. The

Duchy's catch-all "general law" is being applied to permit the Duke of Cornwall to claim property contrary to the provisions of the Royal Mines Acts 1688 & 1693.

27B. The Duchy of Cornwall is described as "a mode of descent unknown to the common law." (Halsbury's Laws of England, Vol.8; Ed.4; para.1560). Also, "Nothing in this Act affects or alters the descent or devolution of any property belonging to the Duchy of Cornwall," (Administration of Estates Act 1925, s.57). It is contended that the stannaries and the minerals of Cornwall, although claimed as the Duke's private property, are not in fact the property of the Duchy of Cornwall.

28. The general law applied to a territorial possession

The claim of personal possessions is inconsistent with the precedent of the foreshore of Cornwall being classified as one of the "territorial possessions" of the Duchy in its political capacity by the Cornwall Submarine Mines Act 1858, after four years of legal exchanges between the Attorney Generals of the Duchy and the Crown in the Cornwall Foreshore Dispute. A number of Acts of Parliament authorise the Duke to act in Ecclesiastical matters which reinforces the evidence on the territorial status of his possessions. "Territorial possessions" and a catch-all "general law" would normally be applied to a colony or annexed country. This suggestion of racial difference is understandable in association with the fact that when England was created the Cornish were in Britain speaking their own Celtic language which has recently been recognised by the British Government.

29. In the name of the Duchy

29A. Despite the Charter statement "we grant the same Duchy to be delivered" i.e., the whole of Cornwall with external annexations, the Duchy still asserts a "private estate" or part of the Crown in its "private capacity," (Crown Proceedings Act 1947 s.38 (c)). This label apparently facilitates the suppression of the term 'territorial possessions' and the denial of public access to information despite the public interest ruling of a Lord Chief Justice in 1828, (Rowe v. Brenton, Concanen, 1830). The Duchy Charter provision of 1337; "in the name of the Duchy," meaning, held in trust for Cornish people, is also disregarded, apparently to facilitate institutionalised discrimination on the ground of property. (Protocol 1, Article 1, ECHR).

29B. Between 1337 and 2002 there are repeated instances of privileges and exemptions etc., to promote the Duke of Cornwall's mining and property income. Examples are to be found in at least one hundred and eighty (180) Acts of Parliament, (List attached). Special privileges in the name of the Duchy for the Duke of Cornwall, are disproportionately prejudicial to Cornwall, in addition to which, the Duchy Charter provisions intended for the benefit of Cornish people have been disregarded.

30. A public interest in the scope of discretion conferred on the Duke

30A. Although the Duchy of Cornwall is officially described as "a mode of descent unknown to the common law" (Halsburys Laws of England 4th Ed. para 1560 - n.3; 8 Co.Rep. 13b) it is promoted as a "private estate." A 'private' landed Duchy estate disregards the ruling; "All Acts

concerning the Duchy are public Acts," (8 Coke's Reports 28b). A further judicial declaration is disregarded to the detriment of public knowledge concerning the role, function, and scope of discretion conferred in relation to property on:- (a) the Duke of Cornwall in Cornwall and (b) the Duchy of Cornwall in Cornwall. To reiterate the institutionally discarded judicial ruling; "The public has an interest in everything that is done in the Duchy," (Lord Chief Justice Tenterden, *Rowe v. Brenton*, Concanen Edition 1830, p.110).

30B. All the documents, reasons and decisions behind the attempts to transform the Duchy of Cornwall from a 'territorial possession' into a 'private estate' and from 'constitutional' to 'commercial' by the application of undefined Duchy 'powers' and an inexplicable 'general law', should be placed in the public domain along with Treasury papers on "The Mines Account" etc., (Crown Lands Act 1866 s. 2).

31. Property interests in Cornwall

Serious unresolved questions regarding the impact of "the general law" (Tamar Bridge Act 1998, s.41. 'Crown rights') on land ownership in Cornwall have been disregarded by the British government. Digression appears to have occurred from the ruling in the case of, *Sebel Products Ltd., v. Custom & Excise Comrs*, [1949] Ch 409 at 413, "Any emanation of the Crown is presumed to maintain the highest standards of probity and fair dealing." The Guidance on Propriety Issues in handling planning case work reveals; "The geographic split is determined so as to avoid ministers taking decisions in regions where they have a constituency or other interest." (*R (Alconbury) v. Secretary of State* [2001] All ER 947). It is contended that the Duke of Cornwall, who is given the political title "the appropriate authority" in many Acts of Parliament, exercises the function of a Minister while making decisions under "the general law" (*British Waterways Act 1995*, s.34) concerning his, contested, claims to mineral and property interests in Cornwall.

32. Human Rights and the scope of discretion by a competent authority

32A. "A deprivation of property effected for no reason other than to confer a private benefit on a private party cannot be in the public interest." (*James v. U.K.*, [1986], 8 E.H.R.R. 123; European Court of Human Rights). There has never been a Public Inquiry to investigate the role of the Duchy of Cornwall in Cornwall. The complete spectrum of the law currently being applied to Cornwall and laws unenforceable against the Duke, who, by birth, is of royal status, should not prejudice the rights of the Cornish to benefit from the provisions of the Framework Convention for the Protection of National Minorities.

32B. The Human Rights Act 1998 includes Article 14 ECHR which guarantees:- "Convention rights without discrimination on any ground such as ... association with an national minority, property, birth or other status." Property rights are further protected by Article 1 of Protocol 1, and equality by Protocol 12, ECHR. Human Rights case law reveals:- "Lawfulness requires that the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure, to give the individual adequate protection against arbitrary interference." (*Malone v. U.K.* 1985 - 7 ECRR 14 para.68, European Court of Human Rights)

We, the members of the Constitutional Committee of the Cornish Stannary Parliament,
respectfully submit these matters for the favour of your consideration,

E.Bray; T. Hall; N.Hicks; M.Jose; A.Muller; C.Murley; R.Nute;
B.Osborne; A.Richards; H.Rowe; A.Trathen; S.Treseder.

<http://cornishstannaryparliament.co.uk//resources//article.php?story=20061026014153525>