

**STATEMENT BY THE GSLP/LIBERAL OPPOSITION 147/2006**  
**23 November 2006**

The Attorney General Ricky Rhoda has told the Opposition that he would regard the referendum of 30 November as being “non-binding”, having “no legal consequences” and being “a testing of public opinion.” This has come in reply to a letter from the Leader of the Opposition Joe Bossano.

In his own response, the Opposition Leader has been quick to point out to the Attorney General that in his view this can only mean that the House of Assembly has agreed to hold an “opinion poll” as opposed to a binding consultation of the Gibraltarian people in the exercise of our right to self-determination.

Mr Bossano has explained that the Attorney General’s view is particularly serious given that the exercise of our right to self-determination has to be entirely binding on the United Kingdom, as the administering power, under the provisions of the UN Charter and the relevant resolutions on decolonisation.

It will be recalled that when the Referendum was discussed in the House of Assembly, Mr Bossano echoed the concern that had been expressed in some quarters as to whether there was a legal basis for the Referendum. He asked the Attorney General to give an opinion on this issue during the meeting in the House of Assembly.

When this was not forthcoming in the House, Mr Bossano wrote to the Attorney General on 31 October, asking for his view as to whether the House of Assembly had the power to call a Referendum given that this is not listed as a defined domestic matter under the 1969 Constitution.

In his reply, the Attorney General says that what the House of Assembly has done is to ratify, approve and join in the decision of the Government to hold a Referendum. He tells Mr Bossano that Referenda can either be mandatory or facultative. “In the case of a mandatory Referendum, it is the law, usually the constitution, that directs authorities to hold Referenda on specific matters, whereas a facultative Referendum can be initiated at the will of a public authority including Government or Parliament, or even at the will of a group of local citizens.”

Mr Rhoda added that he would regard the Referendum of 30 November as being “non-binding facultative Referendum which has no legal consequences and is a testing of public opinion.” He added that as no legal consequences flow from the Referendum, the House or the Government is entitled to call it and whether or not it constitutes a defined domestic matter is irrelevant.

In the other British colonies, modernised constitutions have been the subject of public consultation to establish whether they enjoy broad public support, according to the Foreign Office. In some territories the text has been accepted and in others rejected. None of these have been considered an act of self-determination by the United Kingdom.

However, in Gibraltar, as far as we are concerned, there is a politically binding commitment from the British Government to accept the result of the Referendum as an act of self-determination, whether the result is “YES” or “NO”.

This is in contrast with the assurances Mr Moratinos claims to have had from the same UK Government that what is due to take place here is no different to what is happening in many other colonial territories and the result here has to do with the modernisation of a colonial constitution and not with the decolonisation of the territory to bring about a change in its international status.

Given the apparent conflicting signals to Madrid and Gibraltar from the Foreign Office, had the Government brought primary legislation for the House to create the legal base for a decolonising Referendum it would have been interesting to see whether the UK Government would have permitted such an Ordinance to receive Royal Assent or instead would have disallowed it to keep the Spaniards happy.

ENDS