



List of Additions & Changes to the Constitution 2009

Gathered by the EHRC and HRCBC since 2009

The Preamble

The EHRC would like to see an addition to part (h) to include recognition of the Saint cultural heritage for example:

(h) mindful of the fact that St Helenians, of mixed genetic history whatever their diverse backgrounds, have become fused into a single, harmonious community, dispersed across the globe with their own cultural heritage and traditions;¹

The EHRC have received complaints/questions with regard to (k) which mention Christian and family values. These comments have come from Atheists who object to association with any faith and non-Christian believers who are uncomfortable with the idea that the values which also exist in their faiths are portrayed as having Christian exclusivity. This has been felt by some to be discriminatory and in conflict with Clause 21.

Partnership Agreement

An additional Clause stating that the governments of the UK and St Helena will work in partnership to respect, protect and fulfil the rights in Part 2,

Part 2 -The fundamental Rights and Freedoms of the Individual

The EHRC would like to see a policy statement on the Government's commitment to the people of St Helena, for example:

Clause xx: Promotion of the Welfare of the People

The Government shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:

- maintenance of ecosystems, essential ecological processes and biological diversity of Saint Helena and utilization of living natural resources on a sustainable basis for the benefit of all Saint Helenians, both present and future.

¹Based on the International Covenant on Civil & Political Rights, Article 27

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- consistent planning to raise and maintain an acceptable level of nutrition and standard of living of the Saint Helenian people and to improve public health;

Clause 5 and 21 Protected Characteristics – The EHRC would like to see the following included as they are recommended by the UN

- Pregnancy & maternity
- Disability (physical, mental or sensory)
- Marital status
- Culture
- HIV status

Clause 10 – Provision to secure a fair trial “(2) (d) shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice or, if unable to retain a legal representative at his or her own expense and the interests of justice so require, by a legal representative at the public expense.” This requires the addition of a guarantee that there will be equality of arms between defence and prosecution.

Clause 13 The Right to private & family life etc.

This clause does not adequately cover the scope of the right to privacy in internal law which also covers things like:

- sexuality
- the individual’s body
- personal identity and how someone looks and dresses
- forming and maintaining relationships with other people
- how personal information is held and protected

Family life includes the right to have and maintain family relationships. It covers the right not to be separated from your family and to maintain contact if a family is split up.

Relationships covered by family life include relationships between:

- parents and their children, including illegitimate and adopted children
- husband and wife as well as unmarried couples
- siblings.

Same sex couples are protected but their protection falls under their private life rather than family life.

The right to respect for an individual’s home means public authorities mustn’t prevent access to that home or occupation of it. A person has the right to enjoy their home peacefully without intrusion by a public authority.

A public authority may need to take positive steps to protect the peaceful enjoyment of a person’s home - for example, by reducing noise or protection from serious pollution.

This right extends to care homes and hospitals and includes

- searches and surveillance of a home
- separation of family members including deportation or removal of immigrants
- care or adoption orders for children and interference with parental rights
- compulsory medical treatment or testing

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- ill treatment in care homes
- The right to privacy extends to work - for example, phone tapping, the monitoring of emails and internet use, CCTV etc.
- personal information is disclosed to other people without the individual's consent
- the imposition of unreasonable dress codes at work
- the quality and nature of the accommodation provided by government
- protection from noise and pollution nuisance.

Clause 14 – The right to marry and of spouses' and children's rights

This clause needs to be amended to include the right of same-sex couples to marry

Section (5) "Every child shall have the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the Government of St Helena, and which are appropriate and proportionate to the circumstances of St Helena" needs to be amended to include the phrase "***In all decisions concerning children that are made by public or private social protection institutions, courts, administrative authorities or legislative branches, the child's best interest will be a vital consideration***"².

In addition the EHRC would recommend a statement on asylum seekers for example:

Clause xx: Asylum

The State shall, where it is reasonable to do so, grant asylum to persons who reasonably fear persecution on the ground of their political beliefs, race, religion or membership of a particular social group.

Clause 15-Protection of freedom of conscience

15 (1) Except with his or her own free consent, no person shall be hindered in his or her enjoyment of his or her freedom of conscience, which includes freedom of thought and of religion, freedom to change his or her religion or belief, and freedom, either alone or in community with others and either in public or in private, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance.

This does not make it clear that an individual is also protected if they have no faith.

How does (4) "No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief" fit with the Oath's elected members are expected to swear and the prayers before LegCo?

