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Dear Councillor

From the beginning the Equality & Human Rights Commission (EHRC) has welcomed the review of the governance of St Helena and has understood the drivers for change. In particular the EHRC is keen to see a more open, transparent and accountable method of governing our island, one that can respond properly in reasonable timescales to situations as they arise. It is the spirit of wanting to achieve those goals that we write with our concerns as to the process being followed, the lack of important information which would enable the public to make a properly informed “choice” in the forthcoming consultative poll and the resulting risks to a successful outcome and public engagement.

The link between human rights and democratic constitutional order begins with the process leading up to the constitutional reform. This process can only have a fully successful outcome if it is based on broad participation of all parts of society. The people of St Helena should therefore be able to articulate their views freely and communicate with each other and those carrying out the change process without obstacles on the part of those in power. According to the United Nations it is important that their [the public’s] opinions and views are considered in the framework of clear procedures and that those responsible for overseeing the process and the process itself is open, transparent and objective.¹

In the considered opinion of the EHRC the Political Governance Review has fallen, and is falling far short of this standard in that:

The Change Process

1. The scope of the review

The scope of the review and changes was not consulted on. The public has been asking for broad changes to the Constitution since the current one was imposed without proper consultation in 2009 but their views have not been considered in the current process. It has long been promised that the required changes would be picked up when the next amendments to the Constitution were

¹See Human Rights Committee, general comment No. 25 (1996)

submitted to the Privy Council and therefore it was disappointing to note they did not form part of Professor Sarkin's terms of reference. Despite this being raised with the Governor, Elected Members and the Governance Commission² all the EHRC efforts to have these issues included have failed. Furthermore, there seems to be no process or fora in which they can be raised for consideration and action in future. Many of the questions raised in those letters have gone unanswered.

2. The Governance Commission

The Governance Commission has been the subject of previous correspondence and therefore we will not rehearse the issues raised again here, other than to say that the selection process was neither open nor transparent and it was disappointing that during the public meeting on 8th September 2020 with the Governance Commission, one of the Governance Commissioners admitted to not having read the Sarkin reports in detail.

3. Recommendations in the Second Sarkin report

Recommendations in the Second Sarkin report have been ignored without explanation these include:

- changes to the Governor's powers, and in particular that should a ministerial model be adopted the Governor would not chair Executive Council,
- changes to the Public accounts Committee and
- the inclusion of the EHRC as a Constitutional Body.

4. Constitutional drafting

It has been revealed that the Constitutional drafting has already been carried out by the Attorney General's Chambers, despite the fact that the public have not yet spoken. This along with the already publicised "Fit for the Future" changes to the administrative structure has given the impression that the outcome has already been decided. The Sarkin Report and the ToRs of the Governance Commission both said that representatives from the Governance Commission should be involved in the drafting. Evidence to date suggests that this has not taken place. According to the World Bank, "good governance is epitomized by predictable, open, and enlightened policymaking (that is, transparent processes); a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; and a strong civil society participating in public affairs; ..."³

Information Lacking

5. The cost of the new system.

In the second Sarkin Report paragraph 14 the professor discusses the need to attract more people of vision and leadership. He is clear in his belief that a ministerial system will need significant resources to attract the right people to stand and to train and support them in office. No information has been given to the public on how this will be achieved or the costs involved. He further calls for FCDO to announce their commitment to support the new system in all ways necessary – but this had not been done. With a week to go before the poll the public do not know what this is going to cost and how those costs will be met. Not very different from the current system of governance where Councillors repeatedly struggle to receive timely financial commitment from the FCDO on the Islands budget.

² Letter to Governor Rushbrook from EHRC 18th May 2020, Letter to Governor Rushbrook and The Governance Commission 16th September 2020, on the process being followed, Letter to Governor Rushbrook and The Governance Commission 16th September 2020 on further changes to the Constitution, both also copied to the Social and Community Development Committee.

³ World Bank, *Governance: The World Bank's Experience* (Washington, DC, 1994), p. VII

6. Potential Salaries for Ministers & Elected Members

As detailed in 5, above a ministerial system will not succeed without the right people in the roles, without knowing whether a package will be offered to attract the right people there may be a fear that the system will fail and therefore the public will vote for a safer option.

7. Status of the Poll

The Poll itself has been described as advisory, a consultation, it is not legally binding but at the recent round of public meetings it was stated that the Council would follow the majority wishes. Could the Councillors provide answers to the following, before polling day?

- Is the poll binding or not?
- How will the majority be defined?
- Will it be the majority of those that vote?
- If there is a low turnout will the poll count?

General Concerns

8. The Chief Minister

The public were keen to have input into the selection of the Chief Minister who will be responsible for the appointment of the other ministers. This has been rejected on the basis the other elected members have to work with the Chief Minister, so they should pick. This process is open to exploitation and potentially corruption and on an island the size of ours, it is almost certain to open the Chief Minister up to accusations of nepotism. The Chief Minister may struggle to have backing of their constituents.

9. Wording of the Changes to the Constitution

In Paragraph 67) of his second report, Professor Sarkin recommends consultation on the Draft Constitution. The public were informed at a public meeting on 23rd February that they have no right to see the draft Constitution before the poll as it is UK legislation, yet this holds much of the information the public need in order to cast an informed vote. There is to be a new Oath of Office but the public and potential candidates do not know what it will say. It seems that as the UK Government hold the financial control, and we have no right to any input into a law that only covers St Helena dictated to us by a Government we cannot vote for. This can only be described as colonialism.

10. Poor Consultation

This final round of information meetings, did not contain any new information and the answers to the questions raised during the previous round of meetings were still unavailable. Attendees were not provided information in advance of these meetings and so they could not seek clarification. The Elected Members seemed to be unable to answer the majority of the questions asked by the public. A repetition of unsuccessful and uninformative meetings held previously. If, as the public is being told, the Elected Members are expected to have the final choice on the governance system; they should be provided with sufficient information to make a properly informed choice. If they cannot answer the questions put at public meetings how can they make a fully informed decision?

In the EHRC's opinion, there is a significant danger that there will be little appetite for change, no matter how badly it is needed unless far more detail is given to the public including *inter alia*:

1. The detailed roles of the Ministers and Chief Minister;The reporting lines for Directors, Ministers and the Chief Secretary;
2. The plans for training & development of Ministers & how they will be supported and empowered particularly in the early days?
3. How is it intended that suitable candidates to stand?
4. What are the real costs of the changes?

The EHRC is seriously concerned that the process being followed for constitutional change is failing to achieve to reach the minimum standards expected in a democratic society⁴. Furthermore, based on the questionable process followed thus far, it is likely that the result of the poll will bring to fruition a governance that is no different to the current, except for a superficial change in titles and salaries. To date, the lack of real stakeholder and public engagement has made the public mere observers to what is supposed to be a democratic process that should be led by the people. The EHRC hopes that rather than seeing this document as an indictment of the current process you will accept it in the spirit it is intended, one in which our goals and the Government's align, in a spirit of cooperation in order to a achieve positive change for St Helena that is understood and agreed by all her people.

Yours sincerely

The Equality & Human Rights Commission

cc.

The Governor

The Chief Sec

FCDO Representative

Media

⁴Human Rights and Constitution Making. United Nations, July 2018 available at <https://www.un-ilibrary.org/content/books/9789213622513>