²[International Convention of the Rights of the Child, Article 3.1](#)

Part 4 – The Executive

36. Election of Members to Executive Council

Clearly this will be amended when the changes to the Executive are agreed however the selection of Chairs of Committees or Ministers must be as open and democratic as possible, the current process is viewed as being very undemocratic based on politics not necessarily the best person for the job.

44. Governor's Special responsibilities.

44. (1) The Governor shall be responsible for the conduct (subject to this Constitution and any other law) of any business of the Government of St Helena, including the general direction and policy control of any department of government, with respect to the following matters—

(c) internal security, including the Police; **In peace time this power should be delegated to a political body/person i.e. Committee or Minister.**

d) *The Governor should not have a role in personnel matters i.e. terms and conditions.*

f) *Finance , The EHRC is not clear what this means, further clarity is needed on how this fits with the role of the Financial Secretary and the Finance Committee.*

(g) shipping. Does this include Air access and the Equiano cable in deed this should not be the Governor's role at all.

In general as much as possible should have political oversight.

69. – Public accounts Committee

(1) There shall be a Public Accounts Committee which shall consist of—

(a) a chairman and one other member appointed by the Governor, acting after consultation with the Elected Members of the Legislative Council, from among persons who are not Members of the Council; and

(b) three Elected Members of the Legislative Council, who shall be elected by the Council by a majority of the votes of all its Elected Members **This is seen to be too many Elected Members for an independent body.**

Part 7 Public Service

Terms and conditions of employment

96. (1) The Governor, acting in his or her discretion, shall approve (and may from time to time amend) a Code of Management by or under which the terms and conditions of employment of officers of the St Helena Public Service, or any branch of it, shall be determined.

There is no appeals process

PART 9—COMPLAINTS/ ANTI-CORRUPTION COMMISSIONER

This is a much needed role which should be a permanent appointment not just an ad hoc body. It should cover complaints about the police, prison, hospital and other Government owned institutions like the Bank, and Connect.

Other Additions

The Equity & Human Rights Commission should be a constitutional body.

In effect the Commission protects people in the same way that External Audit protect money.

Two further clauses are recommended

Clause xx: Foreign/ Inward Investment

Foreign/ Inward investments shall be encouraged within Saint Helena subject to the provisions of an Investment Code to be adopted by the executive.

Clause xx: Sovereign ownership

Land, water and natural resources below and above the surface of the land and within the territorial waters and the exclusive economic zone of Saint Helena shall belong to the State if they are not otherwise lawfully owned.

The Oath of Confidentiality needs to be removed or drastically amended to allow for openness and transparency.



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Governor Dr Phillip Rushbrook
& Governance Commissioners
The Castle
Jamestown

16th September 2020

Dear Governor & Governance Commissioners

The EHRC welcomes the review of the governance of St Helena and is cognisant of the urgent need for change. The EHRC agree that there needs to be 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 concerns as to the process being followed and the risks to a successful outcome.

Human rights are at the heart of the constitutional order of a modern State, not only determining relationships between the individual, groups and the State, but also permeating State structures, and decision-making and oversight processes.¹

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. It is important that their 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.²

¹Human Rights and Constitution Making, United Nations publication issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR), 2018, p3

²See Human Rights Committee, general comment No. 25 (1996)

In the considered opinion of the EHRC the Political Governance Review has fallen, and is falling far short of this standard. The key arguments supporting public participation are:

1. A constitution enjoys the highest degree of political legitimacy if it is the fruit of the involvement of the people;
2. A constitutional order established with the participation of diverse segments of society benefits from public support and may be fuelled by the engagement of different groups in public affairs;³

Scope

It is the EHRC's understanding that from its enactment the current Constitution (2009) has fallen short of what the people of St Helena want in many respects, having been pushed through without the consent of the people. The issues and changes required are covered in separate correspondence.

It has long been promised that the required changes would be picked up when the next amendments to the Constitution were submitted to the Privy Council and therefore it was disappointing to note they did not form part of Professor Sarkin's terms of reference (which incidentally were not publically consulted on or discussed with stakeholders). Furthermore, there seems to be no process or fora in which they can be raised for consideration and action. It is essential that effective procedures and processes be put in place to ensure that the people will not only have the final say on the text of the constitution, but will also be involved, as appropriate, in key stages of the process of constitution making.

The Governance Commission

The EHRC's concern with this Commission is the subject of previous correspondence and therefore we will not rehearse them again here, other than to say that the EHRC's impression from the first of the "Public Engagement Meetings" is that the Commission's understanding of the role of a Constitution outside of the two options on the table was minimal.

With all due respect to the members, this was probably the first time they had been involved in the process of Constitutional Reform and they had no specific training or experience. However, it was disappointing that during the above mentioned meeting, one of the Commissioners admitted to not having read the Sarkin reports in detail. Those in attendance at that meeting were told that their comments were being noted and would be fed back but the Commission members present were unable to communicate the feedback process. This question was subsequently addressed in a press release the next day.

During the course of that meeting it was revealed that the Constitutional drafting and incorporation of Governance options changes is taking place, alongside the Public Engagement Sessions. Please would you inform the EHRC and the public who is drafting these changes? It would be useful for the public to have access to the ToR of the drafting process in the interests of transparency and inclusion. The meeting was also informed that the next stage was a referendum in six weeks' time, with no further consultation.

Those that expressed an opinion during the meeting said:

³Human Rights and Constitution Making, United Nations publication issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR), 2018, p 15

1. There was insufficient information on which to base any opinion;
2. Better the Devil you know – because of the lack of clarity on the two proposed options, there was a view expressed by many that it would be prudent to stick with what we have;
3. The time scales are too tight for effective consultation and proper decision making, if we get it wrong it could be another 10 years before it can be changed;
4. Why are we in such a rush and who is driving the change?
5. The whole thing is a fait accompli.

What happens next?

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 roles of the Ministers and Chief Minister;
2. The reporting lines for Directors, Ministers and the Chief Secretary; an organogram would be helpful;
3. The plans for training & development of Ministers & how they will be supported and empowered particularly in the early days;
4. How is it intended that suitable candidates to stand.

The drafting of a constitution, should be structured in such a way that input from different parts of society can be provided without impediments and can be duly taken into consideration. It is vital that the drafting process allow for a free and exhaustive debate on various options for constitutional solutions originating from different segments of society. Finally, it is important that different segments within the constituency have the right to participate in the debate and put forward proposals, and that they be encouraged and enabled to do so.⁴

The EHRC would be happy to assist in any way it can to address this situation, whether that be assisting in public meetings, contributing to drafting of the constitution, facilitating workshops as an independent organisation with an understanding of human rights and the democratic process and a good working knowledge of the Constitution and its role we are well placed to assist. While understanding the need for change we have not specific interest in the outcome, other than having a Constitution which is good for St Helena and its people, its Elected Members and our Civil Service and acceptable to the British Government. A Constitution that promotes and protects everyone's rights and encourages the developments needed for those rights to be attained.

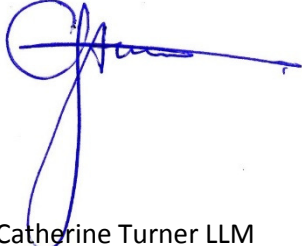
The EHRC recommends:

1. ToR for drafting of constitution be made public;
2. Public Consultation process should be enhanced/ supplemented by involving different segments of society e.g. EHRC, Councillors, etc.;
3. Experts in Constitution making be consulted with;
4. More information be made available/ accessible in public domain (FAQs, Press Release, informational leaflets, and workshops with key stakeholders).

⁴Human Rights and Constitution Making, United Nations publication issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR), 2018, p 14

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 achieve positive change for St Helena that is understood and agreed by all her people.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Catherine Turner', with a large circular flourish at the start and a long horizontal stroke extending to the right.

Catherine Turner LLM
CEO/Commissioner



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Governor Dr Phillip Rushbrook
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16th September 2020

Dear Governor & Governance Commission

Further to our earlier correspondence on the Constitution please find attached the list of amendments/ areas of concern which the Human Rights Capacity Building Committee and the EHRC have collated since 2009. These have been raised in the past with various Governors, Elected Members and SHG Officials all of who have responded that they can only be addressed at a review as the Privy Council will not deal with ad hoc or small changes.

We respectfully request that these are included for full consideration with this current review, to ensure that the new Constitution appropriately reflects human rights and fundamental freedoms and supports the democratic process.

The constitution is seen as the highest legal guarantee of people's well-being and interests, as well as a fundamental tool to shape the life of the island, but the people must have ownership of it. This is a wonderful opportunity to create a common vision of the future of the island, the results of which could have profound and lasting impacts

We look forward to engaging with you further

Yours sincerely

Catherine Turner LLM
CEO/Commissioner